

An Unrecognized Theme in *Hamlet*: Lost Inheritance and Claudius's Marriage to Gertrude

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By delivering possession to the king—the one person whose legal claim outweighed Hamlet's—Gertrude also violated the great social imperative of every parent: at all costs to preserve the property rights of his or her issue. Her "o'er hasty marriage" was therefore not only incestuous and immodest, but disloyal, unnatural, and unkind. The reckless disregard of her first loyalty as "her husband's brother's wife,/ And . . . my mother" (3.4.14-15) scandalizes Hamlet

You cannot call it love; for at your age
The heyday in the blood is tame, it's humble,
And waits upon the judgment (3.4.68-70)

He does not suppose that the dynastic marriage—dowager queen with successor king accompanied by a premarital jointure agreement—was the product of giddy sexual passion; theirs was a negotiated courtship, and required too much reflection and "judgment" on her part to be explained so easily. But it is equally wrong to suppose that Hamlet is furious at his mother simply for marrying a man who was less handsome or accomplished than his father, or for his sexual energy. To him, the offense lay in the way she rushed to do so during her quarantine, trading away his birthright along with everything of her own.¹

Faced with total disinheritance, Hamlet makes no secret of his displeasure, and his plea of poverty "Beggard that I am, I am even poor in thanks" (2.2.272) may be the literal truth. It is precisely the sort of motive Rosencrantz and Guildenstern were sent to discover, but they let its significance pass over their heads and report to Claudius only that

He does confess he feels himself distracted,
But from what cause a will by no means speak.
(3.1.5-6)

Editors and critics who take their report for fact instead of proof of their ineptitude also miss the significance of Hamlet's language in the "rogue and peasant slave" soliloquy later in 2.2:

Yet I,
A dull and muddy-mettled rascal, peak
Like John-a-dreams, unpregnant of my cause,
And can say nothing—no, not for a king,
Upon whose property and most dear life
A damn'd defeat was made. (2.2.561-566)²

When the two bumbling spies summon him to Gertrude's chamber after *The Mousetrap*, Hamlet returns to the same theme of economic deprivation, "Ay, sir, but while the grass grows — the proverb is something musty" (3.2.334-335), referring broadly to the saying that "While the grass grows the horse starves."³ Hamlet makes almost the same complaint to Claudius before *The Mousetrap* performance begins. In response to the king's friendly "How fares our cousin Hamlet?" he responds "Excellent, i'faith, of the chameleon's dish. I eat the air, promise-crammed. You cannot feed capons so" (3.2.93-94). The answer, like its post-Mousetrap companion, is another proverbial reference to starvation: "A man cannot live on air like a chameleon."⁴ In both cases, Hamlet speaks in terms of present deprivation, something he never complains of with respect to the kingship itself. What he has been deprived of is, of course, the income from two-thirds of his father's lands, all of which now flows into Claudius's purse. With Hamlet dependent upon the king for an allowance, as Claudius once was upon his older brother, we can imagine the allowance to be as meager as the one Claudius once endured⁵ and that Hamlet feels himself gradually being reduced to a prince of shreds and patches.

There is repeated textual evidence that Hamlet sees Claudius's offense in terms of property, not royal power. Having arranged for the actors to "play something like the murder of my father/ Before mine uncle" (2.2.591-

592), Hamlet interprets Lucianus's speech to Claudius as provocatively as possible, going out of his way to explain that he killed his uncle for his property: "[He] poisons him i'th'garden for his estate"(3.2.255). After the murder, the essential next step in Lucianus's scheme to make the property his own is to marry the uncle's widow. "You shall see anon how the murderer gets the love of Gonzago's wife" (3.2.257-258).

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Gertrude's marriage had further dire implications for Hamlet's inheritance, in the institution called "tenancy by the curtesy [of England]."⁶ Operating for the benefit of any man who marries a woman having an estate of inheritance, it provided that from the moment she bore him issue capable of inheriting her estate, the husband becomes tenant for life. If the woman has had an heir by a prior husband, that heir's enjoyment of his inheritance is postponed for the lifetime of the tenant by the curtesy. For Hamlet, the birth of an heir to Claudius and Gertrude would have the same effect as the rule of royal prerogative cited in *Hales v. Pettit*, and effectively make his disinheritance permanent. It is tempting to imagine a Claudius who is Hamlet's contemporary, as so many uncles are, making the inequity and iniquity doubly intense, and easy to enact in performance.

The birth of an heir would not only assure Claudius of control over Gertrude's property for life, but it would make Gertrude entirely dispensable to her murderer-husband. Moreover, a male heir in particular would certainly supplant Hamlet in the eyes of Claudius and probably the court at large as "the most immediate to our throne" (1.2.109). Gertrude, once having learned from Hamlet that her present husband murdered her first, "kill a king and marry with his brother" (3.4.29), doesn't need the rest spelled out. She has been sweet talked into disinheriting her son by marrying during her quarantine, but Claudius still needs her alive to enjoy the fruits of his crime, a situation that will change if she bears him an heir and puts her own life in the greatest danger. And the unpopular Claudius already has motives to get rid of each, in Gertrude's love for Hamlet—she "lives almost by his looks" (4.7.12)—and Hamlet's popularity - "the great love the general gender bear him" (4.7.17). But in the absence of loyal supporters to back him up—he relies on the imported Switzers for protection—and also for appearance's sake, Claudius may consider two more royal deaths in quick succession to be an unacceptably risky way to advance his ambition. So when the chastened and frightened Gertrude finally asks, "What shall I do?" (Hamlet's first instruction had been for her to avoid pregnancy; she must refuse to have sex with Claudius), Hamlet responds:

Not this, by no means, that I bid you do:
Let the bloat King tempt you again to bed.
(3.4.183-184)

His second thought is for Gertrude's own immediate safety, and to buy time. So long as Claudius is willing to keep up appearances, there will be time for action. But the moment he thinks they know the truth and constitute an imminent threat to him, he will, no doubt regretfully, arrange to have them both killed and take the property in his own right, as sole heir. So Hamlet warns her—just as he warned Horatio and Marcellus—not to reveal what she knows, nor put herself in danger by making inquiries on her own:

"[Do not] Unpeg the basket on the house's top,
Let the birds fly, and like the famous ape,
To try conclusions, in the basket creep,
And break your own neck down.
(3.4.195-198)

With Hamlet's instructions in her ears, Gertrude runs to Claudius with the cover story she hopes will protect both Hamlet and herself, and tells him that Hamlet killed Polonius in a fit of madness. It doesn't quite work; Claudius realizes "It had been so with us, had we been there" (4.1.13),

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and, feeling his time running out, gives Rosencrantz and Guildenstern a sealed commission for "The present death of Hamlet" (4.4.68).

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Gertrude's status as a "jointress" introduces a further set of threats to Hamlet's inheritance. Editors generally ignore the legal implications, even while expressing regret that the meaning of the word is not further clarified by the text, and propose various pointless explanations.⁷ Even authors looking specifically for legal significance miss the deeper significance of the word, stating confidently that "every Elizabethan man-in-the-street" took jointure to imply joint ownership.⁸ But obviously, the audience for whom the *Hales v. Pettit* allusion was intended had to be legally sophisticated, and would have known better, as would the landed gentry who entered into jointure agreements.⁹ Jointures were uniformly understood to be pre-marital provisions for the livelihood of a wife in substitution for dower,¹⁰ where views differed as to whether it was "joint" only because it related to the joining in marriage, or involved jointly owned property, or was a bargain joined to the marriage contract.¹¹

Under the statute 27 Hen. 8 ch. 10 (1536), jointures operated to waive common law dower.¹² If Claudius was not satisfied with marrying a rich widow but also needed her to waive dower, it may be inferred that he planned to sell the land coming into his possession through her, that is to say, Hamlet's inheritance. But what sort of jointure could the landless Claudius offer? Since he couldn't call on his family, consisting only of Hamlet, he must have turned to his "friends." And who were they? He was not well loved; the "general gender" was loyal to Hamlet, the "rabble" were willing to back Laertes on a moment's notice, his personal guard was made up of Switzers, and King Hamlet's courtiers made mouths at him behind his back. That left only the aggressive land purchaser, the "great buyer of land" (5.1.103) to whom he had to turn to underwrite his marriage, bringing to court contemptible newcomers like Osric, "spacious in the possession of dirt," with "much land and fertile." Just as the people at court in 1.2. all had their separate motives for attending, we have Osric, standing for large landowners in general, acting as the king's privy messenger in the last scene. And landowners were, after all, the ones to whom he would be selling his—that is, Gertrude's and Hamlet's—property in the near future. Like Bassanio, or a modern medical student, Claudius must have mortgaged his future and incurred obligations; and so we hear him make sure to thank his patrons, like any good politician at an after-dinner speech:

Nor have we herein barr'd
Your better wisdoms, which have freely gone
With this affair along. For all, our thanks.
(1.2.14-16)

And Claudius' "freely" may be no more sincere than the "gentle and unforc'd accord" portrayal of Hamlet's consent to remain in Denmark. It is tempting to look through his smooth words, and imagine that they describe intense lobbying and heavy-handed pressure, plastered o'er as an appeal to reason, friendship, and mutual benefit.

The danger to Hamlet implicit in Gertrude's jointure is not in its terms, but in the likelihood that any arrangement designed to procure a waiver of dower is a prelude to disinheritance by legal chicanery. And Hamlet finally confirms how deeply it troubles him during his graveyard ruminations at 5.1. His famous *memento mori* reflection on the transience of worldly values digresses into an otherwise irrelevant fifteen-line diatribe against the species of shady real estate lawyer who uses "his cases, his tenures, and his tricks" (5.1.98) to disinherit heirs, and the great buyer of land for whom he works.¹³

Why, may not that be the skull of a lawyer? Where be his quiddities now, his quillities, his cases, his tenures, and his tricks? . . . Hum, this fellow might be in's time a great buyer of land, with his statutes, his recognizances, his fines, his double vouchers, his recoveries. Is this the fine of his fines and the recovery of his recoveries, to have his fine pate full of fine dirt? Will his vouchers vouch him no more of his

purchases, and double ones, too, than the length and breadth of a pair of indentures? The very conveyances of his lands will scarcely lie in his box, and must th'inheritor himself have no more, ha?

(5.1.96-98, 101-110)

The legal terms in this passage have a significant common feature: in addition to their more general meanings, they all describe elements of collusive lawsuits and procedures commonly used to defeat the rights of heirs in order to facilitate sales of real property by the present owners. In the vocabulary of these actions, a fine ("final concord") ended a lawsuit in which the defendant defaulted by prearrangement; it was "final" because it concluded the rights of all interested persons, and not just the parties to the action. The legal record of the fine was an indenture. The recovery (or common recovery, because its most frequent use was in collusive actions) was more expensive and more secure: it required a law suit to proceed through all its stages (with substantial court fees for each party), upon pleadings which made ownership turn on the existence of a supposed warranty of title by a judgment-proof third party (usually the court bailiff) who was brought in as a witness by a voucher, but always failed to appear and testify. When there were multiple entails, fictitious witnesses were vouched in for each one; a double voucher added a second layer of protection to the rights acquired by the buyer, and so forth. A recognizance was a judicial acknowledgement of debt; and although not a lawsuit, it also lent itself to collusive misuse by placing a priority lien on the lands of the person giving it without requiring any proof that the obligation existed. A statute was similar, except that the acknowledgement of debt was not made in a court but before a mayor or chief magistrate. Hamlet's reference to cases and tricks embraces the entire arsenal of devices for leaving the inheritor with nothing at all.

This unexpected last act tirade confirms Hamlet's fear of being victimized by some form of legal subterfuge, and relates back to and explains his reaction to the ghost's report of Claudius's guilt: "O my prophetic soul! My uncle!" (1.5.40). There is no reason to believe that Hamlet had any reason to suspect murder, but there is every reason for him to have smelled chicanery at work in the details of Claudius's remarkable good fortune. Beginning with old Hamlet's sudden death, then Claudius's own immediate election to the kingship, and then his even more advantageous and "o'erhasty marriage" to Gertrude—those details were too complex in their necessary elements and too well coordinated in their sequence—almost choreographed for Claudius's advantage—to accept as mere coincidence. As husband, Claudius acquired the use and control of his wife's property as a matter of law, and all indications—the legal consultation and economic support which the jointure required, the appearance of land owners at court, together with Claudius' lack of personal wealth and presumed need for ready money—suggest that he planned to line his own pockets and pay back his patrons by selling what he could. His power to do so, as Blackstone explains

depends entirely on the notion of an unity of person between the husband and wife; it being held that they are one person in law, so that the very being and existence of the woman is suspended during the coverture, or entirely merged or incorporated in that of the husband.¹⁴

And this explanation—that man and wife being one person in law gives Claudius control over Hamlet's inheritance and power to destroy it—is the deeper point of Hamlet's rejection of Claudius's farewell to England.

King. Thy loving father, Hamlet.

Ham. My mother. Father and mother is man and wife,
man and wife is one flesh; so my mother.
(4.3.53-55)

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Nothing galls Hamlet so much as the marital unity by which Gertrude's remarriage gave Claudius control over his inheritance, and it adds one more layer of meaning to the taunting words with which he dispatches him.

Drink off this potion. Is thy union here?
Follow my mother.

(5.2.331-332)

* * * *

English law of the early modern period makes gender-based distinctions at every point, but not all of them are discriminatory in the negative sense and not all its victims are women. The inheritance law of England left King Hamlet's younger brother Claudius outside the mainstream of political and economic relevance or power. It sharply reduced his prospects of marriage and his hopes for a personal heir to continue his family line, and infantilized him by placing him in a position of economic dependency on an older brother similar to that of a child with respect to its father.¹⁵ But the same body of law, which is generally thought of as having been conceived and maintained in the service of a patriarchal and authoritarian society, placed Gertrude, as widow, wife, and mother, in direct control over the hopes of both Claudius and Hamlet. A great deal in *Hamlet* points to or turns on Gertrude's ability, as a wealthy widow, to select the object of her protection and benevolence. What she did, and when, was all-important to both Hamlet's expectations and Claudius's ambition. Her decision whether to marry, when, to whom, and upon what conditions, determined which of the two would be elevated to full adulthood and which consigned to the extended infancy that was the lot of the landless nobility. As a woman had once born each of them as a child into the earthly world, now one of them would, through Gertrude, be born as an adult into the social and political world. Her central importance is only obscured if we see her only as a victim of patriarchal constraints, or in terms of Hamlet's supposed religious or psychological revulsion at her sexuality.¹⁶ A more balanced view recognizes that Shakespeare enlists to his service all the social attributes of every different rank or station, whether king and subject, male and female, legitimate and bastard, or single, married, and widowed, and that he has done so to great effect in *Hamlet*.

NOTES

¹The supposed hot-blooded passion between Claudius and Gertrude is often taken for granted, wholly in the absence of textual support. The Gertrude of the text, rather than deny Hamlet's charge that she was moved by cool judgment rather than passion, confesses her shame. Not incidentally, her unmaternal failure to protect Hamlet's inheritance is a "situation, a chain of events which shall be the formula" that explains the fierceness of Hamlet's emotion and the famously undiscovered "objective correlative" for lack of which T.S. Eliot proclaimed the play an artistic failure.

²Modern editors recognize the importance of Hamlet's reference to property, but stoutly reject the plain meaning in favor of pointless abstractions: Jenkins, "I take this to refer to his proper person including all that belonged to the essential quality of the man rather than to his possessions"; Edwards, "the kingdom (rather than his material possessions)"; Hibbard, "dearest possession — his life."

³R.W. Dent, *Shakespeare's Proverbial Language* (Berkeley, 1981), 126.

⁴Dent, 165 and 501, respectively.

⁵Although this is a supposition, it is supported by three considerations: Hamlet's earlier "shreds and patches" description of Claudius; the overall pattern of economic deprivation to the other principals: Fortinbras and his army of landless gentry, Hamlet's own claims of poverty, and Laertes' fear for his own inheritance (which I discuss in a still unpublished essay); and the traditional theme of financial abuse by older brothers, from the

Middle English *Tale of Gamelyn* to Shakespeare's own *As You Like It*.

⁶So called because it was wrongly supposed that no other country beside England made similar provision for a widower. Similar customs existed in Scotland and elsewhere on the continent, although English curtesy was certainly unique in the extent of its generosity.

⁷To Jenkins, "jointress" describes Gertrude as a person in joint possession, or a joint ruler; to Edwards, as sharing property with Claudius; to Hibbard, as a widow in possession of her dower, or a joint owner. T.J.B. Spencer, New Penguin ed. (New York, 1980), opts for the obscure "joint heretrix"; Edward Hubler, Signet Classic ed. (New York, 1963), settles for "joint tenant, partner"; John F. Andrews, Everyman ed. (London, 1989), explains imprecisely that Gertrude has inherited the "kingdom" as a jointure and second—coming close to the real point—that Claudius has joined himself to her by a matrimonial contract; to G. L. Kittredge (New York, 1939), it meant "a widow who has jointure"; to J.Q. Adams (Cambridge, Mass., 1929), "a widow who has joint tenancy."

⁸Paul S. Clarkson and Clyde T. Warren, *The Law of Property in Shakespeare and the Elizabethan Drama* (Baltimore, 1942), 81-84. The authors there note the correct legal meaning but, as a matter of critical judgment, reject it as "over-literaliz[ing]" something meant to be taken loosely.

⁹The statute of 1535 covered transfers to any "Person or Persons, and to their Heirs and Assigns, to the Use and Behoof of the said Husband and Wife, or to the use of the Wife, as is before rehearsed, for the Jointer of the Wife." The statute of 1494 also embraces property received from the husband's family or friends "jointly with her husband, or only to herself or to her use."

¹⁰Coke on Littleton, L.1, c. 5, Sect 36b.

¹¹John Cowell, *The Interpreter* (London, 1607). In quoting from the text, I have modernized the spelling.

¹²The waiver of dower resulted only if jointures conformed to the statutory requirements but, after 1535, the principal effect and significance of a jointure was as a substitute for common law dower rights.

¹³See Arthur Underhill, "Law," *Shakespeare's England* (Oxford, 1916) Vol. 1, Ch. xiii, pp. 404-407, for a discussion of land law and the various methods used to bar entail, i.e., defeat the rights of heirs, with particular reference to the terms used in *Hamlet* 5.1. Underhill did not, however, attach any particular significance to the passages, guided as he was by the assumption expressed in his opening sentence that Shakespeare's "knowledge of law was neither profound nor accurate" (381).

¹⁴Blackstone, 433.

¹⁵Of course, junior or cadet branches of wealthy families could and did exist. English heraldry employs nine marks of cadency for distinguishing successively junior branches of the same family, a good indication that younger brothers could prosper under favorable circumstances or where family loyalty remained intact. In *Hamlet*, however, the facts portray circumstances of disappointed or frustrated inheritance and family disloyalty.

¹⁶Marilyn French takes the chamber scene as the play's climax, on one level, and notes that after Hamlet persuades Gertrude to stay out of Claudius's bed "he becomes a somewhat different person" who "seems to feel he has accomplished his real task" (*Shakespeare's Division of Experience* [New York, 1981], 155). But her supposition that Hamlet was dismayed at Gertrude's sexuality as such seems to me more forced upon the play than inferred from it, and out of character for the prince who traded bawdy jokes with Rosencrantz and Guildenstern. The most notable aspect of sexual activity, at least before *Roe v. Wade*, is that it often leads to children.