

## **Rule of Law in the Wizarding World or Crumple-Horned Snorkack: Which is the Mythical Beast?**

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Well, one relevant point to bear in mind is that there are at least two members of the Wizarding World who believe in the existence of the Crumple Horned Snorkack.

In considering justice and the institutions supposed to uphold justice in the Wizarding World, it is important to keep a grasp of the relevant timeline of key Wizarding and Muggle events against which the events of the books can be base-lined<sup>1</sup>.

Notwithstanding popular mythology, witchcraft has not for most of English history been considered a serious problem. At the start of the 16<sup>th</sup> century there were few capital offences recognised by English courts. None of them included witchcraft.<sup>2</sup> Furthermore, the penalty of burning (occasionally boiling) was reserved for what the law considered the most threatening of crimes. Translating the Bible into English, being an Anabaptist, or (as a woman) poisoning one's husband were what might lead to the crackle of flames, or the earnest bubbling of the pot in the market square. Wherever Wendelin the Weird might have been when indulging in her kinky hobby during the 14th century, it seems improbable that it was England (*PoA* 17–22).<sup>3</sup> Despite passing a Witchcraft statute in 1563, Elizabeth I (whose own mother and great-great-grandmother — on different sides of her family — were both reputed witches, and whose great-grandmother had indeed stood trial for the offence in 1483) was relaxed enough about the subject to appoint John Dee her court astrologer<sup>4</sup> and to load honours upon him, including the Wardenship of the Collegiate Church of Manchester (which would now be a Bishopric). It was James I (whose statute of 1603 made the crime explicitly a capital one, and whose *Demonology* showed ambitious aristocrats a quick way to curry Royal favour) who stimulated the witch-craze in 17<sup>th</sup> Century England.

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<sup>1</sup> I am indebted to the Harry Potter Lexicon ([www.hp\\_lexicon.org](http://www.hp_lexicon.org)) for the HP timeline information, but must also acknowledge assistance from lj users sollersuk, pharnabazus and jodel\_from\_aol in clarifying datings. All errors remain, of course, my own.

<sup>2</sup> Treason, petty treason, murder, robbery, larceny, rape and arson.

<sup>3</sup> The Pope (Innocent VIII) did not declare witchcraft heresy until 1484, which was well into the *fifteenth* century although the fears of Pope John XXII in 1320 about magical poisoning did spark a flurry of Continental interest in the subject. Given the general unreliability of Wizarding history, I am inclined to believe Wendelin a mythical figure, intended to reinforce the Wizarding superiority complex about Muggles.

<sup>4</sup> Dee was of Welsh origin. Even given the vagaries of contemporary spelling and the peculiarities of pronunciation there can be no doubt that 'Dee' is a phonetic attempt to represent the Welsh word 'Du'. It is of some interest that the literal translation of 'Du' is 'Black'.

It was short-lived (rather like its unfortunate victims). The last hanging (burning was normally a Scottish prerogative) for witchcraft in England was that of Alice Molland in 1684. By the repeal of the various capital acts in 1736, which left witchcraft still on the statute book, albeit a non-capital offence, the Authorities began to signal a concerted lack of enthusiasm for prosecuting witches.

One key question therefore is: why 1692?

That is: why implement the Statute of WIZARDING Secrecy at a time when the threat that might be the principal reason for doing so was in fact diminishing?

Could the early stirrings of what became known as 'the Age of Reason' have provoked more panic among wizards than the age of fear and superstition that had preceded them?

Alternatively, the drive may have come from Continental Europe, where the witch-craze persisted considerably longer. No doubt because of the early development of fast magical means of travelling considerable distances compared to the much slower development of Muggle equivalents, the somewhat dubious advantage of internationally imposed legislative norms across Europe arrived in WIZARDING Britain about 300 years before the Treaty of Rome<sup>5</sup>.

Or perhaps Hagrid's blithe assumption that the reason for the secrecy, that 'everyone'd be wantin' magic solutions to their problems' (*PS* 51), could be reversed: the stirrings of science which would in time produce the Industrial Revolution at least meant that wizards could retreat into seclusion without feeling they were leaving the Muggles completely helpless<sup>6</sup> once they had science as a substitute. Or, perhaps more plausibly, there was a protectionist fear that some groups in wizarding society might end up losing out as they saw Muggles becoming more technically adept at coping in the absence of magic?

My own view is that although the details remain obscure the most likely explanation is that in 1692 the WIZARDING World was at a stage when for the first time it believed itself able to cut loose from the Muggle World and know that in Science the Muggles would have a convenient explanation for everything that might trouble them otherwise about the observed Universe, and which no-one would naturally expect to understand.

After all, when 'Any sufficiently advanced technology is indistinguishable from magic' (Clarke), the corollary has to be that any magic can be explained away as sufficiently advanced technology. The people of the late 17<sup>th</sup> century had no difficulty in believing in magic; it was technology with which they had the problem.

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<sup>5</sup> Somewhat oddly, despite the ease of travel which one would have thought might have done much to solve some of the problems caused by the small British (and Irish — there is no reason to suggest anything other than political unity across the whole of the WIZARDING British isles) magical population, there is very little evidence to suggest much social exchange with wizarding populations in other countries; there are more instances in the books of witches and wizards intermarrying with those of other *species* or with Muggles than with the magical humans in other countries.

<sup>6</sup> While I am indebted to sollersuk for this suggestion, I find it ultimately unconvincing, since it suggests a level of altruism about WIZARDING thinking that has certainly never been approached subsequently.

But as canon stands at the moment we simply do not know why the Statute of Secrecy came to be enacted either when it did or at all, and the Wizarding World's 'official line' on the issue seems to vary according to whether paranoia or superiority over the Muggle world better suits the political agenda of the person propounding it.

*FB* notes (xv, note 4) that 'a full account of this particularly bloody period of wizarding history' can be found in *A History of Magic* by Bathilda Bagshot (Little Red Books, 1947). The passing allusion to Chairman Mao's opus in the name of the publishing house may be a clue to the level of credence the reader — already aware of the level of misinformation in wizarding history certainly as it is taught at Hogwarts — is expected to give to any pronouncement dealing with the Wizarding World and its past.

Whatever the reason, the retreat into seclusion of the late 17<sup>th</sup> century gave various cabals within the Wizarding World an opportunity to exercise power, born out of fear and paranoia, with an almost unfettered abandon.

Since 1692 a pall of fear has lain across the Wizarding World. Or, to use a more poetic phrasing: They deliberately shrank away from the Age of Reason. So far as *that* was concerned in 1692 the Wizarding World, in effect, deliberately chose to put itself to sleep. And the Sleep of Reason brings forth monsters. (Goya)

### **What Kind of Polity is the Wizarding World?**

The Wizarding World is not a modern Western democracy. To confuse institutions such as the Ministry of Magic, and the wizarding court (the 'Wizengamot' as we learn, for the first time in *Order of the Phoenix* it is properly called) with their apparent equivalents in 20<sup>th</sup>-century English Muggle society is to make a fundamental error about the world we are considering.

Harry and Hermione both make that mistake.

It is excusable because Hermione is a Muggle-born<sup>7</sup> and Harry is Muggle-raised. Both of them take certain assumptions across with them into the Wizarding World — assumptions which I believe may eventually actually operate to save that world. Unlike Ron, they have a different baseline against which to check their assumptions, and though it leads them to make mistakes at early stages, it also allows them to consider a wider range of potential solutions for problems — much as Hermione uses the Muggle trait of logical analysis to solve the puzzle (*PS* 207).

Furthermore, Harry's own trial in *OotP* (Chapter eight) emphatically demonstrated what had been suggested in *PoA* about the not dissimilar treatment of Sirius, namely that what by Muggle standards are serious breaches of the rights of accused prisoners are not merely commonplace, but do not merit any comment from the witches and wizards who witness them, suffer them or perpetrate them.

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<sup>7</sup> For these purposes 'Muggle' is used to mean someone from the mundane world with no inherent magical talent, 'Muggle-born' means someone born mundane but possessing magical talent (Lily Evans, Hermione Granger), half-blood means strictly Muggle/wizard or Muggle/witch cross (Tom Riddle, Seamus Finnegan), irrespective of whether the witch or wizard concerned was or was not Muggle-born, we have not yet been given a word to describe Harry or Tonks (pureblood/Muggle-born); pureblood means both witch/wizard without either Muggle or Muggle-born either side (for how many generations? )

Accordingly, Harry has direct personal experience of the perils which the lack of legal protections in the Wizarding world can bring, which is perhaps unusual in one of his age, and also has the Muggle legal system against which to compare and contrast them (even the *Daily Mail*-reading Dursleys, whose political viewpoint on related subjects [e.g., Sirius Black's escape: *PoA* 19] suggests they may assume that the function of defence counsel is to earn vast sums from the public purse for performing feats of logic-chopping and misdirection to ensure that acknowledged criminals walk free, have through the television, his attendance at a Muggle primary school up to age of 11, and whatever Muggle books and newspapers he has had access to allowed Harry to have obtained a notion of 'due process' which to a Fudge or an Umbridge would appear a dangerously speculative notion straight from cloud-cuckoo land).

From time to time it has been suggested that Sirius suffered as he did because there was a state of emergency in force when, some time in November 1981,<sup>8</sup> he was sent to Azkaban without trial. I strongly dispute that contention; it may have been a factor but the essentially random nature of the Wizarding World's treatment of suspects must have made it a risk no matter when the incident had occurred. Hagrid's not dissimilar (though much shorter-lived) incarceration in Azkaban because Fudge 'has to be seen to be doing something' (*CoS* 193) is sufficient indication that imprisonment without trial on ministerial fiat is a common-place event.

In further support of the argument against Sirius's treatment deriving from a notional state of emergency associated with the first Voldemort ascendance (during which, as we learn from *GoF* the Ministry did take the opportunity of legalising the use of the Unforgivable Curses (including therefore torture and coercive behaviour) by its operatives against known or suspected Death Eaters), there is no reason why such conditions apply in 1995, at the time of Harry's hearing: at least for official purposes the Voldemort threat is completely over. Yet from the very beginning (the use of *agents provocateurs* to bring about the 'offence' in the first place) through to the game-playing about the timing and status of the hearing, and Fudge's wholly prejudicial conduct of it the objective seems to be to secure a conviction, and only Dumbledore's persistence in defence thwarts this object.

First, my view is that a state of emergency (and the view of human rights appertaining to it) was essentially declared back in 1692.

Secondly, the haphazard nature of Sirius's justice is not significantly better or worse than that handed out to others. While *GoF* shows Bella Lestrage at least getting a hearing some time in 1982 (516), *CoS* (some 20 years later — long after the argument of emergency should have dissipated) shows Hagrid being consigned to Azkaban without trial so that Fudge may be 'seen to be doing something' (193) and *OotP* shows an underage boy being tried by a full adult court on a serious charge without being afforded representation or even adult accompaniment (Chapter 8).

But the key point where the institutional failings of the Wizarding World are most starkly presented in contrast to those of our own is in describing the relationship between the Wizarding World and other sentient beings, magical and non-magical.

First and foremost, the Wizarding World is a slave-owning society. Hogwarts itself could not function without the invisible services provided by more than 100

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<sup>8</sup> I use the conventional timeline which puts the end of the First Voldemort Ascendancy as 31 October 1981.

house elves (*GoF* 161). Among witches and wizards there is no, or little, suggestion that house-elf servitude is wrong; even Molly Weasley wishes the Weasleys owned one (the term is used by each of Harry, Fred and George without any consideration of the implications) (*CoS* 27). Furthermore, there do not appear to be any more restraints than those imposed by personal goodwill or convention on the treatment of house-elves by wizards, and public opinion does not appear to go very far: the ‘noble and most ancient house of Black’ has a ‘family tradition’ (*OotP* 105) of beheading their superannuated house-elves and mounting their heads on the wall, and it does not appear to make them less well regarded in pure-blooded circles.

Second, other magical creatures while not enslaved are the subject of serious restrictions both on their movements (Umbridge, we learn in *OotP*, has restricted werewolf rights to the point of rendering them essentially unemployable and has sought to have merpeople ‘tagged’) and on the powers that they are allowed to use. One of the specific legal provisions of which we are made aware is clause 3 of the Code of Wand Use: *No non-human creature is permitted to carry or use a wand.* (*GoF* 119).

How this legislation is enforced is unclear, given that the other magical beings we meet, apart from house-elves (who are psychologically coerced) appear strong-willed and powerful. Furthermore, it may have greater or lesser impact on the daily lives depending on which magical being is affected by the prohibition; its impact on centaurs (apart from on human/centaur relations) seems to be negligible, and house-elves have their own internal magic, allowing them, for example, to Apparate within Hogwarts, a task which is beyond witches or wizards (*CoS* 134, 249).

However, the magical humans’ self-proclaimed superiority over other sentient magical beings certainly contributes to a tense relationship between the various sentient species within the Wizarding World. This is in particular true of goblins, who occupy a strange and anomalous position — apparently influential (in that they control the wizard bank, Gringotts, one of the few apparently genuinely international institutions in the Wizarding World) but still subject to anti-wand restrictions.

At least in the case of goblins, and probably also to some degree in the case of giants, the current superior social position of humans has been achieved by the use of force; one of Harry’s OWLS questions is ‘*In your opinion, did wand legislation contribute to, or lead to better control of, goblin riots of the eighteenth century?*’ (*OotP* 639).

In earlier books these ‘riots’ are referred to as ‘rebellions’ and even Hermione accepts the received wisdom that goblins do not need their rights protected and are ‘quite capable of dealing with wizards’ (*GoF* 390).

Tellingly the goblin position is seen as pivotal to the coming struggle against Voldemort. Lupin observes, ‘If they’re offered the freedoms we’ve been denying them for centuries they’re going to be tempted’ (*OotP* 81). As a werewolf, Lupin has suffered increasingly extreme forms of prejudice and social exclusion, so can be trusted to know what is he talking about.

Furthermore, the *Quibbler*’s line, ‘Sources close to the Minister have recently disclosed that Fudge’s dearest ambition is to seize control of the goblin gold supplies and that he will not hesitate to use force if need be’ (*OotP* 174) is very likely to be true, even while it is camouflaged within a story so sensational in its details as to be

dismissed (an apparently common *Quibbler* technique; one hardly likes to speculate as to what constraints exist which prevent the development of a free WIZARDING press).

Thirdly, the *general* WIZARDING view of Muggles is much less far removed from that propounded by the Death Eaters than people like Arthur Weasley and Newt Scamander would like to think (or have us think in the case of Scamander; all WIZARDING publications which we see are subject to extremes of spin, and should be treated with great caution). For example Scamander observes that ‘we are all familiar with the extremists who campaign for the classification of Muggles as “beasts”’ (*FB* xiii), and Sirius references his mother’s cousin Araminta Meliflua (‘tried to force through a Ministry Bill to make Muggle-hunting legal’ (*OotP* 105) — the use of the term ‘legal’ suggests that illegal Muggle-hunting is a known sport). In both the cases described, the holders of these anti-Muggle views were using political mechanisms to achieve their ends, suggesting that the positions held, albeit ones others considered extreme, were not regarded as outside the political pale. Furthermore, the dating of Arthur Weasley’s Muggle Protection Act (1992–93) suggests that it is protecting Muggles, a position which has been late to achieve political respectability (and that among Lucius Malfoy — then at the height of his power and respectability — and his circle, it has not yet done so) not the converse. Even Arthur — while pointing out that Fred and George’s Ton Tongue Toffee assault on Dudley ‘seriously undermines wizard-Muggle relations’ — had not apparently intended to tell their mother about it, and does not — at least in the part of the argument we get to see — go so far as to highlight its potentially life-threatening nature (*GoF* 50).

Fourthly, WIZARDING society is inherently violent. Duelling — possibly to the death (*PS* 114) — is a recognised part of society (although possibly nominally illegal), hanging students in chains from the ceiling appears to have been an acceptable punishment in the reasonably recent past (*PS* 181) and approval for whipping students is granted (*OotP* 594), while conditions at Hogwarts, even without the annual intervention of Voldemort, are so inherently dangerous that the news that there has apparently only been one pupil fatality in 50 years struck me, at least, with considerable surprise.

As 20<sup>th</sup>- and 21<sup>st</sup>-century experience has shown, one of the first casualties of any state of emergency is the rule of law, if indeed it existed beforehand. One of the objectives of this presentation will be to show that because the Statute predated any formalised rule of law thinking (it was passed less than a decade after Judge Jeffries’ infamous ‘Bloody Assize’ in the wake of the Monmouth Rebellion) the notions of checks and balances, concepts of individual liberties, equality before the law and civil rights were, in fact, frozen in the WIZARDING World as they had existed approximately at the end of the 17<sup>th</sup> century (i.e., largely rudimentary at best). The WIZARDING World has been largely isolated from the developments which went on in the Muggle world during what that world knew as ‘the Age of Enlightenment’ or ‘the Age of Reason’.

It is also the case that there seems to be very rudimentary notions of the separation of powers in the WIZARDING World. The Ministry of Magic acts as a law-making body, a judicial body and apparently as a prosecuting authority (*OotP* 90 and *passim*). Although it can be partly explained by the comparatively tiny WIZARDING population, conflict of interest does not appear to be a concern either, as demonstrated by, among other things, Crouch’s prosecution of his own son (*GoF* 516). Notions of

private rights appear rudimentary and we know little or nothing about how they are enforced. The alternatives are examined in the discussion of patronage below.

### **The Statute of Secrecy Examined**

The genesis of the Statute of Secrecy (henceforward ‘the Statute’) is apparently international not national (*FB xv*). It seems to have come out of ‘the famous summit meeting’ of the International Confederation of Wizards in 1692 (where the goblins, attending with centaurs and merpeople to debate its impact on non-human magical beings, failed to reach agreement with the others).

We do not have a full text of the Statute (which has been amended, apparently, on several occasions and has spawned subordinate legislation) but section 13 creates an offence of carrying out magical activity that risks notice by members of the non-magical community (*CoS 21*) and section 73 imposes on relevant ministries obligations of concealment and control of magical beasts, beings and spirits on their territories (*FB xvi*).

There is therefore international pressure to conform to the Statute (although it is unclear what international sanctions can be brought to bear on states which do not).

As secrecy is the paramount aim, it seems plain that wizard/Muggle relationships threaten that secrecy, and might therefore be thought undesirable even by those who would not naturally be in sympathy with the pure-blood agenda.<sup>9</sup> Alternatively, opportunities for meeting Muggles may well be limited, at least in part because of the Statute of Secrecy, and the constraints placed by the Statute have also led to severe pressure on those relationships which have occurred; very noticeably in Voldemort’s own case, where the breakup of his parents’ marriage was occasioned when Tom Riddle senior reacted with horror to the news that his wife was a witch, a fact she only revealed to him after the marriage, and after she had become pregnant (*CoS 231*), at a period in English Muggle history during which divorce was virtually impossible, and serious social consequences attended a failed marriage, even for the male partner. One imagines that unless memory charms are used, the Muggle partners to a failed mixed marriage must pose a real threat to the maintenance of secrecy for the Wizarding World as a whole, and that the strains imposed both by the inherent cultural difficulties and by the maintenance of secrecy in the first place make such marriages more likely to fail than otherwise.

Because mixed marriages seem so logically precluded by the objectives of the Statute of Secrecy, the fact that they never seem to have been legally prohibited is a strong indication of the seriousness of the threat of total population collapse in the wizarding community. It seems likely that Ron was saying nothing more than the

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<sup>9</sup> Interestingly, though it appears that the Weasleys are regarded as ‘blood traitors’ by pureblood extremists such as the Blacks for their pro-Muggle position, in practice the Weasleys and Molly’s family have not in fact intermarried with Muggles — the nearest is ‘a second cousin who’s an accountant’ but ‘we never talk about him’ (*PS 75*). Likewise, the Hufflepuff Ernie Macmillan, who is a fairly central member of the DA, boasts in *CoS* (150) of an ability to trace his family back through ‘nine generations of witches and warlocks’ and asserts that ‘my blood’s as pure as anyone’s’.

simple truth when he observed that ‘If we hadn’t married Muggles we’d’ve died out’ (CoS 89).

In the remainder of this paper, I hope to show why, in my view, in trying to understand the problems in terms of justice and rule of law faced by the protagonists in the Harry Potter novels of JK Rowling, it is not sufficient to excuse the actions of the Wizarding World merely by quoting the magnitude of the threat they oppose, nor to go to the opposite extreme, and look at the (admittedly repellent) pronouncements of Lucius and Draco Malfoy about ‘Mudbloods’ as though they were simply racists failing to be judged by the values of Western democracies of the late 20<sup>th</sup> or early 21<sup>st</sup> century.

### **Wizardly Extra-Legal Support Mechanisms: an Understandable Response to Intolerable Conditions?**

It appears from all five of the books to date that there are also individuals or individual situations that are recognised as above the law, and it is quite clear that there is no generalised principle of respect for law or legal institutions. It is suggested below that the weakness of formalised authority structures in the Wizarding World, the corruption within the Ministry, the absence of legal protection for the individual and the pernicious influence of the Statute-created state of emergency has led to extra-legal protection mechanisms growing up, with witches and wizards forced to attach themselves as ‘clients’ to powerful ‘patrons’ who can protect them against the threats to life, liberty and property which tend to flourish in such conditions.<sup>10</sup>

The client/patronage system was at its height in the later Roman Republic, where it had a respectability and formality it probably has not subsequently attained. To a Roman, nepotism was somewhere between a civic duty and a way of life, and the notion of the *familias* to whom duties extended can probably best be grasped by looking at the early chapters of Mario Puzo’s *The Godfather*, although what is described there is a system of ‘bastard’ patronage. The latter have tended to grow up in times of social instability, or among groups who, for whatever reason, feel institutionally disadvantaged in society and unable to avail themselves of formal mechanisms to achieve justice, and, arguably, is what currently prevails in the Wizarding World<sup>11</sup>.

Patronage merely extended the concept of *familias* to a network of unrelated dependents, who owe allegiance to their own patrons, and protection to their own clients: a superior patron expected his clients to bring their own patronage networks under the overall umbrella. While being entitled to demand almost any service of his clients, a patron also needed to be prepared to — and capable of — extending protection to them and their families. It is to be contrasted to the feudal system, since it is possible to change one’s patron (though potentially dangerous: consider the fate

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<sup>10</sup> Patronage discussion inspired by sollersuk and pharnabazus; conclusions and errors all my own.

<sup>11</sup> Actually, it is possible that the Wizarding World is currently poised between an official and semi-official patronage system; patronage was certainly an established part of the British political scene at the date of the retreat in 1692, and Continental European examples, such as that of France, showed it developing rather than receding in the Muggle world over the next half century or so.

of Regulus Black, who discovers that with Voldemort as one's patron, 'It's a lifetime of service or death' [*OotP* 104]).

The first part of *OotP* depicts an assault by Fudge and Umbridge upon Dumbledore's patronage network in an effort to persuade his clients to change their allegiance. The attack on Harry's credibility via the *Daily Prophet* can be seen as an early effort to force Dumbledore to demonstrate whether he is prepared to step up to defend a prominent but heavily beleaguered client (*OotP* 71). He bides his time, playing a waiting game, until subsequently the assault becomes too insistent to ignore without risking his entire network, and he manages to secure Harry's acquittal, though at a severe cost in terms of forcing Fudge into a posture of open hostility (*OotP* 137).

The Ministry may appear to be an organ of state, but there is no apparent enfranchised public to exercise democratic influence over it. In these circumstances, it becomes a powerful weapon in the hands of any patronage network controlling it, and a prize to be fought for, or a hazard to be circumvented. Accordingly, Fudge can use it as his own fiefdom, which he increasingly displays as the series develops, in stark contrast with the early days when, at least according to Hagrid, 'he pelt[ed] Dumbledore with owls every morning, askin' fer advice' (*PS* 51).

It can therefore be seen that institutions which have a superficial resemblance to those of the Muggle world — for example the Wizengamot — become arenas in which rival patrons cross horns and test the relative strengths of their networks, rather than the forums in which justice (however imperfect) is delivered.

It appears likely that, when the network controlling the Ministry is weak and/or sympathetic to Dumbledore, Dumbledore can use his influence to have the laws operated to enhance protection of the individual in general (that is, irrespective of whether that person has a place in his network); in times of trouble it is often borderline whether he can protect even his own client network<sup>12</sup>. In these circumstances the best option may be outright illegality, and, where necessary, Dumbledore does not scruple to place justice above legality, as with the rescue of Sirius and Buckbeak in *Azkaban*.

Dumbledore is an inveterate lawbreaker (for the best of motives, naturally) but he is far from alone in doing so.

When he is not building in loopholes in the laws he drafts to allow him to pursue his hobbies, Arthur Weasley happily conspires with Amos Diggory to conceal what he believes to be Mad-Eye Moody's misdeeds (*GoF* 142–3)<sup>13</sup>; Sirius's flying motorcycle is clearly a misuse of a Muggle Artefact; the erratic enforcement of the Decree for the Reasonable Restriction of Underage Sorcery 1875 seems to make it more of a lottery than a statute, and, in short, the typical approach of witches and

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<sup>12</sup> It is a bewildering question why the powerful Dumbledore needs to rely on the illegal and wildly dangerous activities of two 13-year olds to rescue Sirius (*PoA* 287) when one would have thought that as Chief Warlock on the Wizengamot and Chairman of the International Confederation of Wizards — as he must have been at that time — he could not simply have ordered that Sirius be placed under Veritaserum, and also put the facts openly to the Wizengamot.

<sup>13</sup> Thus, along with his co-conspirator Amos Diggory, contributing to the chain of events which will include the faux-Moody being established at Hogwarts and lead to Cedric's murder.

wizards to wizarding laws is to appreciate the attractive tinkling sound they make when one breaks them.

### **Due Process in the Wizarding World: Flogging a Thestral?**

In these circumstances it seems almost superfluous to point out that notions such as ‘due process’ and ‘civil rights’ are alien to most witches and wizards, and that the rule of law does not exist in the Wizarding World. That is, capricious exercise of power by the Ministry or those influencing it (and therefore immune to its reach) at any given moment is a given.

It is instructive to consider Harry’s trial in *OotP*, Buckbeak’s trial and what we learn about Sirius’s imprisonment without trial in *PoA* (as developed in subsequent books) and even the hints gleaned about the trials of Bagman, the Lestranges and Barty Crouch in *GoF*, and to compare them to the standards which appear from the Universal Declaration of Human Rights, or the Geneva Conventions.

In the Wizarding World, torture and mistreatment of prisoners are also givens. Conditions in Azkaban are such that ‘most of the prisoners in there sit muttering to themselves in the dark, there’s no sense in them’ (*PoA* 155). In fact, given what we are told about the effect of Dementors on the human psyche, which is nothing short of inducing severe clinical depression in any witch or wizard within their orbit, even a short prison sentence is likely to result in permanent psychological damage. A society which can tolerate this as the standard punishment for any form of transgression, and which does not even ensure such minor safeguards as legal representation, procedural fairness or an unbiased hearing to those threatened with it, is not a healthy society.

Although some suspensions of civil rights do occur in consequence of emergency conditions in the Muggle world, the examples given above demonstrate that these are expected to be the subject of scrutiny by legal institutions. Most of the examples of treatment of house-elves, legal procedures, penal institutions and the like described in the series would be condemned in the Western world outright under any circumstances, including a full-blown state of emergency, and civil legal action might well follow.

### **Conclusions**

The Statute of 1692 created a state of emergency, and, indeed, a climate of fear. While isolating the Wizarding World from cross-fertilisation with Muggle ideas developing over the intervening three centuries, it also allowed initially strong interest groups to maintain and strengthen their privileged positions. It inhibited the development of what we would think of as essential democratic institutions, such as a free and independent judiciary (though the smallness of the wizarding population is no doubt also a factor here). Their absence was taken by patronage networks.

Furthermore, the magical world became internally riven, in particular with the deterioration of relationships with other magical beings. These ingrained inequities create a climate which conduces towards the development of the phenomenon of Dark Lords; with so many fault lines riddling wizarding society it is easy to exploit pre-existing divisions to create a power base.

By looking at the world from an external perspective, Harry (and to an even greater extent Hermione) are capable of throwing a light on matters which pure-blooded witches and wizards, or those immersed since birth in the culture, are unable

to do. Hopefully as the series moves towards its denouement Harry will be able to draw upon his Muggle world experience so that the underlying causes of the Wizarding World's ills can be diagnosed and an attempt at a cure made, rather than merely addressing the symptoms (of which Voldemort is only the most noticeable).

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