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## Harry Potter & the Law: Status, Rules, and the Enslavement of the House-Elves

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Dumbledore.<sup>147</sup> The Ministry apparently did not have knowledge of their use, or does not object, because charges are never brought against them.

In conclusion, the *Harry Potter* narratives portray a system that attempts to limit misbehavior through both rewards and punishments. The application of these rewards and punishments, however, is quite arbitrary. Teachers have enormous discretion in giving punishments and rewards. In the criminal realm, the Minister of Magic can follow or bend the law depending on how he relates to specific people. The use of magic is punished depending on who the person is that commits a particular illegal act. Thus, readers come to understand that rule-breaking or criminal behavior may or may not be punished because of an unfair administration of justice by those in charge of the system. Such a portrayal leaves the reader open to questioning today's criminal justice system as well.

VII. STATUS, RULES, AND THE ENSLAVEMENT  
OF THE HOUSE-ELVES  
JAMES CHARLES SMITH

House-elves, magical creatures with enormous eyes and bat-like ears, are enslaved to one wizarding family for their entire life. These family-elf relationships can span generations. Elves generally have great devotion and loyalty to their wizard families. Their code includes keeping family secrets and never saying anything critical about the family to outsiders. They dress in rags and do not own real clothing. Although elves are not wizards, they communicate and express emotions in human ways. Elves, who misbehave, are physically punished, sometimes by themselves without their masters' intervention.

Two of the books have elf emancipation stories. In *The Chamber of Secrets*, we meet house-elf Dobby, a servant to the villainous Malfoy family. Dobby surreptitiously aids Harry by warning him of a grave threat, earning his gratitude. Harry subsequently engineers Dobby's freedom, taking advantage of a custom enshrined in Wizard law, that a master's gift of clothing to an elf signifies emancipation. During a heated confrontation involving Harry, Dumbledore, and Lucius Malfoy, Harry tricks Malfoy into tossing a sock in Dobby's direction, which Dobby takes up.<sup>148</sup>

Every system of property law has a set of transfer rules.<sup>149</sup> Often but not always those rules are formal. The gift-of-clothing custom represents a formal transfer rule. It is a symbolic act with legal conse-

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147. THE GOBLET OF FIRE, *supra* note 1, at 517, 629–31, 682–83, 744–45.

148. Timothy S. Hall discusses this episode from the perspective of contract intent. See Timothy S. Hall, *Magic and Contract: The Role of Intent*, *infra* text accompanying notes 191–211.

149. Certain property rights are sometimes made inalienable. See, e.g., Guido Calabresi & A. Douglas Melamed, *Property Rules, Liability Rules, and Inalienability*:

quences. Although it has no real-world antecedent of which I am aware, it fits within our social and legal traditions. Socially, historically, and today, specialized clothing often shows a person's employment status, or shows membership in a particular trade or occupation. Members of medieval guilds wore particular clothing.<sup>150</sup> Epaulets displayed rank.<sup>151</sup> In colonial America, landowners with particular quantity of landholding were allowed to dress a certain way.<sup>152</sup> Perhaps this is the base of the saying, "Clothes make the man." Thus, a change in garb logically shows a change in status as slave or servant.

Legally, the elf emancipation custom fits within the traditional use of a symbol, or a symbolic ceremony, to transfer or validate property. Throughout history, the law has required acts other than, or in addition to, the mere expression of intent to accomplish property transfers. Ownership transfers of goods and lands required delivery.<sup>153</sup> For land, medieval England required a symbolic delivery, known as livery of seisin, in which the owner handed a clump of sod to the grantee.<sup>154</sup> A wizard's handing over of clothing to an elf is not so different. Modern law has tended to replace formal rules involving symbols with formal rules requiring a writing,<sup>155</sup> but that is just replacing one type of symbol with another.

When it comes to the manumission of slaves, various slave-holding societies followed different methods. Nineteenth century U.S. slave law generally used paper records for slave transactions, not only manumission but sales and mortgages.<sup>156</sup> One symbolic act that sometimes had legal significance was the slave's movement to another jurisdiction, especially when accomplished by the master or with the master's consent.<sup>157</sup> Transportation to a new place was the badge of emancipation. In the famous 1772 case of *James Somerset*, Lord Mansfield held that a slave transported from West Indies to England,

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*One View of the Cathedral*, 85 HARV. L. REV. 1089, 1111–12 (1972). No system of property law, as we know it, could possibly exist if all rights were inalienable.

150. See *Costumes and Courtiers: Garments and Fashion Ideas in Late Medieval Western Europe*, <http://www.ceu.hu/medstud/manual/SRM/costumes.htm> (last visited Oct. 3, 2005).

151. See *id.*

152. See Linda Baumgarten, *Colonial Dress Codes*, *Colonial Williamsburg Journal* (Winter 03–04), available at <http://www.history.org/Foundation/journal/Winter03-04/clothing.cfm>.

153. See CORNELIUS J. MOYNIHAN & SHELDON F. KURTZ, *INTRODUCTION TO THE LAW OF REAL PROPERTY* § 11, at 26–27 (3d ed. 2002).

154. See *id.* at 204–05.

155. For example, modern statutes of frauds require a writing for certain transactions. See ROBIN PAUL MALLOY & JAMES CHARLES SMITH, *REAL ESTATE TRANSACTIONS: PROBLEMS, CASES, AND MATERIALS* 131–35 (2d ed. 2002).

156. WILLIAM GOODELL, *THE AMERICAN SLAVE TRADE IN THEORY AND PRACTICE* 44–62 (Negro Univs. Press 1968) (1853).

157. See PAUL FINKELMAN, *AN IMPERFECT UNION: SLAVERY, FEDERALISM, AND COMITY* (Morris S. Arnold ed., 1981).

became free the instant the slave breathed the English air.<sup>158</sup> The infamous Dred Scot decision raised the same issue: Did the relocation of Dred Scot from Missouri to the territory of Minnesota affect his freedom?<sup>159</sup>

In *The Goblet of Fire*, emancipation moves beyond the individual, raising a challenge to the institution. Dobby is now a free elf, but what of all the others? Hermione becomes sensitized to the plight of the house-elves through a house-elf named Winky. Upon investigation, she is shocked to learn that Hogwarts has scores of house-elves, who cook and clean for the students. She promptly launches a crusade, forming the Society for the Promotion of Elfish Welfare (S.P.E.W.) but gets virtually no support from her fellow students at Hogwarts.

Is elfin bondage morally justified, or is it as evil as the human institution of slavery? Rowling shows Hermione as a crusader, as an abolitionist. Yet as narrator Rowling does not interject a moral judgment. The reader is left to decide whether Hermione's cause has great merit, is half-cocked, or is somewhere in between. Ambiguity arises for two reasons.

First, the proper position of elves in society is unclear. Who are elves, after all? What is their proper relationship with "people" or "wizards?"<sup>160</sup> Modern property law freely recognizes property rights in living things.<sup>161</sup> The law sanctions the ownership of plants and animals, both in their natural state<sup>162</sup> and in genetically modified forms.<sup>163</sup> The law also allows the ownership of property related to human beings.<sup>164</sup> For example, organs, body tissue, blood, and reproductive materials are the subjects of property.<sup>165</sup> Modern law, however, draws the line with respect to property in human beings at what we call slavery.<sup>166</sup>

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158. *Somerset v. Stewart*, (1772) 98 Eng. Rep. 499 (K.B.).

159. *Scott v. Sanford*, 60 U.S. 393 (1856).

160. Wizard families own house-elves, and so do wizard institutions, such as Hogwarts School. Muggles apparently never own house-elves. Indeed, there is no evidence that they can see, or are allowed to see elves. In the *Harry Potter* series, both Muggles and Wizards are "people." Not only are they similar in appearance but they can reproduce. That is why we have "half-bloods," with attendant racial conflicts between those of mixed parentage and "purebloods." The standard biologist's definition of what makes one species is the ability to reproduce. Conversely, there is no evidence in the books that elves can reproduce with Wizards or Muggles. But after all, these are children's books; the author may not have told us everything. So elves are a separate species. But are they on a lower plane? See generally THE SORCERER'S STONE, *supra* note 1, at 65-66.

161. See JAMES CHARLES SMITH, EDWARD J. LARSON, JOHN COPELAND NAGLE & JOHN A. KIDWELL, PROPERTY: CASES & MATERIALS 311-49 (2004).

162. *Id.* at 311-20.

163. *Id.* at 320-28.

164. *Id.* at 328-49.

165. *Id.* at 333-49.

166. U.S. CONST. amend. XIII § 1.

Slavery, as we understand it, relates solely to the enslavement of human beings by other human beings.<sup>167</sup> Fantasy fiction permits a fuzzing that we do not have in the real world—or that at least most people do not perceive. In Rowling's fictional world, are we to treat wizards and elves as equals? Are they a different species? Elves do exhibit a number of characteristics that we would call human. They speak; they reason; they have emotions. If elves are not wizards, then perhaps they are not on the same moral plane as wizards. If this is true, then slavery is not the issue. Instead, animal rights perspectives may inform the mistreatment of elves by wizards.<sup>168</sup>

The second form of ambiguity relates to the elves's behavior when confronted by the S.P.E.W. agenda. Winky and most of the other elves are singularly unwilling to embrace Hermione's call for liberation. What should we make of the elves's acceptance of their station as servants? Is Hermione pressing for a reform that the elves do not want? Is she trying to impose her lifestyle preferences upon them? Are the elves happy? Perhaps they are really employees under long-term contracts, working under conditions that are a bit unusual. Or are the elves, as Hermione believes, brainwashed? Are they akin to human victims of domestic violence?<sup>169</sup> If Hermione is right, when and if the elves are liberated, they will have a better life and shall come to realize the value of freedom. We await the finale, Book number 7.

#### VIII. EXCUSE, JUSTIFICATION, AND AUTHORITY DANIEL AUSTIN GREEN

*"Laws can be changed," said Fudge savagely.*

*"Of course they can," said Dumbledore, inclining his head. "And you certainly seem to be making many changes, Cornelius. Why, in the few short weeks since I was asked to leave the Wizengamot, it has*

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167. BLACK'S LAW DICTIONARY 1422 (8th ed. 2004) (defining slavery as "[a] situation in which one person has absolute power over the life, fortune, and liberty of another").

168. In the history of U.S. slavery, there was a pronounced tendency of slavery apologists to portray African-Americans as subhuman. See GEORGE M. FREDRICKSON, THE BLACK IMAGE IN THE WHITE MIND: THE DEBATE ON AFRO-AMERICAN CHARACTER AND DESTINY 1817-1914 (Wesleyan Univ. Press 1987) (1971). This attitude persisted to a significant degree after the Civil War into the Jim Crow era. See *id.*; ALFRED L. BROPHY, RECONSTRUCTING THE DREAMLAND: THE TULSA RACE RIOT OF 1921, RACE REPARATIONS, AND RECONCILIATION 73 (2002) (quoting a white newspaper as stating that after riot white citizens viewed blacks as "helpless refugees," seeing them as "objects of charity and subject to white control").

169. It is sometimes difficult to explain why some domestic violence victims stay in abusive relationships, when it seems to outsiders that they could readily exit. Perpetrators of domestic violence on occasion seek to justify their acts by asserting that their victims enjoy their maltreatment.