



Harry Potter and the Draconian Laws

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Anyone would say that a world where brooms and carpets cross the skies, unicorns roam the forests and people depicted in portraits talk to you is wonderful, literally magical. However, not everything is as beautiful as it looks – just you wait for the effect of the polyjuice potion to wear off and you’ll see what is hidden behind the reality created by British author J.K. Rowling.

Spells can fix a pair of glasses, turn water into butterbeer, inflate boring aunts and even ignore the immutable law of Lavoisier, creating matter from nothing. However, spells can also be used in not-so-benign activities, as cursing people, destroying things, being inflated by rude nephews and even killing. So in the same way that our international conventions prohibit certain weapons from being used in wars (such as cluster bombs, and chemical/biological warfare; The Biological and Toxin Weapons Convention Database, 1925), so some charms (*Imperius*, *Cruciatus* and *Avada Kedavra*, collectively called “Unforgivable Curses”) are prohibited from being practiced (Rowling, 2000: ch. 14). As expected, in the same way that not all countries participate in our conventions, not all wizards follow such rules.

Let’s make a brief intermission now. It is true that wizard society has medieval features. However, since it has always been inserted within a community of non-wizards, it was expected to have incorporated the values that were gradually acquired by the international community. Moreover, there are some rights that are guaranteed to all persons, regardless of the country where they live on or its governmental system, which is called “customary law” (ICRC, 2015).

Now back to the spells. The lack of control over spells seen in the books, no matter the severity of the curse, is quite paradoxical, given the intense regulations over magic practiced by minors. Wizards under 17 years old are not allowed to use magic outside their school (unless facing exceptional circumstances), and a Trace Spell detects such activities. To give you an idea, a notification is sent almost immediately to the juvenile offender, which, depending on the gravity of the situation, must then go to the Ministry of Magic (Rowling, 1998: ch. 2; Rowling, 2003: ch. 2). In other words, we may conclude that there is the technical capability to perform this type of identification, namely the age of the offender, the spell used and location. But why

the same technique is not used with the Unforgivable Curses is a mystery.

By the way “Mystery” is, incidentally, the name of one of the Ministry of Magic’s departments. An institution so lacking in transparency, and theoretically with such advanced surveillance capabilities of their society (a magic Orwellian Big Brother) is to raise all sorts of suspicions about it. Denying the return of Voldemort (a powerful evil wizard; Rowling, 2003: ch. 4), attempting to use a minor as a mascot in this conflict (Rowling, 2005: chs. 16 and 30), and protecting people who make large donations to them (Rowling, 2003: ch. 9), are just some examples of the Ministry’s flaws.

We could also bring up the prison system of the wizards. The main reference is the prison of Azkaban, which is guarded by creatures known as Dementors, whose ability is to absorb all the happiness of those who are around them, and whose “kiss” sucks a person’s soul, leaving her in an eternal lethargic state (Rowling, 1999: chs. 10 and 12). A fate, perhaps, even worse than death. Since the 18th century, Cesare Beccaria, an important Italian criminal scholar, wrote on the humanity of penalties, their social function, and the necessary proportionality between crime and punishment (Beccaria, 1764). In this regard, we see that the world of Harry Potter is over 200 years late in comparison to the so-called “muggles” (the name given to non-wizards), which in 1789 had already promulgated the famous Declaration of the Rights of Man and of the Citizen (*Déclaration des Droits de l'Homme et du Citoyen*). So, because of their outdated and ineffective system (even innocents have been sent to Azkaban; Rowling, 1999: ch. 19), serious insecurities of the criminal point of view

are raised, and the cruelty of sanctions hurts human dignity.

And talking about fundamental rights, we note that some of the creatures that inhabit this universe so fabulous end up enslaved (such as house-elves) or have suffered plenty of persecutions (such as goblins). Other creatures, like the centaurs, suffer severe prejudice. A considerable amount of wizards extends this prejudice to other creatures, like half-giants and werewolves, and in some cases even to wizards that are not “pure-blood”, resembling the most foul ideologies ever seen in our world.

In contrast, in our current legal system, other animals have been receiving a human-like treatment, as evidenced by the laws of countries like England (the first one to create animal protection rules; Department for Environment, Food & Rural Affairs, 2013) and Argentina, where a court recently awarded human rights to an orangutan (BBC News, 21 December 2014).

As previously stated, there are exceptions in every group, and it could not be different for the wizards. Also, it is yet to be seen a government without any failures. So, dear reader, take lightly those critics of a muggle who is still waiting for his owl to arrive with his Hogwarts’ letter.

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