



“Kidlit” as “Law-And-Lit”: *Harry Potter and the Scales of Justice*

William P. MacNeil*

I. Harry Potter’s Legal Legerdemain: The Jurisprudence of Magic and the Magic of Jurisprudence

As many of his young fans would put it, “Harry Potter is magic!” — “magic,” in this case, being the currently fashionable, Anglo-Commonwealth youth culture adjective of acclaim. And one absolutely *a propos* here because it speaks as much to our hero’s extratextual influences as a worldwide publishing phenomenon, as his intratextual practices as a wizard-in-training. From his first appearance in the kick-off volume of J.K. Rowling’s remarkable series, *Harry Potter and the Philosopher’s Stone*,¹ Harry has cast a spell as it were, over legions of supposedly print-allergic, digitally-dependant children, bewitching them on behalf of the “pleasure of the text,” instead of the *spiel* of the video. In the series’ second and third follow-ups — *Harry Potter and the Chamber of Secret* and *Harry Potter and the Prisoner of Azkaban*² — Harry and his teenybopper cohort of sorcerer’s apprentices (Hermione, Ron, Neville, Seamus, *etc.*) have continued to enchant new, largely adult audiences: principally, those Tolkein-, Lewis- and Blyton-reared “baby boomers,” long alienated by the exile of “the fantastic” from not only the best-seller lists, but children’s literature. With the publication of the fourth instalment, *Harry Potter and the Goblet of the Fire*,³ this broadening of readership, adult or otherwise, continues apace. But it complicates, even contests, some of the unflattering and patronising media images of Rowling’s series as escapist whimsy, nostalgic for the conservatism of the Shire, Narnia or Mallory Towers.⁴ For, here, in her latest offering, Rowling addresses — so I contend — one of the least whimsical of readerships in terms that are anything but backward-looking or conformist: lawyers. Not that the legal profession directly figures, or is figured in the text’s characterological system in the way, say, journalism is embodied in Rita Skeeter, the odious queen of tabloid tittle-tattle, or bureaucracy is in the unfortunately monikered Cornelius Fudge, the

muddlingly mediocre Minister of Magic. But, despite their absence as characters from the *dramatis personae*, lawyers may be, nonetheless, the novel's privileged "implied readers" because of the pervasive presence in the text's setting, language and theme, of what James Boyd White would call the "legal imagination."⁵

This imaginative vision is realised, as much in the novel's scenic representation of the law's principal forensic process (*i.e.*, the trial, detailed in Section II, "Hogwarts as Nuremberg: The Pensieve's Vision of Judgement"), as in the text's referencing of, and allusion to, jurisprudence's dominant idiom (*i.e.*, rights, taken up in Section III, "Training for Hierarchy: Hogwarts and the Alchemy of Rights and Race, Gender and Class) and controlling value (*i.e.*, justice, touched upon in Section VI, "Justice for All? Transfiguring the Magic Kingdom"). What's more, Rowling's text subjects legal procedures and jurisprudential discourse to *critique*, sketching out, as well as satirising, critical positions of both the left (in the elf rights advocacy of Hermione) and the right (in the apologia for the status quo voiced by the Weasley twins). For animating *Harry Potter and the Goblet of Fire* is, I argue, a suspicion of the institution of the law, which may be related to Rowling's own on-going legal worries and the Stouffer suit against her, adverted to in Section IV, "*Avant la loi*: The Trials of J.K. Rowling." Ultimately, however, this suspicion extends to, and, indeed is predicated upon a sense that *all* institutions—legal, governmental, *etc.* — in the magic kingdom are tainted, including Hogwarts itself. Clearly, Hogwarts is not all it seems to be, and is, itself, in dire need of not only urgent external protection (from Voldemort and his quislings, the Death-Eaters) but drastic internal reform (and the righting of its marked status inequities). So what Rowling may point to here is not so much the utility of the law, but its *limits* (and, by the way, the indeterminacy of judgement), urging the society of Hogwarts to go "beyond the law," realising in its stead a community of fairness, a realm of justice. All of this suggests a didacticism that could potentially alienate a future (and present) generation of post-modern jurists, but that is carried off here with Rowling's characteristic mixture of the serious and the satirical, the critical and the celebratory, so much so that *Harry Potter and the Goblet of Fire*, in my opinion, may well constitute a minor classic of the law-and-literature movement.

II. Hogwarts as Nuremberg: *The Pensieve's Vision of Judgement*

A law-and-lit reading of this kidlit charm of a text would begin, however, at the story's end. This back-to-front interpretive strategy is warranted because in chapter 30 — near concluding chapter 37, entitled, ironically, "The Beginning" — the reader is immersed, vicariously, in the novel's legal imagination. There, Harry plunges, like an inadvertent diver "thrown forward and pitched headfirst" (p. 508), into the undecidably aqueous or gaseous "bright, whitish silver" (p. 507) swirl of Albus Dumbledore's *pensieve*, a magical, rune-decorated "shallow, stone basin" (p. 506), secreted away in the headmaster's study, upon which our hero stumbles after a debriefing session following his disturbing encounter with the now clearly deranged ministerial official, Bartemius Crouch, Sr. The *pensieve* is one of those portmanteau puns, typical of Rowling's humour (*cf., eg.,* Diagon Alley), which works both as a referent, descriptive of its object, and, as a sign, phonically auto-referencing itself. Quite literally, the *pensieve*, as the orthography of the second syllable indicates, is a *sieve*, screening out "excess thoughts" (p. 519) and "memories" (p. 519), although it secures them in the first syllable's "pen," as Dumbledore explains, for later reflection that will process their "patterns and links" (p. 519) — hence, the *pensiveness* of the *pensieve*. But the *pensieve* affords more than just an opportunity to re-examine past memories and thoughts; it enables one to actually re-experience them, re-staging these moments of *temps perdu*, like some returned, hitherto repressed trauma, suggesting that the *pensieve* is not unlike, in its structure and function, the Freudian unconscious.

This similitude, of course, is not the text's first gesture in the direction of psychoanalysis. After all, throughout the novel, Harry has been plagued by a series of psychic events that Freud called "the royal road to the unconscious": namely, dreams, or, more precisely here, nightmares — the first, at Privet Drive, home of the dreaded Dursleys (ch. 2); the second, at Hogwarts, in the unlikely confines of Prof. Trelawney's bogus Divination class (ch. 29), both of which herald the present return of Voldemort, the Dark Lord, whose growing power is somatised in the symptomatic throbbing of Harry's fabled forehead scar. But Harry's nightmares, on both occasions, differ markedly, in terms of their *content* as much as in their source and effect, from the memories vouchsafed him by Dumbledore's *pensieve*: while the nightmares are criminally violent in the extreme,

replete with near Tarantino-esque scenes of murder (that of Riddle House's hapless muggle caretaker, Frank Bryce, p. 19) and torture (in the Cruciatuŕ curse performed on Voldemort's shapeshifting factotum, Wormtail, pp. 500–501), the pensieve's memories are models of order — specifically, *law* and order. For they consist of three long past trials at law of putative “Death-Eaters,” the Dark Lord's erstwhile minions. The first is of Igor Karkaroff, the Blofeldian headmaster of Durmstrang, Hogwarts' ruthless *Mittleuropa* rival in athletics and scholastics; the second, of the aptly named Ludo Bagman, ex-Quidditch star, now turned sports impresario for the Ministry of Magic, compering any and all events of a “gaming” (*i.e.*, gambling) nature, like the World Quidditch Cup and the Triwizard Tournament; and the third of a kind of Death-Eating “Gang of Four,” the most recalcitrant of Voldemort's followers, of whom one prominent member is Crouch's renegade son, Barty, Jr.

Now none of these trials really tell either Harry or the reader anything new in terms of plot development. Rather, they merely confirm what the text has strongly hinted at, if not disclosed outright: that Karkaroff was a Death-Eater, imprisoned for it, and released only when he grassed on his former associates in crime by turning state's evidence (all of which we know, courtesy of the fugitive Sirius Black who, early on, warned Harry off Karkaroff and the entire Durmstrang mob, p. 291); that Ludo Bagman is a compulsive punter, who plays fast and loose with any and all rules when money is involved (think how all too eager he is to “help” Harry by passing on insider information, prior to each event of the tournament, pp. 307, 389, so that his odds-on favourite will win the Triwizard and his punt with the goblins); that the Crouch family was destroyed by Barty Jr.'s treachery — his father's career compromised, his mother dead of grief and, himself, dying in prison (again, a cautionary tale told by Sirius in one of his clandestine visits to Hogwarts in his role as Harry's godfather and guardian, pp. 456–459). Nothing startling here, at least in causal terms of “who?,” “what?” or “why?,” all of which points to a *thematic*, rather than structural, function for the pensieve's trial scenes in the narrative as a whole.

What these trial scenes thematise is the kind of world Hogwarts, and that of magic, *is*: namely, one subject to something like the Diceyan “Rule of Law,”⁶ where no one is above the law, even if they are Barty Crouch, Jr., and everyone is entitled to the same procedures — here, trial by jury (twelve wizards “strong and true?”). Moreover, the presence of the jury at these

trials heightens the thematic of legalism by way of contrast with the insidious trials by ordeal meted out by that demonic parody of the “Rule of Man,” Lord Voldemort, the would-be sovereign that *kills* through command, and whose sanctions work almost as brutally against those who obey him — think of Wormtail’s sacrificed hand during the resurrection ceremony, pp. 556–557 — as those who oppose him (like Neville’s parents, the Longbottoms, whom he has driven insane, pp. 523–524). So, here, I argue, is the *raison d’être* for the pensieve’s curial representations, they drive home an important jurisprudential point about Hogwarts, and, indeed, the magic kingdom as a whole, that, despite the unsettling carceral presence of Azkaban in its midst — now more than ever, under the Dementors, a spiritual gulag — the realm of witches and wizards remains committed, as the trials seemingly demonstrate, to resolution rather than revenge, adjudication rather than attack, or, as Derrida might put it, the “*force of law*”⁷ rather than the law of force.

But is it so committed? After all, force is present in spades in the brusque courtroom strongarming of Barty Crouch Jr., whose pathetic, repeated cries of “Mother, I didn’t do it” (p. 517) evoke, amongst the jury, neither “the quality of mercy” nor a call for clemency, but rather a vengeful, almost sadistic “savage triumph” (p. 516). Now, admittedly, given Barty’s subsequent escapades, revealed by himself in chapter 35 while under the effects of “veritaserum” (p. 593) — the covert break from Azkaban (p. 594), the abduction and impersonation of Mad-Eye Moody (pp. 591–592), the attempt on Harry’s life (p. 589), all in the fanatical service of Voldemort (“It was my dream, my greatest ambition, to serve him, to prove myself to him,” p. 597) — , his cries of innocence here ring far from true, calling to mind the psycho-pathology of that other mother-fixated killer of popular culture, Norman Bates, and warranting, even justifying the use of the most extreme force. But, still, there is something deeply unsettling about a “life sentence” (p. 517), callously meted out to a teenager — who seems to have wandered in from a John Marsden novel — by *his own father* (recalling those intrafamilial denunciations under Stalin or Hitler where party loyalty trumps blood ties), and enforced in the most hamfisted way imaginable (“being dragged away” by the Dementors, whose “cold, draining power was starting to affect him,” p. 517), without any consideration of mitigating circumstances, like past record, relative youth, *etc.* All of which raises a strong suspicion that what Harry witnesses in the

pensieve are not *bona fide* judicial proceedings but, rather, those curial performances beloved of totalitarian regimes, the show trial, where legality is staged as a show of governmental force — precisely what the Ministry of Magic, under witchfinder-general Bartemius Crouch Sr., seems to have done here.

For all that Barty Jr.'s trial is bad, things are worse with those of Karkaroff and Bagman, thoroughly undermining the dignity of the court and its processes. The trial of Karkaroff, for instance, is more a police interrogation than a judicial proceeding, with an unctuous, curry-favouring accused plea-bargaining his way out of Azkaban (“‘Crouch is going to let him out,’ Moody breathed quietly to Dumbledore. ‘He’s done a deal with him’” [p. 511].) in exchange for information: naming the names of his erstwhile Death-eating comrades, Dolohov (p. 511), Rosier (p. 512), Travers (p. 512), *et al.* — even, in one last desperate effort, Severus Snape, Hogwarts’ obstreperous Potions master and the bane of Harry’s and, indeed, Gryffindor’s existence (p. 513)! Even more unedifying a spectacle than this is the “indulgence” (p. 514) with which Ludo Bagman is treated at his trial. He is all too easily exculpated as the “innocent dupe” of the Philby-like, ministerial mole Augustus Rockwood and even congratulated by one of the jury for his “splendid performance” (p. 515) in the last Quidditch match. So much for the equality of treatment under the law that here seems shot through with judicial bias, operating far too leniently for some (*i.e.*, sporting stars like Bagman), but all too severely for others (like Barty Jr.) that, in its utter indifference to the principle of “like cases being decided alike” — the lynchpin of the Rule of Law, *stare decisis* — is suggestive of the worst features of the Rule of Man and its capricious, arbitrary and erratic “palm tree justice.”

So the “vision of judgement” that emerges from the pensieve’s rebus is a grimly forbidding one: of a society “judged and found wanting,” wanting in the very legality it purports to stage, but that here, in the trials and elsewhere, resembles nothing less — in its tactics of forced confessions (Barty Jr. under the veritaserum) and grudge informers (Karkaroff) — than a police state. Now one could argue, as indeed Sirius Black does, that this a legality, even anti-legality is an extreme but necessary response to an emergency situation, a “policing of crisis,” as Stuart Hall⁸ would put it, namely, that of Voldemort’s first appearance, and rise to power breeding “terror everywhere . . . panic . . . [and] confusion” (p. 457). Against this

dire backdrop, the magic kingdom's chances for survival would be remarkably slight, so Sirius seems to imply, if it did not fight "violence with violence" (p. 457). But the danger, Black continues, is that these "harsh measures" (p. 457) — turning the Aurors, for example, into a kind of crack SAS squad with "powers to kill rather than capture" (p. 457) — that presumably were intended to operate temporarily for the duration of the emergency, may have become permanent, threatening to transform, if not the whole society, then, at least, the hitherto rule-bound but ultimately benign Ministry of Magic into something "as ruthless and cruel as many on the Dark Side" (p. 457). Already, Cornelius Fudge travels in state, with the Dementors acting as a kind of praetorian guard (whose loyalty is highly uncertain, given that Voldemort, himself, considers them his "natural allies," p. 564), even going so far as to bring them, in the wake of the debacle of the Triwizard Tournament, into Hogwarts itself where they dispense their "rough (in-)justice" to the likes of Barty Crouch, Jr. ("It had administered its fatal kiss to Barty Crouch. It had sucked his soul out through his mouth. He was worse than dead," p. 610). Naturally, Dumbledore stands firm, once more, against the Dementors and the kind of "discipline and punish" they represent (he says to Barty Crouch, Sr: "The first and most essential step is to remove Azkaban from the control of the Dementors," p. 614), as he did in *Harry Potter and the Prisoner of Azkaban* where, even on their security patrols, he forbade their presence on Hogwarts' school grounds, effectively quarantining the student body against their malign influence, even spiritual pollution (p. 140).

III. Training for Hierarchy? Hogwarts and the Alchemy of Rights and Race, Gender and Class

What complicates this strategy of immunisation is that, in *Harry Potter and the Goblet of Fire*, Hogwarts itself is exposed as always/already infected by injustice, if not comparable then approximate to that of the Dementors, enough, at least, to call into question Dumbledore's claims of occupying the high moral ground. For if the Dementors abuse the prisoners in their charge, literally feeding off their life-force (*chi?*), then Hogwarts, too, is implicated in an exploitative arrangement, though here they feed off their charges figuratively in that they are fed, literally, by *them*. The "them" I refer to are, of course, the house elves, no Tolkeinesque sprites of

high estate here, but, as their name suggests, the lowest of domestic help. Now, previously, house elves have intruded in the series in the curious shape of Dobby — “enormous, green, tennis-ball-shaped eyes . . . pencil shaped nose . . . bat-like ears . . . [and] long fingers and feet” (p. 327) — the house elf of the haughty, high-born family of Harry’s nemesis, Draco, the Malfoys, those unrepentant gentry recusants of the Dark Arts, from whom Dobby, with the assistance of Harry, “tricked” (p. 328) his way into freedom in *Harry Potter and the Chamber of Secrets*. In that volume of the series, house elves are represented as historical anachronisms, throwbacks to another time. Like the nurses of Shakespearean drama, or the old retainers and mammies of romance novels — with whom they perform the same structural function of supplying rather broad comic relief — house elves are feudal superfluties of the “old wizarding famil[ies]” (p. 27), otiose fixtures of, as Ron points out, “big old manors and castles and places like that” (p. 28), with little or no relevance to the modern world of witchcraft and wizardry (though Mrs. Weasley wishes she had one “to do the ironing,” p. 27). So the suggestion in *Harry Potter and the Chamber of Secrets* is that the house elves, like the Giants, are a dying breed, the few remaining ones — like Dobby — soon to secure their release.

Nothing, of course, could be further from the truth, as *Harry Potter and the Goblet of Fire* all too clearly demonstrates. For there, house-elfery is exposed as alive and well, indeed flourishing at no less a place than Hogwarts itself, which runs as smoothly as it does because of the seemingly invisible, but tireless efforts of the elves: “You do realise,” orates an outraged Hermione, “that your sheets are changed, your fires lit, your classrooms cleaned and your food cooked by a group of magical creatures who are unpaid and enslaved” (p. 210). So Hogwarts mimics the worst aspects of the *ancien regime* of the Malfoys, and their “Upstairs, Downstairs” ethic, with their own liveried house elves (in tea towels emblazoned with the “Hogwarts’ crest,” p. 328) consigned to, and “rarely leaving the kitchen by day” (p. 161), and when they do, being neither seen nor heard “the mark of a good house elf” (p. 161). Indeed, Hogwarts goes one better than the Malfoys, and their kind (the Saint Evremondes of the magic kingdom?) by indenturing more house elves than anyone else, “the largest number in any dwelling in Britain” (p. 161), observes the Gryffindor ghost, Nearly Headless Nick, “Over a hundred” (p. 161). Compounding this “oppression of a hundred slaves” (p. 209) is, as the language of pop

psychology would have it, the “deep denial” in which Hogwarts seems to be about its complicity. Evidencing this denial is the omission in “one thousand pages” (p. 209) of its official *Hogwarts: A History*, of any reference to the elves, a silence that Hermione condemns as the worst sort of revisionism, “biased” and “selective” (p. 209).

Thus, far from being the wizard school of wizarding where, as Dumbledore claims like Napoleon did of the First Empire, “*les avenues sont ouverts aux talents*” whether one is from a pureblood (like Ron), mixed (like Harry) or muggle (like Hermione) background, Hogwarts reproduces all the status inequities of the wider society within which it is situated, its *slave labour* (p. 162) — as Hermione terms it, calling a spade a spade — resonating with overtones of racial discrimination (signaled in “slave”) as much as with class oppression (conveyed in “labour”). For, make no mistake about it, this is a world in which race as much as class is determinative, thereby contextualising Rowling’s fiction as very much a work of post-imperial, multiracial *fin de siècle* Britain, and explaining why it has such resonance in a world of globalised multiculturalism that is anxious to rewrite its history of racist segregation, stereotyping and ghettoisation. Hence, the presence in the text — unthinkable in earlier children’s fictions such as the eminently WASP-y “Secret Seven” or “Famous Five”¹⁰ — of characters of colour, such as the British-born Chinese (BBC), Cho Chang, or the Afro-Caribbean Angelina Johnson. But this Hobsbawmian “(re)invention of tradition”¹¹ that Rowling engages in here — depicting Hogwarts as a very grand public school, but with the difference of black and Asian students — more *displaces* than replaces racism, projecting its worst caricatures of racial “Otherness” onto the house elves. Described as “beaming, bowing and curtseying” (p. 329) — terms reminiscent of either wide eyed “Uncle Toms” or giggling “Oriental” houseboys — the house elves parallel, in their subservient status, the treatment meted out to, and behaviour expected of all “subaltern subjects,” be they black, yellow or brown, by “white mythology’s” race power.

The allegory of race, however, does not stop with the house elves. Consider, for instance, the case of Hagrid, Hogwarts’ larger-than-life gamekeeper and instructor in the Care of Magical Creatures, who feels obliged to offer Dumbledore his resignation when Rita Skeeter “unearths evidence” (p. 381) published in the “Daily Prophet” exposing him as a “half giant” (p. 373) “passing” as a wizard, an epithet that evokes memories of the

Empire and its “half-castes.” For the world of witches and wizards has its own version of the old colonial colour-bar, tabooing relationships like that of Hagrid’s parents — a wizard father and a Giantess mother, “Fridwulfa” (p. 381) — as a “miscegenation” that even Ron euphemises as “not very nice” (p. 374). Now Harry, having grown up in the muggle Dursley world of 4 Privet Drive, may be oblivious to the “niceties” of birth adverted to here (“Who cares? . . . There’s nothing wrong with Hagrid” (p. 374) is his response). Ron, however, as the progeny of a pureblood wizarding family, however down at the heels, is certainly *not*. He understands immediately why Hagrid has kept his less than “respectable” (p. 395) parentage “so quiet” (p. 374): because the Giants, like the werewolves and vampires, have been hounded from Hogwarts’ midst, hunted down as putative Voldemort supporters by the Aurors, and considered so “vicious” (p. 374) as to be irredeemable. Indeed, so engrained is this prejudice, that even someone as secure in their social position as the magnificent Mme. Maxime, the towering headmistress of the Francophone and -phile Beauxbatons, denies her origins as a half-giantess, like other persons of size do their weight, as nothing more than “big bones” (p. 373).

One person who makes no bones about how she feels about Hogwarts’ finely calibrated race and class hierarchy is Hermione Granger, having herself endured the schoolyard taunts of “mudblood,” a racist put-down for the muggle born, from Draco Malfoy’s high caste clique of Slytherin snobs (think of the repellantly Hoo-ray Henrietta-ish Pansy Parkinson) and slobs (the prehensile duo of Goyle and Crabbe). In fact, much of the latter half of the narrative is concerned with Hermione’s retaliation against the Slytherin mob’s malicious mouthpiece, poison pen journo Rita Skeeter, for disseminating these kinds of racist slurs against her and Hagrid. But Hermione’s anti-racism is about more than just personal reprisal; for her, “the personal,” to misquote Sheila Rowbotham, is the occasion for “the political.”¹² And the political that Hermione introduces into the hitherto a-political world of Hogwarts is nothing less than the “politics of the law,”¹³ that is, the quintessentially legalist agenda of what Mr. Weasley calls “elf rights” (p. 125), pursued through her activist pressure group, the “Society for the Promotion of Elfish Welfare” (p. 198), acronymised as “S.P.E.W.” (p. 198).

It is here in the narrative that Rowling indulges her own not inconsiderable flair for political satire. She has as much fun at the expense of the

agitprop of the '60s and '70s New Left, with their “manifesto[es]” (p. 198) and “badges” (p. 198), as with the “politically correct” campus politicians of the '80s and '90s, and their obsessions over quotas (*e.g.*, one of S.P.E.W.'s long term goals is “trying to get an elf into the Department for the Regulation and Control of Magical Creatures because they're shockingly under-represented,” p. 198) and concern with speech codes (think of Hermione's arched eyebrow over Ron's phrase “working like a house elf,” p. 198). This kind of humour, however, begins to wear a bit thin, especially when it starts to take on a distinctly Skeeter-esque tone of vitriol, describing Hermione, in the least flattering of terms, as “vociferous,” “badgering” and “glowering” (p. 210), and her campaign as one for which even her closest confreres — Harry and Ron — exhibit a distinct “lack of enthusiasm” (p. 210). What remains unclear, however, is precisely *why* Harry and Ron are unenthusiastic about Hermione's efforts to combat racism through a revived rights discourse. Does that imply, *a fortiori*, that Harry and Ron are content with, even enthusiastic about the prevailing status quo, however racist, because it redounds to their advantage, as white male wizards? Rowling's text suggests *not* because it goes out of its way to parody the kind of right-wing rationalisations of racial inequity, often proffered by the privileged in the defense of their privileges, namely, that the subaltern really enjoys their symptom of servitude, subordination and/or second-rate citizenship. “We've met them [*i.e.*, the elves], and they're *happy*. They think they've got the best job in the world” (p. 211) — so claim the Weasley twins, George and Fred, hitherto concerned solely with sport, pranks and money, in short, Jack-the-lad spoofs of the bloke-y, Richard Branson-like public schoolboy, and as such, hardly the best judge of elf welfare.

The problem, though, is that the behaviour of the house elves rather confirms than contests the twins' claims as to their happiness. For example, consider how “delighted” (p. 329) the house elves are when Ron, then on a foray into the Hogwarts kitchen, says “good service” (p. 329), after being presented with a tea-tray groaning with elf prepared goodies. “False consciousness” is Hermione's rather predictable retort: the house elves only think they are content because they are “uneducated” (p. 211) and “brain-washed” (p. 211). They will soon be put to “rights”; that is, rights to “wages,” “holidays” and “proper clothes” (p. 161), with the shining example of Dobby before them, now working on contract at Hogwarts. “I

think this is the best thing that could have happened to those elves,” opines Hermione in top “Mother-knows-best” form, “Dobby coming to work here. . . . The other elves will see how happy he is being free, and slowly it’ll dawn on them that they want that too” (p. 334). The difficulty, however, with Hermione’s model worker, a kind of elvish Lei Feng, is that Dobby himself feels that, as far as “freedom” goes, there can be too much of a good thing. For instance, when Dumbledore offered to pay him ten Galleons a week — a standard wizarding wage, but for an elf, an *embarras des richesses* — Dobby “beat . . . him down” (p. 331) to one Galleon, thereby exchanging the slavery of unpaid domestic service for what the Marxists would call “wage slavery.” This is hardly the movement from the realm of necessity to that of freedom.

In light of this, where, then, lie the text’s — and, by extension, Rowling’s — sympathies, be they social, political and, last but certainly not least, legal? Do they lie with the Weasley twins, and the organic conservatism of the wizarding caste they represent? Namely, that the traditional bonds of master and slave, of wizard lord and house elf serf are best left alone, untouched and intact, as reforms, like emancipation, bring with them the greater threat of what Habermas might call “juridification” in the form of rights discourse, which, more often than not, create more problems than they solve. This very Burkean view of “law and society” seems borne out by the doleful plight of Winky, Hogwarts’ other “free” elf. Winky was dismissed by the Crouch family when, in the wake of the harrowing reappearance of the “Dark Mark” (p. 116) of Voldemort, she was found unconscious and, in contravention of the “Code of Wand Use” (p. 119), in possession of Harry’s wand. In this context, “freedom” for Winky means “disgrace” (p. 331), a source of “shame” (p. 331), hysterically “acted out” in “screaming” (p. 330) and “beating her tiny fists” (p. 330). “Pining” (p. 446) for the only “home” (p. 446) she has known — that of her hereditary masters, the Crouches — Winky anaesthetises herself against self-recrimination (after all, her secret charge, Barty Jr., *did* escape from her at the match) with a six bottle-a-day Butterbeer habit, ending up a disshevelled, teary and sodden pariah among the Hogwarts’ house elves: “We are sorry you had to see that,” chime the house elves when Winky, now a weepy drunk, passes out, “we is hoping you will not judge us all by Winky” (p. 467).

So much for equal rights, Rowling seems to say here. For the freedom

they bring is double-edged, enabling, at one and the same time, the flourishing self-improvement of Dobby, *and* the sinking stupor of Winky, in much the same fashion as Anatole France once said of the “majestic egalitarianism” of the Rule of Law, which forbids the rich and the poor alike to sleep under the bridges of Paris.¹⁴ This suggests that Rowling’s jurisprudential position is more complex than either the *arrière-garde* benevolence of the Weasleys or the militant activism of Hermione, and constitutes something of a “third way” in its politics. A clue to this “way” may be found in the very *identity* of Winky herself who is referred to repeatedly as “her,” though, initially, there is some ambiguity about her sex. “Its voice was higher even than Dobby’s had been, a teeny, equivalent squeak of a voice, and Harry suspected — though it was very hard to tell with a house elf — that this one might be female” (p. 89). Thus, Winky is, first and foremost, a *gendered* subject, the daughter of a long matrilineal line (“I is looking after the Crouches all my life, and my mother is doing it before me, and my grandmother is doing it before her” [p. 332]), who speaks, as the text insists, in a “different voice” from her male partner Dobby. This difference is more than just literally vocal, it extends, figuratively, to outlook, attitude, even ways of knowing in the broad sense of Carol Gilligan’s celebrated metaphor of a “different voice.”¹⁵ For Winky and Dobby seem to differ on every issue: for example, pay, for him, is a point of pride (“Dobby wants paying now!” p. 329), while, for her, it is “unbecoming . . . a house elf” (p. 90); furthermore, disclosures about ex-masters are for him exercises in blunt honesty (the Malfoys, admits Dobby, are “bad Dark wizards” [p. 332]), while, for her, they smack of the rankest betrayal (“You ought to be ashamed of yourself, Dobby, talking that way about your masters” [p. 332]).

Male house elves are from Mars, female house elves are from Venus? The text seems to cock a satirical snook at the current “battle of the sexes” in exchanges like these, but may also point to a more serious proposition, long maintained by critical legal *feminists*:¹⁶ that what may work for men — contract, autonomy, rights — may not even speak to, let alone address women’s concerns for connection, community and context, and, often, will result in a juridico-political “silencing,” even more final and forceful than the one Winky “keeps,” as a good house elf, over her master’s secrets (p. 467). So the narrative airs, here, a wider “hermeneutics of suspicion,” rife in, and bedeviling critical legal circles, that rights discourse, and

indeed the law itself, might be highly problematic strategies for change: something that “you can’t live with, and can’t live without.” Specifically, how do you change a system’s status inequities — its gender, race and class “intersections”¹⁷ through the very instrument of those inequities, namely the law? Or to reformulate the question in terms of agency rather than structure: how do you name someone as a legal subject — that is, the bearer of rights — without negating her through the “lack” that the law installs in its severance of feudalism’s ties?¹⁸ In short, is the law a symptom or a solution? a hindrance or a help? a friend or a foe? That seems to be the philosophical anxiety driving the novel’s very ambiguous representation of rights, and, perforce, the law.

IV. Avant la loi: Judging J.K. Rowling

The text’s anxieties about the law, though, may be rooted as much in practice as in philosophy, hinting at J.K. Rowling’s own on-going legal woes. Of course, there are the usual intellectual property problems of pirated copies in the copyright-averse Asian jurisdictions.¹⁹ The West is not much better, though, there the legal issue concerns the “magical” properties of the series itself, rather than who has property in it: specifically, whether Harry Potter is an advert for the occult, luring preteens away from what *The Simpsons*’ Ned Flanders would call the “Good Book,” and the numbing fundamentalism that forms,²⁰ in this instance, its interpretive community. Calls for banning the series from schools and public libraries have been heard in — where else? — a number of states in the American “Bible Belt,”²¹ with their decidedly (un)Christian Coalitions (and condemned, quite rightly, by mainstream church leaders, be they Roman Catholic, Anglican or Protestant). But the real source of Rowling’s troubles is a federal lawsuit, launched in the U.S. District Court against Rowling and Scholastic, Inc., the American publishers of the Harry Potter series (as well as Time-Warner, Hasbro and Mattel), by a Pennsylvania-based childrens’ fantasy writer, Nancy Stouffer,²² who claims, *inter alia*, trademark and copyright violation of the “muggle” that she says she coined first in her 1984 book, *The Legend of Rah and the Muggles*.²³ Now “muggle” has a very different *meaning* in Stouffer’s text (where they are tiny, hairless mutants in a post-nuclear holocaust future) than in Rowling’s (where it signifies non-wizarding humanity), but, presumably the etymological

similitude is enough here, and not the only instance of it either: both texts, in fact, have characters named Potter, though in Stouffer's, they are *Larry* and *Lilly*.²⁴

Plagiarism? Certainly that is the suspicion that leaps to this teacher's mind, particularly one living in what John Dewar has so delicately described as "the land of the literary hoax," Australia, with its Demidenko *cause célèbre*, *et al.*²⁵ "Coincidence!" — seems to be the not very convincing come-back of Rowling's publishers, quick to dismiss Stouffer's claims as "completely meritless."²⁶ But this over-reaction does not ring as true as Rowling's silence on this issue, a silence that *might* be construed as assent. But I stress "might" because, far from implying assent, I contend that this silence, to Rowling's credit, does far more to *challenge* Stouffer's charge of plagiarism than an avalanche of affidavits of denial. For basically, I feel like many writers — including, I imagine, Rowling — that *all* writing, especially *good* writing is a form of plagiarism,²⁷ or, in a more literary critical or aesthetic theory vein, "appropriation."²⁸ Certainly in the past, Rowling has made no secret of her sources²⁹ — principally, the Oxford "Inklings" (Lewis, Tolkien, *et al.*)³⁰ and Blyton's school sagas³¹ — extremely *distingué* company that the transatlantic *arriviste*, Stouffer, now joins. But Rowling's appropriations of the "great tradition" of children's literature (and its not-so-great tradition, *i.e.*, Stouffer) work a transformation. Not for nothing is the controlling *leitmotiv* of the series one of "transfiguration" because these spells (*e.g.*, "*Riddikulus*") bring about a metamorphosis (changing, for example, a boggart into an image of a cross-dressed Snape, to the delight of Neville Longbottom in *Harry Potter and the Prisoner of Azkaban*, pp. 103–104) that functions as a metaphor for Rowling's literary mode and method, weaving canonical echoes and resonances, literary allusions and attributions into a wholly *new* intertextual fabric. If that is the case here, then the legal issue becomes whether the court, indeed, the law itself can distinguish between plagiarism and appropriation, theft and "borrowing," guilt and innocence.³²

V. Justice For All? Transfiguring the Magic Kingdom

This uncertainty as to the law's judgment shifts the jurisprudential concerns that I have explored so far in this article away from *critique* and its overarching question of whether or not to mobilise the blunt instru-

ment of the law for social change, to the essentially *post-modern* one of whether the law, as a forensic device, is capable at all of rendering any kind of determination. Uncannily enough — and this may be the truly astounding coincidence of the series — *Harry Potter and the Goblet of Fire* anticipates, even pre-empts, proleptically, this jurisprudential shift in its representation of a legal system that cannot tell, with any conviction, who is a Death-Eater and who is a White Wizard, in short, who is good, and who is evil. This is not to suggest, as some vulgar relativist might, that the world the narrative depicts is “beyond good and evil” because, without any doubt whatsoever, there *is* “radical evil” here (distilled in its purest form in Lord Voldemort), as much as there is “the Good” (figured in the Gandalfesque Dumbledore). But the point *Harry Potter and the Goblet of Fire* seems to make is that it is no longer possible to tell, authoritatively who is good and who is evil because evil in this world is a corollary, even a result of the good, Voldemort, himself, was a product of the Hogwarts system, as the poor scholarship boy, Tom Riddle, the *unheimlich* double, interestingly enough, of Harry Potter.³³ The great uncertainty here is not whether Voldemort should be resisted — clearly he must be — but whether this world, with its admixture of good and evil, is one worth fighting for. Class distinctions, racial discrimination, gender bias, in short all the social evils depicted at Hogwarts and throughout the magic kingdom suggest *not*. If, however, the evil of Voldemort outweighs the social evils represented here, rendering this a cause worth the fight, then changes *must* come. In his plan for a “popular front” against the Dark Lord involving not just his continental European Union wizarding allies, the Beauxbatons, and Durmstrang contingents (p. 627), but the Giants (p. 614), possibly the vampires, and even the elves (!), Dumbledore suggests, at the close of the narrative, that such changes are in the offing.

The situation could just as easily go the other way, however. Now that he has risen from his strange, twilight state of “Life-in-Death,” and re-assumed “human” form (p. 558), Voldemort might appear at any moment, like Lenin at the Finland Station in Petrograd, declaring “All power to the Giant and Vampire Soviets,” urging elvish “workers of the world” to “throw off their chains,” and marshalling broad Death-eater support for “the construction of the Dark Arts order.” If our embattled band of wizards and witches — Harry, Dumbledore, Sirius, Ron, Hermione, even Snape — are to combat this threatened *coup d'état* and its looming civil war, then

Rowling's "imagined community"³⁴ of Hogwarts' world must be *reimagined* as one that goes beyond not just the bumbling "governmentality" of the Ministry of Magic, beyond not only the forbidding carcerality of Azkaban, but even "beyond the law" — be it the old order's ethic of duty, with everyone in their proper stations or the critical language of rights, and its attendant problems of "misrecognising" some, Dobby, for example, at the expense of others, namely Winky.

Where, though, is this community to go in search for a vision of a more equal society, a fairer world? Surely to the imaginary of Justice itself, with Iustitia at its centre blindfolded and balancing the one against the many, the universal and the particular. What might Iustitia's magic kingdom look like? I would hazard a guess that it would be a place in which slurs like "mudblood" are unutterable, and house-elf indenture unthinkable, in which a Giant heritage (or half-heritage) would be a point of pride, and unearned privilege, like that of the Malfoys, a disgrace. It would be a place in which an inclusiveness prevails, and one in which difference is not only tolerated but encouraged. Now the law, in the form of rights, would have to be involved, to some extent, in these sweeping changes. But the point *Harry Potter and the Goblet of Fire* seems to be making is that the law is not enough; and, indeed, if change should and *must* come to Hogwarts, then that community must broach and tap into the transformative potential of substantive justice, with its capacity to look beyond formal equality and to trade-off entitlement against right, need against desire. I hope, therefore that the controlling trope of the next book in the series is *Harry Potter and the Scales of Justice*.

* Loewenstein Visiting Fellow in Political Science and Jurisprudence, Amherst College, Amherst, Mass., USA and Senior Lecturer in Law, Griffith University, Brisbane, Australia. Versions of this article have been given in a variety of conferences, venues and places: the Faculty of Law Seminar Series at Griffith University (Brisbane, November 1999); the Australian Law and Society Conference (Griffith University, Brisbane, December 1999); La Trobe University's Cross Encounters: Law and Literature Conference (Melbourne, March 2000); Kidlit-as-Law 'n Lit: An Interdisciplinary Workshop on the Law and Children's Literature (Socio-Legal Research Centre, Griffith University, Brisbane, July 2000); the British Critical Legal Conference (Kent Law School, Canterbury, Sept 2000);

the Conference on Law, Culture, and Humanities (University of Texas, Austin, 2001); and Amherst College's Department of Political Science Lecture Series (Amherst, November 2000). My thanks to the audiences and organisers of each of those talks, especially: Pamela Adams, April Chrzanowski, Rosemary Hunter, Kirsty Duncanson, Gloria Lappin, Shaun McVeigh, Maria Drakopoulou, Sue Chaplin, David Seymour, James Boyd White, Austin Sarat and Vicki Farrington. My thanks as well to the anonymous reviewers at the *Journal of Law and Literature*, and to Peter Goodrich for, as ever, his support. Particular thanks go to my Griffith colleague, Shaunnagh Dorsett, for introducing me to the Harry Potter series in the first place, and to three of my favourite readers, Miss Sage Cammers-Goodwin (aged six) and Misses Eliza and Anna Dewar (aged six and four respectively). Last but certainly not least, I'd like to thank my American niece, god-daughter and fellow film fan, Miss Catherine Elizabeth Harding (aged five), for her patience throughout, enjoyment of, and indeed enthusiasm for repeated cinematic viewings — 3 times! — of *Harry Potter and the Sorcerer's Stone* over its Thanksgiving holiday release in Ann Arbor, Michigan. To her, I dedicate this article with much love and affection. Riddikulus!

- 1 J.K.Rowling, *Harry Potter and the Philosopher's Stone* (London: Bloomsbury Publishing Plc., 1997). In America, the novel was distributed by Scholastic, Inc. under the rather "disneyfied" title, *Harry Potter and the Sorcerer's Stone*. The recently released American-funded and -directed film retained that alteration, though it resisted the temptation to further "americanise" the script (aside from certain peculiarities of pronunciation). Interestingly, other anglophone countries — Australia, New Zealand, Canada, *etc.* . . . — retained Rowling's original title, as well as orthography and idiom, for both novel and film.
- 2 J.K. Rowling, *Harry Potter and the Chamber of Secrets* (London: Bloomsbury Publishing Plc., 1998) and J.K.Rowling, *Harry Potter and the Prisoner of Azkaban* (London: Bloomsbury Publishing Plc., 1999).
- 3 J.K. Rowling, *Harry Potter and the Goblet of Fire* (London: Bloomsbury Publishing Plc., 2000).
- 4 Anthony Holden, "Why Harry Doesn't Cast A Spell Over Me," *The Observer* (Sunday 25 June 2000).
- 5 James Boyd White, *The Legal Imagination* (Boston: Little, Brown, 1973).
- 6 A.V.Dicey, *An Introduction to the Study of the Law of the Constitution* (London: Macmillan, 1959) and *Lectures on the Relation between Law and Public Opinion in England during the Nineteenth-Century* (London: Macmillan, 1962).
- 7 Jacques Derrida, "Force of Law: The 'Mystical Foundation of Authority,'" 11 *Cardozo Law Review* 919 (1990)
- 8 Stuart Hall, *Policing the Crisis: Mugging, the State and Law and Order* (London: Macmillan, 1978).
- 9 For examples of these frightfully "Okay, yah" pre-teen detectives, see Enid Blyton, *Good Work, Secret Seven* (1974), *Look Out Secret Seven* (1971) and *Well Done Secret Seven* (1951), all published by Brockhampton (Leicester).
- 10 Again more of Blyton's pre-teen twitery, this time with lashings of turkish delight, ginger beer and adventures in outings like *The Famous Five, Five Fall Into Adventure* and *Five on a Hike Together*, all published by Heron (Geneva, 1981).

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- 11 Eric Hobsbawm and Terence Ranger, *The Invention of Tradition* (Cambridge: University Press, 1983).
 - 12 Sheila Rowbotham, *Woman's Consciousness, Man's World* (Harmondsworth, England: Penguin, 1973).
 - 13 D. Kairys, *The Politics of the Law: A Progressive Critique* (New York: Pantheon, 1982).
 - 14 Quoted in S. Parker and S. Bottomley, *Law in Context* (Annadale, NSW: Federation Press, 1994), p. 24.
 - 15 Carol Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Cambridge: Harvard University Press, 1982).
 - 16 For an excellent overview of critical legal feminism, among other things, see: Gerry Simpson and Hilary Charlesworth, "Objecting to Objectivity: the Radical Challenge to Legal Liberalism," in Rosemary Hunter, Richard Ingleby and Richard Johnstone, eds., *Thinking About Law: Perspectives on History, Philosophy and Sociology of Law* (Sydney: Allen & Unwin, 1995).
 - 17 Kim Crenshaw, "Demarginalising the Intersection of Race and Sex: A Black Feminist Critique of AntiDiscrimination Doctrine, Feminist Theory and Antiracist Politics," *U.Chicago Leg. Forum*, 139(1) (1989).
 - 18 For more developed versions of this agreement, see: William MacNeil, "Law's *Corpus Delicti*: The Fantasmatic Body of Rights Discourse," *Law and Critique*, vol. IX, no. 1 (1998) at 37; "Taking Rights Symptomatically: *Jouissance, Coupure, Objet Petit A*," *Griffith Law Review* 8(1) (1999) at 134.
 - 19 "Harry Potter and the Chinese Pirates," Monday 25 Sept. at <http://www.news.excite.ca./news/r/000925/08/odd-potter-dc>.
 - 20 Berit Kjos, "Bewitched by Harry Potter" at http://www.daveandangel.com/CRN/Harry_Potter.html
 - 21 South Carolina, most notably, but also, disturbingly, the un-Bible Beltish states of Michigan, Minesota, etc. . . . see: Judy Blume, "Is Harry Potter Evil?," *Censorships News Online*, issue #76, Winter 1999–2000, National Coalition Against Censorship at http://www.ncac.org/cen_news/cn_76_harry_potter.html.
 - 22 Stouffer's action is, in fact, a counterclaim in response to a suit initiated by Scholastic, Inc. That suit, however, was provoked by a letter written by Stouffer's solicitors urging Scholastic to cease and desist from the violation of their client's alleged copyright and trademark in the distribution of the Harry Potter books. Consequently, Scholastic immediately filed for a declaratory judgement in the New York courts that they were not violating Stouffer's alleged copyright and trademark. Stouffer, in turn, proceeded to file a motion to dismiss the New York suit, and move proceedings to Pennsylvania. That motion was rejected by the New York court in August, 2000.
 - 23 "Harry Potter' copyright suit to go to trial," CNN. com, 16 August 2000 at <http://europe.cnn.com/2000/books/news/08/US/pottersuit.ap/>.
 - 24 *Id.*
 - 25 In 1995, Helen Demidenko received the prestigious Miles Franklin Award for her novel, *The Hand That Signed The Paper*. The book took as its theme the quintessential modern historical trauma, the Holocaust, but narrated that event from the point-of-view of col-

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- laborationist Ukrainians under Nazi occupation. Demidenko claimed to have based her revisionist account of Eastern Europe's quisling collusion with the "final solution" on information gained from her own "New Australian" *émigré* family. Within weeks, an immense literary scandal erupted and Demidenko was exposed as one Helen Darville, a journalist of distinctly standard-issue Aussie Anglo-Celtic stock, with no contact or knowledge of wartime Eastern Europe. See, Robert Manne, *The Culture of Forgetting: Helen Demidenko and the Holocaust* (Melbourne: Text Publishing, 1996); Stephen Wheatcroft, ed. *Genocide, History and Fictions: Historians Respond to Helen Demidenko/Helen Darville's The Hand That Signed the Paper* (Melbourne: University of Melbourne Press, 1997).
- 26 Judy Corman, a spokesperson of Scholastic, Inc., quoted in "U.S. author sues, claims Harry Potter ideas came from her," Fox Market Wire, Saturday 24 November 2000 at http://www.foxmarketwire.com/wires/0316/f_ap_0316_25.sml.
- 27 A point also made by Nadine Epstein, "Children's Books," *The Washington Post*, Sunday 6 August 2000, p. X10.
- 28 For a sustained treatment of this term, see: Rex Butler, *What is Appropriation? An Anthology of Critical Writings on Australian Art in the '80s and '90s* (Sydney, NSW: Power Publication & IMA, 1996).
- 29 In an interview with Helena de Bertodano, Rowling said "she loved C.S.Lewis and E. Nesbit . . . [and] the Blyton books," "Harry Potter Charms a Nation," *Telegraph*, Saturday 25 July 1998, issue 1156.
- 30 H.Carpenter, *The Inklings: C.S.Lewis, J.R.R.Tolkein, Charles Williams and their Friends* (London: Harper Collins, 1978).
- 31 See, e.g., the "Malory Towers" series or the "St. Clare's" series, all published by Mammouth (London: Egmont Children's Books Ltd., 1991).
- 32 Certainly, the case as it stands has resolved very little. In December of 2000, the U.S. District Court of New York gave a ruling that repeats rather than resolves the ambiguities suggested above in that it granted *and* denied Scholastic's motion to dismiss, thereby validating, at least procedurally *some* of Stouffer's counterclaims. One of her claims under the Lanham Act (the Federal Unfair Competition Law) was dismissed, as was her defamation and tortious interference claim (though she was granted permission to plead in the tort claim). The court, however, *declined* to dismiss Stouffer's counterclaims of false designation, unfair competition and the dilution claims. Of course, this judgement addressed the procedural rather than *substantive* validity of Stouffer's case: see *Scholastic v. Stouffer*, 124 F.Supp.2d 836 (S.D.N.Y. 2000). The real battle — like the one with Voldemort — is yet to come.
- 33 Revealed as such in ch. 17, "The Heir of Slytherin," in *Harry Potter and the Chamber of Secrets*, note 3.
- 34 Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (London, 1983).