

## The Laws of Magic and the Magic of Laws

A Study of the Unbreakable Vow from *Harry Potter and the Half-Blood Prince* from a Legal and Ontological Perspective

MARCO MAZZOCCA

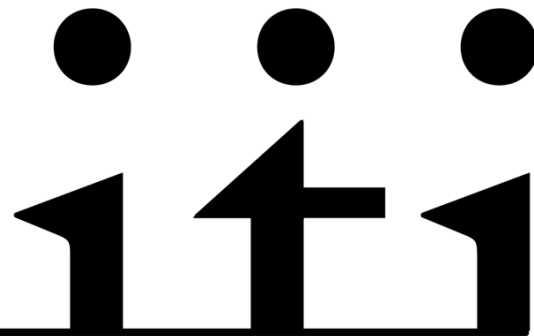
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Prince* from a Legal and Ontologi-  
cal Perspective

MARCO MAZZOCCA\*

*This work analyses the «Unbreakable Vow» as developed in the plot of the novel Harry Potter and the Half-Blood Prince from a legal and ontological perspective. In particular, the relationship between magic and law is investigated in light of social ontology and is compared to Roman law's obligations verbis contractae.*

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### I. Introduction

The world described in the *Harry Potter* series has an exceptional feature that distinguishes these works from many other excellent fantasy series.<sup>1</sup> Instead of being located in some remote fictional world, locations such as «Little Whinging», «Diagon Alley», and «Hogwarts» all have quite familiar geographical locations – the county of Surrey, London, and the Scottish Highlands, respectively.

Likewise, even the political geography of the novels should be quite familiar. Throughout the saga, we discover, for example, that there

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<sup>1</sup> Indeed, in many popular fantasy series, such as «The Lord of the Rings» or «The Chronicles of Narnia», or the more recent «A Song of Ice and Fire», events occur in other worlds (respectively «Middle Earth», «Narnia», and «Westeros»). See TOLKIEN J.R.R., *The Fellowship of the Ring*, London 1954; LEWIS C. S., *The Lion, the Witch and the Wardrobe*, London 1950; MARTIN GEORGE R.R., *A Game of Thrones*, New York 1996.

is a reserve of dragons in Romania<sup>2</sup> and that Bulgaria and Ireland each have formidable national «Quidditch» teams.<sup>3</sup> In other words, every magical community seems to be nothing more than a subgroup of citizens of a given nation.<sup>4</sup> However, they are not like other citizens, for they are wizards and witches.

In ROWLING's books, we are made to understand that wizards and witches' magical abilities demand ad hoc legal measures such as the «Decree for the Reasonable Restriction of Underage Sorcery» or the «Law regarding ownership of charmed objects».<sup>5</sup> Furthermore, magic and law sometimes seem to merge to the point of generating fascinating magical-legal institutions, such as contracts that are formed through the use of magical artifacts (such as the «Goblet of Fire»)<sup>6</sup> or agreements that are concluded through the use of magic (such as the «Un-

breakable Vow».<sup>7</sup>

This work's main objective is to analyze one of these legal-magical agreements from a legal and ontological perspective. To this end, this article first presents a brief exploration of the concepts of law and magic (II.). Thereafter, it compares an ancient legal institution and ROWLING's «Unbreakable Vow» to show how in some cases, in the past, magic and law were considered the same thing (III.). This article then shows how magic and law do not differ significantly from an ontological point of view; rather, they are more distinct when considered from the perspective of social ontology (IV.).

## II. Law and Magic

### A. Law

In modern linguistic practices,<sup>8</sup> the term «law» is often used even outside the legal context. Indeed, the word «law» can also be used, for example, in the scientific field to describe «what always happens when the same conditions exist».<sup>9</sup> However, there is a considerable semantic gap between, for instance, NEWTON's law of universal gravitation<sup>10</sup> and the law that legalizes divorce in a country. While the former attempts to account for a physical phenomenon, the latter is the result of the will of a legislative body.

Thus, it seems appropriate to distinguish between a legal sense and a scientific or

<sup>2</sup> The dragon sanctuary in Romania is first mentioned in ROWLING J.K., *Harry Potter and the Philosopher's Stone*, London 1997, p. 254.

<sup>3</sup> The existence of the national «Quidditch» teams of Bulgaria and Ireland is reported in ROWLING J.K., *Harry Potter and the Goblet of Fire*, London 2000, p. 87 et seqq.

<sup>4</sup> One might wonder what kind of minority this is and how it is governed. From the books, we know that a «Minister of Magic» oversees the magical institutions of the UK. However, it is not clear how this individual is elected, whether they are a real first minister, or whether they are part of the cabinet of the British government. It is also not clear whether there is a legislative body for the magical community. Instead, the judiciary power of the UK's magical community is held by the «Wizengamot» – even if its jurisdiction has not yet been made clear. Actually, following the conclusion of the book series, J.K. ROWLING has revealed that the «Wizengamot» currently functions as a combined court and parliament. Cf. ROWLING J.K., *Wizarding World*, Order of Merlin, 2015.

<sup>5</sup> Curiously, both the «Decree for the Reasonable Restriction of Underage Sorcery» and the «Law regarding ownership of charmed objects» are first mentioned in ROWLING J.K., *Harry Potter and the Chamber of Secrets*, London 1998, p. 21 and p. 41.

<sup>6</sup> The «Goblet of Fire» is first mentioned in ROWLING (Fn. 3), p. 215.

<sup>7</sup> The «Unbreakable Vow» is first mentioned in ROWLING J.K., *Harry Potter and the Half-blood Prince*, London 2005, p. 30.

<sup>8</sup> The concept of linguistic practice is widely used in many branches of philosophy. Generally speaking, linguistic practice refers to concrete language use in a given community, «(including using language to shape and reshape the meaning, truth, knowledge, and value of human activities)». SUN ZHENBIN, *Language, Discourse, and Praxis in Ancient China*, Berlin/Heidelberg 2015, p. 77.

<sup>9</sup> Law, in: *Cambridge Dictionary*, 2021.

<sup>10</sup> Cf. NEWTON ISAAC, *Philosophiae Naturalis Principia Mathematica*, London 1687.

magical (depending on the context) sense of the term «law». In this regard, hereafter, it is proposed to ground such a distinction on the difference between what is possible and what is lawful.<sup>11</sup> Specifically,

- in a legal sense, a law distinguishes what is lawful from what is not lawful, while
- in a scientific or magical sense, a law distinguishes what is possible from what is not possible.

From this perspective, a law such as «Gamp's Law of Elemental Transfiguration» is to be considered law in a magical sense, since it dictates the rules of transfiguration and the exceptions thereto. Certainly, wizards and witches may attempt to break that law. However, as suggested in the novel *Harry Potter and the Deathly Hallows*, such an attempt would be destined to fail, as this law does not concern what is lawful but rather what is possible.<sup>12</sup> Then there are cases in the *Harry Potter* series in which the word «law» is to be understood exclusively in the legal sense. In this regard, consider, for instance, the previously mentioned «Law regarding ownership of charmed objects». That law does not determine whether objects can be enchanted (it is likely that all objects can be enchanted); instead, it determines what their owners can lawfully do with them. Finally, there are also cases where it is not easy to discern whether one is dealing with a legal institution or a magic spell. Consider, in this regard, the «Unbreakable Vow»<sup>13</sup>: one might wonder whether it concerns the domain of what is lawful or that of

which what is possible. An initial reading of ROWLING's work could make one lean towards this second possibility. After all, the term «unbreakable» suggests that it is impossible to break the vow – not that it is unlawful to break it.

On closer inspection, however, one can notice that it is indeed possible to break an «Unbreakable Vow». Should this happen, there is an unpleasant consequence: the death of the one who breaks the vow. Nevertheless, it is possible to break an «Unbreakable Vow». What is not possible, however, is the conjunction of breaking a vow and staying alive.

Therefore, when the literary character of Ronald Weasley says, «Well, you can't break an Unbreakable Vow»,<sup>14</sup> he does not mean that it is impossible to break it but simply that someone cannot break a vow and remain alive.

Thus, exactly like laws in the legal sense, even an «Unbreakable Vow» does not make a particular action impossible. What changes is how a breach is detected, and sanction is provided. In the case of an «Unbreakable Vow», the punishment that occurs for a breach (the death of the one who broke the vow) occurs automatically and without any human mediation. In short, it occurs magically.

## B. Magic

In the previous subsection, it was suggested that the «Unbreakable Vow»:

- does not appear to concern the domain of what is possible, and
- is to be considered magical only to the extent that breach discovery and the infliction of the corresponding punishment occur automatically and do not require any human intervention.

These statements, however, are not immune to criticism.

<sup>11</sup> Cf. ZANETTI FRANCESCO, I limiti del diritto. Aspetti del dibattito contemporaneo, in: *Rivista di filosofia del diritto*, 2017/6, p. 25 et seqq.

<sup>12</sup> In this sense, for instance, according to the fictional «Gamp's Law of Elemental Transfiguration», it is impossible to transfigure food. Cf. ROWLING J.K., *Harry Potter and the Deathly Hallows*, London 2007, p. 471.

<sup>13</sup> In J. K. ROWLING's *Harry Potter* series, an «Unbreakable Vow» is a kind of binding magical obligation between two parties which, if broken, causes the death of whoever broke the obligation. It is first mentioned in: ROWLING (Fn. 7), p. 30.

<sup>14</sup> ROWLING (Fn. 7), p. 271.

An initial criticism might be that «simple impossibility is too restrictive (covers too few cases)», whereas «conjunctive impossibility is too permissive (covers too many)».<sup>15</sup> Thus, an intermediate criterion – one that, while admitting that the certainty of death does not make it impossible to violate a vow, acknowledges that it affects people’s choice to violate the vow – seems necessary.

It could also be argued that proving that the «Unbreakable Vow» does not seem to concern the domain of what is possible does not imply that it concerns the domain of what is lawful. Indeed, we have no information concerning the lawfulness or unlawfulness of such a vow. Certainly, it may be that the subject matter of a vow may be unlawful and that, for example, someone commits themselves to kill another person with the «Unbreakable Vow». However, even in such kind of cases, it is the subject of the vow that should be considered unlawful and not the vow itself.

Finally, one can also criticize the supposedly magical nature of the «Unbreakable Vow». Indeed, if the «Unbreakable Vow»’s magic lies in the automatism of its effects in case of vow violation, it can be argued that it is not very different from some «Muggle technologies».<sup>16</sup> In this regard, it is sufficient to consider the wide range of contemporary technologies that can perform automatic actions according to certain inputs.

Indeed, a careful reading of ROWLING’s novels would lead one to affirm that magic is considered a kind of technology for the magical community and that technology is considered a kind of magic for the Muggle community.<sup>17</sup> After all, as members of the

Muggle community, «we use the increasingly complex technology that is at our disposal without really knowing how and why it works. When it breaks down, we call in an expert to repair it, or we throw it away. In our trust that, ultimately, technology will always work for us, we are like the people of ancient times who relied on magic that seemed to work for them and had worked for their ancestors for a very long time».<sup>18</sup> In other words, as DERRIDA correctly noted, «because one increasingly uses artifacts and prostheses of which one is totally ignorant, in a growing disproportion between knowledge and know-how, the space of such technical experience tends to become more animistic, magical, mystical».<sup>19</sup>

Therefore, the magical characteristics shared by both the magic of wizards and witches and «Muggle artifacts» (including the law<sup>20</sup>) would lie not so much in the automatic nature of their effects but rather in the users’ lack of knowledge of their functioning.

### III. Legal Forms and Magic Formulas

#### A. The «Unbreakable Vow» and its Form

Even though it seems not possible to determine the lawfulness or unlawfulness of the «Unbreakable Vow», at first glance, it appears to share some features with Muggles’ legal obligations. Indeed, both the «Unbreakable Vow» and Muggles’ legal obligations involve a tie between at least two parties that imposes duties on one party in fa-

<sup>15</sup> MILLER DAVID, Constraints on Freedom, in: Ethics, 1983/9(1), p. 66 et seqq., p. 77.

<sup>16</sup> A first idea of what is meant by «Muggle technologies» in the magical world is provided by Hermione Granger’s character, who defines them as «All those substitutes for magic Muggles use – electricity, and computers and radar, and all those things». ROWLING (Fn. 3), p. 462.

<sup>17</sup> Cf. REGAZZONI SIMONE, La Filosofia di Harry Potter, Milano 2017, p. 51 et seq. As explained since the very first book of the *Harry Potter* se-

ries, a «Muggle» is a «non-magic folk». ROWLING (Fn. 2), p. 57.

<sup>18</sup> LUCK GEORG, Exploring the Ancient World, in: Luck Georg (ed.), Arcana mundi: magic and the occult in the Greek and Roman worlds, Baltimore 1985, p. 1 et seqq., p. 1.

<sup>19</sup> DERRIDA JACQUES, Faith and Knowledge, in: Derrida Jacques (ed.), Acts of religion, New York 2002, p. 40 et seqq., p. 91.

<sup>20</sup> For a first approach to the conception of the «Law as an Artefact» see FLORES IMER B., Law as an Artefact, SSRN, 2019.

vor of the other.<sup>21</sup>

In the third chapter of *Harry Potter and the Half-Blood Prince*, it is possible to observe the formation of an «Unbreakable Vow». That chapter tells of the visit Narcissa Malfoy, mother of the main character's rival, and her sister Bellatrix Lestrange made to Severus Snape. Narcissa wanted Snape to help her protect her son Draco, who has been assigned a risky mission by Lord Voldemort (the main villain of the *Harry Potter* series). Snape, the Hogwarts school potions professor and director of Slytherin (the Hogwarts house of which Draco is a member), offers to help Draco. However, Narcissa is not content with a mere offer of help: she asks him to make an «Unbreakable Vow». It is at this point in the narrative that readers learn that, although it may seem to be an agreement between two parties, the formation of an «Unbreakable Vow» also requires a third party: the «Bonder».<sup>22</sup>

The latter seems to be an exciting role to study since it appears to be, in a way, entirely external to the vow. The «Bonder» does not make any promises or require that they be made. However, it seems to be the only party entitled to use magic during the stipulation of an «Unbreakable Vow». The «Bonder», indeed, seems to be exactly what the name indicates: the personification of the bond created by the vow.

Once a «Bonder» is identified, the novel suggests that the «Unbreakable Vow»'s form requires the contracting parties to hold hands throughout the vow process. To the eyes of a Muggle jurist, such a «handshake» might seem like a merely symbolic act similar to those used by Muggles in some of their legal obligations. However, since the «Unbreakable Vow» is stipulated through magic, it is impossible to know whether such a handshake is necessary for the bond's magical element to take effect.<sup>23</sup>

Therefore, once the contracting parties' hands are joined, they proceed to make the vow through a question-and-answer form. Specifically, in the case mentioned in the sixth novel of the *Harry Potter* series, Mrs. Malfoy asked Snape the following three questions:

1. «Will you, Severus, watch over my son, Draco, as he attempts to fulfill the Dark Lord's wishes?»
2. «And will you, to the best of your ability, protect him from harm?»
3. «And, should it prove necessary [...] if it seems Draco will fail [...] will you carry out the deed that the Dark Lord has ordered Draco to perform?»<sup>24</sup>

Interestingly, the Hogwarts professor's answer for each question is a simple and asser-

<sup>21</sup> In legal terms, an obligation can be seen as a «legal tie (*vinculum juris*), between a debtor and a creditor, created through the medium of a specific sort of relationship, such tie imposing duties on the debtor in favour of the creditor». HOGG MARTIN, *Obligation, Law and Language*, New York 2007, p. 14. As rightly suggested by the reviewers of this article, the very etymology of the word «vinculum» is somewhat reminiscent of the concept of chaining of the debtor to the creditor. Indeed, as HOWE points out, the «phrase *vinculum juris* as employed in the definition of the Institutes, is an energetic expression [...] which is thus likened to a tether of steel». HOWE WILLIAM W., *Studies in the Civil Law*, Littleton 1980, p. 99.

<sup>22</sup> Cf. ROWLING (Fn. 7), p. 17–31.

<sup>23</sup> In this regard, one might wonder whether the hand should be offered freely by parties. Indeed, since there are more possibilities in terms of forcing someone to reach out their hand and provide their consent in the magical world than in the Muggle world, one might wonder whether the will of the parties involved could not be flawed, much like in Muggle obligations. In truth, it is not difficult to imagine how a wizard, or a witch could force another person's will. Consider, for example, the «Imperius Curse», which, when cast successfully, places the victim completely under the caster's control. However, it should be noted that, in the *Harry Potter* series, it is repeatedly hinted that such a curse, as well as the other two «Unforgivable Curses», is unlawful in the UK. Cf. ROWLING (Fn. 3), p. 176 et seqq.

<sup>24</sup> Cf. ROWLING (Fn. 7), p. 31.

tive «I will».

Given the three-question formulation of the vow, one might wonder whether those three conjunct promises are part of a single «Unbreakable Vow» or whether they are three different «Unbreakable Vows». In support of the first option, it is possible to note how the second and third questions are preceded by the conjunction «and». In contrast, in favor of the view that these are three distinct «Unbreakable Vows», one could note that the Bonder's magical activity occurs after every single question and answer.

Whatever the case may be, the consequences of any violation of the «Unbreakable Vow(s)» would not change. If it were a single vow comprised of three conjunct promises, the breach of one of them would violate the entire vow and result in the death of the party who breached it. In contrast, if each promise corresponds to a single «Unbreakable Vow», the breach of one would violate the corresponding vow and, again, result in the death of the party who breached it.

More interesting than the number of Vows is the person for whose benefit they were made. Indeed, in the vow under consideration, none of the promises favor the involved parties. Instead, each promise is for the benefit of a person who was not even present during the vow stipulation (i.e., Draco Malfoy).

The very idea that an «Unbreakable Vow» can be made for a non-contracting party's benefit involves several considerations. Among these, the most important concerns what would happen should the person for whose benefit the vow was made be unaware of it or, worse, opposed to the subject matter of the vow. Based solely on what we know from the books, one could venture that the non-contracting party's will (or their knowledge of the vow) is irrelevant. However, it is worth noting that the cooperation of the person for whose benefit the «Unbreakable Vow» was made could facilitate the fulfilment of the vow.

Fulfilling an «Unbreakable Vow», in fact,

does not seem to be particularly easy given the wide semantic range of the terms used in promises. Consider, for example, the terms «watch over» used in the first question of the analyzed vow(s): what would Snape have been required to do to fulfill this requirement? Would it have been sufficient to occasionally check in on what Draco was doing? Or should he have been watching over Draco for every moment of the latter's life?

The problem posed by the nature of the vow is thus purely definitional in nature: who defines the semantic breadth of the terms used in the «Unbreakable Vow» questions, and when they do so?

The books provide no answers to these questions. However, it is possible to imagine that the criteria for the semantic interpretation of an «Unbreakable Vow» are (explicitly or implicitly) defined by someone simultaneously to the promises, as, otherwise, one would commit to something undefined.

## B. The Form Mirrored by Roman Law

Legal obligations differ from other types of inter-subjective relationships because the creditor (also called the «active subject» in Roman law) can only satisfy their interest through the debtor's (also called the «passive subject» in Roman law) cooperation. Legal obligations, in other words, demand that the debtor must behave in a certain way should they not want to be held liable against the creditor.<sup>25</sup>

In the previous subsection, it was argued that although it is impossible to determine whether an «Unbreakable Vow» is a legal obligation, both legal obligations and «Unbreakable Vows» seems to share some features.<sup>26</sup> In particular, the «Unbreakable

<sup>25</sup> In this sense, cf. TALAMANCA MARIO, *Istituzioni di Diritto Romano*, Milano 1990, p. 501; ZIMMERMANN REINHARD, *The law of obligations: Roman foundations of the civilian tradition*, Oxford 1996, p. 1.

<sup>26</sup> This, however, should not be surprising. After all, if one considers law as «an integral aspect of

Vow's oral form and its ritual nature seem to recall an ancient *obligationes verbis contractae* of Roman law: the *sponsio*.<sup>27</sup>

The *sponsio* is an ancient legal obligation whose origin probably dates back to the dawn of Rome. A historical period, that of archaic Rome, in which *ius* (i.e., what was legal) and *fas* (i.e., what was sacred) were indistinguishable. It is precisely this lack of difference between what was sacred and what was legal that makes certain Roman legal institutions so intriguing. In particular, it has been argued that it was likely the religious dimension that made the *sponsio* both extremely formal and extremely binding in intersubjective relations among Roman citizens.<sup>28</sup>

It seems, therefore, that the *sponsio* required

- the presence of at least three parties;
- the use of a question-and-answer form between two parties;
- the involvement of a third party called a *pontifex* (a sort of cleric/jurist), who would have pronounced the ritual legal/religious formulas, which the parties would then repeat; and
- the *congruentia verborum*, which means that the verbs used in questions (*spondeo*) had to be used in the re-

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spondere), it is no wonder that it could pervade society's cultural products. In this sense, cf. TALAMANCA BRIAN Z., *A Realistic Theory of Law*, Cambridge 2017, p. 1.

<sup>27</sup> In ancient Rome, *obligationes verbis contractae* were a category of obligations that were orally contracted. A rather wide category that, in addition to the *sponsio*, also included the *stipulatio*, the *dotis diction*, and the *promissio iurata liberti*. Cf. TALAMANCA (Fn. 25), p. 560.

<sup>28</sup> Indeed, in many ancient city-states such as archaic Rome, belonging to the *civitas* meant belonging to the city's religion. Thus, the religious community was the community of the state. Therefore, the rules regarding the state religion were, to all intents and purposes, state rules, and there were no differences between *ius humanum* (human law) and *ius sacrum* (sacred law). Cf. TALAMANCA (Fn. 25), p. 19–22.

spondere) to those questions (*spondeo*).

Furthermore, it should also be noted that the *sponsio* was a prerogative of Roman citizens. In other words, the *sponsio* could only take place between Roman citizens and only in Latin; otherwise, it would have been devoid of any legal force.<sup>29</sup>

Even from this brief examination of the *sponsio*, it is possible to note certain similarities between this legal obligation and the «Unbreakable Vow».

The first similarity concerns the number of parties involved: both the vow and the *sponsio* require the presence of at least three parties. However, the non-contracting parties, namely the «Bonder» and the *pontifex*, play different roles. In the case of the «Unbreakable Vow», the «Bonder» takes action (using magic) following each individual vow. In the case of the *sponsio*, the *pontifex* takes (legal and religious) action before every single promise.

Another similarity concerns the question-and-answer form that both the *sponsio* and the «Unbreakable Vow» require. However, even in this case, a subtle difference must be noted: While the *sponsio* requires perfect correspondence between the verb(s) used in the question and the verb used in the response, it is not clear whether this requirement is also necessary for the «Unbreakable Vow» or whether the repetition seen in the previously presented example is instead a lucky coincidence largely due to the syntax of the English language.

Furthermore, it should also be emphasized that both the *sponsio* and the «Unbreakable Vow» are reserved for specific groups of individuals: the citizens of ancient Rome in the case of the former and citizens endowed with magical powers in the case of the latter. However, although there is no doubt that the verb *spondere* could be validly used only by Roman citizens, there are doubts as to whether only wizards and witches can make an «Unbreakable Vow». In particular, since

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<sup>29</sup> For a more extensive description of the *sponsio* characteristics, cf. TALAMANCA (Fn. 25), p. 560.



the magical element of an «Unbreakable Vow» is provided by the «Bonder», one might wonder whether other parties must be wizards or witches.

Finally, there is also the magic that permeates and characterizes both the «Unbreakable Vow» and the *sponsio*. However, while there is no doubt concerning the «Unbreakable Vow»'s magical element, it may be difficult to identify the magical element of a legal obligation. For this reason, the next subsection discusses the magical aspect of Roman law and, in particular, the reasons why the *sponsio* should be considered both a legal obligation and a magical act.

### C. The Magical Aspect of Roman Law

The comparison between the «Unbreakable Vow» and the *sponsio* only shows a certain degree of similarity between a fictional magic spell and an ancient religious/legal ritual. However, the assumption that magic and law are in some way similar has not yet been proven, and religion and magic indeed seem to be quite distinct.

In the *Harry Potter* series, for example, it seems that magic and religion are different and co-existing spheres.<sup>30</sup> However, the same cannot be said for the early Roman *civitas*, in which magic and religion were considered the same.

As reported by FARALLI, according to Swedish philosopher AXEL HÄGERSTRÖM, the gods of ancient Rome were magical forces personified in beings apparently endowed with will. The gods' benevolence depended on neither humility nor love manifested in

the act of worship but was magically «prompted» by the act of worship itself.<sup>31</sup>

In ancient Rome, citizens' inner attitudes towards the gods were completely irrelevant; what mattered was the exact recitation of certain words or the exact performance of certain actions. In this sense, acts of worship were magical acts. Thus, considering that at least in the early phase of the Roman Empire, it was not possible to distinguish between acts of worship and legal acts, it can be concluded that legal acts were also magical acts.<sup>32</sup>

Therefore, even a religious/legal act such as *sponsio*, which consisted of the performance of symbolic acts and the pronunciation of *verba solemnia*, must be considered a magical act. In particular, HÄGERSTRÖM considered the *sponsio* a legal/magical act suitable for establishing a certain power over a person; the formality of this act was understood not as a legal validity condition of the act but as a creative force of specific automatic effects. Indeed, the violation of the ancient Roman community's legal and religious norms, as well as the violation of a sacred/legal oath such as the *sponsio*, automatically constituted a violation of the *Pax Deorum*,<sup>33</sup> much like how breaking the «Unbreakable Vow» entails an automatic punishment. Therefore, not only did the *sponsio* automatically create effects, but its violation also produced automatic effects that did not require human intervention.

Of course, it could be argued that the resto-

<sup>30</sup> Religion in the *Harry Potter* series is only mentioned incidentally. However, after the end of the book series, the author herself confirmed the presence of students of different religions at Hogwarts. Cf. BAUSELLS MARTA, JK Rowling confirms that there were Jewish wizards at Hogwarts, in: [The Guardian of December 17, 2014](#).

<sup>31</sup> Cf. FARALLI CARLA, *Diritto e magia. Il realismo di Hägerström e il positivismo filosofico*, Bologna 1992, p. 100.

<sup>32</sup> In this regard, HÄGERSTRÖM explains such indistinguishability through the example of the things (*res*) consecrated to the gods that could belong neither to the state nor to private citizens. Cf. HÄGERSTRÖM AXEL, *Der römische Obligationsbegriff im Lichte der allgemeinen römischen Rechtsanschauung I*, Uppsala 1927, p. 28 et seqq.

<sup>33</sup> The *Pax Deorum* can be defined as a situation in which the ancient Roman gods were not angry with the community. Cf. TALAMANCA (Fn. 25), p. 19–22.

ration of the *Pax Deorum* would have required the discovery of a violation and the imposition of sanctions. However, the violation of the *Pax Deorum* occurred automatically, regardless of whether the Roman *civitas* was aware of it. For this reason, it is possible to consider the violation of the *Pax Deorum* as an automatic punishment that did not require any human intervention.

Moreover, it should be noted how the idea of the magical origins of Roman law proposed by HÄGERSTRÖM is still much debated. Some authors, in this regard, have accused the Swedish philosopher of having overestimated the magical element in ancient Roman law. Indeed, although Roman law scholars generally recognize a particular affinity between legal formalism and magic/religious formalism, this would not allow claiming that law and magic were the same in ancient Rome.<sup>34</sup> Not to mention the fact that tracing the origins of Roman law – and, consequently, the origins of most of today's legal systems – back to a sort of religious superstition would deprive the law of objectivity.<sup>35</sup>

However, as pointed out by HÄGERSTRÖM himself, the goal of his study is not to show that law and magic were one and the same in ancient Rome but, rather, to demonstrate that ancient Roman citizens considered the law a form of magic.<sup>36</sup>

## IV. Muggles' Ontology and Magic Words

### A. Muggles' Ontology

In the *Harry Potter* series, magic acts in the field of what is possible. This means that magic makes certain things, like enchanting people or transfiguring objects, possible. However, outside of literary fiction, not many people would be willing to argue that things such as curses, spells, or magical potions exist in the ordinary world (i.e., the «Muggle world»). On the contrary, if one wished to draw up a catalog containing everything that exists in the world, they would likely not include things like magic wands, flying broomsticks, or defensive spells in it.<sup>37</sup> Instead, a serious universal catalog of our world would likely be composed of the entirety of the people who inhabit the world and the objects to be found in it, as well as everything that happens to these people and objects.

Some people are probably convinced that nothing magical happens in the world. Many persons, instead, are certain of the existence of things such as money or phenomena such as weddings. However, from a strictly realistic point of view, money and weddings, as well as magic, do not exist in our world.<sup>38</sup> Consider, for example, money: in the world, there are a great number of small pieces of colored paper that many of us keep inside our wallets, but there is no such thing as money. If money exists, it exists only because we have assigned the status of money to certain objects. In other words, no pieces of paper perform the function of money

<sup>34</sup> Cf. KUNKEL WOLFGANG, (Review of) Axel Hägerström, *Der römische Obligationsbegriff*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 1929/49, p. 479 et seqq.

<sup>35</sup> Indeed, as BINDER pointed out, attempting to explain legal concepts such as rights and duties tracing them to an unknown and mysterious phenomenon such as magic would not allow for a full understanding of the legal concepts themselves. Cf. BINDER JULIUS, (Review of) Axel Hägerström, *Der römische Obligationsbegriff I*, in: *Kritische Vierteljahresschrift Für Gesetzgebung und Rechtswissenschaft* 1931/24, p. 269 et seqq.

<sup>36</sup> Cf. HÄGERSTRÖM (Fn. 32), p. 399.

<sup>37</sup> Cf. VARZI ACHILLE C., *Parole, Oggetti, Eventi e altri argomenti di metafisica*, Rome 2001, p. 13–19.

<sup>38</sup> This point of view is sometimes called «realism» or even «metaphysical realism». For a definition of «metaphysical realism», see: LOWE JONATHAN, *Essentialism, Metaphysical Realism, and the Errors of Conceptualism*, in: *Philosophia Scientiae* 2008/12, p. 9 et seqq., p. 9.

because they are printed in a certain way, have a specific size, or feature a particular color. A piece of paper performs the function of money only due to the collective acceptance that it has the status of money in a specific context (usually a state or group of states).<sup>39</sup>

From the point of view of social ontology, the law does not seem very different from money. Indeed, the law as well as money would not exist if there were no beliefs, perceptions, memories, desires, will, intentions, feelings, and actions related to it. In other words, their existence depends on our intentionality. The latter is a basic (although amazing) aspect of our mental life: «it is the power of minds to be about, to represent, or to stand for, things, properties and states of affairs».<sup>40</sup> Thus, one might venture the hypothesis that it is precisely collective intentionality and collective acceptance that make laws in our world concretely effective. In other words, unlike in archaic Roman times in which belief in the magical/religious effects of legal entities led people to believe in the existence of laws, today the concrete effects of legal institutions seem to be linked to the collective acceptance of (and collective intentionality on) the law.<sup>41</sup>

In this regard, consider, for example, the legal institution of marriage. Laws belonging to different contexts (religious or civil) prescribe different procedures through which two people can marry. In some contexts, for example, two people can get married only after performing certain gestures and pronouncing certain formulas in front of a

group of people.<sup>42</sup> However, if certain gestures and formulas were not recognized and collectively accepted as constitutive of a marriage, there would not be any kind of marriage. It would perhaps be possible for people to fall in love and spend their lives together in the same place, but it would not be possible to do so as husband and wife. Indeed, terms such as «husband» and «wife» denote a «status» that people acquire as a result of a specific legal event: the marriage.<sup>43</sup> However, a person cannot become a husband or wife simply because they have performed specific actions; such statuses can be acquired only because some activities are recognized as being suited to constituting a marriage in a given context.<sup>44</sup>

Legal entities such as marriages, contracts, or public limited companies cannot be reduced to (and should not be confused with) physical entities. Of course, they can be constituted by physical entities, but they cannot be «reduced» to them.<sup>45</sup> Thus, it seems not possible to reduce a verbal obligation to either a series of sounds or to the feeling of being obligated as well as it seems not possible to reduce a \$10 banknote to a mere piece of paper. Unlike entities such as animals or trees, which exist regardless of the intentionality of subjects towards them,<sup>46</sup> things such

<sup>39</sup> For an in-depth analysis of this example concerning money, cf. SEARLE JOHN R., Money: Ontology and Deception, in: *Cambridge Journal of Economics* 2017,/41(5), p. 1453 et seqq.

<sup>40</sup> JACOB PIERRE, Intentionality, in: *The Stanford Encyclopedia of Philosophy*, 2019.

<sup>41</sup> This reflection is primarily inspired by: CONDELLO ANGELA/SEARLE JOHN R., (2017), Some Remarks about Social Ontology and Law: An Interview with John R. Searle, in: *Ratio Juris* 2019/30(2), p. 226 et seqq.

<sup>42</sup> On this topic see: WOLFRAM MÜLLER-FREIENFELS, Cohabitation and Marriage Law – A Comparative Study, in: *International Journal of Law, Policy and the Family* 1987/1(2), p. 259–294. WARDLE LYNN D., Marriage and Religious Liberty: Comparative Law Problems and Conflict of Laws Solutions, in: *Journal of Law & Family Studies* 2010/12(2), p. 315 et seqq.

<sup>43</sup> On the concepts of «status», «status function» and «constitutive rule», cf. SEARLE JOHN R., *The Construction of Social Reality*, New York 1995, p. 28.

<sup>44</sup> Cf. SEARLE JOHN R., *Il mistero della realtà*, Milano 2019, p. 207–220.

<sup>45</sup> Cf. DE VECCHI FRANCESCA, Ontologia sociale e intenzionalità: quattro tesi, in: *Rivista di estetica* 2012/49.

<sup>46</sup> Cf. VARZI ACHILLE C./FERRARIS MAURIZIO, Che cosa c'è e che cos'è, in: VARZI ACHILLE C. (ed.), *Il mondo messo a fuoco. Storie di alluci-*

as money or oral agreements seem to ontologically depend on our beliefs.

Therefore, from the perspective of social ontology, there is a significant difference between magic and law – which is well emphasized by the «Unbreakable Vow». Indeed, as repeatedly noted, what makes the «Unbreakable Vow» magical is its ability to automatically detect and punish any breach of its term without the need for human mediation. In comparison, Muggles' legal obligations seem to produce effects in the ordinary world only through human mediation and only as long as there is collective acceptance of the existence of such obligations. In other words, it is humans who make legal institutions concrete; they are the ones who find, judge, and punish any breaches of obligations. Unlike the Roman Empire period, indeed, contemporary Muggle legal obligations lack any automatic self-fulfilling element.

## B. Magic Words

From an ontological perspective, both magic and law do not exist.<sup>47</sup> There are no things like legal obligations, laws, spells, or curses in our world.<sup>48</sup>

However, from the point of view of social ontology, which focuses on «the study of the nature and properties of the social world»,<sup>49</sup> it is possible to explain certain legal phenomena, such as legal obligations or marriages, with reference to the notion of «collective acceptance». Such acceptance «involves believing that the entities have that

status as well as being disposed to treat them as such».<sup>50</sup> In other words, laws, contracts, legal obligations, or marriage produce concrete effects in the world because we believe they have a certain status.

According to a social ontology perspective, legal obligations produce concrete effects in our world if and only if some individuals recognize (and collectively accept) their legal status.<sup>51</sup> The same considerations seem to be true even for the «Unbreakable Vow». Indeed, since it requires that more than one person take part in its creation, there seems to be a minimal form of collective acceptance. In other words, all parties to the «Unbreakable Vow» seem to have to collectively accept the vow itself – otherwise, they would not take part in the «spell». However, it is important to note that the «Unbreakable Vow» seems to be an exception to the normal functioning of magic in *Harry Potter's* world. Indeed, in the world created by J.K. ROWLING, most spells produce effects regardless of the collective acceptance of their status and effects. For example, if a wizard or a witch waves their wand and utters the word «Lumos» in *Harry Potter's* world, a light will be produced regardless of whether anyone knows that spell has been cast.<sup>52</sup> In other words, in most of the spells of *Harry Potter's* world, what matters seem to be the individual intentionality (and magical abilities) of the one casting the spell.<sup>53</sup>

Of course, one could argue that words are as

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nazioni e miopie filosofiche, Rome 2010, p. 5–27.

<sup>47</sup> In this paper, ontology is understood in its classical sense as the study of what there is. For a general introduction to the topic of ontology, see VARZI ACHILLE C., *Ontologia*, Rome 2005.

<sup>48</sup> On this point, cf. QUINE WILLARD V., *On What There Is*, in: *Review of Metaphysics* 1948(2), p. 21 et seqq.

<sup>49</sup> EPSTEIN BRIAN, *Social Ontology*, in: *The Stanford Encyclopedia of Philosophy*, 2018.

<sup>50</sup> HINDRIKS FRANK, *Collective Acceptance and the Is-Ought Argument*, in: *Ethic Theory and Moral Practice* 2013/16, p. 465 et seqq., p. 468.

<sup>51</sup> One could discuss whether collective acceptance concerns all individuals in a given community or only those who administer justice – i.e., the officials. In this regard, it should be noted that important authors such as HART and KELSEN, even though they do not deal directly with the issue, seem inclined to support the last option. Cf. KELSEN HANS, *Pure Theory of Law*, 2<sup>nd</sup> ed., Berkeley 1967; HART HERBERT L. A., *The Concept of Law*, 2<sup>nd</sup> ed., Oxford 1994.

<sup>52</sup> Cf. ROWLING (Fn. 5), p. 287.

<sup>53</sup> On individual intentionality, see JACOB (Fn. 40).

important in *Harry Potter's* magic world as they are in Muggle's legal matters. Indeed, just as in the wizarding world, a wizard or witch only needs to utter the word «Lumos» to create light;<sup>54</sup> two people in our world only need to utter the words «I do» in a certain context (with witnesses, celebrants, etc.) to become spouses.<sup>55</sup> However, from an ontological point of view, while it seems that spells in *Harry Potter's* world generally require only the intentionality of those who utter them (individual intentionality), the legal effects of an act exist in our world to the extent that it is collectively accepted as a legal act. In other words, certain formulas and rituals are considered legal because they are collectively recognized as having a legal status.

At this point, it could be argued that even if the right words were to be pronounced in the correct context, the effects of a legal obligation would not actually exist in the real world but rather in the minds of individuals who would consider them as real – and act in the world accordingly. However, in the words of professor Dumbledore, headmaster of Hogwarts and one of the wisest and most powerful wizards of the *Harry Potter* series, even if such legal effects were only existing in people's heads, «why on earth should that mean that [...] [they are] not real?»<sup>56</sup>

## V. Conclusion

Arguably, a legal analysis of the «Unbreakable Vow» does not provide any certainty as to whether or not it is a legal obligation. Nevertheless, studying such a fictional enchantment/institution allows us to examine legal obligations from an often-ignored perspective, one that makes it possible to clearly distinguish the boundaries between magic and law: the perspective of law in literature.<sup>57</sup>

Specifically, this paper has attempted to show how, although seemingly distinct, magic and law have some similarities, which seem to connect them. Therefore, after showing how in ancient societies (as ancient Rome), legal acts were considered both magical and religious, it has been pointed out that some similarities between law and magic seem to persist to this day. Particularly, there seems to be at least one element in common among the «Unbreakable Vow», the *sponsio*, and contemporary conceptions of legal obligations: the belief in being bound. Indeed, both the Snape and Malfoy characters for the «Unbreakable Vow» and ancient Roman citizens for the *sponsio* and those who enter into a legal obligation nowadays believe to be bound in some way. The belief is the same; what changes are the reasons why they believe to be bound.

<sup>54</sup> It could be argued that even in the case of the magic described in the *Harry Potter* series, a minimal context that requires the wizard or witch to possess the wand would be necessary. However, it should be noted that in the *Harry Potter* novels, wizards and witches do not always need a wand to cast a spell. Moreover, a wizard or witch's possession of a wand might not be connected to any spells. Cf. ROWLING (Fn. 7), p. 62 et seqq.

<sup>55</sup> The example of marriage is taken from JOHN AUSTIN's famous work *How to do things with words*. In that text, the English philosopher introduces the idea that language not only describes reality but can also do something. Cf. AUSTIN JOHN L., *How to do things with words*, Cambridge 1962.

<sup>56</sup> ROWLING (Fn. 12), p. 591.

<sup>57</sup> Clearly, I am referring to the field of Law & Humanities and, particularly, the Law & Literature point of view. For an introduction to the topic see: WARD IAN, *Law and literature: possibilities and perspectives*, Cambridge 1995.