

HARRY POTTER AND THE HALF-CRAZED BUREAUCRACY

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What would you think of a government that engaged in this list of tyrannical activities: tortured children for lying;¹ designed its prison specifically to suck all life and hope out of the inmates;² placed citizens in that prison without a hearing;³ ordered the death penalty without a

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1. I will explain critical plot and character references in the main text, but will treat the footnotes as a place for legal and textual support, added analysis, and references for avid Harry Potter readers.

Ministry employee—and evil bureaucrat extraordinaire—Dolores Umbridge forces Harry to write “*I must not tell lies*” over and over again with an enchanted quill that slices those words into his hand and writes in blood. The worst part of the punishment is that Harry was actually telling the truth and was punished for publicly announcing Voldemort’s return. Pp. 219, 347; *see also* J.K. ROWLING, HARRY POTTER AND THE ORDER OF THE PHOENIX 263–68 (2003) [hereinafter ROWLING, THE ORDER OF THE PHOENIX].

2. The wizard prison, Azkaban, is staffed by dementors, magical beings that suck all hope and life out of the inmates. *See, e.g.*, J.K. ROWLING, HARRY POTTER AND THE PRISONER OF AZKABAN 97 (1999) [hereinafter ROWLING, THE PRISONER OF AZKABAN] (describing Azkaban as “the worst place” and stating that “[m]ost of the prisoners go mad in there”).

3. In *Harry Potter and the Half-Blood Prince* [hereinafter *The Half-Blood Prince*], the Ministry arrests and holds a minor character named Stan Shunpike without a trial on “suspicion of

trial;⁴ allowed the powerful, rich, or famous to control policy;⁵ selectively prosecuted crimes (the powerful go unpunished and the unpopular face trumped-up charges);⁶ conducted criminal trials without defense counsel;⁷ used truth serum to force confessions;⁸ maintained constant surveillance over all citizens;⁹ offered no elections and no democratic lawmaking process;¹⁰ and controlled the press?¹¹

You might assume that the above list is the work of some despotic central African nation, but it is actually the product of the Ministry of Magic, the magicians' government in J.K. Rowling's Harry Potter series. When *Harry Potter and the Half-Blood Prince* was released this summer, I, along with many others, bought and read it on the day of its release.¹² I was immediately struck by

Death Eater activity," although no one seems to think that Shunpike is actually guilty. Pp. 221 (emphasis deleted), 331, 346–47. The "Death Eaters" are the evil Lord Voldemort's supporters. Similarly, in *Harry Potter and the Chamber of Secrets*, the Minister of Magic, Cornelius Fudge, sends one of Harry's favorite teachers, Hagrid, to Azkaban without a hearing or any opportunity to present a defense because the "Ministry's got to do something" in response to attacks at Hogwarts. Fudge further defends the action by saying "I'm under a lot of pressure. Got to be seen to be doing something." J.K. ROWLING, *HARRY POTTER AND THE CHAMBER OF SECRETS* 261 (1999) [hereinafter ROWLING, *THE CHAMBER OF SECRETS*].

4. In *The Prisoner of Azkaban*, the dementors have permission from the Ministry to destroy Sirius Black upon capture, and without any further trial, with the "dementor's kiss." ROWLING, *THE PRISONER OF AZKABAN*, *supra* note 2, at 247. Similarly, Barty Crouch was given the dementor's kiss without a trial in J.K. ROWLING, *HARRY POTTER AND THE GOBLET OF FIRE* 703 (2000) [hereinafter ROWLING, *THE GOBLET OF FIRE*].

5. There are innumerable examples of this. Throughout each of the books, Lucius Malfoy—a Death Eater and the father of Harry's archenemy Draco Malfoy—is shown to have inordinate governmental access and influence. *See, e.g.*, ROWLING, *THE PRISONER OF AZKABAN*, *supra* note 2, at 125, 218 (arranging to have Hagrid's Hippogriff executed by the Committee for the Disposal of Dangerous Creatures); ROWLING, *THE GOBLET OF FIRE*, *supra* note 4, at 100–01 (appearing as the Minister of Magic's honored guest at the Quidditch world cup).

6. The lengthy detention of Stan Shunpike, on the mere suspicion of Death Eater activity, is a good example. Pp. 221, 331, 346–47. Harry himself is another example. In book three, the Ministry of Magic pooh-poohs a charge of the improper underage use of magic. *See* ROWLING, *THE PRISONER OF AZKABAN*, *supra* note 2, at 43–46. And in book five, they attempt to prosecute Harry to the limit of the law (and beyond) for the same charge. *See* ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 26–27, 137–51.

7. Harry's trial in book five is an obvious example. *See* ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 137–51.

8. *See* ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 629–31 (Dolores Umbridge interrogating Harry); ROWLING, *THE GOBLET OF FIRE*, *supra* note 4, at 683–91 (Dumbledore interrogating Barty Crouch).

9. The Ministry of Magic keeps tabs on all uses of magic in order to detect any improper or underage uses of magic. P. 368.

10. This requires an inference from the first chapter of *The Half-Blood Prince*. *See* discussion *infra* Section III.A.

11. In *The Order of the Phoenix*, the wizard newspaper (*The Daily Prophet*) regularly disparages Harry and Professor Dumbledore as deranged for claiming that Voldemort has returned. *See* ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 94, 306–08 (stating that the *Daily Prophet* is discrediting Dumbledore under pressure from the Ministry of Magic); *id.* at 73–75 (same for Harry).

12. I did not, however, dress up as a wizard or go to one of the local bookstore's midnight Harry Potter parties. *Cf.* Triumph the Insult Comic Dog, *Attack of the Nerds* (NBC Television Broadcast May 17, 2002), available at <http://www.milkandcookies.com/links/2536/> (video of Tri-

Rowling's unsparingly negative portrait of the Ministry of Magic and its bureaucrats. I decided to sit down and reread each of the Harry Potter books with an eye toward discerning what exactly J.K. Rowling's most recent novel tells us about the nature, societal role, and legitimacy of government.

I did this for several reasons. First, with all due respect to Richard Posner, Cass Sunstein, or Peter Schuck,¹³ no book released in 2005 will have more influence on what kids and adults around the world think about government than *The Half-Blood Prince*. It would be difficult to overstate the influence and market penetration of the Harry Potter series.¹⁴ Somewhere over the last few years, the Harry Potter novels passed from a children's-literature sensation to a bona fide international happening.

Second, Rowling's scathing portrait of government is surprisingly strident and effective. This is partly because her critique works on so many levels: the functions of government (see above), the structure of government, and the bureaucrats who run the show. All three elements work together to depict a Ministry of Magic run by self-interested bureaucrats bent on increasing and protecting their power, often to the detriment of the public at large. In other words, Rowling creates a public-interest scholar's dream—or nightmare—government.

Her critique is also particularly effective because, despite how awful Rowling's Ministry of Magic looks and acts, it bears such a tremendous resemblance to current Anglo-American government. Rowling's negative picture of government is thus both subtle and extraordinarily piercing. Taken in the context of the Harry Potter novels and the personalities of the bureaucrats involved, each of the above acts of government misconduct seems perfectly natural and familiar to the reader. The critique works because the reader identifies her own government with Rowling's Ministry of Magic.

Lastly, *The Half-Blood Prince* is a tremendous work of fiction that deserves a more careful reading of its themes and plot. It continues a trend in the Harry Potter novels: over the last six books, Rowling's Harry Potter novels have gotten longer, more complex, and much, much darker. The first two Harry Potter books tell straightforward stories of good triumphing over evil—Harry defeating the evil Lord Voldemort—at the magical Hogwarts School.¹⁵ The next four books present a more complex vision of an entire

umph insulting Star Wars geeks in costumes, including this question: "How do you explain this [outfit] to your imaginary girlfriend?").

13. See RICHARD A. POSNER, PREVENTING SURPRISE ATTACKS: INTELLIGENCE REFORM IN THE WAKE OF 9/11 (2005); PETER H. SCHUCK, MEDITATIONS OF A MILITANT MODERATE (2005); CASS R. SUNSTEIN, RADICALS IN ROBES: WHY EXTREME RIGHT-WING COURTS ARE BAD FOR AMERICA (2005).

14. Over ten million copies of *The Half Blood Prince* were sold internationally in its first twenty-four hours of release. See *Smothered in HP*, THE ECONOMIST, Sept. 3, 2005, at 75 ("Garagemen in Beirut were selling it; fishermen on the Greek island of Hydra too."). Over 275 million Harry Potter novels have been sold worldwide, placing them among the best selling novels of all time. See Wikipedia, Harry Potter, http://en.wikipedia.org/wiki/Harry_Potter (last visited Sept. 22, 2005).

15. The first two books, *The Sorcerer's Stone* and *The Chamber of Secrets*, clock in at a tidy 309 and 341 pages respectively, and feature quite similar narratives: the evil Lord Voldemort's

wizard society, including a wizard government and an international struggle against Voldemort and his followers that does not feature easy answers, instant triumphs, unblemished heroes, or even clear lines between good and evil.¹⁶

Rowling's decision to eschew the tried-and-true formula of her first two books in favor of longer books featuring deaths, imperfect characters, and moral ambiguity is both exceptional and refreshing. She could have repeated her formula from the first two books to great acclaim. Instead, she created a much richer world, where the more typical elements of magic and childhood collide with satire and social commentary in the mold of Mark Twain or Jonathan Swift.¹⁷

Given the overwhelming popularity and influence of the Harry Potter books, it is worth examining what Rowling has to say about government and its role in society. Part I gives a short synopsis of the plot and themes of *The Half-Blood Prince* and its predecessors, and describes how *The Half-Blood Prince* cements Rowling's negative portrayal of government. Part II argues that *The Half-Blood Prince* presents a government that fits perfectly into the public-choice model of self-interested bureaucrats running roughshod over the broader public interest. Part III asserts that *The Half-Blood Prince*'s unflattering depiction of government is particularly damning because it so closely resembles the British and U.S. governments, but without many of the features that potentially undermine the public-choice critique. Rowling's vision of government consists almost solely of bureaucracy, without elections to offer the sheen of democracy, without a free press or independent judiciary to act as a check on bureaucratic excess, and with few true public servants to counteract craven bureaucrats. Part IV talks a little bit about how Rowling's personal story may explain her disdain for government and bureaucracy. Part V concludes that Rowling may do more for libertarianism than anyone since John Stuart Mill.¹⁸

attempts to return to power through unlikely pawns (a teacher in *The Sorcerer's Stone* and a student in *The Chamber of Secrets*) are foiled by Harry and his friends. See J.K. ROWLING, HARRY POTTER AND THE SORCERER'S STONE (1997) [hereinafter ROWLING, THE SORCERER'S STONE]; ROWLING, THE CHAMBER OF SECRETS, *supra* note 3. In moral tone these books are very black and white, and in subject matter they are basically circumscribed to happenings at or around Hogwarts.

16. Each of the last four books is longer and more complex than the first two, and each abandons the "Harry triumphs over Voldemort" structure of the first two. The bulk of the third book, *Harry Potter and the Prisoner of Azkaban*, deals with Sirius Black, the allegedly deadly prisoner of Azkaban, and his pursuit of Harry. See ROWLING, THE PRISONER OF AZKABAN, *supra* note 2. It turns out that Sirius was wrongfully accused and convicted (a running theme in each of the next three books), and he resumes his role as Harry's godfather at the end of the book. Book four, *Harry Potter and the Goblet of Fire*, tells the story of Voldemort's return to power, and features the first death in the series (one of Voldemort's Death Eaters murders Hogwarts student Cedric Diggory). ROWLING, THE GOBLET OF FIRE, *supra* note 4. Book Five, *Harry Potter and the Order of the Phoenix*, is darker yet. Harry hits puberty, and is a moody mess throughout the book. For the first time Harry's impetuosity and desire to confront Voldemort backfires, as Sirius Black is murdered, and Harry leads his friends into a trap set by Lord Voldemort. See ROWLING, THE ORDER OF THE PHOENIX, *supra* note 1.

17. Some will complain that this is ridiculously high praise, and I do not use those names lightly. Twain, Swift, and now Rowling, use simple stories that are aimed at children in form and style, but that run much deeper in subject matter and social critique.

18. Mill's *On Liberty* is widely considered the seminal and original work of libertarian philosophy. See JOHN STUART MILL, ON LIBERTY, at viii (Alburey Castell ed., 1947) (1859) ("No finer

I. HARRY POTTER AND THE REPULSIVE MINISTRY OF MAGIC

Rowling's Harry Potter books, up to and including *The Half-Blood Prince*, slowly but surely build an impregnable invective against government, while still telling charming fantasy stories about witches and wizards at a school for magic.¹⁹ Each of the first six Harry Potter books follows a similar template. They begin with Harry Potter living with his extremely unlikable "muggle"²⁰ relations. They then proceed through the course of a school year at the Hogwarts School of Witchcraft and Wizardry. Each year presents a new mystery to be resolved or a Lord Voldemort-inspired challenge to overcome, as well as the details of Harry's social life and school work.²¹

The last three books all have the same meta-narrative: Lord Voldemort has returned from the dead, and is seeking to kill Harry and take over the world.²² Book four, *The Goblet of Fire*, ends with Voldemort's return to full power (and the murder of fellow student Cedric Diggory).²³ In book five, *The Order of the Phoenix*, Voldemort tries to discover the exact contents of the prophecy that proclaims that either Harry or Voldemort are destined to kill the other.²⁴ In *The Half-Blood Prince*, Harry and the Hogwart's headmaster—and Harry's hero—Professor Dumbledore explore the history and

book has been written on the case for man's right to think and act for himself than Mill's essay."); Paul M. Secunda, Lawrence's *Quintessential Millian Moment and Its Impact on the Doctrine of Unconstitutional Conditions*, 50 VILL. L. REV. 117, 118–25 (2005) (describing *Lawrence v. Texas* as a libertarian, and essentially "Millian" decision).

19. Six books and roughly 3300 pages into the story of Harry Potter, the Michigan Law Review is probably the wrong place for any kind of comprehensive synopsis. Instead I offer a minimalist version of the back story and a greater focus on Rowling's representation of government. There are several excellent options for more thorough synopses. The first four books have been made into movies, albeit movies that greatly undersell the source material. See HARRY POTTER AND THE SORCERER'S STONE (Warner Bros. 2001); HARRY POTTER AND THE CHAMBER OF SECRETS (Warner Bros. 2002); HARRY POTTER AND THE PRISONER OF AZKABAN (Warner Bros. 2004); HARRY POTTER AND THE GOBLET OF FIRE (Warner Bros. 2005). There are also some hilarious Harry Potter fan sites that offer synopses and everything else Potter related. See, e.g., MuggleNet.com, <http://www.mugglenet.com/> (last visited September 16, 2005). For an alternate scholarly take on Harry Potter's world, consider Aaron Schwabach, *Harry Potter and the Unforgivable Curses: Norm-formation, Inconsistency, and the Rule of Law in the Wizarding World*, 11 ROGER WILLIAMS U. L. REV. (forthcoming 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=818185.

20. "Muggle" is Rowling's term for the non-magical world and people, that is, all (most?) of her readers. Humorously, the *Oxford English Dictionary* recently added "muggle" to its word list. See *Muggle Goes into Oxford English Dictionary*, CBBC NEWSROUND, Mar. 24, 2003, http://news.bbc.co.uk/cbbcnews/hi/uk/newsid_2882000/2882895.stm. Rowling uses these muggle interludes to great effect. Some of her most penetrating social critiques involve how magical folk and Harry view the lives of a "typical" family in a fictional British suburb, Little Whinging.

21. I am going to skip over this aspect of Rowling's work for brevity's sake, but *The Half-Blood Prince* offers a captivating picture of adolescence and school life, including Harry's first true love, and a budding romance between his best friends Ron Weasley and Hermione Granger.

22. Lord Voldemort thus follows in the long tradition of truly evil villains who aim high: full domination of everyone and everything. See, e.g., THE SPONGEBOB SQUAREPANTS MOVIE (Paramount Pictures 2004). In *The SpongeBob SquarePants Movie*, the evil villain Plankton proclaims: "By tomorrow, I will rule the world!" *Id.* SpongeBob replies: "Well, good luck with that!" *Id.*

23. ROWLING, THE GOBLET OF FIRE, *supra* note 4, at 643–71.

24. See ROWLING, THE ORDER OF THE PHOENIX, *supra* note 1, at 841 ("[A]nd either must die at the hand of the other for neither can live while the other survives . . .") (emphasis omitted).

nature of Voldemort, presumably in preparation for Harry's final battle against Voldemort in the next, and final, book in the series.

The first five books lay the groundwork for Rowling's depiction of the Ministry of Magic in *The Half-Blood Prince*. The first three books take a relatively lighthearted view of the wizard government. Rowling gives us goofy and highly bureaucratic-sounding government offices like "[t]he Misuse of Muggle Artifacts Office"²⁵ or "the Department of Magical Catastrophes"²⁶ and a portrait of the Minister of Magic, Cornelius Fudge, as a bumbling, but well-meaning, political hack.²⁷

In *The Goblet of Fire*, we have the first real hints of Rowling's darker vision for the Ministry of Magic. The depiction of how the Ministry handles Voldemort's first rise to power features overzealous prosecutions and the suspension of civil rights.²⁸ Most notably, at the end of the book, the Ministry refuses to believe that Voldemort has returned to power, and actually works to discredit and suppress Harry's story.²⁹

The end of *The Goblet of Fire* presages the open hostility between the Ministry of Magic and Harry and Dumbledore in *The Order of the Phoenix*. The Ministry attempts to kick Harry out of school, strips Dumbledore of his various government positions (including headmaster of Hogwarts), sickens the evil-bureaucrat par excellence Dolores Umbridge on Hogwarts, and generally brings the full weight of the Ministry's powers to bear upon Harry and Dumbledore.³⁰

Nevertheless, *The Order of the Phoenix* ends on a hopeful note: Fudge finally recognizes that Voldemort has returned to power.³¹ We are left with the impression that Fudge will now use the full powers of the Ministry to battle Voldemort and his followers, the Death Eaters.³² After all, even the most hardened libertarian generally recognizes that government is best suited to fight wars against aggressors and pursue police actions against those who threaten the well-being of others.³³

The Half-Blood Prince, however, offers no such succor to government. The Ministry remains remarkably ineffective in its battle against Voldemort (pp. 7–18, 648–49). Cornelius Fudge is replaced as Minister of Magic by Rufus Scrimgeour, a savvy veteran of the battles against Lord Voldemort,

25. See ROWLING, *THE CHAMBER OF SECRETS*, *supra* note 3, at 30–31.

26. See ROWLING, *THE PRISONER OF AZKABAN*, *supra* note 2, at 208.

27. See, e.g., *id.* at 41–47.

28. See ROWLING, *THE GOBLET OF FIRE*, *supra* note 4, at 458–66, 509–19.

29. See *id.* at 611–17. These steps are ostensibly taken to "avoid a panic that will destabilize everything [the Ministry has] worked for these last thirteen years." *Id.* at 613. Dumbledore offers a likelier explanation: Fudge is "blinded . . . by the love of the office" he holds. *Id.* at 614.

30. See, e.g., ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 26–27, 71–75, 93–95, 137–51, 212–14, 239–40, 265–68, 296–98, 306–08, 351–52, 415–16, 551, 567, 610–21, 624, 747.

31. See *id.* at 816–19.

32. See *id.* at 845–48.

33. See, e.g., National Platform of the Libertarian Party, http://www.lp.org/issues/prINTER_platform_all.shtml (last visited Sept. 16, 2005).

and yet the tone and actions of the Ministry remain unchanged (pp. 7–18). In fact, Scrimgeour decides to try to calm the public by detaining individuals who are likely innocent (pp. 221, 331, 346–47). And his attempts to use Harry as a “mascot” (p. 346) or “poster boy” (p. 650) for the ministry are also arguably worse than Fudge’s actions.³⁴

Perhaps *The Half-Blood Prince*’s most devastating criticism of the Ministry has little to do with Voldemort, however. It is what service in the Ministry of Magic has done to Percy Weasley. Harry’s best friend at Hogwarts is Ron Weasley, a member of a large and likable magical family that informally adopts Harry as their own. Percy Weasley is Ron’s older brother, and throughout the first three books he is depicted as a bit of a rule-loving stuffed shirt. But the portrait is sympathetic, and it is clear that he is still a lovable member of the Weasley family.

In *The Goblet of Fire*, Percy goes to work for the Ministry of Magic in a junior capacity, and at once finds a home for his love of rules and talent for minutiae.³⁵ In *The Order of the Phoenix*, however, Percy takes the side of the Ministry against Harry and Dumbledore and ends up alienating his entire family as a result.³⁶ This offers the first object lesson in government service: Percy essentially loses his soul and all that should matter to him by following his blind ambition.

The Half-Blood Prince, however, offers Percy a chance at redemption. Now that the Ministry recognizes that Voldemort has returned and that Harry is its best chance of defeating him, Percy could admit he was wrong about Dumbledore and Harry and rejoin the family. Yet, Percy refuses to bend and remains estranged (p. 96). Of course that does not free Percy from the clutches of the government. The first encounter between Harry and Scrimgeour occurs at the Weasley family Christmas dinner, which Scrimgeour crashes with Percy as his excuse (pp. 341–42). The violation of the Weasley family, and Scrimgeour’s callous use of Percy to gain access to Harry, are hardly lost on the readers. The depths that Scrimgeour and Percy will plumb to co-opt Harry are more offensive and distasteful than even the list of government wrongdoing that began this Review, because we experience them directly through the eyes of Harry and the Weasley family.³⁷

This is likewise true when Scrimgeour reiterates his request to Harry at the Hogwarts funeral that ends the book (pp. 647–50). We fully sympathize with Harry’s refusal to help the Ministry; how could he do otherwise? Thus, the replacement of Fudge with Scrimgeour and the hardening of Harry’s negative feelings toward the Ministry finalize Rowling’s portrait of the

34. Harry himself notes that it is hard to tell whether Fudge or Scrimgeour is more distasteful: “You never get it right, you people, do you? Either we’ve got Fudge, pretending everything’s lovely while people get murdered right under his nose, or we’ve got you [Scrimgeour], chucking the wrong people into jail and trying to pretend you’ve got ‘the Chosen One’ [Harry] working for you!” P. 347.

35. See ROWLING, *THE GOBLET OF FIRE*, *supra* note 4, at 55–56, 61–64.

36. See ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 70–72, 296–99.

37. This is because it is directly experienced by Harry, and the well of good feelings every reader has for the Weasley family.

Ministry of Magic and its bureaucrats. Before *The Half-Blood Prince*, it was possible to imagine that the Ministry of Magic was trying hard, but was misguided or ineffectual. After *The Half-Blood Prince*, the reader reaches the inexorable conclusion that Harry (and Rowling for that matter) has little use for government.

II. HARRY POTTER AND THE PUBLIC-CHOICE GOVERNMENT

The odd thing about Rowling's Ministry of Magic is how closely it accords with the public-choice critique of government. The central tenet of public-choice theory is that the best way to understand the actions of governmental actors is to assume they are primarily—or solely—motivated by self-interest.³⁸ The theory has been applied to the actions and incentives of virtually every government actor and sector,³⁹ but it seems to have been most popular as an explanation of bureaucratic behavior. One of the earliest public-choice scholars, William Niskanen, theorized that self-interested bureaucrats would seek to expand their budgets and influence at the expense of the public.⁴⁰ This theory has since spawned a cottage industry of public-choice analyses of bureaucracy.⁴¹

38. See, e.g., Edward L. Rubin, *Public Choice, Phenomenology, and the Meaning of the Modern State*, 87 CORNELL L. REV. 309, 310 (2002) ("The essential and familiar components of [the public-choice] model are that human beings are instrumentally rational and motivated by self-interest."). Note that not every public-choice analysis of government results in a critique. See David B. Spence & Frank Cross, *A Public Choice Case for the Administrative State*, 89 GEO. L.J. 97 (2000) (applying public-choice theory to prove that the administrative state can be defended as a rational choice of busy voters and legislators).

39. See, e.g., R. DOUGLAS ARNOLD, CONGRESS AND THE BUREAUCRACY (1979) (exploring Congress's ability to influence and control bureaucracy); DENNIS C. MUELLER, PUBLIC CHOICE II 43–369 (1989) (applying public-choice scholarship to any and all types of democracy and areas of government); Benjamin H. Barton, *An Institutional Analysis of Lawyer Regulation: Who Should Control Lawyer Regulation—Courts, Legislatures, or the Market?*, 37 GA. L. REV. 1167, 1185–1210 (2003) (applying tools of economic analysis and public-choice theory to state supreme courts).

40. See WILLIAM A. NISKANEN, BUREAUCRACY AND REPRESENTATIVE GOVERNMENT (1971). For an update and analysis of Niskanen's groundbreaking work, see THE BUDGET-MAXIMIZING BUREAUCRAT: APPRAISALS AND EVIDENCE (André Blais & Stéphane Dion eds., 1991).

Niskanen's bureaucrats, however, look like rank amateurs next to Scrimgeour and Fudge, who detain suspects indefinitely so the government appears to be addressing Voldemort's return, and ask the sixteen-year-old Harry to act as a Ministry mascot to fulfill his "duty to be used by the Ministry." Pp. 221, 331, 346. Of all the self-interested bureaucrats in the Ministry of Magic, however, Dolores Umbridge takes the cake. In *The Order of the Phoenix*, she is sent to Hogwarts as a new professor and the "High Inquisitor." See ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1. By the end of the book she has taken over as the headmaster, created an "inquisitorial squad" of students to act as student informants and enforcers, and has generally turned Hogwarts into a mini-fascist state. *Id.* We eventually learn that in her thirst for power she sent dementors to attack Harry and his cousin Dudley in Little Whinging, attempted to use an "unforgivable curse" on Harry, and has generally broken any and all laws in an effort to discredit Harry and gain favor with Fudge. *Id.* In *The Half-Blood Prince*, Harry is horrified to learn that she is still a powerful force at the Ministry and appalled at her gall in attending a Hogwarts funeral. Pp. 345, 642.

41. See, e.g., TERRY L. ANDERSON & DONALD R. LEAL, FREE MARKET ENVIRONMENTALISM 57–58 (2d. ed. 2001) (arguing that public-choice theory explains the failure of many environmental regulations); ALBERT BRETON & RONALD WINTROBE, THE LOGIC OF BUREAUCRATIC CONDUCT (1982) (using the tools of economic analysis to explain bureaucratic conduct); WILLIAM T. GORMLEY, JR., TAMING THE BUREAUCRACY (1989) (arguing the same for bureaucracy as a whole).

The greatest strength of the public-choice theory is, of course, its simplicity, and how much it comports with our own experience of government.⁴² The word “bureaucrat” itself has come to have a negative connotation,⁴³ and many would instinctively agree that bureaucrats look out for their own interests ahead of the interests of the public.

The power of Rowling’s portrait of bureaucratic activity is similarly its believability. Given the list of Ministry of Magic activities at the start of this Review, this is no mean feat. Rowling makes the Ministry’s actions reasonable with well-drawn characters and difficult situations. Fudge, the original Minister of Magic, is portrayed as a classic bumbling politician: not quite up to the job, but generally genial and harmless (pp. 5–15). Fudge’s replacement, Scrimgeour, is described as the battle-hardened leader offering “an immediate impression of shrewdness and toughness” (p. 16). Dolores Umbridge is the über-bureaucrat, an unctuous climber who begins every discussion with a phony “Hem Hem” and ends each with multiple references to Ministry protocols.⁴⁴ Percy Weasley is the familiar young striver, willing to adopt any position of the Ministry in order to get ahead.

Combining these characters, different in every way except for their overweening self-interest, with the extreme circumstances of the return of Voldemort, the reader believes that the Ministry is capable of almost anything. Furthermore, anyone who has lived in England or the United States post-9/11 will recognize the themes raised by *The Half-Blood Prince*: government by and for the public relations effect, the indefinite detention of suspects for show, obtrusive governmental searches,⁴⁵ and government pamphlets offering silly advice of little help.⁴⁶ Meanwhile, there is little in the way of actual help.

The most powerful aspect of Rowling’s portrait of the Ministry of Magic as a corrupt, self-perpetuating bureaucracy is how natural it all seems. Rowling creates a government that fits—and actually exceeds—each of the public-choice assumptions about government, and closely resembles our own government in personnel and activities.

42. See James Q. Wilson, *The Politics of Regulation*, in *THE POLITICS OF REGULATION* 361 (James Q. Wilson ed., 1980) (“The virtues of the economic perspective on regulation are clear. . . . [I]t offers an elegant and parsimonious way of explaining a great deal of human behavior.”).

43. In researching this Review, I came across a fascinating little book that discusses the long history of administrative arms of governments, and the relatively shorter history of bureaucracy as a concept. See *BUREAUCRACY: THE CAREER OF A CONCEPT* (Eugene Kamenka & Martin Krygier eds., 1979). It also covers the popular dislike of bureaucracy. See Martin Krygier, *State and Bureaucracy in Europe: The Growth of a Concept*, in *id.* at 2 (noting that the word bureaucracy has had “a busy career as a weapon of popular invective”).

44. See, e.g., ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 211.

45. *The Half-Blood Prince* features several scenes where the students are searched leaving Hogwarts, creating this response from Ron Weasley: “‘What does it matter if we’re smuggling Dark stuff OUT?’ demanded Ron, eyeing the long thin Secrecy Sensor with apprehension. ‘Surely you ought to be checking what we bring back IN?’ His cheek earned him a few extra jabs with the sensor” P. 243.

46. Consider the Ministry’s pamphlet “Protecting Your Home and Family Against Dark Forces.” Pp. 42–43, 61–62.

III. HARRY POTTER AND THE BUREAUCRACY THAT ATE GOVERNMENT WHOLE

Despite the intuitive power of public-choice theory, defenders of government and bureaucracy remain unconvinced, and offer a spirited critique of public-choice theory. Interestingly, Rowling foresees many of these defenses of government, and her portrayal of the Ministry of Magic parries them with ease.

A. *The Democratic Defense*

The first line of attack against public-choice theory is always that bureaucrats must answer to elected officials, who must in turn answer to the voters.⁴⁷ This defense has both descriptive and normative aspects. As a descriptive/empirical matter, defenders of bureaucracy question whether bureaucrats really have the ability or capacity to hoodwink elected executives or legislators who have to answer to their constituents.⁴⁸ As a normative matter, defenders of bureaucracy argue that democracy justifies bureaucracy as a result of deliberation and public buy-in.⁴⁹

Rowling strips the Ministry of Magic of even this most basic justification, as Fudge is replaced by Scrimgeour as the Minister of Magic with no mention of an election.⁵⁰ To the contrary, Rowling uses the passive voice of the verb “to sack” repeatedly to describe Fudge’s fate.⁵¹ The lack of an election is highlighted by a meeting between the muggle Prime Minister (presumably Tony Blair) and Fudge (the former Minister of Magic) and Scrimgeour (the new Minister) (pp. 1–18). The description of the muggle Prime Minister features a discussion of elections and political opponents, two elements of governmental life that are notably absent from the Ministry of Magic.

47. See, e.g., Daryl J. Levinson, *Empire-Building Government in Constitutional Law*, 118 HARV. L. REV. 915, 933–34 (2005) (noting political oversight as a check on self-interested bureaucracies).

48. See Spence & Cross, *supra* note 38, at 119 (“[T]he empirical evidence on independent bureaucracies does not support the claims that independent bureaucrats advance their own interests at the expense of the commonwealth; to the contrary, greater independence may better promote the public interest.”); Edward Rubin, *The Conceptual Explanation for Legislative Failure*, 30 LAW & SOC. INQUIRY 586–90 (2005) (book review).

49. See BRIAN J. COOK, BUREAUCRACY AND SELF-GOVERNMENT 1–28 (1996) (arguing that bureaucracy both responds to and fosters democratic impulses); LARS UDEHN, THE LIMITS OF PUBLIC CHOICE: A SOCIOLOGICAL CRITIQUE OF THE ECONOMIC THEORY OF POLITICS 184–88, 329–61 (1996) (asserting that much of public-choice theory is antidemocratic, and that deliberative democracy can support a legitimate bureaucratic state).

50. Prior to *The Half-Blood Prince*, it was an open question whether the wizarding world had any elections. The fact that the Ministry stripped Dumbledore of his titles and positions in *The Order of the Phoenix* made it seem unlikely, but not impossible, that elections occurred.

51. We first learn the news from Fudge himself: “I was sacked three days ago!” P. 15. Harry later uses similar verbiage. P. 60. Scrimgeour is described as “appointed Minister of Magic,” again with no description of who did the “appointment.” Pp. 40–41.

One mystery that remains after *The Half-Blood Prince* is the legislative or rule-making power of the Ministry of Magic. It is clear that the Ministry enforces the laws, and there are discussions in the books about adopting new laws, but there is never any mention of a legislature or legislative process. The hints that Rowling drops, however, are not encouraging.⁵²

These omissions are purposeful, authorial decisions by Rowling. A government that has no elections and no democratic process for lawmaking obviously lacks the legitimacy of a democratic regime. Nevertheless, the overall similarity of the Ministry of Magic to our own government in actions, motivation, and personnel suggests that elections and democratic lawmaking actually have little, if any, effect on government as experienced by its subjects.

B. The Structural Defense

Defenders of bureaucracy frequently note that bureaucrats are overseen by other governmental and nongovernmental entities.⁵³ In the U.S. system, for example, bureaucrats are subject to varying levels of oversight by the president, Congress, a politically appointed head of the agency, and a free press to root out any wrongdoing.

The first thing to note about Rowling's Ministry of Magic is that she has created a government structure that appears to be one hundred percent bureaucracy. There is a Minister of Magic, but he is appointed, not elected. It is unclear who appoints the Minister of Magic, but perhaps it is the elites. There are multiple offices and committees below the Minister, but each of these appears to be a classic bureaucracy within a bureaucracy, each staffed by a junior minister with their own area of responsibility.

There is a judicial body, the Wizengamot, which Rowling describes as the "the Wizard High Court."⁵⁴ We have good reason to believe it is substantially controlled by the Minister of Magic, and it certainly does not seem to be an independent check on Ministry authority.⁵⁵

There are thus no governmental bodies outside the Ministry of Magic to act as a check upon government abuses. Again, this suggests that neither

52. Harry's trial in book five suggests that the laws are quite pliable and possibly subject to change at the Minister of Magic's whim. During the trial Fudge and Dumbledore argue over a point of law and the following exchange occurs: "'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 . . .'" ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 149.

53. See JAMES Q. WILSON, *BUREAUCRACY: WHAT GOVERNMENT AGENCIES DO AND WHY THEY DO IT* 235–94 (1989) (describing the roles of Congress, the president, and the courts in overseeing bureaucratic activities).

54. ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 95.

55. In *The Order of the Phoenix*, Dumbledore is fired as Chief Warlock of the Wizengamot because of his criticism of Ministry policy. *Id.* When Harry later appears before the Wizengamot to answer the trumped-up charges of underage use of magic, Fudge appears to be the main officiator and leader. *Id.* at 137–51. Although Harry successfully pleads his case before the Wizengamot, the sheer procedural irregularities and Ministry domination of the proceeding offer little hope of an independent judiciary to stem government abuses. *Id.*

governmental structure nor checks and balances matter much: bureaucracy will run roughshod regardless.

C. *The Free Press*

Free speech and freedom of the press are generally taken as constitutional guarantees in the United States, and are perceived to be fundamental to a just and responsive government. In the narrower sense, a free press is considered another check on bureaucratic or governmental misconduct.⁵⁶

Humorously, Rowling denies the magical world a free press (or even a functional press).⁵⁷ Both *The Half-Blood Prince* and *The Order of the Phoenix* are replete with instances of the Ministry leaning on the press to print what is essentially government propaganda.⁵⁸ Again, this strips the government of even the possibility of press oversight, or realistically public oversight, because wizards (not unlike we poor muggles) typically rely upon the press for information outside of their daily experience.

D. *Bureaucrats Are People Too*

Another line of defense is the public-minded bureaucrat. Some theorists argue that the public-choice critique ignores what government officials are really like. They are not greedy, self-interested, budget-maximizers. Instead, they are decent and publicly oriented.⁵⁹

Rowling rolls over this possibility in three ways. There are five main characters that are Ministry employees: Fudge, Scrimgeour, Umbridge, Percy Weasley, and Arthur Weasley (Ron and Percy's father).⁶⁰ The first four of these five characters are basically villains, and are unquestionably motivated by self-interest and a naked lust for power rather than the public interest. The fifth of those characters, Arthur Weasley, is actually the excep-

56. See, e.g., Potter Stewart, "Or of the Press", 26 HASTINGS L.J. 631, 634 (1975) ("The primary purpose of the constitutional guarantee of a free press was . . . to create a fourth institution outside the Government as an additional check on the three official branches.").

57. If you think the depiction of the press as a government puppet is unflattering, Rowling has actually lightened up since her portrayal of the evil reporter Rita Skeeter—the reporter equivalent of Dolores Umbridge—in *The Goblet of Fire*. Throughout *The Goblet of Fire*, Skeeter followed a well-known pattern of the press: she built Harry up as a hero at first, only to tear him down later, with unfair and scurrilous selective reporting on both ends. See ROWLING, *THE GOBLET OF FIRE*, *supra* note 4, at 275–76, 380–81, 445–46, 531–32. Just as I speculate later about why Rowling might not have much use for government, see *infra* Part IV, I think Rowling's depiction of the press is likely a reaction to her own life. Rowling's abrupt arrival as a magnet for Britain's rough-and-tumble tabloids following her success as an author must have been brutal.

58. P. 221 (repeating the *Daily Prophet's* uncritical reporting on the Stan Shunpike arrest); p. 314 (alleging that the Ministry squashed a story that Scrimgeour is a vampire in the alternative press); see also ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 94 ("[T]he Ministry's leaning heavily on the *Daily Prophet* not to report any of what they're calling Dumbledore's rumor-mongering . . .").

59. See, e.g., CHARLES T. GOODSSELL, *THE CASE FOR BUREAUCRACY* 101–06 (2004).

60. You could include Barty Crouch from *The Goblet of Fire* on this list, although it would not improve the overall batting average for public-interested Ministry employees.

tion that proves the rule. He is a decent, hardworking bureaucrat who loves his work at the Ministry. Of course, in Rowling's Ministry, no good deed goes unpunished. Arthur Weasley is described as a relative failure. At one point in *The Order of the Phoenix*, Harry is taken to his office, which is in the basement, down several long hallways, and is "slightly smaller than [a] broom cupboard."⁶¹ Lastly, in *The Half-Blood Prince*, two of the most revered characters, Dumbledore and Harry, clearly have little use for the Ministry or its bureaucrats.⁶²

E. *Love It or Leave It*

There is not a strong scholarly tradition of what I am calling the "love it or leave it" defense, but it does exist, and has actually come to the fore in recent years. This defense of government basically requires citizens to accept the legitimacy of the government and its actions as a duty of citizenship, and then rebukes any criticisms as unpatriotic. The interesting thing about this defense is that it explicitly raises the question of governmental legitimacy: if one assumes governmental legitimacy, it may be appropriate to ask a citizen to "love it or leave it." If one leaves open the possibility that governments and laws may lack legitimacy, it becomes much harder simply to order blind allegiance.

Rowling makes quick work of this potential defense. In *The Half-Blood Prince*, Harry makes it clear that he feels no independent duty to be used by the Ministry for the benefit of the public. Harry's decision should come as no surprise: throughout the novels Harry seems to pick and choose certain school rules—and even Ministry laws—to follow or disregard depending on the situation and his own sense of morality or duty. Rowling treats these decisions by Harry as if they are natural and easy, but taken together with Harry's rejection of the Ministry's overtures in *The Half-Blood Prince*, Rowling presents a remarkably contingent and situational approach to both government and law.

In sum, Rowling has created a world where all of our negative governmental stereotypes have come true. She combines familiar character types and government structures with a vision of government by the bureaucrats, and for the bureaucrats, to create a devastating critique of Anglo-American government.

61. ROWLING, *THE ORDER OF THE PHOENIX*, *supra* note 1, at 132–34. Arthur does get a small promotion (and presumably a better office) in *The Half-Blood Prince*. P. 84.

62. In *The Half-Blood Prince*, Dumbledore notes that he has been offered the job of Minister of Magic, "[b]ut the Ministry never attracted me as a career." P. 443. Dumbledore similarly disparages the Ministry's attempts at public safety through leaflet. Pp. 61–62. Likewise, Harry declares his loyalty to Dumbledore over the Ministry twice in *The Half-Blood Prince*, making clear that Harry pledges his allegiance to those he respects and trusts instead of feeling any overriding obligation to the government. Pp. 343–48, 647–50.

IV. J.K. ROWLING AND THE LIBERTARIAN MINDSET

Anyone familiar with Rowling's personal story will know that when she started the Harry Potter series, she spent a period of time unemployed and on public assistance in Edinburgh, divorced with a young child. These biographic details are frequently juxtaposed with Rowling's current financial status.⁶³

Rowling's personal story provides two insights into her feelings toward government. First, in both England and the United States there is no quicker route to hating the government than dealing with the various bureaucracies that handle public assistance. As a general rule, you can predict how user-friendly a bureaucracy will be by determining whether the served constituency regularly votes and/or gives campaign contributions.⁶⁴ Those persons unfortunate enough to have to rely upon the government for assistance obviously are unlikely to have sufficient funds to donate to political causes. Similarly, poor people are less likely to vote than other socioeconomic groups.⁶⁵ As such, you can expect that the bureaucracies set up to deal with the poor will be relatively badly run and user-unfriendly.

If the public assistance bureaucracy does not answer to its customers, the poor, for example, then to whom do they respond? The obvious answer is legislators and members of the executive branch. In times of tight government funding, it seems clear that these parties will exert pressure on the bureaucracy to grant fewer applications and to root out any fraud or waste in the system. As a result, the best scenario for poor people may be a disinterested bureaucracy, because an interested bureaucracy may meet them with skepticism or outright hostility. Moreover, because each approved application costs the government money, there is pressure to make the system as unwieldy and complicated as possible to deter applications. The Social Security Disability system is a typical example. The application process for disabled individuals (including mentally disabled individuals) requires pages of paperwork, medical testimony and records, and months and years

63. See Jim Auchmuty, *Author to Deliver New 'Harry Potter,' Third Child in 2005*, ATLANTA J.-CONST., December 22, 2004, at 1H; Wikipedia, J.K. Rowling, http://en.wikipedia.org/wiki/J._K._Rowling (last visited Sept. 16, 2005).

64. Consider, for example, the Social Security disability system, which has been described as "one of the least user-friendly bureaucracies known to the administrative state." Barbara A. Sheehy, *An Analysis of the Honorable Richard Posner's Social Security Law*, 7 CONN. INS. L.J. 103, 104 (2002); cf. BRUCE ACKERMAN & IAN AYRES, VOTING WITH DOLLARS: A NEW PARADIGM FOR CAMPAIGN FINANCE 14 (2002) (arguing that a campaign finance reform that would grant each voter "patriot dollars" to donate to politicians would "reshape the political marketplace and enable it to become more responsive to the judgments of equal citizens than to the preferences of unequal property owners").

65. Ironically, this may be partially because the least educated citizens are the least equipped to handle the bureaucratic process of registering and appearing to vote. See Jonathan Nagler, *The Effect of Registration Laws and Education on U.S. Voter Turnout*, 85 AM. POL. SCI. REV. 1393, 1395-1403 (1991).

of perseverance.⁶⁶ Thus, I think that Rowling's experience on public assistance likely soured her on bureaucracy for a lifetime.

Second, Rowling's story smacks of success through self-reliance and sheer force of will. The Harry Potter novels likewise show a strong strain of self-reliance and stubborn independence, and Rowling came upon these themes the hard way. Anyone who has pulled herself out of poverty as Rowling has is likely to believe that self-reliance and hard-work are the keys to success, and to be conversely wary of government intervention.

V. HARRY POTTER AND THE FUTURE LIBERTARIAN MAJORITY

The Libertarian Party claims to be the fastest-growing political party in the United States.⁶⁷ After reading *The Half-Blood Prince*, I am much more convinced. The libertarian movement relies upon two interrelated concepts to recruit: (a) "[t]hat government is best which governs least,"⁶⁸ and (b) self-reliance and respect of individual rights should be paramount.⁶⁹ *The Half-Blood Prince* makes both of these points exceptionally well. Rowling taps into the current general distrust of government in the United States⁷⁰ and the United Kingdom⁷¹ and creates a Ministry of Magic that simultaneously echoes and critiques our own governments. On the one hand, she creates a government that is repulsive in its structure, personnel, and actions. On the other, she crafts this government to appear closely related to our own government. This juxtaposition creates a powerful and subtle critique of government.

The truly surprising aspect of *The Half-Blood Prince* is how effortlessly Rowling covers the questions of the nature, role, and legitimacy of government in what is ostensibly a work of children's literature. I must admit that when I sat down to reread the Harry Potter books in light of *The Half-Blood Prince* I did not expect to find the overwhelming skepticism of government that seeps through Rowling's work. Of course, the ability to entertain first

66. See, e.g., CAROLYN A. KUBITSCHKE, SOCIAL SECURITY DISABILITY: LAW & PROCEDURE IN FEDERAL COURT (1994). In Knoxville, Tennessee, where I live and teach law, the SSI Disability office recently moved from the Federal building downtown (where it was a short walk from the various homeless shelters, and reachable on almost any bus line) to a strip mall in the distant suburbs where there are not sidewalks and there is infrequent bus service.

67. See National Libertarian Party, America's Third Largest Party, <http://www.libertarianparty.net/issues/party.shtml> (last visited Sept. 16, 2005).

68. HENRY DAVID THOREAU, *Civil Disobedience*, in HENRY DAVID THOREAU: COLLECTED ESSAYS AND POEMS 203, 203 (Elizabeth Hall Witherell ed., 2001).

69. See ROBERT NOZICK, ANARCHY, STATE, AND UTOPIA 183-231 (1974) (offering a libertarian critique of the Rawlsian state); MURRAY N. ROTHBARD, FOR A NEW LIBERTY: THE LIBERTARIAN MANIFESTO (2d ed. 1978) (stating a theory of libertarian political philosophy); MURRAY N. ROTHBARD, THE ETHICS OF LIBERTY (1982) (same, in a more academic structure).

70. See THE PEW RESEARCH CENTER, HOW AMERICANS VIEW GOVERNMENT: DECONSTRUCTING DISTRUST (1998), <http://people-press.org/reports/display.php3?ReportID=95>.

71. Pauline Park, *Is Tony Blair Spun Out?*, THE GULLY, Sept. 5, 2003, http://www.thegully.com/essays/britain/030905_blair_spin_kelly.html.

and foremost, although providing other levels of discourse, is the hallmark of great and thoughtful literature, and *The Half-Blood Prince* is both.