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Repealing the Statute of Wizarding Secrecy in Legal Education

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ABSTRACT

In the fictional Harry Potter universe, J.K. Rowling has fashioned a parallel world based on our own, but with the fundamental difference of a separate magical society grafted onto it. In Rowling's fictional version, the magical population lives among the non-magical Muggle population, but we Muggles are largely unaware of them. This secrecy is by elaborate design and was brought about by centuries-long hostility toward wizards by the non-magical majority. But what if secrecy is precisely the wrong approach? What if widespread wizard-Muggle collaboration were precisely the thing needed to address the enormous and pressing problems of the day?

The secrecy and exclusivity of the wizarding world, when combined with the similarities between Harry Potter-style magic and American law, make Rowling's world a useful cautionary tale for legal education. This essay, in accord with its longer and decidedly non-literary companion piece,[1] argues that law schools should reject their largely Hogwarts-style approach to the dissemination of legal knowledge in favor of increased educational paths appropriate to a liberal republican democracy invested in the rule of law. A modest but positive step in that direction is the establishment by law schools of legal master's degree programs aimed at non-lawyer professionals. In a societal sense, these programs are a positive step in the direction of repealing the

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* Professor of Law and Director of San Antonio Programs, Texas A&M University School of Law. Portions of this essay appeared in an anthology—and for a much different purpose—nearly a decade ago in Mark Edwin Burge, *Who Wants to Be a Muggle? The Diminished Legitimacy of Law as Magic*, *in* THE LAW AND HARRY POTTER 333–47 (Jeffrey E. Thomas & Franklin G. Snyder, eds., 2010). Special thanks to Carolina Academic Press for permission to substantially repurpose parts of that prior work in these pages, and to the *Cumberland Law Review* for the kind invitation to do so. For present readers who find themselves spellbound by the potential interplay amongst law, lawyers, and Harry Potter, I recommend the above-referenced Thomas and Snyder anthology as a thoroughly delightful resource.

[1] Mark Edwin Burge, *Access to Law or Access to Lawyers? Masters Programs in the Public Educational Mission of Law Schools*, 74 U. MIAMI L. REV. 143 (2019).

"statute of wizarding secrecy" that has long and implicitly accompanied legal education.

I. PROLOGUE[2]

"Albus," gasped Minerva McGonagall, with her hands uncharacteristically gripping the edge of the conference table, "are you quite . . . sure about this proposal?"

The Committee on Admissions was a longstanding institution of the Hogwarts School of Witchcraft and Wizardry, but in truth it did very little work in most years related to its charge. The invitation-by-owl process was largely automated and had been for centuries. Apart from providing guidance in a few exceptional situations—most notably the challenging Harry Potter admission process of four summers ago—the Committee's function was nearly ceremonial. The fact that the subjects of the surrounding wall paintings had either absented themselves from the room or had dozed off further affirmed the stately boredom surrounding the Committee. But that was perhaps about to change.

"Indeed I am, Minerva. As sure as I've been of anything since I first set foot in this castle. My principal regret, I think, is not realizing the necessity of this approach sooner."

Albus Dumbledore smiled genially as he peered over his half-moon spectacles to gauge the reactions of his colleagues, whose expressions ranged from incredulity and anger to curiosity and open interest. The reactions, both individually and collectively, were largely as he had expected.

McGonagall continued, "Hogwarts has done nothing even remotely like this in over a thousand years of its history.[3] *We maintained the confidences of the wizarding world long before anyone even imagined an International Statute of Wizarding Secrecy. I do hesitate disregarding the wisdom of those who came before us."*

"As do I," intoned Severus Snape through clenched teeth. "This would be a foolish errand, Headmaster. Your sympathy for Muggles is

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[2] Apologies to J.K. Rowling for starting this essay with bit of illustrative fan faction. Nonetheless, it pleases me greatly to imagine that this committee meeting actually occurred and that we were not privy to it until my recent black-market acquisition of a pensieve and a hitherto undiscovered memory strand from Minerva McGonagall.

[3] In the *Harry Potter* canon, Hogwarts School of Witchcraft and Wizardry was established in approximately 990 A.D. *See, e.g.*, *Hogwarts School of Witchcraft and Wizardry*, HARRY POTTER WIKI, https://harrypotter.fandom.com/wiki/ Hogwarts_School_of_Witchcraft_and_Wizardry (last visited Feb. 9, 2020); *The Origins of Hogwarts School of Witchcraft and Wizardry*, POTTERMORE, https://www.pottermore.com/features/origins-of-hogwarts-school-of-witchcraft-and-wizardry (last visited Feb. 9, 2020).

getting the better of your judgement.[4] *A school of witchcraft and wizardry teaches witches and wizards. I should have thought that to be self-evident."*

Charity Burbage, Hogwarts's resident professor of Muggle Studies, was beaming, however. "I strongly disagree, Severus! The magical world has been far too insulated for far too long. Even if the secrecy statute made good sense in 1692—a point I would strongly contest—the world has changed greatly since then. Muggle technology is capable of causing as much destruction as the darkest of dark wizards."

"I think you must agree, Charity," spoke Snape, with barely constrained contempt, "that the return of the Dark Lord is a uniquely powerful threat against which Muggle weaponry pales in comparison."

"Nonsense," responded Burbage crisply. "He-Who-Must-Not-be-Named is but a criminal on a large scale. We can and should unite with the Muggles against him and the many other evils threatening our shared world."

"And that," interjected Dumbledore, "is part of the reason we should allow selected Muggle students within these walls. I do, however, agree with Severus that Voldemort poses a uniquely powerful threat." Several around the table visibly winced upon hearing the dark wizard's name. "Yet while we have power that the non-magical do not possess, they have numbers and force that the wizarding community does not possess. With careful cultivation, the combined community of Muggles and wizards can be a force . . ." he paused, as if the next words resisted departing his lips, "for the greater good."

"How on earth would Muggles manage in my Transfiguration class?" whispered McGonagall, with her eyes widening at the prospect.

"They wouldn't, of course, and it would be unreasonable to expect otherwise," answered Dumbledore, calmly. "However, they could benefit greatly from an education covering fundamentals of magical creatures, herbology, potions . . . ."

"Potions!" roared Snape, now abandoning all pretext of controlling his temper. "You ask far too much, Headmaster. And you are gravely mistaken if you believe that the Ministry of Magic would ever allow this sort of . . . ."

"The Ministry," interrupted Dumbledore firmly, "is my problem, Severus, not yours. I should hope after the dementor attack on the Dursley boy that there are those in the Ministry who would see the benefit of training the non-magical in at least certain techniques of

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[4] The British spelling here is intentional.

recognition of and defense against the dark arts."

"I couldn't agree more, Headmaster," enthused Burbage, absorbing some of the tension in the room with her cheerful tone. "Might this also be an opportunity for us to consider my curriculum reform proposal? Understanding is a two-way street, after all."

McGonagall sounded exasperated. "Are you still pressing to make Muggle Studies a required course, Charity? We simply do not have room for such a requirement in the class schedule!"

"Well, it wouldn't be a requirement for the Muggle-born, of course. We could start fitting it in the students' third year, in place of . . . some other course."

Burbage glanced sideways at Sybil Trelawney, hoping that McGonagall had caught the gesture. She had not, but Dumbledore had.

"You've been uncharacteristically quiet this entire meeting, Sybil," observed Dumbledore. "Do you have any thoughts on opening Hogwarts to a select group of Muggle students, perhaps on a trial basis?"

Trelawney exhaled loudly, and the room suddenly carried a slight scent of cooking sherry. "The inner eye sees dark shadows on the horizon."

McGonagall rolled her eyes. "Oh, for pity's sake Sybil! You'd see dark shadows on an overcast day in an unlit dungeon."

"With that as our closing thought," said Dumbledore brightly, rising to his feet at the end of the conference table, "we can perhaps continue this discussion at our next gathering. For the moment, however, I must bid you all farewell if I'm to make my appointment at the Ministry of Magic."

"The Ministry?" McGonagall's voice betrayed a hint of concern. "But they've already concluded their inquiry—inadequate though it was—into the Cedric Diggory tragedy. What business does the Ministry of Magic have with the school, now?"

"I do not yet know precisely why Delores Umbridge insisted upon seeing me, but, in light of Alastor Moody's understandable reluctance to teach next year, my own business with the Ministry is to procure for us a new Defense Against the Dark Arts professor. I've requested that the Auror office grant Kingsley Shacklebolt a leave of absence to join us next year." Dumbledore paused by the fireplace, his hand lingering inside the pot of Floo powder perched on the mantle. "I expect we will not know the Ministry's intentions until they reveal such to us—shadows of the inner eye notwithstanding, of course." Moments later, Dumbledore had vanished into the fireplace's emerald flames.

II. LAWYERS AS WIZARDS

Law has long been compared to magic.[5] This state of affairs originated, in substantial part, in the formalist era that gave rise to our modern system of legal education. As most law professors are aware, today's American law school curriculum traces its origins back to Christopher Columbus Langdell, the dean of the Harvard Law School who famously hypothesized in the 1870s that law is a science that, when correctly applied, should lead to an objectively "correct" resolution of a legal dispute. The postulates of Langdell's science were to be derived from judicial opinions, and Langdell's principal method of legal training, accordingly, was to direct students to plow through judicial opinions so that they may independently and rigorously derive proper legal rules and reasoning.[6] The process of questioning future lawyers rather than lecturing to them remains dubbed the "Socratic method," despite protestations that Socrates himself would have scorned the method.[7]

Langdell's idea of legal science did not survive the legal realist era,[8] but his education system is widespread today, in large part because of its effectiveness in teaching critical thinking.[9] The process of lawyer education has in fact developed an initiation mystique that exceeds the boundaries of the law school and has found its way into popular culture. Generations of law students have come to the task fully immersed in what we might style "Law School Apocalyptic Literature," a genre that includes Scott Turow's *One-L* and John Jay Osborn's *The Paper*

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[5] *See, e.g.*, JEROME FRANK, COURTS ON TRIAL 37–79 (1949) (discussing "Modern Legal Magic" and "Wizards and Lawyers").

[6] *See generally* M. H. Hoeflich, *Law & Geometry: Legal Science from Leibniz to Langdell*, 30 AM. J. LEGAL HIST. 95, 119–21 (1986).

[7] *See, e.g.*, Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L. J. 725, 729 (1989); William C. Heffernan, *Not Socrates but Protagoras: The Sophistic Basis of Legal Education*, 29 BUFF. L. REV. 399, 415 (1980).

[8] Keith A. Findley, *Rediscovering the Lawyer School: Curriculum Reform in Wisconsin*, 24 WIS. INT'L L. J. 295, 300 (2006) ("Langdell's notion of law as a science did not survive the realism movement of the 1920s and 1930s."). *See also* Mark Edwin Burge, *Without Precedent: Legal Analysis in the Age of Non-Judicial Dispute Resolution*, 15 CARDOZO J. CONFLICT RESOL. 143, 147 (2013); Nancy Cook, *Law as Science: Revisiting Langdell's Paradigm in the 21st Century*, 88 N.D. L. REV. 21, 34 (2012) ("In a very short time, the scientific theory paradigm attributed to Langdell was 'obsolete in entirety.'") (quoting Edward Rubin, *What's Wrong with Langdell's Method, and What to Do About It*, 60 VAND. L. REV. 609, 635 (2007)).

[9] *See* David S. Romantz, *The Truth About Cats and Dogs: Legal Writing Courses and the Law School Curriculum*, 52 U. KAN. L. REV. 105, 118–20 (2003); Michael Vitiello, *Professor Kingsfield: The Most Misunderstood Character in Literature*, 33 HOFSTRA L. REV. 955, 979–86 (2005).

Chase.[10] In the popular mind—both within and outside the law student population—Osborn's novel has perhaps been eclipsed by the 1973 film version of *The Paper Chase*, where John Houseman portrayed the archetype of a harsh Socratic instructor, Professor Kingsfield.[11] The sense of initiation, even borderline hazing, is common to these stories. The intensity and hostility of Kingsfield's questioning is such that he provokes the hapless "Mr. Hart" into vomiting after class a scant few minutes into the film version.[12] Socratic questioning of law students by their professors, albeit substantially toned down from the Kingsfield model, is still a popular method of legal instruction.

As students in a juris doctor program, future lawyers have long been "initiated" into a realm of knowledge and skills of which it is implicitly understood that the world-at-large has no part. So are students at Hogwarts. In this arena, Professor Snape could be more than an adequate substitute for Professor Kingsfield. Consider Harry's first Potions class:

> "You are here to learn the subtle science and exact art of potion-making," he began. He spoke in barely more than a whisper, but they caught every word—like Professor McGonagall, Snape had the gift of keeping a class silent without effort. "As there is little foolish wand-waving here, many of you will hardly believe this is magic. I don't expect you will really understand the beauty of the softly simmering cauldron with its shimmering fumes, the delicate power of liquids that creep through human veins, bewitching the mind, ensnaring the senses. . . . I can teach you how to bottle fame, brew glory, even stopper death—if you aren't as big a bunch of dunderheads as I usually have to teach."
>
> More silence followed this little speech. Harry and Ron exchanged looks with raised eyebrows. Hermione Granger was on the edge of her seat and looked desperate to start proving that she wasn't a dunderhead.[13]

This momentous (and to the student, somewhat frightening) sense

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[10] SCOTT TUROW, ONE L (Putnam, 1st ed. 1977); JOHN JAY OSBORN, JR., THE PAPER CHASE (Houghton Mifflin, 1st ed. 1971).

[11] THE PAPER CHASE (Twentieth Century Fox Film Corp. 1973).

[12] *Id.*

[13] J.K. ROWLING, HARRY POTTER AND THE SORCERER'S STONE 136–37 (1st Am. ed. 1998).

of initiation conveyed by Snape is more than a little like traditional law school. Each year, as a new One-L class begins its studies, a law school's hallways crackle with excitement. The initiation is underway. The culture, history, and even mystery of law school creates a mixture of terror and wonder for the initiates. When dozens upon dozens of Hermione Grangers roam the halls, eager to prove to themselves and their peers that they, too, are not "dunderheads," the experience can be mind-altering, or at least worldview-altering.

The methods of instruction and concepts taught add to the mix, reinforcing the sense that the law student is being initiated into an ancient and elite order. This order is somewhat Gnostic in the sense that the general public does not share in the *gnosis*, the special knowledge being imparted. Though all people must live within and deal with the law, members of the order perceive themselves as understanding the *real* functioning of the law in a way that the rest of the world does not. Thus begins the process of the student becoming a wizard while those outside of the Gnostic order remain Muggles.

Beyond the methods of their training, however, lawyers often appear to be wizards as to their practices, specifically in the use of words. Law has its specialized vocabulary, and these words are magical in more than a figurative sense. In the world of Harry Potter, certain words properly spoken by a wizard can, in and of themselves, change the surrounding world. Consider a few examples from the novels: *Wingardium Leviosa* causes an object to levitate; *Expelliarmus* disarms an opponent; *Expecto Patronum* creates a patronus, a temporary guardian; *Morsmordre* invokes the "Dark Mark," Voldemort's evil wizarding sign.[14]

Throughout the series words like these cause events. Only a minor stretch of imagination is necessary to substitute legal terms as magic words.

> "*Res judicata*!" shouted Malfoy, shooting a blast of sparks towards Harry's Amended Complaint.
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> But Harry responded almost instinctively. "Waiver!" he cried, deflecting Malfoy's spell harmlessly to the floor of the courtroom.[15]

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[14] Andrew Sims, *Harry Potter Spells: A Complete List of What They All Do*, HYPABLE (last visited Feb. 9, 2020), https://www.hypable.com/harry-potter/list-of-spells/.

[15] *Res judicata*, BLACK'S LAW DICTIONARY (10th ed. 2014). The doctrine of *res judicata* (i.e., "the thing has already been decided") prevents someone who has lost on a particular issue in court from raising it in a subsequent claim. The doctrine can be waived, however, if the other party fails to raise it in a timely manner.

Or again:

> "We're doomed," said Ron, as Harry glumly looked on. "We have absolutely no direct evidence of causation."
>
> Hermione simply glared at them. "Oh, honestly! Am I the only person to have read *Torts: A History*?" She deftly flicked her wand. "*Res ipsa loquitur*," she said, and the causation gap in the summary judgment brief appeared to mend itself.[16]

Indeed, some magic words in American law have even made the jump into being taught as a dark art against which to defend:

> "*Lochner*!" cried Voldemort, striking the bakery workers with a bolt of green light. The gag stifled Harry's gasp as he remained tied to the tombstone. Harry had seen Professor Moody demonstrate the Unforgivable Doctrines, but nothing in the classroom prepared him to see substantive due process used on human beings.[17]

The wizard-like practices of lawyers are not confined to magic words, which seem to fit most closely in the context of litigation. Transactional lawyers—those who in popular parlance are in the business of "doing deals"—are more akin to the potion-brewing wizards Snape alluded to in Harry's first year. Consider Hermione Granger's research in *The Chamber of Secrets* on how to brew the Polyjuice

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[16] *Res ipsa loquitur*, BLACK'S LAW DICTIONARY (10th ed. 2014). The doctrine of *res ipsa loquitur* (i.e., "the thing speaks for itself") is a doctrine of tort law under which a plaintiff need not prove that someone was negligent if the facts are such that the harm suffered could only have been the result of someone's negligence, as when a passer-by is hit in the head by a safe that someone has dropped out a window, or a surgeon accidentally amputates the wrong leg.

[17] This is a reference to the line of cases exemplified by *Lochner v. New York*, in which the U.S. Supreme Court struck down a law limiting the number of hours bakers could work on grounds that it interfered with the constitutional rights of employers and employees to freely agree about hours worked. Lochner v. New York, 198 U.S. 45, 53 (1905). The *Lochner* variety of "substantive due process" was subsequently repudiated by the Court. *See, e.g.*, West Coast Hotel Co. v. Parrish, 300 U.S. 379, 392–93 (1937) (affirming the constitutionality of a state minimum wage law).

Potion.[18] Our imaginations will not be taxed[19] if we imagine Hermione as a driven associate at a transactional law firm:

> "I've never seen a deal this complex before!" gasped Hermione as she reviewed the proposal. "It will take at least a month to scratch the surface on due diligence alone."
>
> "A month?" said Ron darkly. "Mr. Malfoy will be sure we've each clocked 300 billable hours by then." But Hermione's eyes narrowed dangerously, and he added swiftly, "But it's our best chance for making partner, so full steam ahead, I say."

With an "initiation" system of education and practices that involve magic words and transactional brewing, lawyers may quite reasonably be viewed as wizards. The analogy is amusing, but, as the Harry Potter wizarding world illustrates, potential problems arise when a small group in society has exclusive access to the magic.

III. THE SEPARATE WORLD

Wizarding separateness and secrecy in the Harry Potter narrative establish the background for the uneasy Muggle-wizard relationship. The lengths to which the magical community has gone to achieve secrecy are, upon reflection, staggering. The worldwide wizarding community requires secrecy far more elaborate than any immense conspiracy that Senator Joseph McCarthy ever alleged in the United States government.[20] Wizards and magical creatures have a documented existence at least as far back as ancient Egypt, but, due to wizard efforts, that history is largely unknown to Muggles.

In the world where Harry lives today,[21] wizards have developed a complete society with institutions helping to ensure that regular interaction with Muggles is largely unnecessary. The magical population

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[18] *See* J.K. ROWLING, HARRY POTTER AND THE CHAMBER OF SECRETS 165, 215 (1st Am. ed. 1999).

[19] And rightly so. Good transactional lawyers always seek to avoid taxation.

[20] *See generally* DAVID M. OSHINSKY, A CONSPIRACY SO IMMENSE: THE WORLD OF JOE MCCARTHY (1983).

[21] I mean "today" in only a very general sense, as the events recounted in Rowling's novels actually occurred several years ago. Harry's first year at Hogwarts seems to have been 1991–1992, and his final confrontation with Voldemort in *Deathly Hallows* would have occurred in 1998. *See* Steve VanderArk, *Timeline Facts and Questions*, THE HARRY POTTER LEXICON (Aug. 23, 2003), https://www.hp-lexicon.org/2003/08/23/timeline-facts-and-questions/.

certainly has its own system of schools. Though Hogwarts is the most prominent wizarding school in the novels, there are others, like Beauxbatons Academy, the Durmstrang Institute, and the U.S.-based Ilvermorny School of Witchcraft and Wizardry.[22] Although Harry and Muggle-born wizards like Hermione attended ordinary English Muggle schools prior to age eleven, the wizard-born must go somewhere else because they seem to have only the haziest idea of Muggle ways. Nor do the novels suggest that a wizard would ever re-enter the Muggle educational system once leaving Hogwarts. Indeed, Professor McGonagall's career-counseling session with Harry in *The Order of the Phoenix* strongly suggests otherwise, as does Hermione's observation on reading a Muggle Relations recruiting pamphlet: "You don't seem to need many qualifications to liaise with Muggles."[23] The idea that a properly-trained wizard might go on to attend Oxford or Cambridge is apparently unknown. The wizarding educational system is thus quite self-contained and quite separate from non-magical education.

Wizarding government is also a separate enterprise. The Ministry of Magic has its own bureaucracy and is not subject to the Muggle Prime Minister's government.[24] In *The Half-Blood Prince* we learn that in dire situations the Minister of Magic will confer with his Muggle counterpart, the Prime Minister, who does not dare tell anyone of these interactions lest his or her sanity be questioned.[25] Though both the Minister of Magic and the Prime Minister are British, governing British subjects, their spheres of authority clearly do not overlap. Even

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[22] *See generally* J.K. Rowling, POTTERMORE, "Wizarding Schools," https://www.pottermore.com/collection-episodic/wizarding-schools ("There are eleven long-established and prestigious wizarding schools worldwide, all of which are registered with the International Confederation of Wizards.").

[23] J.K. ROWLING, HARRY POTTER AND THE ORDER OF THE PHOENIX 656–57 (1st Am. ed. 2003).

[24] *British Ministry of Magic*, HARRY POTTER WIKI, https://harrypotter.fandom.com/wiki/British_Ministry_of_Magic (last visited Feb. 9, 2020).

[25] Shortly after the July 2005 release of *The Half-Blood Prince*, then-Prime Minister Tony Blair refused to admit to any conversations with the Minister of Magic when he told the House of Commons:

> The Harry Potter brief in my file is somewhat thin, which only shows that my officials' sense of importance is not what it should be. I was told by someone, however, that in the first chapter of the new book the Minister of Magic comes out of a picture to confront the Prime Minister. I am still searching for the Minister.

The United Kingdom Parliament, House of Commons Debates for 20 July 2005, referenced at http://www.the-leaky-cauldron.org/2005/07/22/hbp-acknowledged-in-parliament/. J.K. ROWLING, HARRY POTTER AND THE HALF-BLOOD PRINCE 1–18 (1st Am. ed. 2005).

communication between them is rare. Most wizards can accordingly avoid dealing with Muggles completely. Government officials like Minister of Magic Cornelius Fudge and lower-level minions like Arthur Weasley take care of that work. Notably, even the Muggle-loving Mr. Weasley's interactions with the Muggle population are rare enough that he has great difficulty even using and calculating the value of "Muggle money"—British pounds.[26]

Another area in which the wizarding world is separate from the Muggle world is that of public infrastructure. The magical world has its own currency and banking system—run by goblins, no less—and therefore has no need to use our Muggle banks and Muggle money.[27] They have their own transit system.[28] Many wizards can magically "apparate" from place to place. If this is uncomfortable or impractical, they may solicit (and pay for) a ride to certain destinations on the Knight Bus, as Harry does in *The Prisoner of Azkaban*, or make use of the Floo Network, a system allowing for travel and communication through fireplaces, or use a Portkey. Wizard shopping also appears to be completely separate from Muggle shopping. A wizard purchasing goods or services in Diagon Alley (or the more sinister Knockturn Alley) has no need ever to visit Harrods. Indeed, only a very few wizards visiting the famous department store would have any idea how to make a purchase there anyway.

With separate schools, a separate government, and a separate public infrastructure, the magical community in Rowling's wizarding world is able to avoid interaction with most of the non-magical population, and they do precisely that. The Muggles, being the vast majority of the world, constitute a population from whom the very existence of wizards is a carefully guarded secret. The existence of a separate community, elaborately kept secret from the world-at-large, raises a question: Why all the secrecy? The separateness and secrecy are symptoms of a problematic instability inherent in Muggle interactions with wizards and magic. The nature of the wizard-Muggle relationship is instructive for how our own society manages matters of law.

IV. CAUSES OF CONFLICT

> "Are you planning to follow a career in Magical Law, Miss Granger?" asked Scrimgeor.

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[26] J.K. ROWLING, HARRY POTTER AND THE GOBLET OF FIRE 76–77 (1st Am. ed. 2000).

[27] J.K. ROWLING, HARRY POTTER AND THE SORCERER'S STONE 72–73 (1st Am. ed. 1998).

[28] *The Best Methods of Transportation in Harry Potter*, BUSTLE (July 20, 2016), https://www.bustle.com/articles/173711-the-best-methods-of-transportation-in-harry-potter-ranked.

> "No, I'm not," retorted Hermione. "I'm hoping to do some good in the world!"[29]

If non-comprehended law can seem like incomprehensible magic—with lawyers as the wizards applying it—and if Muggles have fear and disdain for wizards and their craft, we can quite reasonably view Harry Potter as a cautionary tale for the legal system. The warnings to the legal system regard comprehensibility—the capability for legal texts to be understood by the general population—and ultimately comprehension. If legal texts are not understandable and understood by those who are subject to them, legitimate law risks descent into the illegitimacy of law as magic. The statement above by Hermione Granger suggesting that lawyers are distrusted even within the wizarding world strengthens the parallel. Even wizards disdain a mysterious magician class within their own ranks.

The backstory for Rowling's novels, some of which the author disclosed in the two "Harry's Books" paperbacks released for charity in 2001, includes history establishing that things have not gone well for wizards in the past when Muggles learn of their nature and existence. Why would that be? Harry's miserable life with the Dursleys is the most vivid example of the relational problem, but the Muggle-wizard chasm is far larger than that. Despite their powers, wizards apparently cannot in the end defeat a hostile and much larger Muggle population. Consider the following passage from one of the charity books:

> Imperfect understanding is often more dangerous than ignorance, and the Muggles' fear of magic was undoubtedly increased by their dread of what might be lurking in their herb gardens. Muggle persecution of wizards at this time was reaching a pitch hitherto unknown and sightings of such beasts as dragons and Hippogriffs were contributing to Muggle hysteria.
>
> It is not the aim of this work to discuss the dark days that preceded the wizards' retreat into hiding.[30]

The Muggle persecution, we are told in the same text, was a "particularly bloody period of wizarding history," and it ultimately culminated in the International Statute of Wizarding Secrecy of 1692.[31] An excerpt from Bathilda Bagshot's *A History of Magic* likewise recounts

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[29] J.K. ROWLING, HARRY POTTER AND THE DEATHLY HALLOWS 123–24 (1st Am. Ed. 2007).

[30] NEWT SCAMANDER, FANTASTIC BEASTS AND WHERE TO FIND THEM xv (2d ed. 2017).

[31] *Id.*

how "wizards went into hiding for good" at about this time and "formed their own small communities within a community" following enactment of "the International Statute of Secrecy in 1689."[32] By the time of Harry's story, secrecy has been the law for some three hundred years, and the wizard population has largely mastered the task of secrecy. Harry himself falls victim to the harsh (and in his cases, unjust) enforcement of wizard secrecy in both *The Chamber of Secrets* and *The Order of the Phoenix*.[33]

Fear of magic, only partially understood, seems be the basis for the intense dislike of wizards by Muggles. Human history is rife with prejudices—whether justified or not—that arise from fear of something that those living in fear do not understand. In the case of magic, fear of the unknown is especially acute. Not only do Muggles have an "imperfect" understanding of magic, but most aspects of magic are entirely unknowable to them. Harry's Aunt Petunia learned of this exclusivity to great dismay in her youth, first begging for admission into Hogwarts, but then disparaging it as a "special school for freaks" following Dumbledore's "very kind" letter denying her admission.[34] In the Harry Potter universe, it matters not how much study or effort a Muggle might put into the effort to learn magic, the knowledge cannot be learned unless one has the genetic gift. A non-magical Squib (one who has wizard parents yet cannot perform magic) like Hogwarts caretaker Argus Filch can live in the very center of magical education but cannot become a wizard; he instead lives with a futile hope of learning magic through a "Kwikspell" correspondence course.[35] For Muggles, garden-variety

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[32] Rowling, *supra* note 29, at 318. Do the 1689 and 1692 dates reflect disagreement between esteemed textbook authors Newt Scamander and Bathilda Bagshot? Probably not. The *Harry Potter Lexicon* website resolves the chronology as follows:

> The International Statute of Secrecy is a wizarding law which was instituted in 1689 and put fully into effect in 1692 in order to hide the existence of witches and wizards from the Muggles who persecuted them. This law was at least in part a direct outcome of the Salem Witch Trials of 1692–93 in Massachusetts Colony of North America, although many also cite the delegation of wizards who went to the British monarchs William and Mary circa 1690 asking for but failing to get protection of the wizarding population under Muggle law.

International Statute of Secrecy, HARRY POTTER LEXICON, https://www.hp-lexicon.org/thing/international-statute-of-secrecy/ (last visited Feb. 9, 2020).

[33] *See generally* J.K. ROWLING, HARRY POTTER AND THE CHAMBER OF SECRETS (1st Am. ed. 1999); J.K. ROWLING, HARRY POTTER AND THE ORDER OF THE PHOENIX (1st Am. ed. 2003).

[34] ROWLING, *supra* note 29, at 669–70.

[35] *Wizarding Culture Kwikispell*, THE HARRY POTTER LEXICON, https://www.hp-

fear of the unknown is greatly exacerbated in the case of magic. Magic is not only unknown, but it is unknowable. While the young protagonist of a Horatio Alger story might, by effort and determination, ascend from mailroom-boy poverty to the executive echelons of wealth, the same character with the same character traits in the world of Harry Potter can never be more than a Muggle.

Lack of understanding and—far worse—the *impossibility* of understanding lies at the root of Muggle disdain for wizards where Muggles are aware of the magical population. However, the wizards also do themselves no favors by the approach many of them take to Muggle-relations. By this statement, I do not refer to the obvious fact that dark wizards are unlikely to win Muggle friends by perpetrating violence upon them, such as where the villain of *The Prisoner of Azkaban* is said to have murdered thirteen Muggles with a single curse.[36] Rather, the more widespread and subtle problem is the condescending attitudes of wizards who deal with Muggles. The most detailed example of wizard condescension Rowling provides is in her telling of meetings between Minister of Magic Cornelius Fudge and the Muggle British Prime Minister.[37] The Muggle leader's reaction when Fudge has suddenly and inconveniently appeared in his office is telling:

> "Ah . . . Prime Minister," said Cornelius Fudge, striding forward with his hand outstretched. "Good to see you again."
>
> The Prime Minister could not honestly return this compliment, so said nothing at all. He was not remotely pleased to see Fudge, whose occasional appearances, apart from being downright alarming in themselves, generally meant that he was about to hear some very bad news.[38]

On this particular visit, the Prime Minister is surprised to learn that Fudge has been dealing with the very same disasters and debacles that have plagued his own government over the past week:

> "You—er—your—I mean to say, some of your people were—were involved in those—those things, were they?"

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lexicon.org/thing/kwikspell/ (last visited Feb. 9, 2020).

[36] J.K. ROWLING, HARRY POTTER AND THE PRISONER OF AZKABAN 38 (1st Am. ed. 1999).

[37] J.K. ROWLING, HARRY POTTER AND THE HALF-BLOOD PRINCE 4 (1st Am. ed. 2005).

[38] J.K. ROWLING, HARRY POTTER AND THE HALF-BLOOD PRINCE 4 (1st Am. ed. 2005).

> Fudge fixed the Prime Minister with a rather stern look. "Of course they were," he said. "Surely you've realized what's going on?"
>
> "I . . ." hesitated the Prime Minister.
>
> It was precisely this sort of behavior that made him dislike Fudge's visits so much. He was, after all, the Prime Minister and did not appreciate being made to feel like an ignorant schoolboy. But of course, it had been like this from his very first meeting with Fudge on his very first evening as Prime Minister.[39]

The put-upon Prime Minister is surely not alone in disdaining "being made to feel like an ignorant schoolboy."[40] No person, even one fully aware of his ignorance, appreciates having a lack of knowledge gratuitously highlighted. The magical world that Fudge represents is, to a large extent, outside the realm of the Prime Minister's understanding. Still, that fact does not require Fudge to make the situation worse with his condescension. Nonetheless, the tendency is one that even the nobler wizards in Rowling's world cannot avoid. Albus Dumbledore is derided in his old age as a "friend of Muggles," but he shared the superiority complex of a would-be ruling class in his youth. Writing to villain-in-the-making Gellert Grindelwald, young Dumbledore muses:

> *Your point about Wizard dominance being FOR THE MUGGLES' OWN GOOD—this, I think is the crucial point. Yes, we have been given power and yes, that power gives us the right to rule, but it also gives us responsibilities over the ruled. . . . We seize control FOR THE GREATER GOOD.*[41]

Dumbledore thus illustrates a troubling ultimate outcome of wizard condescension, a trait that was arguably a mere boorish annoyance in the hands of Cornelius Fudge.

The Muggles in Rowling's novels fear wizards first because they are intrinsically incapable of performing their magic, a fact which is regrettably immutable. The magical community makes the situation worse, however, even in its limited interaction with Muggles by condescending words and actions. The Muggle fear, despite its roots in prejudice, is unfortunately justified. A Grindelwald, a Voldemort,

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[39] *Id.* at 4–5.

[40] *Id.* at 5.

[41] ROWLING, *supra* note 29, at 357.

and—disturbingly—even a comparatively well-meaning Dumbledore represent a very real danger to Muggles of having a magical ruling class imposed upon them in which they largely have no voice.

V. REPEALING WIZARDING SECRECY

Fudge's interaction with the Prime Minister may well remind us of some interaction between lawyers and non-lawyer members of the public, including (most notably) clients. Clients, like the Prime Minister, often will not understand the intricacies of a legal problem, yet their fate often will hinge on what the "wizard" lawyers do. Indeed, even the most intelligent and experienced lay persons may be entirely unable to understand the statutes, regulations, and legal rules with which they are asked to comply or the contracts they are asked to sign. Some lawyers and legal academics may react to this state of affairs as being precisely as it should be:[42] "You wouldn't want a lay person performing heart surgery, would you? We must protect the public. These people must consult a lawyer!"

The analogy between lawyer and surgeon used in this manner,[43] however, suffers the flaw of being simultaneously true yet overbroad. In its best sense, the consumer-protection role of law licensure protects the public from being *represented* by one who is unlicensed and presumably unqualified. That protection, even where imperfectly administered, is justified. The fact that the puzzled clients referenced above ought not to be allowed to represent others, however, does not lead to the conclusion that they ought to remain puzzled as to their own legal affairs. Or, for that matter, as to the legal affairs within their own organizations. Law and medicine are professions, not repositories of forbidden knowledge. What if uninformed reliance upon a licensed elite did not have to be the norm? What if, instead of exclusively generating members of a profession, law schools instead facilitated public access to law and its understanding?

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[42] *See generally* Michele DeStefano, *Compliance and Claim Funding: Testing the Borders of Lawyers' Monopoly and the Unauthorized Practice of Law*, 82 FORDHAM L. REV. 2961, 2969 (2014) ("Those in favor of UPL prohibitions argue that they protect the public from bad legal advice and representation and from inferior legal or law-related services. They contend [the] chief reason for defining the practice of law and regulating those who perform services within the scope of the definition is to protect the public from harm that may result from the activities of dishonest, unethical and incompetent providers.") (internal quotation marks and references omitted).

[43] *See, e.g.*, Katherine Fox, *From the Desk of the General Counsel*, 2006 UTAH BAR J. 16 ("It never ceases to amaze me what non-lawyers believe they can do because 'all the practice of law is just a bunch of memorizing stuff like the Utah Code.' In talking with those individuals, I sometimes compare practicing law to practicing medicine and ask them if they think they are competent to perform surgery on their friends and family.")

Legal master's degree programs are the manifestation of facilitating such access. Students in these degree programs are obtaining advanced knowledge, but they are not preparing for licensed entry into the legal profession. This distinction is actually a strength of the master's degree approach in that it can expressly promote access by working professionals. One longstanding criticism of general legal education—that it offers nothing "that prepares a young law graduate for a career as a corporate executive, an investment banker, a management consultant, or an entrepreneur"—can be turned on its head.[44] By bringing the law component to those who, for example, are *already* executives, bankers, consultants, and entrepreneurs, legal master's degree programs fill a discrete need. The program objectives for non-lawyer master's degrees can build on the strengths of what legal education does rather than backfill something it does not do. The most fundamental strength upon which law schools can build is their institutional competence and capacity for disseminating *legal literacy*.

Legal literacy[45]—as a self-contained, normative value in the enactment, interpretation, and operation of law—tends to be given short shrift in much of the legal academy apart from the realm of training lawyers. It deserves a far higher place of honor in institutions serving a liberal republic. Law schools ought not to underestimate the importance of this value. From its founding documents, American democracy is based on an assumption of a general competence of the populace to govern itself,[46] albeit within systems designed to temper the will and whims of the majority.[47] The system further assumes a general submission by that populace to a legal system based on the premise that the system is—on balance—just.[48] Understanding of the legal system

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[44] Robert J. Rhee, *Specialization in Law and Business: A Proposal for a J.D. / "MBL" Curriculum*, 17 CHAP. L. REV. 37, 51–52 (2013).

[45] Credit goes here to Jennifer Romig for introducing me to the "legal literacy" terminology and the richness of its implications for legal master's programs. The term is the foundational concept behind a text we co-authored for legal master's students. *See generally* JENNIFER MURPHY ROMIG & MARK EDWIN BURGE, LEGAL LITERACY AND COMMUNICATIONS SKILLS: WORKING WITH LAW AND LAWYERS (2020).

[46] *See, e.g.*, U.S. CONST. pmbl. ("We the People of the United States . . . do ordain and establish this Constitution . . . ."); THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776) ("We hold these truths to be self-evident, that . . . it is the Right of the People . . . to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."); THE FEDERALIST NO. 55, at 361 (James Madison) (Clinton Rossiter ed., 1961) (stating that despite the existence of "a degree of depravity in mankind," a republican system "presupposes the existence" of qualities making humans capable of self-government).

[47] *See generally* THE FEDERALIST NO. 10 (James Madison).

[48] *See, e.g.*, THE FEDERALIST NO. 51 (James Madison) ("Justice is the end of government. It is the end of civil society.").

among the population-at-large is not only normatively preferable, but it is prudentially critical to the political health of a democracy. Absent public comprehension of the law and how it operates, democracy risks turning into oligarchy—with lawyers as the hated oligarchs.

Legal literacy is an essential value in law because law and the legal profession are fundamentally different from other fields requiring technical expertise, such as engineering, medicine, or physics. The difference arises from the fact that enacted law is a human construct. All of us must live within the laws of physics, and it is not offensive to learn that there are formulas and reasons for physical phenomena that some solid majority of us will not understand. Likewise, no one is truly offended by the proposition that only a skilled surgeon might understand the nuances of a heart transplant procedure. Some of us cross suspension bridges and work in tall skyscrapers without giving serious thought to the idea that we need to understand structural engineering. But contrast these laws of science with the enacted laws of society. Imagine a moderately educated member of the public being told any of the following things: (1) "You are not capable of understanding the reason for the Supreme Court's ruling;" (2) "Do not bother to read what the legislature has enacted; it is quite beyond you;" (3) "The court of appeals has reversed your $50,000 judgment, but the reasons why are unfathomable." Such statements—even if actually true—would be condescending at best and patently offensive at worst in a way that would not occur if the subject of the discussion were chemistry or mechanical engineering. Why?

Law is different. And legal education need not treat its understanding as forbidden knowledge that should not fall into the wrong hands. Put differently, legal education ought not to be conducted as if it were part-and-parcel of the Statute of Wizarding Secrecy. Legal knowledge is not, nor should it be, conflated with the unauthorized practice of law.

In a republican democracy, law is intended to be made and changed by the will of the public. All are supposed to have available a participatory role in building and operating the machinery of law, even if that role never becomes more than theoretical. Perhaps one useful analogy here is to voting rights. Is the mere *right* to vote of any value to one who never or seldom votes? Certainly. The widespread ability to participate in the political arena has value independent of actual participation. This ability is what makes an election fairly determined by ten percent voter turnout of equal legitimacy with an election determined by ninety percent of the voters. The ten percent did not engage in a *coup d'état*; they merely availed themselves of the voting right as the ninety percent might likewise have done. Law that can be

understood by the Muggle population-at-large gains similar legitimacy. Incomprehensibility of a governing legal text to the public at large is ultimately offensive to democracy.

Fortunately, the analogy between law and magic breaks down on a major point. While Muggles can never truly understand and be a part of magical society—and wizards cannot help them to do so—non-lawyers are not genetically barred from understanding legal text. Law schools, in their public service role,[49] have an ethical and prudential obligation to bridge this gap in understanding. There are many ways that these professional schools might do so; however, this essay focuses on one development in legal education as an opportunity to meet the obligation.

Non-lawyer master's programs—known variously as Master of Jurisprudence (M. Jur.), Juris Master (J.M.), and Master of Legal Studies (M.L.S.), among other names, serve to mediate the gap between law and its governed public. These programs are, in the extended Harry Potter metaphor of this piece, actively bringing Muggles into Hogwarts. And that is very much a good thing. While the worthy goals of access to justice and to the legal system have traditionally been conceived in terms of ensuring access to lawyers, the better organizing vision for law schools in a liberal republic is that of providing *access to law*, a term which encompasses public engagement with law and legal structures—both with and without the guidance of lawyers.[50]

Empowering the public is, in many respects, the ultimate fulfillment of legal education as a public service, particularly in the tradition of higher education in the United States, which differs from its medieval European origins of universities in large part because of the impact of creation of land-grant universities starting in 1862.[51] Land-grant universities bear that name based on their being financial beneficiaries of grants of federal land to the states for the purpose of funding institutions of higher education.[52] Congressman Justin S. Morrill sponsored

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[49] *See, e.g.*, Lauren Carasik, *Renaissance or Retrenchment: Legal Education at A Crossroads*, 44 IND. L. REV. 735, 742 (2011) (recounting the 2007 Carnegie Report as characterizing "law schools as hybrid institutions of which one progenitor is 'the historic community of practitioners, deeply immersed in the common law and carrying on traditions of craft, judgment, and public responsibility'") (quoting WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 4 (2007)).

[50] *See generally* Mark Edwin Burge, *Access to Law or Access to Lawyers? Masters Programs in the Public Educational Mission of Law Schools*, 74 U. MIAMI L. REV. 143 (2019).

[51] *Id.*

[52] Land grant colleges and universities now exist in every state, and my home institution, Texas A&M University, is by way of example, the oldest land-grant university in the state of Texas. *See The Morrill Act, Explained*, TEX. A&M TODAY (July 1, 2018), https://today.tamu.edu/2018/07/01/the-morrill-act-explained/.

the land-grant legislation that to this day bears his name as the Morrill Act.[53] The land-grant mission sought an extension of public higher education that "aimed at the widest possible dissemination of learning."[54] While universities certainly existed in the United States before 1862, their focus tended to be consistent with their European origins of serving a relatively elite population.[55] The proposed land-grant universities were to be different, as they expressly were to be "the public's universities."[56] Their mission unapologetically included practical education, which Representative Morrill described as an "opportunity in every State for a liberal and larger education to larger numbers, not merely to those destined to sedentary professions, but to those needing higher instruction for the world's business, for the industrial pursuits[,] and professions of life."[57] Put differently, land-grant schools would emphasize practical education with the express goal of bringing practical knowledge to the public at large.[58]

The delivery of empowering practical knowledge is a worthy and widespread goal outside of its original land-grant setting. As I explain in this essay's companion article:

> The impact of the original Morrill Act on shaping higher education in the United States really cannot be over-emphasized, as it established the *ethos* in which programs like the post World War II G.I. Bill were not only possible but were broadly supported. American higher education, while still firmly committed to the traditional liberal arts, nonetheless has a distinctive practical streak that encompasses empowering the public. . . . Indeed, one would be hard pressed to find either a private university or private law school in the United States that explicitly denies having a mission of public service to a broad public. In many respects in

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[53] *See* 7 U.S.C. §§ 301–09 (2012).

[54] Rex R. Perschbacher, *The Public Responsibilities of a Public Law School*, 31 U. TOL. L. REV. 693, 694 (2000).

[55] *Id.* at 693.

[56] *Id.* at 694.

[57] S. Res. 502, 112th Cong., 158 CONG. REC. S4374 (2012) (quoting Representative Morrill in commemoration of the 150th anniversary of passage of the Morrill Act).

[58] James O. Freedman, *Liberal Education and the Legal Profession*, 39 SW. L.J. 741, 745 (1985) ("Rather than perpetuating an elite of gentlemen-scholars, the Morrill Act called into being a new kind of university, created without European precedents, hospitable to all comers, and designed to prepare Americans to be Americans. The land-grant university opened the pursuit of excellence to farmers' children, artisans' children, and storekeepers' children.").

> American higher education, we are all land-grant schools now.[59]

This American university mission—and its companion law school mission—should be true to its anti-elitist origins. The new breed of non-lawyer law degrees (whether M. Jur., J.M., M.L.S., or otherwise) is squarely in this republican and classically liberal tradition:

> Moreover, the offering of [legal masters] degrees is consistent with Morrill Act's vision of profoundly *public* universities that reconceived higher education with a role that includes rather than excludes the teaching of practical knowledge. While not all are lawyers, all will engage with the law. Instruction in the means of effective engagement is in furtherance of the public and practical land-grant mission. That mission, in its most fundamental sense, is no longer exclusive [to] land-grant universities, or even to public universities.[60]

Law schools are well-justified in offering new master's degrees, especially in light of the history and tradition of university education in the United States. For law schools, these degrees, far from being a source of distraction, further the institutional mission.

VI. CONCLUSION: TOWARDS REPEALING THE STATUTE

Law schools can and should play an important role in repealing the "Statute of Wizarding Secrecy" that shrouds legal institutions. Comprehension of law and legal structures by Jane Q. Public matters a great deal, and it matters regardless of the fact that she will not represent clients or sell legal services to another. Mere comprehensibility, in contrast, does not require that the law actually *be* comprehended but only that it be *capable* of comprehension by those who want to know. Legal master's degrees, in contrast, offer actual legal comprehension and the ability of graduates to navigate day-to-day issues that they confront in their personal or professional lives. They are not practicing law, but they are living within the law.

In a nation where—to use Lincoln's terms—government is

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[59] Mark Edwin Burge, *Access to Law or Access to Lawyers? Masters Programs in the Public Educational Mission of Law Schools*, 74 U. MIAMI L. REV. 143 (2019).

[60] *Id.* (citing James O. Freedman, *Liberal Education and the Legal Profession*, 39 SW. L.J. 741, 745 (1985)).

conceived as "of the people, by the people, for the people,"[61] no one would dispute that a governing legal text understood by only one person is illegitimate. Expanding that number to nine people—the number of Supreme Court justices—does not greatly ameliorate the situation. At the other extreme, a governing legal text capable of understanding by all has, if duly enacted, a far greater claim to legitimacy. Ancient civilizations had good reason to post their codes in public places like markets, even though few of their subjects could actually read them. The value of distributed comprehension, then, runs along a continuum. The more who are capable of understanding and navigating law and legal systems in a republican democracy, the greater the claim of legitimacy those systems earn. The smaller the audience, the more diminished is the system's legitimacy. Legal master's programs are a step in the right direction in expanding understanding, and they do so in a way that meets a strand of practical need in accord with the tradition of universities in the United States.

In the Harry Potter world, magic and its machinations are permanently beyond the performance capacity of the non-magical, but I would suggest—as does the vignette in this essay's prologue—that fictional Hogwarts would be well served by carefully opening its doors to the non-magical. The decidedly real law schools in our own world have an advantage over Hogwarts. The divide between the lawyer and the otherwise educated public is not insurmountable. Indeed, legal master's programs are already playing an important role in bridging the gap.

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[61] Abraham Lincoln, *Address Delivered at the Dedication of the Cemetery at Gettysburg on November 19, 1863 quoted in* GARRY WILLS, LINCOLN AT GETTYSBURG 263 (1992).