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Legal Publics in Shakespeare's *Hamlet*

Widely known for its famous soliloquies, Shakespeare's *Hamlet* is often argued to stress the importance of the individual experience. Although these arguments are persuasive, they leave out the essential evidence within the play for collaboration and public spaces. This essay considers how *Hamlet* illuminates Shakespeare's account of selfhood, which I will suggest is collaborative rather than individual. It does so by proposing that *Hamlet* models a legal public. This legal public consists of juries that are made up not only by characters within the play but also by audience members and are formed in order to provide answers to the wealth of epistemological questions posed by the play. To make this argument, I will first reflect on the relationship between the law and the theater in early modern England and how these fields were growing in analogous ways. The resources I will draw upon to illustrate the legal-theatrical relationship will be scholarly accounts that provide a wealth of knowledge in regards to the rising popularity of forensic evidence, trial by jury, and the commercial theater. I will then explore the concept of Habermas's public sphere to articulate how the juries created in *Hamlet* make up a legal public and how that term should be defined. My final move will be to relate all of this information back to the play itself. Through a close reading from this perspective, I will relay how the characters attempt to answer the major questions of the play through collaborative forms of knowledge. To sum up, I will bring the Theory of the Public Sphere to bear on *Hamlet's* legal themes in order to make an argument that the play models a legal public as part of its larger concern with collaboration and sociality.

Both the law and the theater in early modern England were undergoing rapid changes in comparable ways; they were both becoming more participatory. Before this time, both establishments were highly exclusive and relied on members of a singular, noble, class to pass judgment. Lorna Huston points out in her detailed study of the law and theater in early modern England, *The Invention of Suspicion*, that the English criminal justice system emphasized the participatory nature of the jury trial, which consisted of people that were not necessarily trained in the law. Rather, they were made up of people who represented dissimilar levels of society (Huston 3). The lack of training in the justices of peace and jurors no doubt posed problems to the system as these inferior officers gained more responsibility (158). This conflict would be the grounds for much debate in Elizabethan England as there was an increasing amount of trust in

local judicial entities, especially in criminal cases (160). Huston notes that this time had “an acute consciousness of problems of administering justice and enabling moral self-governance in the localities” (159). The pamphlet culture reacted to the growing concern over the untrained legal participants and attempted to fix the problem by identifying the causes. Huston gives a wonderful example revealing an attempt to resolve the conflict through William Fleetwood’s manual *The Office of a Justice of Peace together with instructions, How and what manner Statutes shall be expounded* (189). Fleetwood, with his knowledge as recorder of London, attempted to teach proper legal practices to the untrained justices of peace. There was also a plethora of other self-help manuals that circulated around the local courts. These self-help manuals were utilized by the untrained officials in an attempt to become as knowledgeable as those versed in the law. The English justice system was markedly moving in a direction that allowed for more lay participation. Due to this, it was highly important that these unskilled men, the justices of peace and jurors, attained pertinent knowledge.

The dispute over whether every person could rationally judge events was also relevant to the commercial theater. Much like the local government, the commercial theater was accessible to a diverse public. Before 1558 the theatrical audiences usually consisted of nobles who attended court dramas. However, the theatrical landscape was vastly changing—the public theater was gaining more popularity, which allowed for the common people to now become participants (Ringler 392-394). One anti-theatrical pamphlet writer, Stephen Gosson, critiqued the public theater by stating that the audience was of the “baser sort” and had no “right to be admitted in the place of judgment” (Gosson). Like the common jurors, the audience members were seemingly unskilled in their newfound role. Both roles were viewed as being made up of people who did not have enough knowledge to arrive at rational conclusions.

To understand how the common classes—the playwrights, justices of peace, jurors, and audience members—may have been able to ascertain the specialized knowledge required in order to successfully navigate judicial narratives, Huston focuses on the importance of the rhetorical techniques embedded in the Latin treatises taught during the time. Some of the techniques taught in schools, which have been associated with sixteenth century dramatists and participants in the court, are the judicial teachings of Cicero and Quintilian that taught advocates, those whose profession it is to plead the cause of any one in a court of justice (OED 1), “how to open a case with an irrefutable *narratio*, or ‘narrative of the facts’” (Huston 7). She explains how rhetorical techniques, such as the one above, caused dramatic writers to create their characters as “forensically engaged in persuading each other of the facts” and “as suspiciously testing and trying out the grounds for belief in one another” (4). These practices would parallel the techniques that legal participants would employ in the courtroom. In other words, both the courtroom and the theater would become the setting in which forensic oratory, the mastering of legal opinion into a type of rhetorical art, would take place (Peters 445).

Huston’s argument then illuminates the parallel roles and abilities of the jurors and the revenge tragedy audience members by explaining that although “sixteenth century English revenge tragedy” would not present the audience “with competing narratives,” it would “nevertheless make a similar open ended appeal to our capacity as equitable moral arbiters of the case” (Huston 69-70). In both the criminal trial and the revenge tragedy, participants would be exposed to narratives that would require them to pass judgment by examining the forensic evidence

provided to them through narration. Finally if, as Ian Ward points out, the audience is subjugated to the law as they are to drama, it would make sense that the influx of integrated classes of people into participatory roles in both the law and in the theater would be highly significant to how one imagined themselves during this time. Members of the court and dramatists would now have to appeal not only to one's "individual imagination" but to one's "collective imagination" (Ward 1).

Jürgen Habermas's *The Structural Formation of the Public Sphere: An Inquiry into a Category of Bourgeois Society* provides a set of concepts that are helpful when defining what a collaborative form of selfhood is and how it may be articulated. The bourgeois public sphere is defined as a group of private people coming together to create a public. Their medium of political confrontation is their use of their reason (Habermas 27). Since Habermas defines this public as a group that utilizes reason collaboratively, which was a necessary practice to jurors and audience members, it is important to note that the group is only able to successfully achieve political confrontation together. The idea of the public sphere, then, is one that is concerned with sociality above individuality and how a community of thought is able to enact political change.

Habermas explains that there has been a change in the definitions of the Latin words "publicus" and "privates" and their modern translations. Originally, the "publicus" was "the public authority" and was likened to the state and the monarch, while the "privates" would be considered the individual that was apolitical (14). During the sixteenth century, this translation was still current. However, as Habermas points out, the definition of those words change at the end of the seventeenth century as the old form of the monarchical public was set against "the private-apolitical bourgeoisie" (29). This change in meaning of public and private is important to my argument because it was beginning to occur during the time *Hamlet* was written and staged. Although Habermas does not attribute this type of ideal public sphere to the sixteenth century- he believes it to have been achieved in the eighteenth- he still attributes its early development to the former. The public-monarch and private-bourgeoisie member would eventually switch roles due to the power of communication that was becoming available during this time through inventions such as the printing press. Therefore, it may be concluded that the increasing ability for socially integrated groups to communicate allowed for a change in the perception of the self from the individual self, under the monarch, to the collaborative self, united under a public ideology.

Although there is not a specific definition in Habermas's work of a legal public, he provides a detailed definition of how publics in general are created and should be understood. A major component of this is equal communication. Habermas expresses his "interest in a communicative ideal" through his idea of the public sphere, since it operates on "the idea of [an] inclusive critical discussion, free of social and economic pressures, in which interlocutors treat each other as equals in a cooperative attempt to reach an understanding on matters of common concern" (Bohman). The groundwork for the ideal Habermasian public sphere was undoubtedly being formed in part due to the growing participatory roles in the courtrooms and theaters in the sixteenth century. The participatory structures allowed for, and required, groups of people to cooperate and collaboratively practice weighing evidence and forms of discretion and judgment (Huston 4). As a result, legal publics should be understood as groups of people who are cooperating in judicial manners in an attempt to reach a common rational judgment. Many critics

argue whether this idea of a bourgeoisie public sphere was ever a reality or if it was just an ideal (Calhoun 6). However, the main importance of the public sphere is its ability to integrate diverse social groups, just as the legal sphere and theatrical sphere in the time of early modern England were beginning to do.

How do these legal publics take shape in Shakespeare's *Hamlet*? What I want to do in the remainder of this essay is consider the play's legal themes and elaborate how they focus on collaborative forms of selfhood. This will be done by identifying the sets of juries, or legal publics, within *Hamlet*, which consist of the characters within the play and the audience members. I will then elucidate the importance of their collective attempts to answer the play's epistemological questions through Habermas's communicative ideal, which is the desire to understand matters of common concern collaboratively. Although critics tend to focus on Hamlet's interiority and desire for a private space, the play also puts strong emphasis on collaboration and public spaces. Lorna Huston believes Hamlet's defining characteristic to be his fear of being "(mis)construed evidentially" (Huston 309). Although many of the characters within the play and the audience are attempting to understand Hamlet, it seems as though the character Hamlet is also trying to understand the course of action he should take. Luke Wilson argues in his study *Theaters of Intention* that "intention is arguably part of a picture of mental processes founded in appropriative epistemology in which knowing entails an act of mental acquisition" (Wilson 7). The acts of mental acquisition in the play *Hamlet* are irrefutably done through the collaborative groups created within the play. These groups, or juries, attempt to answer two significant questions: 1) What is the extent or reality of Hamlet's madness? 2) Is Hamlet justified in taking revenge?

Claudius, more or less, forms the legal public that attempts to answer the first question, regarding the extent of Hamlet's madness. Instead of trying to get rid of Hamlet, by sending him back to Wittenberg, Claudius decides to determine the cause of Hamlet's madness with the assistance of the other characters. Claudius first enlists the aid of Hamlet's childhood friends Rosencrantz and Guildenstern. He wishes them to find out the cause of Hamlet's madness obliquely and recruits them to

draw (Hamlet) on to pleasures, and to gather,
So much as from occasions you may glean,
Whether aught to us unknown afflicts him thus
That, opened, lies within our remedy. (2.2. 15-18)

They agree to ally themselves with Claudius and in doing so create a legal public. From the beginning of the play, Shakespeare focuses on the inability of the characters to attempt to pursue the knowledge they seek alone. He readily provides another example, through Polonius, right after this exchange. Polonius, who has been conducting his own research regarding Hamlet's intentions towards Ophelia, approaches Claudius with the supposed answer to Hamlet's madness, which is said to be scorned love. He relays this verdict in a drawn out narration explaining the evidence he has seemingly collected from Ophelia's testimony. However, Claudius is not appeased by this evidence alone and agrees to observe, with Polonius, an interaction between Ophelia and Hamlet. It is clear that if Claudius has any doubt while observing the lovers himself,

he will be able to overcome it with Polonius's aid. The evidence for this reading is in Claudius's explanation to Gertrude regarding their plan. He explains that both Ophelia's "father and (himself)" will be "lawful espials" that "will so bestow (themselves) that, seeing unseen" they may "frankly judge" the encounter between Hamlet and Ophelia (3.1. 33-35). Claudius states *her father and myself* will frankly judge not just *myself*. This shows his intention to work together with Polonius in order to determine a conclusion. Furthermore, after they observe the lovers and do not come to an official agreed consensus, they do not act. Instead, they come to an agreement that Hamlet is indeed mad and that his final verdict will depend on whether or not he explains his cause of grief to his mother or not. In this interaction, both Polonius's and Claudius's opinion carry the same weight-- one of their opinions does not override the others. Polonius still believes Hamlet to be mad due to unrequited love; Claudius still believes there is more to it than that. However because of the equality of opinion between the characters, an action is not directly taken. The partnership of Claudius and Polonius provides strong evidence for the importance of collaborative forms of knowledge that are an essential element of a legal public.

Another noteworthy legal public is created between Claudius and Laertes after Hamlet reappears in Denmark. Claudius enlists Laertes to take revenge on Hamlet with him by explaining to him that "No place should murder sanctuarize; / Revenge should have no bounds" (4.7. 101-102). It seems that, unlike Hamlet, Claudius does not have a problem devising a direct plan for revenge. However, like Hamlet, Claudius cannot act alone. He first attempts to get rid of Hamlet by enlisting the English to murder him. When that attempt falls through, he enlists Laertes to administer his final judgment. Throughout the play, Claudius is presented as a man who does not have the qualms Hamlet has with murder. Although Claudius could finish off Hamlet alone, he instead chooses to enlist others to perform the final blow. There is a necessity within the play for a collaborative action, which is emphasized after Laertes agrees to take revenge on Hamlet with Claudius. Although Laertes has agreed, he almost takes revenge on his own when he encounters Hamlet at Ophelia's grave. This individual revenge is stopped short by Claudius restating the importance of their collaborative revenge. Claudius asks him to "Strengthen [his] patience in [their] last night's speech. / [they'll] put the matter to the present push" (5.2. 286). Laertes relents and the final action of the play is finally able to occur, through Claudius poisoning a drink and Laertes poisoning a blade, in a public space.

Yet another legal public within the play is crafted by Hamlet and may be used to answer the other major question of the play, which is whether or not Hamlet is justified in taking revenge on Claudius. Act 1.1 opens with a legal narration by the guards regarding the vision of the ghost. Horatio does not believe the narratives he has been given up until this point but allows Barnardo to give his testimony. Just as Barnardo begins to do so, his narrative is proven true as the apparition of the Ghost appears on stage. Instead of the characters attempting to determine who the ghost represents by themselves, they employ each other to come to a conclusion. First Barnardo states that the ghost is "In the same figure like the King that's dead." But then asks Horatio to agree with him, "Looks it not like the King? Mark it, Horatio" (1.1. 41-43). Then, although Horatio agrees, Marcellus begs that Horatio question the Ghost. Horatio does so but his questioning to the ghost reveals that he is skeptical if the ghost is indeed the king, "What art thou that usurp'st this time of night | Together with that fair and warlike form / In which the majesty of buried Denmark / Did sometimes march?" (1.1. 45-48). The Ghost does not speak to him but

disappears. Marcellus then asks Horatio, "Is it not like the King?" (1.1. 58). The two guards try to identify the ghost by consulting one another. All of which seem settled in their collective opinion, after consulting one another, that the ghost has at least taken on the figure of the dead king. This is the first scene in the first act in *Hamlet*. Shakespeare, it seems, is already setting up the skeptical personalities that make up the *dramatis personae* in *Hamlet* and is already placing emphasis on their desire to determine truth jointly.

The next scene that takes place regarding the Ghost is Act 1.2. In this scene the soldiers and Horatio decide that prince Hamlet must be informed of the Ghost. Horatio tells Hamlet to listen to his testimony with an "attent ear till [he] may deliver / Upon the witness of [Marcellus and Barnardo], | This marvel" (1.2. 193-195). Hamlet listens to Horatio but then interrogates him for evidence, just like a lawyer would do in a courtroom, "What looked he? Frowningly?" (1.2. 230). When he has exhausted his questions to Horatio, Hamlet decides to go stand guard that night to encounter the Ghost himself and hopefully receive his narrative. After he encounters the Ghost and hears of his plight, Hamlet vows that the Ghost's commandment "shall live within the book and volume of [his] brain, unmixed with baser matter" (1.5. 102-104). He then places himself in a revenge contract with the Ghost. In normal revenge tragedies, Hamlet would then away to kill Claudius on behalf of his murdered father. However, Shakespeare does not choose to write his play in that prescriptive form. Instead, Hamlet's skepticism of his own interpretation of the Ghost's account of the murder causes him to search for forensic evidence and justify what he must do to Horatio. This change inevitably allows for more tragedy to occur within the play but also emphasizes the importance of collaborative forms of knowledge.

Another formation of a legal public occurs through Hamlet's relationship with Horatio. Hamlet attempts to receive absolute proof of Claudius's guilt through *The Mousetrap* play. This scene may also be perceived as an attempt by Hamlet to communicate his knowledge to a public that may then ally with him for his cause to seek vengeance on Claudius. In the least, Hamlet wants Horatio to agree with his judgment by "observing [his] uncle" to see "if his occulted guilt" is shown within "one speech" of the play (3.2. 75-76). Hamlet proposes that after they view Claudius watching the play, they "will both [their] judgments join to censure of his seeming" (3.2. 81-82). Due to this, Hamlet and Horatio form a legal public that will collaboratively determine Claudius's guilt and Hamlet's justified course of action. Also, significantly, Hamlet wishes to pass this judgment in a public space as opposed to a private space.

The action in the play delayed after Hamlet and Horatio decide that Claudius is indeed guilty, which occurs because Hamlet stabs Polonius through the arras instead of his desired target, Claudius. However, this scene illustrates Hamlet's ability to take only after agreeing with Horatio that Claudius was guilty. Arguably, the only action of revenge Hamlet is able to take without justifying it first to someone is the death of Rosencrantz and Guildenstern. However, he immediately justifies this act to Horatio upon his arrival back to Denmark from the sea. Instead of affirming that he acted alone in order to take revenge on them, he instead states that it was an act of divine intervention. What's more, before Hamlet tells Horatio of his action that will put Rosencrantz and Guildenstern to death, he asks if Horatio remembers "all the circumstance" (5.2. 291) that had transpired to justify all of his actions. This parallels the final scene of the play in which Hamlet begs Horatio to stay alive so that he may give a narration of "all the circumstance"

that caused the events that took place. In essence, Hamlet desires Horatio to give his testimony so that his side of the story may become real. Hamlet's plea is much like Weisberg's poethics: the use of literature to fill the ethical void in which thought and practice exist (Huston 449). Horatio's narration to Fortinbras, and the audience, then overcomes Hamlet's fear that they will misinterpret forensic evidence through their epistemological questioning.

Finally, Act 5 is also significant to the legal publics created by Hamlet. By means of the legal publics he forms, Hamlet is able to finally administer the justice he vowed to the Ghost. The events that took place in order for him to finally perform the revenge are significant. Much like Claudius, Hamlet is unable to act based on his desire for vengeance alone. He needs tangible evidence to be provided to him of Claudius's guilt through the other characters, which he finally receives via the poison used to kill Gertrude and Laertes definitive testimony "The King, the King's to blame" (5.2. 274). It is not surprising that, in this moment of complete collaboration and absolute proof, the final action is allowed to take place at last.

There is one more legal public that needs to be considered: the audience. Shakespeare seems to have crafted *Hamlet* in the form of the circumstantial narrative taught in schools of the time, in which the audience questions the characters motives because the *dramatis personae* are hyper involved in questioning each other. Since Shakespeare has not produced a prescriptive revenge tragedy, the audience is not given a formulated judgment. Therefore, the audience has to determine the answers to the questions the characters within the play asked each other. This is much in the fashion of the epistemological drama which was based on the participation of laypersons deciding what counted as knowledge (Huston 5). Furthermore, since the commercial theaters were outdoor theaters, the audience would be able to converse with each other without reproof. Through their conversations and through the evidence and testimonies they collected throughout their theatrical experience, they would be able to pass judgment on the *dramatis personae* and the play as a whole. Since the play begs its audience to decide the final verdict, the audience would then have a specific role in the drama.

The audience's role may also be likened to that of Fortinbras, the English Ambassadors, and soldiers that are greeted with the results of tragedy when they enter the stage. After Horatio narrates the events that took place before this point, these characters will be put in the same position as the audience. The parallel is exposed through a close reading of Horatio's dialogue to Fortinbras at the end of Act 5. After the carnage of the final act, the audience, much like Fortinbras and the others, would be left with the bodies on the stage as their final vision of those particular characters. Horatio desires the bodies to be placed "high on a stage... to view" so that he may "speak to the yet unknowing world | How these things came about" (*Hamlet* 5.2. 330-334). Horatio desires the public to judge the events that occurred in Denmark and pass judgment only after hearing his version of Hamlet's testimony. What's more, Horatio tells Fortinbras he will use a collective voice when he explains the events in Denmark. He will speak from Hamlet's "mouth whose voice will draw on more" (5.2. 345). This scene evokes the idea of Habermas's public sphere—it emphasizes the importance of collective communication regarding a common concern. It may be argued that this scene does not mimic an ideal public sphere in a pure Habermasian account because Fortinbras states that they will "call the noblest to the audience" instead of the public. However, this argument is countered when one takes into account the

audience who is watching the play in the commercial theater and has already seen the story Horatio will tell. Therefore these groups both form a legal public, since the judgments Fortinbras's public and the audience will make will both be taken from their collective interpretations, which both include Hamlet's account.

As a final point, the first and final scenes in Shakespeare's *Hamlet* put a great amount of emphasis on collective forms of knowledge. The rising participatory culture of the English courtroom and the commercial theater had a significant effect on conceptions of selfhood in sixteenth century England as seen in *Hamlet*. The growing importance for lay people to be trained in modes of justice challenged the way the people envisioned themselves within society. People were no longer bound to a system that did not value their opinion but bound to one that desired to educate them in the ways of the law so that they may have one. The result of the distribution of legal rhetoric to the lay people provided a large group with a common language in which they would be able to use to discuss plays such as the revenge tragedy. It would also aid them in navigating a play, such as *Hamlet*, that breaks away from a prescriptive form and instead complicates and expands it by championing the use of collaborations. Through the lens of the Habermasian public sphere, one is able to see that the juries created within the play emphasize a collective voice—a voice that is in stark contrast to the reading that renders Hamlet a play concerned with interiority. Shakespeare utilizes legal themes in *Hamlet* to make a statement that groups of people have more power to act to promote change together than they do individually. The commercial theater would have been a perfect space to showcase this ideal and a play concerned with sociality, since a diverse demographic of classes were admitted to participate in the drama there. In a society still controlled by a monarchical force, a play such as *Hamlet*, that beckoned private people to come together as a group in the commercial theater and collectively administer judgment, would have been a novelty. The fact that Shakespeare was already imagining legal publics in this time makes *Hamlet* groundbreaking in a whole new way.

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