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Harry Potter & the Law: Family Life and Moral Character

James C. Smith

University of Georgia School of Law, jim@uga.edu



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This group of essays concludes by returning to one of the themes of the *Power of Stories* conference—the Dick Whittington story.¹⁵ A second essay by Timothy S. Hall compares the *Harry Potter* narratives to the Dick Whittington story, which reflects an interesting cultural evolution from Tudor to modern time.

II. FAMILY LIFE AND MORAL CHARACTER

JAMES CHARLES SMITH

The *Harry Potter* series opens in the first book, *The Sorcerer's Stone*,¹⁶ with a picture of family life in the Muggle world.¹⁷ Harry has lived with his relatives, the Dursleys, on Privet Drive since he was orphaned in infancy at the hands of Lord Voldemort.¹⁸ It is summer, and Harry must endure life with the Dursleys awhile longer before he may leave to attend Hogwarts, the wizarding school.¹⁹ Each subsequent book starts at the same scene, one year later, preceding another Hogwarts school year.

A large part of the humor of the series is seeing how poorly the Dursleys treat Harry. Their mistreatment of Harry is highlighted by a contrast. The Dursleys are raising another son, their biological son, Dudley, who appears close to Harry in age. They lavish attention, praise, and wealth on Dudley. Harry on the other hand is mostly ignored. When the parents do notice him, they mete out criticism and punishment to a boy who is kind hearted and basically well behaved.

In their shabby treatment of Harry, do the Dursleys observe or violate recognized norms of family life? Behavioral norms are of many types, and they have multiple sources.²⁰ One often-used classification distinguishes legal norms from cultural and societal norms that are extralegal.²¹ Today most parents who raise multiple children follow, or attempt to follow, an ethic of equal or equitable treatment.²² Few parents strive for “strict equality,” recognizing that each child is unique and different, with needs and desires not necessarily identical to those of siblings. Also, parenting strategies evolve over time as parents gain experience, *i.e.*, the kids “break them in,” and their cir-

15. The conference was held in Gloucester, England, where the Dick Whittington story originated some 400 years ago. *See, e.g.*, Helen Hershkoff, *The Dick Whittington Story: Theories of Poor Relief, Social Ambition, and Possibilities for Class Transformation*, 12 TEX. WESLEYAN L. REV. 67 (2005).

16. THE SORCERER'S STONE, *supra* note 1.

17. *Id.* at 1.

18. *Id.* at 13–16.

19. *Id.* at 87–90.

20. 16 International Encyclopedia of the Social and Behavioral Sciences, Norms 10714–20 (2001).

21. *See, e.g.*, Robert C. Ellickson, *Of Coase and Cattle: Dispute Resolution Among Neighbors in Shasta County*, 38 STAN. L. REV. 623 (1986) (exploring Coase's “farmer-ranch parable” in Shasta County, California).

22. *See* BENJAMIN SPOCK & MICHAEL B. ROTHENBERG, DR. SPOCK'S BABY AND CHILD CARE 18–19 (6th ed., rev. 1992).

cumstances change.²³ For this reason, a first child's handling is usually not precisely the same as that afforded subsequent children. Nevertheless, most parents generally seek to apportion fairly their attention, encouragement, and resources among the children. From this standpoint, the Dursleys plainly violate widely shared norms. Most parents would not treat Harry the way the Dursleys do, even if he has entered the family not as a biological child but as a nephew, adopted through an informal mechanism. This explains Dumbledore's justifiable outrage in *The Half-Blood Prince* when he visits the Dursleys to retrieve Harry.²⁴

Harry's mistreatment by his Muggle family does not amount to a legal wrong. Notice that Dumbledore did not threaten the Dursleys with legal proceedings, either in Muggle or Wizard tribunals. The ethic of equitable treatment is societal and lacks a legal basis in Anglo-American family law.²⁵ Family law has many facets; it is an amalgam of legal rules and principles.²⁶ My focus is the lens of property law—in particular, family property norms—although it is also plain that the Dursleys have not violated non-property-based family law norms.

Harry Potter gives an illustration of how parents distribute property within a family. What Mr. and Mrs. Dursley do is legal, but unfair. The law does not have an equality principle when it comes to how parents choose to spend money on their children. Dudley is given everything. Harry is given little property—he wears old clothes and sleeps in a cupboard under the stairs.²⁷

The *Harry Potter* books give us a reason why Harry is given so little. The Dursleys refuse to accept him because he is not their natural child. He is a nephew, who they feel has been thrust upon them as a consequence of his parents' poor choices, which led to their deaths.²⁸ But the legal rule is the same. The Dursleys could choose to treat Dudley much better than Harry, even if both boys were their biological sons. The English doctrine of inheritance known as primogeniture²⁹ illustrates the point. Primogeniture epitomized classic English favoritism to the eldest son, who inherited the parents' real property

23. *See id.* at 2–3.

24. *THE HALF-BLOOD PRINCE*, *supra* note 1, at 55–56.

25. IRA MARK ELLMAN ET AL., *FAMILY LAW: CASES, TEXT, PROBLEMS* 459–75 (4th ed. 2004).

26. *See generally id.* at 3–20.

27. *THE SORCERER'S STONE*, *supra* note 1, at 24.

28. This fits the story into the classic literary mold of the orphan, who receives scant care and attention but fights to overcome all the odds. *See* Timothy S. Hall, *Harry Potter and Dick Whittington: Similarities and Divergences*, *infra* text accompanying notes 272–96.

29. *See* Mark A. Senn, *English Life and Law in the Time of the Black Death*, 38 *REAL PROP. PROB. & TR. J.* 507, 558–60 (2003).

to the exclusion of all other siblings.³⁰ England did not abolish primogeniture until 1925.³¹ Since then, the social attitudes that sanctioned the practice have withered, but have not evaporated completely.³² Today parents may disinherit children, treating them differently after death,³³ just as they may treat them differently during life.

The only limit the law places on parents' freedom to discriminate in allocating resources unevenly is the duty of support. Here, the Dursleys comply with that standard, as it is commonly interpreted. Harry has clothes, food, and a place to sleep inside. That is all he needs. It does not matter how much Dudley gets.

Rowling employs a common literary theme in portraying Harry and Dudley. Dudley is the favored son, but the neglected, discriminated-against child turns out to be the winner. Harry follows in the footsteps of Dick Whittington³⁴ and fictitious characters such as Oliver Twist,³⁵ Jane Eyre,³⁶ and Cinderella.³⁷ The years of misery inflicted upon Harry by the Dursleys helped to forge Harry's character and humble nature. In contrast, the Dursleys showered Dudley with everything. Yet one almost feels sorry for the spoiled brat. His corpulence is a manifestation of excessive wealth. Family wealth does not build character. Rather, it has the opposite effect, leading to sloth and decadence.

30. From our modern perspective, primogeniture strikes us as harsh and unfair. Perhaps it was, but the practice served economic and social needs of the society that followed it. Primogeniture certainly does not prove that families did not love and nurture their other children. Didn't most English families seek to provide suitable opportunities for all other children? For younger sons, the traditional channel was military service and clergy. For daughters, obtaining proper marriages was the norm. FRANCES GIES & JOSEPH GIES, *MARRIAGE IN THE FAMILY IN THE MIDDLE AGES* 142-45 (1987).

31. Administration of Estates Act, 1925, 15 Geo. 5, c. 23, § 45.

32. See KAREN ROWLINGSON & STEPHEN MCKAY, *ATTITUDES TO INHERITANCE IN BRITAIN* (2005); Deborah A. Batts, *I Didn't Ask to Be Born: The American Law of Disinheritance and a Proposal for Change to a System of Protected Inheritance* 41 *HASTINGS L.J.* 1197, 1215-16 (1990).

33. Judith G. McMullen, *Father (or Mother) Knows Best: An Argument Against Including Post-Majority Educational Expenses in Court-Ordered Child Support*, 34 *IND. L. REV.* 343, 354-62 (2001).

34. See Timothy S. Hall, *Harry Potter and Dick Whittington: Similarities and Divergences*, *infra* text accompanying notes 272-96; Stephen Alton, Professor, Tex. Wesleyan Sch. of Law, *Rags to Riches Stories* (July 26, 2005) (presented at the Power of Stories, Gloucester, England 24-26 July 2005 Symposium); Hershkoff, *supra* note 15, at 67.

35. CHARLES DICKENS, *OLIVER TWIST* (George Stade ed., Barnes & Nobles Classics 2005) (1838).

36. CHARLOTTE BRONTË, *JANE EYRE* (George Stade ed., Barnes & Nobles Classics 2005) (1847).

37. The fairy tale *Cinderella* has multiple versions, dating back at least to China in 860 A.D. Modern culture identifies most closely with the Disney classic animated movie, *Cinderella*. *CINDERELLA* (Disney Studios 1950). Prior to Disney, the best known version was by French author Charles Perrault. See Charles Perrault, *Cendrillon ou la Petite Pantoufle de Verre*, in *CONTES DE MA MERE L'OYE* (Barbin 1697).