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III. COLLAPSING LIBERALISM'S PUBLIC/PRIVATE DIVIDE:
VOLDEMORT'S WAR ON THE FAMILY
DANAYA WRIGHT

Were I a sociologist,³⁸ I would spend a great deal of time expounding upon the different types of families that J.K. Rowling has created in her *Harry Potter* series,³⁹ from the uptight middle-class Dursleys, to the interracial families of Hagrid and Lord Voldemort, to the upper-crust Black family, and the chaotic working-class Weasley family. But as a legal scholar setting out to explore themes of law in *Harry Potter*, I am acutely aware of the absence of family law conflicts⁴⁰ in these different family structures and relationships. There is no divorce, there is no wrangling over custody of children, and there is no apparent legal intervention in the inter-generational transfer of wealth. If there is marriage, it is something that has occurred in the past and either resulted in successful couples like the Weasleys, the Malfoys, the Dursleys, and the Potters; or it resulted in unsuccessful relationships that ultimately ended long before the books began, as with the marriages of Voldemort's parents, the Riddles, which ended by death, and Hagrid's parents, which ended by separation. Yet the series begins with an event that is quintessentially legal: the placement of the orphaned Harry with his Aunt and Uncle Dursley.

Rowling's obvious fascination with different family structures and her relatively strong sense of an isolated, private sphere that is free of state intervention seems in keeping with traditional liberal values of the public/private divide.⁴¹ Yet her rejection of state interference in the private sphere of the family does not correspond to an autonomous state that is focused on the public sphere. Where liberalism separates the private world of the family from the public world of the

38. I am not a sociologist, but my partner is, so I feel that enough of sociology's methodology has rubbed off that I can allege all sorts of wild conclusions about what sociologists might do. Sociology, according to a friend, is the process of "taking the obvious and putting it into impenetrable prose." I can only hope that legal scholarship isn't even more impenetrable than sociological scholarship.

39. There are currently six, out of a proposed seven, books in the series: *THE SORCERER'S STONE*, *supra* note 1; *THE CHAMBER OF SECRETS*, *supra* note 1; *THE PRISONER OF AZKABAN*, *supra* note 1; *THE GOBLET OF FIRE*, *supra* note 1; *THE ORDER OF THE PHOENIX*, *supra* note 1, and *THE HALF-BLOOD PRINCE*, *supra* note 1.

40. Although in other sources I critique the single-minded focus of family law on the marriage/divorce, property, and child custody triad, even more remote areas of family law, like health care coverage, housing, elder care, adoption, inheritance, and the like are rarely explicitly raised in the Harry Potter books. While the books are rife with criminal law and contract law issues, there are very few even tangential family-law issues raised by the events of the novels. See Danaya C. Wright, "Well Behaved Women Don't Make History": *Rethinking English Family, Law, and History*, 19 WISC. WOMEN'S L.J. 211, 222 (2004).

41. See traditional political and feminist theory on the rhetoric of the public and private spheres. See, e.g., Linda K. Kerber, *Separate Spheres, Female Worlds, Women's Place: The Rhetoric of Women's History*, 75 J. AM. HIST. 9 (1988); Wright, *supra* note 40, at 234-39.

state, Rowling has created strong families and a weak state which seems to be subsumed into a series of family dynasties. Thus, while she does not have family law—*i.e.*, state intervention in the family—she instead has created a family-based state. In exploring this collapsed public/private divide we begin by considering the relation between families and family law in these books.

The Sorcerer's Stone begins with Harry's placement with the Dursleys. Here we have an infant child, whose parents have been killed by Lord Voldemort, left on the doorstep of his aunt and uncle's house, just like countless orphans in nineteenth century English literature.⁴² But unlike nineteenth century England, the Muggle world of *Harry Potter* has rigid procedures for the placement and adoption of orphans.⁴³ Although the law might presume that placement with blood relatives would be in the best interests of an orphaned infant, there would be home visits, trips to the judge, and reams of paperwork before Harry would spend his first night with the Dursleys in Muggle England today.⁴⁴ But in Rowling's world, a single wizard, Professor Albus Dumbledore, even without the imprimatur of the Ministry of Magic, and before most people even knew of the Potters' deaths, makes a unilateral decision that Harry should be taken to his aunt and uncle because "[t]hey're the only family he has left now" and, most importantly, that "[i]t's the best place for him."⁴⁵ That decision, moreover, is not transmitted through a court document, nor are any instructions for Harry's upbringing given to his new caregivers. As Dumbledore explains: "I've written them a letter."⁴⁶

42. Rowling is clearly alluding to the wealth of nineteenth century orphan novels in the *Bildungsroman* genre. *Jane Eyre*, *Emma*, *The Mill on the Floss*, *Oliver Twist*, *Great Expectations*, *Wuthering Heights*, *Tristram Shandy*, and many other nineteenth century novels are coming-of-age stories of young children, mostly orphans, raised by relatives, strangers, institutions, and the streets. BRONTË, *supra* note 36; JANE AUSTEN, *EMMA* (Richard Cronon & Dorothy McMillan eds., Cambridge Univ. Press 2005) (1815); GEORGE ELLIOT, *THE MILL ON THE FLOSS* (Nancy Henry ed., Houghton Mifflin Co. 2004) (1860); DICKENS, *supra* note 35; CHARLES DICKENS, *GREAT EXPECTATIONS* (George Stade ed., Barnes & Nobles Classics 2005) (1861); EMILY BRONTË, *WUTHERING HEIGHTS* (George Shade ed., Barnes & Noble Classics 2005) (1847); LAURENCE STERNE, *TRISTAM SHANDY* (Melvyn New & Joan New eds., Penguin Books 2003) (1760). Rowling has created the same kind of Dickensian world for Harry Potter as existed for David Copperfield and Oliver Twist.

43. Although England was a late entry into the adoption arena, an orphaned child like Harry would be evaluated by experts, processed through the judicial system, and placed with his relatives only if they made the effort to adopt him.

44. See 5(3) HALSBURY'S LAWS OF ENGLAND, Children and Young Persons: Adoptions §§ 501–700 (4th ed. 2001) (amended by Adoption of Children Act of 2002).

45. *THE SORCERER'S STONE*, *supra* note 1, at 13. Moreover, we learn in *The Half-Blood Prince* that it is the best place for Harry because Dumbledore has bewitched the house, not because there is some inherent protective force there, or because blood relatives are in the best interests of children. Rather, Dumbledore has artificially made it the best place for Harry. See *THE HALF-BLOOD PRINCE*, *supra* note 1, at 55.

46. *THE SORCERER'S STONE*, *supra* note 1, at 13.

This event sets the tone for the remainder of the books: family law, at least the family law of the Muggle world, is noticeably absent from the wizarding world Rowling has created. But in the absence of family law, how do intra-familial decisions get made? For instance:

- What law requires each wizard child to attend wizarding school at age 11?
- Children are signed up to attend Hogwarts at birth. By whom? Parents or the Ministry or the Headmaster?
- Does Harry have gold in Gringotts because someone liquidated his parents' estates? Who?—Muggles or the Ministry of Magic?
- Do house-elves have families other than the ones they work for?
- Did Hagrid's parents get divorced or did they informally separate?
- Is there any official state involvement in Neville Longbottom's living arrangement with his grandmother? Why doesn't Harry live with his grandparents? Does he have any?
- Do adult wizards marry? What kind of ceremony (religious or civil)?
- Although a parent or guardian's signature is needed before a child can visit Hogsmeade, why is no signature required to send a child to Hogwarts? Harry's decision to attend did not involve the approval of the Dursleys.
- Could Harry have chosen to live with his godfather, Sirius Black, had Sirius not been in hiding?

These questions, and many more, suggest that the wizarding world is fundamentally different from the Muggle world in its use of state intervention in family relationships and family structure. Does a wizard child exist in the wizard world like a child in a village,⁴⁷ where village elders simply make decisions about appropriate family arrangements, such as what happens to the Potters' wealth upon their death, Harry's placement with his aunt and uncle, and whether Hagrid would stay with his Muggle father or go off to France with his giant mother? The apparent absence of state action forces us to ask even more fundamental questions about the relationship between the family and the state: namely, to what extent does the presence of wizardry and magic alter the family? And conversely, to what extent does wizardry and magic affect the state?

Because of limited space in this collection of essays, there is only time to highlight certain themes and events that help us see how Rowling has essentially flipped the public/private divide on its head. First, I would suggest that many authors, and female authors in particular, are uncomfortable with state intervention in family disputes.⁴⁸

47. See HILLARY RODHAM CLINTON, *IT TAKES A VILLAGE AND OTHER LESSONS CHILDREN TEACH US* (1996) (arguing that children today are raised better by a wide network of family and community adults).

48. In my previous research on the development of English family law I was struck by a noticeable distinction between how female authors treat state intervention in the

In many of the classic English novels of the nineteenth century, a genre Rowling is clearly alluding to in many of the scenes and events of her books, state intervention in family affairs is virtually unknown. Instead, novelists used dramatic plotting to create and solve family tensions. Often, an offending husband died by falling through a weak tread on the stairs, or an errant wife slowly died of brain fever. Death is a novelist's easy solution to discord, especially in a world in which critics decried depictions of family discord because it was believed to encourage family rupture, and therefore social instability, in the world of the readers.

Though Rowling is not writing in nineteenth century England, her world of wizardry and magic evokes a very different type of social structure from the twenty-first century Muggle world. It is very much a world in which state power is weak and families tend to their own business. For instance, as we learn in *The Half-Blood Prince*, Harry inherits No. 12 Grimmauld Place from his godfather because of Sirius' self-executing will. Unlike Muggle wills, which require extensive probate and administration procedures, and which cannot guarantee that the true "will" of the deceased will be done, in the wizarding world a spell identifies who the true beneficiary will be. While Kreacher is loudly exclaiming that he "won't, won't, won't" go to "the Potter brat," Dumbledore tells Harry to "Give him an order." "If he has passed into your ownership, he will have to obey. If not, then we shall have to think of some other means of keeping him from his rightful mistress."⁴⁹

Fortunately, Kreacher does obey Harry's order to "shut up," and Harry is so identified as the true beneficiary, and thus No. 12 Grimmauld Place will not fall into the hands of Bellatrix Lestrange, Sirius's closest relative and murderer. But had Harry's order not worked, because Sirius's will was defective, the house would have passed not by wizarding laws of intestacy, but by "Black family tradition." Dumbledore explains that:

family and how male authors treat it. See generally Danaya C. Wright, *The Crisis of Child Custody: A History of the Birth of Family Law in England*, 11 COLUM. J. OF GENDER & L. 175, 241-48 (2002). For instance, throughout most of the nineteenth century, female authors like Anne Brönte (*The Tenant of Wildfell Hall*), Elizabeth Gaskell (*Wives and Daughters*), Margaret Oliphant (*The Marriage of Elinor*), and Mrs. Henry Wood (*East Lynne*), to name just a few, created plots involving family discord among husband and wife, all of which ended in informal, non-legal solutions. Male authors, on the other hand, including Thomas DeQuincey (*The Household Wreck*), Charles Dickens (*Bleak House*), and Anthony Trollope (*He Knew He Was Right*), often used lawyers, courts, and legal rules to create family tension and to sometimes resolve it. The assertion of legal rights to their child is the focal point of Trollope's *He Knew He Was Right*, even though final resolution occurred through the death of the father. ANTHONY TROLLOPE, *HE KNEW HE WAS RIGHT* (Frank Kermodé ed., Penguin Books 1994) (1869).

49. *THE HALF-BLOOD PRINCE*, *supra* note 1, at 52.

the house was handed down the direct line, to the next male with the name of 'Black.' . . . While [Sirius]'s will makes it perfectly plain that he wants you to have the house, it is nevertheless possible that some spell or enchantment has been set upon the place to ensure that it cannot be owned by anyone other than a pureblood.⁵⁰

It would seem that "dead hand control"⁵¹ is far more alive and well in the wizarding world than in the Muggle world.⁵² But more important than dead hand control is the fact that wizarding families exist as autonomous institutions that, in many respects, make their own rules and solve their own problems without oversight by a bureaucratic or therapeutic state. It is not clear whether there is no divorce because the presence of magic insures that wizards do not make mistakes in choosing spouses, or because the presence of magic provides a mechanism interior to the family structure for fixing mistakes of this sort. But in any event, magic has apparently made the family unit more autonomous than is true in the Muggle world.

At the same time, the strength of the wizarding family is mirrored by a weak and ineffectual state. As explored by other participants in this collection,⁵³ Rowling has created the incompetent and somewhat corrupt Ministry of Magic as a scathing critique of state institutions. Is it any wonder, given the weak, pompous, and easily-swayed Minister Cornelius Fudge, the pedantic bureaucrat Percy Weasley, the dictatorial counselor Dolores Umbridge and the empty-headed Barty Crouch that Rowling does not involve the state in matters of family creation or family breakdown? When the state does become involved, as it does in the operation of Hogwarts in *The Order of the Phoenix*, we see not only distrust, but also downright corruption as Dolores Umbridge invokes a new ministry directive every time she feels thwarted by the power of the headmaster or the lack of cooperation by the students. The ministry dominates the press and attempts to dominate the educational system in order to control public opinion and academic freedom. Throughout all of the first six books, Rowling has created a state that cannot be trusted with the simplest of matters, much less

50. *Id.* at 50.

51. Dead Hand Control is a common theme in property and trusts law for exploring the appropriateness of legal rules that permit deceased landowners to control the disposition, use, and alienation of land long after their deaths.

52. This is just one example of many in which Rowling has bypassed the opportunity for state intervention in family matters in favor of the benevolent intervention of Albus Dumbledore, or in favor of self-executing spells that insure the orderly disposition of family matters. For example, Harry's notice to attend Hogwarts, Dumbledore's defense of Harry's use of underage magic, and the emancipation of Dobby by tossing him a sock are all events with legal significance that do not entail formal legal intervention. *THE SORCERER'S STONE*, *supra* note 1, at 63-64; *THE ORDER OF THE PHOENIX*, *supra* note 1, at 146-51; *THE CHAMBER OF SECRETS*, *supra* note 1, at 337-38.

53. See Benjamin H. Barton, *Harry Potter and the Miserable Ministry of Magic*, *infra* text accompanying notes 57-66.

with the all-important decisions like the custody of the orphaned Harry.

In *The Half-Blood Prince*, however, Rowling evinces a dramatic shift from her incompetent state in the first five books, to a state that is exquisitely unsuited to fighting the new war being waged by Lord Voldemort. It is perhaps most telling that Rowling begins *The Half-Blood Prince* with a meeting of the Muggle Prime Minister and the new Minister of Magic, rather than with the usual depiction of Harry's tedious, miserable life on Privet Drive. The shift from the private realm of the Dursley family to the public realm of the state signals a change in emphasis from the relatively isolated and autonomous spheres of family and state to a brave new world in which the private and public worlds merge over a new type of war: a private war against families. Lord Voldemort is not training an army to fight on a battlefield for a nationalistic cause. Instead, he is striking strategically at the heart of individual families in a targeted war against the tenuous power of a weak state made up of independent wizarding families held together only by their common characteristic—magic. The public/private divide that we are accustomed to in the modern Anglo-American world is clearly not Harry's world in which Voldemort's murderous powers are aimed at the individual families of numerous Hogwarts students and Rufus Scrimgour himself asks Harry to become a spokesperson for the Ministry only because his family has made the ultimate familial sacrifice. In the wizard world, power resides in the individual family units and not in the state.

But while it might be easy to understand Rowling's personal objections to state interference in the family from her history as a "welfare mother," her incompetent state becomes downright destructive of the social order in *The Half-Blood Prince* when it cannot keep wizarding families safe. Consider the ridiculous instructions the Ministry distributes to families to develop codes to identify the person they are letting into their home as truly a family member. The absurdity of asking each other pre-established secrets rather reminds one of the U.S. government's admonition to buy plastic sheeting and duct tape in preparation for another terrorist attack.⁵⁴ As the evil effects of Voldemort's power strikes not at the Ministry but at individual families, the state's inability to battle the diffuse and personalized attacks of Voldemort's war highlights the incongruity of the public/private divide in the wizarding world.

Rowling has rejected family law, *i.e.*, the interference of the state in the private sphere, partly because the state is corrupt and incompetent, but also because such interference is dangerous. When the Ministry is actually protecting Lord Voldemort, and Lucius Malfoy has the

54. Mary Delach Leonard, *Yellow Alert Are You Prepared for a Terrorist Attack? Do You Know where your Flashlight is?*, ST. LOUIS POST-DISPATCH, Feb. 15, 2004, at E1.

Minister's ear, the reader realizes that the only way to protect one's family and loved ones is through private action and personal courage. Despite the many references to Voldemort's prior rise to power as essentially fomenting a war between good wizards and Voldemort's death eaters, we quickly realize that this war is not like military operations between feuding nations. Rather, it is a series of personalized, private attacks in which success comes from essentially private actions: Lily's sacrificing her life for Harry's, Barty Crouch Jr.'s mother giving up her life for her son, and Draco's mother extracting an Unbreakable Vow from Snape to protect her son. People are killed not as soldiers in a traditional war, but as vendettas against Muggle fathers, inter-family feuds (Bellatrix Lestrange and Sirius), and warped notions of the master-servant relations by the sycophantic Nagini and Wormtail. Power lies not in the traditional liberal state, but in the autonomous building blocks of social order—the family.

Rowling has flipped the traditional feminist mantra, “the personal is the political,”⁵⁵ in which personal decisions and personal relations are seen as fundamental expressions of public ordering, to “the political is the personal.” In Rowling's world, the war the Ministry is fighting is an upside down attack on private families. Thus, just as she has rejected the fallible state in favor of a naturalized ordering in the wizarding world that, through spells and community acceptance, makes the private world of the family a thoroughly separate realm from the public world of the state, she has made the public state a tool in the war of private, inter-familial power struggles.

Rowling's rejection of state intervention in family disputes clearly comes from a profound distrust of the state's motives as well as a rejection of state authority to intervene in the personal realm of family decision-making. Certain things occur in Rowling's world almost by nature, as though it is just a matter of cosmic law that wizard children would be signed up for Hogwarts at birth. Others are structured by consensus among the relevant parties, as the spells over the Black family home that would keep it in the bloodline. And other matters, like Harry's placement with the Dursleys, are a matter of almost-divine intervention by a benevolent bystander. The state not only can do no right, and therefore must be kept away from the important realm of family autonomy, but it actually does harm within the private realm of the family by having become a tool for the personal war Voldemort has waged. Traditional liberalism sees the family as the building block of social order. In the wizarding world, the family unit is the locus of power and consequently the target of Voldemort's attacks. To a great extent, the state has become a pawn in Voldemort's

55. The “personal is the political” is a common feminist slogan, explored in depth in CATHERINE A. MACKINNON, *Privacy v. Equality: Beyond Roe v. Wade*, in *FEMINISM UNMODIFIED* 93, 100 (1987) (“The private is the public for those for whom the personal is the political.”).

war to destroy the family. Voldemort's war logically focuses on attacking individual families because his fear of weakness and dependence makes him challenge the strongest of magical powers, the power he constantly overestimates, which is the love of family.⁵⁶

IV. HARRY POTTER AND THE MISERABLE MINISTRY OF MAGIC BENJAMIN H. BARTON

As the author of perhaps the best selling and most influential children's novels of all time,⁵⁷ it is well worth considering what Rowling's vision of the wizarding world tells us about our own culture. This essay briefly discussed some of what Rowling tells us about government through her depiction of the Ministry of Magic in the *Harry Potter* novels.⁵⁸ In a nutshell, Rowling has very little use for central government, and through satire and later, darker commentaries, draws a portrait of government as a non-democratic, inefficient, and frequently, a flatly dishonest bureaucracy.

There are several notable features of Rowling's portrait of the Ministry of Magic. The first is what the Ministry is not. The Ministry is not democratic. At no point in any of the six *Harry Potter* books is an election mentioned. To the contrary, in *The Half-Blood Prince* Cornelius Fudge is replaced as Minister of Magic with a reference to his being "sacked," all without reference to an election.⁵⁹ In conjunction to suggestions that Dumbledore was recruited to be Minister of Magic at one point⁶⁰ and had later been fired from the Wizengamot,⁶¹ Rowling has repeatedly skipped over opportunities to have elections.

The Ministry is not a classic executive, legislative, or judicial body.⁶² There does appear to be a law-making function, but the descriptions of that process sound more like administrative rule-making than any kind of deliberative or democratic legislative action. Similarly, there is a "Minister of Magic" that heads up the various departments of the ministry, but the minister resembles an agency head more than a President or Prime Minister.

56. There are many similarities in the orphan status of Voldemort and Harry, but Harry has found substitute family in Sirius, the Weasleys, and Professor Dumbledore, where Voldemort found none. I predict that the fatherly love Dumbledore bestowed on Harry will give him the magical power to defeat Voldemort.

57. See *supra* notes 3–9.

58. This essay assumes a baseline of Harry Potter knowledge. The uninitiated may wish to consult *The Leaky Cauldron*, <http://www.the-leaky-cauldron.org/> (last visited Sept. 23, 2005).

59. See *THE HALF-BLOOD PRINCE*, *supra* note 1, at 15–18.

60. See *THE SORCERER'S STONE*, *supra* note 1, at 64–65.

61. See *THE ORDER OF THE PHOENIX*, *supra* note 1, at 95.

62. The Wizengamot, where Harry is tried in *The Order of the Phoenix*, appears to be the main adjudicatory body in the wizarding world. See *id.* at 134–51; and *The Harry Potter Lexicon*, <http://www.hp-lexicon.org/ministry/ministry-main.html> (last visited Sept. 23, 2005).