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Legal Structures in a Game of Thrones: The Laws of the First Men and Those That Followed

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**LEGAL STRUCTURES IN A GAME OF THRONES: THE LAWS OF THE FIRST
MEN AND THOSE THAT FOLLOWED**

David P. Weber*

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* Author's note: I never expected to write these words in a law review article, but, spoilers are coming. Thank you to Shayla Slaymaker, my indefatigable research assistant on this project, and to Creighton University School of Law for supporting this project every step of the way. Thank you also to Rob Stark (former research assistant and now valued colleague) for his comments on the Article.

*When you play the game of thrones, you win or you die. There is no middle ground.*¹

– Cersei Lannister

I. INTRODUCTION

For as long as we humans have recorded our existence, we have developed rules to govern our affairs.² It is not surprising, then, that the rule of law predominates not only our own lives but also that of those worlds which only exist on paper or the screen. Generally, the more complex the society, the more complex the rules it has developed to govern it. In the lands of Westeros, Essos, the Free Cities, and Slaver's Bay, rules, laws, and customs appear to dominate one's life to a greater extent than we may feel in our own lives.³

The laws of the Game of Thrones ecosystem—which consist of dragons, magic, and treachery—at times feel shockingly different from our own, but many more similarities exist than we may prefer to acknowledge. An article in the *New Yorker* described Game of Thrones as “a world in which the law has not yet formed, [that] lowers us into the pit of the human brain.”⁴ But that assertion is not quite accurate. Broad legal themes, such as a border-length wall to keep out the Others, the abolishment of slavery, effective criminal procedures, and the very structure of political systems themselves—whether through democracy, aristocracy, plutocracy, or theocracy—abound. This Article will look at significant legal topics such as political and legal structures, criminal law and procedure, and, briefly, immigration law—as well as examining the applicable rules, laws, and customs for each of these legal topics in the world of *A Song of Ice and Fire*.⁵ In addition, this Article will highlight stark⁶ differences and startling similarities to many of our current laws and customs, demonstrating the underpinnings of what binds us together

1. GEORGE R.R. MARTIN, *A GAME OF THRONES* 488 (Bantam Books Mass Market ed. 2011) [hereinafter *A GAME OF THRONES*].

2. See, e.g., Joshua J. Mark, *Ur-Nammu*, ANCIENT HISTORY ENCYC. (June 16, 2014), <http://www.ancient.eu/Ur-Nammu/> (describing The Code of Ur-Nammu, developed around 2050 BCE, as one of the first complete law codes in the world).

3. GEORGE R.R. MARTIN, *A SONG OF ICE AND FIRE* (Bantam Books spec. ed. 2015). *A Song of Ice and Fire* is a series of five published novels with two more expected. See *A Song of Ice and Fire*, A WIKI OF ICE & FIRE, http://awoiaf.westeros.org/index.php/A_Song_of_Ice_and_Fire (last modified Sept. 12, 2018).

4. Clive James, *The Raw Appeal of Game of Thrones*, NEW YORKER (Apr. 18, 2016), <https://www.newyorker.com/magazine/2016/04/18/the-raw-appeal-of-game-of-thrones>.

5. *Id.*

6. Bad pun intended.

and makes us a society.⁷ The more you read of *A Song of Ice and Fire*, the more you realize that you are reading about our society⁸—our mores, our evolving rules and standards, and, most especially, about power and who wields it.

II. STRUCTURE AND GOVERNANCE (ON CONSTITUTIONAL LAW)

*Power resides where men believe it resides. No more and no less . . . [a] shadow on the wall . . . yet sometimes shadows can kill. And oftimes a very small man can cast a very large shadow.*⁹

– Varys

A. Monarchy

*I swear to you, sitting a throne is a thousand times harder than winning one.*¹⁰

– Robert Baratheon

Human beings have long had formal rules to govern their conduct within society.¹¹ Some of those rules were imposed on them by the ruling class, others were adopted freely by them to proscribe certain behaviors,¹² and

7. This Article is not the first to look at parallels between the worlds created in *A Song of Ice and Fire* and our own. See, e.g., Neil deGrasse Tyson (@neiltyson), TWITTER (Sept. 24, 2017, 4:13 PM), <https://twitter.com/neiltyson/status/912062422898348034>; Neil deGrasse Tyson (@neiltyson), TWITTER (Sept. 24, 2017, 4:46 PM), <https://twitter.com/neiltyson/status/912070876950122496> (analyzing the biology and physics in the *Game of Thrones* television series).

8. George R.R. Martin stated that the series is inspired in part by real events such as the decades-long civil war known as the Wars of the Roses. Ishaan Tharoor, *Watch: The Real History Behind Game of Thrones*, WASH. POST (May 12, 2015), https://www.washingtonpost.com/news/worldviews/wp/2015/05/12/watch-the-real-history-behind-game-of-thrones/?utm_term=.e08800878899.

9. GEORGE R.R. MARTIN, *A CLASH OF KINGS* 132 (Bantam Books Mass Market ed. 2011) [hereinafter *A CLASH OF KINGS*].

10. *A GAME OF THRONES*, *supra* note 1, at 47.

11. See, e.g., Kathryn E. Slanski, *The Law of Hammurabi and its Audience*, 24 YALE J.L. & HUMAN. 97, 103–05 (2012) (discussing the Code of Hammurabi or the Law Stele of Hammurabi from the reign of Hammurabi in Babylonia, dated to approximately 1792 B.C.E. to 1750 B.C.E., that governed many aspects of life from criminal law to family law to property law).

12. ROBERT A. DAHL, *DEMOCRACY*, ENCYC. BRITANNICA ONLINE, <https://www.britannica.com/topic/democracy#toc233828> (last visited Sept. 22, 2018) (analyzing the roots and pathways of the democratic form of government).

others have been presented as divinely inspired.¹³ Today in Europe, ceremonial vestiges of monarchy remain scattered throughout the region,¹⁴ with a constitutional monarchy being the most common form of government. In a constitutional monarchy, the royal family's power is constrained by the governing documents of the nation.¹⁵ In many cases, the limits on the royal family's power are such that the monarch serves only as a figurehead rather than as a leader.¹⁶ Many of the recent revisions to constitutional monarchies clarify that the monarch retains no significant discretionary power, and that the role of political leader is held by the prime minister or other equivalent officer.¹⁷ In the Middle East and a few scattered other regions, however, traditional absolute monarchies continue to exist, with power remaining in the royal family.¹⁸

Historically, monarchies were an extremely common form of government—perhaps the most prevalent until the 1800s.¹⁹ Monarchies provided a predictable leadership structure independent of elections, and through the establishment of a feudal system, could extend the royal reach far beyond the capital city.²⁰ The monarch, owner of all real property in the territory,²¹ would grant fiefs (land) to the noble class in exchange for the

13. Harold J. Burman, *The Origins of Historical Jurisprudence: Coke, Selden, Hale*, 103 YALE L.J. 1651, 1661–62 (1994).

14. See Wim Roobol, *Twilight of the European Monarchy*, 7 EUR. CONST. L. REV. 272, 275 (2011) (discussing the history of the rise and subsequent decline of traditional monarchies in Europe and noting that eleven European states currently have some type of monarchical structure, the majority of which are a constitutional monarchy).

15. See *id.* at 276.

16. *Id.* at 275–76.

17. INT'L INST. FOR DEMOCRACY & ELECTORAL ASSISTANCE, CONSTITUTIONAL MONARCHS IN PARLIAMENTARY DEMOCRACIES 4 (2017), <https://www.idea.int/sites/default/files/publications/constitutional-monarchs-in-parliamentary-democracies-primer.pdf>.

18. See CIA, *Government Type*, THE WORLD FACTBOOK, <https://www.cia.gov/library/publications/resources/the-world-factbook/fields/2128.html> (last visited Sept. 22, 2018) (listing the form of government for each country); see also Charlotte M. Levins, *The Rentier State & The Survival of Arab Absolute Monarchies*, 14 RUTGERS J. LAW & RELIG. 388, 388 (2013) (listing the absolute monarchies that still exist in the Arab world today).

19. See, e.g., Roobol, *supra* note 14, at 281 (stating that monarchy was the most common form of government in Europe throughout the early 1900's).

20. David P. Weber, 'Power Resides Where Men Believe It Resides': Examining the Law of the Game of Thrones, OMAHA WORLD-HERALD (Oct. 12, 2018), https://www.omaha.com/sponsored/crighthon/power-resides-where-men-believe-it-resides-examining-the-law/article_fddb9b69-bda6-5eef-8770-4610938950d2.html.

21. David A. Thomas, *Anglo-American Land Law: Diverging Developments from a Shared History - Part I: The Shared History*, 34 REAL PROP., PROB. & TR. J. 143, 166 (1999).

promise of revenue and protection.²² In turn, the nobles could grant fiefs to knights or other vassals in exchange for promises of loyalty and protection.²³ These lands contained both the natural resources thereon as well as the human resources of the peasant class.²⁴ Inherent in the need for the feudal system was the ever-present recognition that wars were not unlikely, and that standing armies were otherwise too costly to maintain.²⁵ As wealth was accumulated through land, the monarchs and lords beneath them recognized the importance of solidifying the loyalty of the knights and soldiers that would be called upon to battle on their behalf by granting them fiefdoms.²⁶

On its face, the realm of Westeros is an absolute monarchy (the “Seven Kingdoms”) governed by a king (though for now a queen reigns).²⁷ The Targaryen family united seven separate kingdoms through conquest and marriage to consolidate their reign over Westeros, which they controlled for three centuries until Robert Baratheon seized the throne.²⁸ As in most monarchies, the laws of Westeros appear to provide for a hereditary succession to the eldest son (primogeniture).²⁹ This stands in contrast to the

22. *Feudalism*, ENCYCLOPEDIA.COM (2008), <http://www.encyclopedia.com/topic/feudalism.aspx> (last visited Sept. 22, 2018) (noting a Lord can only rescind a granted fief if the vassal commits a felony-type offense). These relationships typically implied permanent bonds.

Permanence of Relationship. References in the capitularies show that this custom of commendation was widespread in the Frankish Empire by the year 816, if not earlier. In the latter year Louis the Pious decreed: ‘If any one shall wish to leave his lord (seniorem), and is able to prove against him one of these crimes, that is, in the first place, if the lord has wished to reduce him unjustly into servitude; in the second place, if he has taken counsel against his life; in the third place, if the lord has committed adultery with the wife of the vassal; in the fourth place, if he has willfully attacked him with a drawn sword; in the fifth place, if the lord has been able to bring defense to his vassal after he has commended his hands to him, and has not done so; it is allowed to the vassal to leave him. If the lord has perpetrated anything against the vassal in these five points it is allowed the vassal to leave him.’ But otherwise, not; vassalage was a permanent relationship.

DANA CARELTON MUNRO, *THE MIDDLE AGES: 395–1272*, at 126–37 (New York: The Century Co. 1921).

23. Thomas, *supra* note 21, at 164–65, 170–71.

24. *Id.* at 173, 191.

25. J. O. Prestwich, *Anglo-Norman Feudalism and the Problem of Continuity*, 26 *PAST & PRESENT* 39, 48 (1963) (noting that “the cost of maintaining military forces would be borne by the king or his subjects”).

26. Thomas, *supra* note 21, at 165.

27. See GEORGE R.R. MARTIN ET AL., *THE WORLD OF ICE AND FIRE* 4 (2014) [hereinafter *THE WORLD OF ICE AND FIRE*]; *Game of Thrones: The Winds of Winter* (HBO television broadcast June 26, 2016) [hereinafter *The Winds of Winter*].

28. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 31–45, 127–29.

29. In 92 A.C., King Jaehaerys I chose his second eldest son, Prince Baelon, as heir apparent over his granddaughter Rhaenys, who was the daughter of King Jaehaerys I’s deceased

southern state of Dorne, which provides for succession based solely on birth order regardless of sex, but which otherwise follows the monarchical structure.³⁰

In Westeros, the ruler holds executive, legislative, and judicial powers.³¹ The ruler is assisted in governing through the Small Council, a cabinet-type body consisting of the Hand of the King,³² the Master of Whisperers,³³ the Lord Commander of the Kingsguard,³⁴ the Master of Coin,³⁵ the Grand Maester,³⁶ the Master of Ships,³⁷ and the Master of Laws.³⁸ These members of the Small Council, akin to modern cabinet position holders, serve at the pleasure of the king.³⁹ Additionally, the Hand of the King is the second in command and can rule when the king is absent.⁴⁰ The role of the Hand is to enforce the directives of the king. The saying goes, “What the king dreams, the Hand builds.”⁴¹ According to canon, the duties of the Hand include drafting laws, dispensing justice, and otherwise administering the affairs of

eldest son, Prince Aemon. However, no Great Council was involved in this decision. King Jaehaerys I did this of his own accord. *See id.* at 60. In 101 A.C., King Jaehaerys I called a Great Council to determine his heir after Prince Baelon predeceased him. In this Great Council, Viserys, the son of Prince Baelon, was favored over Laenor, the son of Princess Rhaenys, whose claims would have had primacy had she been male. *Id.* at 63–65. Great Councils may have been a legal equivalent of a constitutional convention occurring very infrequently to resolve questions of succession. *See* A CLASH OF KINGS, *supra* note 9, at 104–05 (discussing the Great Council passing over King Maekar’s two deceased eldest children’s issue to give the crown to King Maekar’s fourth son Aegon).

30. *See* GEORGE R.R. MARTIN, A STORM OF SWORDS 909 (Bantam Books Mass Market ed. 2011) [hereinafter A STORM OF SWORDS].

31. *See generally* A GAME OF THRONES, *supra* note 1, at 47 (King Robert discussing the duties required of a king such as creating laws, counting coppers, and listening to individuals in court).

32. The King appoints the Hand of the King with consent of the Small Council. A CLASH OF KINGS, *supra* note 9, at 56; *see also* A GAME OF THRONES, *supra* note 1, at 47 (King Robert appoints Ned Stark as Hand of the King).

33. *See* A GAME OF THRONES, *supra* note 1, at 111, 191, 811.

34. *See id.* at 193, 811.

35. *See id.* at 172, 194, 811; A CLASH OF KINGS, *supra* note 9, at 271.

36. *See* A GAME OF THRONES, *supra* note 1, at 190–94, 811.

37. *See* GEORGE R.R. MARTIN, A FEAST FOR CROWS 334–35 (Bantam Books Mass Market ed. 2011) [hereinafter A FEAST FOR CROWS]; *see* A GAME OF THRONES, *supra* note 1, at 811.

38. *See* A GAME OF THRONES, *supra* note 1, at 811.

39. *See id.* at 621 (noting King Joffrey appointed Tywin Lannister as Hand of the King and gave his mother, Cersei Lannister, a seat on the Small Council; King Joffrey also appointed Janos Slynt, Commander of the City Watch, a seat on the Small Council).

40. *Id.* at 47. The Hand of the King conducts Small Council meetings in the absence of the King. *Id.* at 193.

41. *Id.* at 47.

the king.⁴² While the Small Council exists to provide advice and insight, all decisions are ultimately those of the monarch alone.⁴³

In Westeros, there is essentially no separation of powers. The king or queen (or a delegate) administers justice,⁴⁴ handles finances including foreign debt⁴⁵ and the power of taxation,⁴⁶ raises armies and declares war, and imposes new laws at will.⁴⁷ With such unfettered power, it is no surprise the political environment is ripe for strife. Any thought of term limits appears unnecessary since the person who becomes ruler in Westeros generally holds that position for a very brief period (at least in recent times).⁴⁸

It was a purported abuse of power by the married Prince Rhaegar Targaryen in allegedly kidnapping Lyanna Stark that sparked the war which led to the death of the “Mad King” Aerys II Targaryen.⁴⁹ Both the books and TV series hint (as of the time of writing this article) that Aerys II was willing to order the sacrifice of the lives of all that lived within the capital of King’s

42. *Id.*

43. *See, e.g., id.* at 745–46 (King Joffrey allows Small Council members to handle some matters at court but decides other matters in his sole discretion).

44. *See, e.g., A GAME OF THRONES, supra* note 1, at 726 (ordering the execution of former Hand of the King, Ned Stark).

45. *See id.* at 194 (noting the crown’s indebtedness to the Iron Bank). Upon Ned Stark’s arrival to King’s Landing as Hand of the King, one of the first things he learned was that King Robert had become indebted in an amount in excess of six million gold crowns to the Iron Bank, Tyroshi trading cartels, the Faith of the Seven, House Lannister, and House Tyrell. *Id.*

46. *See, e.g., id.* at 273 (the Master of Coin is responsible for financing and raising money for tournaments).

47. Such as when Aegon IV Targaryen legitimized his children born out of wedlock, *THE WORLD OF ICE AND FIRE, supra* note 27, at 97, or when King Tommen declared that all trials henceforth would be conducted before the faith and outlawing the historic right of trial by combat. This occurred in the HBO Series only as the books have not yet progressed to this point). *Game of Thrones: No One* (HBO television broadcast June 12, 2016) [hereinafter *No One*].

48. A similar fate has existed for the Hand of the King. Robert’s last two Hands were both killed. Jon Arryn was surreptitiously poisoned by his wife, Lysa Arryn, in a conspiracy with Peter Baelish in which they accused the Lannisters of the murder of Jon Arryn. *A STORM OF SWORDS, supra* note 30, at 1114. Ned Stark was purportedly executed for treason when he discovered the true parentage of Robert Baratheon’s children. *See A GAME OF THRONES, supra* note 1, at 282, 528, 725–26. Tywin Lannister, Hand of the King to Joffrey, was killed by Tyrion Lannister who is held out to be the third child of Tywin. *A STORM OF SWORDS, supra* note 30, at 1073. Prior to Robert’s reign, Aerys Targaryen’s last Hand was killed within a fortnight of appointment during the Sack of King’s Landing by being burnt to death, and Aerys’ Hand before that was burned to death as well. *A CLASH OF KINGS, supra* note 9, at 56.

49. *Game of Thrones: The Dragon and the Wolf* (HBO television broadcast Aug. 27, 2017) (Prince Rhaegar married Lyanna Stark in a secret marriage in Dorne after the annulment of his first marriage) [hereinafter *The Dragon and the Wolf*]; *THE WORLD OF ICE AND FIRE, supra* note 27, at 127–29; *see also A GAME OF THRONES, supra* note 1, at 733 (explaining that Robert was betrothed to Lyanna and started a war to get her back after Rhaegar took her).

Landing in defense against Robert's attack.⁵⁰ It was that order which drew Jaime Lannister, a member of the Kingsguard, to kill the king he was sworn to protect.⁵¹ Aerys II's successor, Robert Baratheon, was later killed at the instigation of Robert's wife Cersei.⁵² Robert's successor, Cersei's child and his step-son,⁵³ Joffrey, was poisoned on his wedding day by the Tyrell family.⁵⁴ Joffrey's successor, his younger brother Tommen, committed suicide when his mother Cersei destroyed the Great Sept of Baelor with Tommen's wife, Margaery, inside.⁵⁵

It appears that both the King and Hand of the King are positions to which one should aspire with great caution—if at all. As Cersei has famously said, “When you play the game of thrones, you win or you die. There is no middle ground.”⁵⁶ The potential for absolute power attracts many contenders who are willing to go to any extreme to acquire it.⁵⁷ The power itself, as it is so concentrated, leads to a fragility in leadership that was common among our ancestors. Too many kings, pharaohs, shahs, and emperors died unnatural early deaths because others coveted the power they wielded.

In Westeros, a monarchical crisis appears to be looming. Daenerys Targaryen is attempting to reclaim her family's throne in Westeros. Her claim to the throne is based in part on her status as the only surviving child of the “Mad King,” King Aerys II Targaryen.⁵⁸ King Aerys' eldest son Rhaegar was next in line for the throne, and under the law of primogeniture, any legitimate male heir of Rhaegar would have a superior claim over Daenerys.⁵⁹ If, in fact, Jon Snow is the legitimate child of Rhaegar, his lawful claim to the throne

50. A STORM OF SWORDS, *supra* note 30, at 507; *see also Game of Thrones: Blood of My Blood* (HBO television broadcast May 29, 2016) (where Bran has a vision of Aerys ordering his alchemists to create massive amounts of wildfire to destroy the city) [hereinafter *Blood of My Blood*].

51. A STORM OF SWORDS, *supra* note 30, at 507.

52. A CLASH OF KINGS, *supra* note 9, at 61.

53. Though the “step-” aspect of the relationship was unknown to Robert. A GAME OF THRONES, *supra* note 1, at 504.

54. *See* STORM OF SWORDS, *supra* note 30, at 839–40, 936.

55. *The Winds of Winter*, *supra* note 27.

56. A GAME OF THRONES, *supra* note 1, at 488.

57. In Westeros, this includes “blood magic,” sacrificing one's only child in a religious ceremony to the Red God, *Game of Thrones: The Dance of Dragons* (HBO television broadcast June 7, 2015); assassinating one's husband for the legitimacy of her children's claim to the throne, A CLASH OF KINGS, *supra* note 9, at 61; and assembling an army of dragons, *see* A GAME OF THRONES, *supra* note 1, at 805–07, among many others.

58. A GAME OF THRONES, *supra* note 1, at 586.

59. *See* THE WORLD OF ICE AND FIRE, *supra* note 27, at 125 and accompanying text (hinting that primogeniture is the law of the land by suggesting that the King should pass over his firstborn son for the throne since he is disloyal).

would be superior under the Targaryen line.⁶⁰ Not all is lost for Daenerys, however, should she claim her title as a conqueror and not as the next Targaryen in the line of succession. Her claim, like that of Robert Baratheon, would be predicated on military conquest, not bloodline.⁶¹

Depending on the goals of Queen Cersei, the Dornish practice of following birth order—rather than male birth order—for succession to the crown may be implemented in Westeros to solidify the legal basis for Cersei's position.⁶² This implementation would echo reforms in Sweden (1980), the Netherlands (1983), Norway (1990), Belgium (1991), Denmark (2009), Luxembourg (2011), and the United Kingdom (2015), which made succession gender neutral.⁶³ If Queen Cersei were to implement absolute primogeniture, Westeros would have adopted gender neutrality far earlier, relatively speaking, than our own societies.⁶⁴

B. Democracy

1. The Free Folk

*Free folk don't follow names, or little cloth animals sewn on a tunic
... They won't dance for coins, they don't care how you style
yourself or what that chain of office means or who your grandsire
was. They follow strength. They follow the man.*⁶⁵

— Mance Rayder

60. See *id.*; see also Jon Snow, GAME OF THRONES WIKI, http://gameofthrones.wikia.com/wiki/Jon_Snow (as of Sept. 25, 2018) (describing Jon Snow as the son of Lyanna Stark and Rhaegar Targaryen).

61. See THE WORLD OF ICE AND FIRE, *supra* note 27, at 129 (explaining that King Robert's rule began with a rebellion).

62. *Id.* at 242 (explaining that the Dornish girls are equal with Dornish boys in matters of inheritance).

63. See respectively SUCCESSIONSORDNINGEN [SO] [Act of Succession] 1 (Swed.). Succession to the Crown Act 2013, c. 20 (Eng.); GRUNNLOVEN [GRL.] [CONSTITUTION] May 17, 1814, art. 6 (Nor.). 2014 CONST. art. 85 (Belg.); *Décret grand-ducal du 16 septembre 2010 introduisant l'égalité entre hommes et femmes en matière de succession au trône* [Grand Ducal Decree of September 16, 2010 Introducing Equality Between Men and Women in Matters of Succession to the Throne], JOURNAL OFFICIEL DU GRAND-DUCHÉ DE LUXEMBOURG (Lux.), June 23, 2011, at 720; *Denmark Votes to Change Royal Succession Rules*, DEUTSCHE WELLE, June 23, 2011, <https://www.dw.com/en/denmark-votes-to-change-royal-succession-rules/a-4310654>; *Succession to the Throne*, ROYAL HOUSE OF THE NETHERLANDS, <https://www.royal-house.nl/topics/royal-house/succession-to-the-throne> (last visited Sept. 24, 2018).

64. See, e.g., Marie-Pierre Arrizabalaga, *Succession Strategies in the Pyrenees in the 19th Century: The Basque Case*, 10 HIST. OF THE FAM. 271, 275–76 (2005).

65. GEORGE R.R. MARTIN, A DANCE WITH DRAGONS 300–01 (Bantam Books Mass Market ed. 2013) [hereinafter A DANCE WITH DRAGONS].

In contrast to the monarchy entrenched in King's Landing, two other groups in Westeros govern themselves in a democratic fashion: The Free Folk⁶⁶ and the Night's Watch.⁶⁷ The Free Folk are the people who live north of the Wall that separates the political territory of the Seven Kingdoms from the north.⁶⁸ They have long prided themselves on refusing to "bend the knee"⁶⁹ to the established monarch or the various lords in the north.⁷⁰ The Free Folk did not typically act collectively, but rather as individual groups that generally tolerate one another.⁷¹ When circumstances dictated that they unite, they did so by choice—appointing Mance Rayder to the ironically named position of "King-Beyond-the-Wall."⁷² It is not clear by what exact mechanism the Free Folk chose the King-Beyond-the-Wall, though it may have occurred by general acclamation as more and more of the clans came to support him or challengers were vanquished.⁷³

66. See *A STORM OF SWORDS*, *supra* note 30, at 206 (stating that the Free Folk may choose to ride with a new leader or clan whenever they please).

67. See *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 146 (explaining that the Lord Commander of the Night's Watch is appointed by election).

68. *Id.* at 147.

69. See *Game of Thrones: The Wars to Come* (HBO television broadcast Apr. 12, 2015) (Mance Rayder refuses to bend the knee to Stannis, even though doing so would save his life).

70. See *Game of Thrones: Valar Dohaeris* (HBO television broadcast Mar. 31, 2013) (statement of Mance Rayder) ("Stand, boy. We don't kneel for anyone beyond the Wall."); see also *A STORM OF SWORDS*, *supra* note 30, at 1020 (statement of Mance Rayder) ("We will not kneel to you."), and *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 147 (noting that the wildlings believe greater freedom comes from not bowing or kneeling to any man—regardless of his station as lord, king, or priest).

71. Mance Rayder united ninety previously hostile clans north of the wall to form his coalition. He stated:

[d]o you know what it takes to unite ninety clans, half of whom want to massacre the other half for one insult or another? They speak seven different languages in my army. The Thenns hate the Hornfoots, the Hornfoots hate the Ice-river clans, everyone hates the cave people. So, you know how I got moon-worshippers and cannibals and giants to march together in the same army? . . . I told them we were all going to die if we don't get south. 'Cause that's the truth.

Game of Thrones: Dark Wings, Dark Words (HBO television broadcast Apr. 7, 2013) [hereinafter *Dark Wings, Dark Words*].

72. Cf. *A STORM OF SWORDS*, *supra* note 30, at 209 (stating that, although Mance Rayder was able to win over support from some clans through diplomatic means, he prevailed upon others "with the edge of his sword").

73. See *id.* at 1020. Mance Rayder said,

[i]f I've never had a crown on my head or sat my arse on a bloody throne, if that's what you're asking. My birth is as low as a man's can get, no septon's ever smeared my head with oils, I don't own any castles, and my queen wears furs and amber, not silk and sapphires. I am my own champion, my own fool, and my own harpist. You don't become King-beyond-the-Wall because your father was. The free folk won't follow a name, and they don't care which brother was born first. They follow fighters. When I

The King-Beyond-the-Wall does not have a line of succession,⁷⁴ and the position only exists when an individual is sufficiently well-poised and respected to gather a coalition. The position is extremely rare, and Rayder was only the sixth King-Beyond-the-Wall in the past thousand years to attempt to invade the south—all of whom were defeated during the invasions.⁷⁵ The Free Folk, by their very nature, have few formal civil structures or laws.⁷⁶ Custom binds them, though it is only custom, and as such, subject to change. Of the few customs mentioned, the most common relates to family law and marriage. Men are expected to kidnap women (daughters, not wives) from their homes or clans, with the women expected to earnestly resist.⁷⁷ Property rights likewise depend on the strength of the individual to keep what he or she possesses.⁷⁸

Given their strenuous objection to formal rulers, the Free Folk society is more egalitarian, or perhaps “Darwinian,” than that of the Seven Kingdoms. This equality is evident as the Free Folk allow men and women both to go on raiding parties and attacks south of the wall.⁷⁹ The equality present among the Free Folks exists precisely because of the lack of any formal civic structure and the abhorrence of any type of social order or caste system.⁸⁰ The other democratic institution in Westeros exists precisely because of deliberate structure and the order necessary to maintain discipline in harsh conditions.⁸¹

left the Shadow Tower there were five men making noises about how they might be the stuff of kings. Tormund was one, the Magnar another. The other three I slew, when they made it plain they'd sooner fight than follow.

Id.

74. A DANCE WITH DRAGONS, *supra* note 65, at 60 (“You do not become King-Beyond-the-Wall because your father was.”).

75. THE WORLD OF ICE AND FIRE, *supra* note 27, at 147–49; *see also* *Game of Thrones: The Bear and the Maiden Fair* (HBO television broadcast May 12, 2013), and A STORM OF SWORDS, *supra* note 30, at 559 (“In the end Mance will fail as all the Kings-Beyond-the-Wall have failed before him.”).

76. *See* A STORM OF SWORDS, *supra* note 30, at 1020 (statement of Mance Rayder) (“Whose laws? The laws of Winterfell and King’s Landing? . . . When we want laws we’ll make our own.”).

77. *See id.* at 365.

78. *See id.* at 208 (“They have no laws. . . . They steal endlessly from each other. . . .”).

79. *See, e.g.,* A CLASH OF KINGS, *supra* note 9, at 951.

80. *See, e.g.,* THE WORLD OF ICE AND FIRE, *supra* note 27, at 147.

81. *See, e.g., id.* at 145.

2. *The Night's Watch*

*Here, a man gets what he earns, when he earns it.*⁸²

– Benjen Stark

The Night's Watch is the military order charged with defending the wall from all that is north of it, including the Free Folk, giants, and the Others (including White Walkers and wights).⁸³ As noted above, south of the wall, birth order is generally of paramount importance in determining the line of succession.⁸⁴ Because of the rigidity of succession, many later-born offspring were left with no land, income, or title.⁸⁵ One option for them was to renounce their hereditary rights, “take the black,”⁸⁶ and become a sworn member of the Night's Watch.⁸⁷ Additionally, the Night's Watch has served as an outpost for

82. *Game of Thrones: Lord Snow* (HBO television broadcast May 1, 2011); see also *A GAME OF THRONES*, *supra* note 1, at 178 (differing slightly from the quote in the television show) (“On the Wall, a man gets only what he earns.”).

83. See *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 145 (noting that initially the Night's Watch guarded the realms of men from Others, wights, giants, greenseers, wargs, skinchangers, and other monsters); see also *Game of Thrones: Fire and Blood* (HBO television broadcast June 19, 2011) (statement of Lord Commander Jeor Mormont) (“The Night's Watch will ride in force against the wildlings, the White Walkers, and whatever else is out there.”), and *A GAME OF THRONES* *supra* note 1, at 784 (statement of Lord Commander Jeor Mormont) (“This time the Night's Watch will ride in force, against the King-beyond-the-Wall, the Others, and anything else that may be out there.”).

84. See, e.g., *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 60–65.

85. *Lordship*, *GAME OF THRONES WIKI*, <http://gameofthrones.fandom.com/wiki/Lordship> (as of Nov. 26, 2018) (describing a “winner-take-all system in which the designated heir inherits all of [t]heir parents' lands and possessions, to the exclusion of younger siblings”).

86. See *Game of Thrones: Bastards, Cripples, and Broken Things* (HBO television broadcast May 8, 2011) (Samwell Tarley explaining why he renounced his title to join the Night's Watch); see also *A GAME OF THRONES*, *supra* note 1, at 664 (Maester Aemon telling Jon Snow he was a Targaryen prior to becoming a Maester of the Citadel and taking the black); *Game of Thrones: Baelor* (HBO television broadcast June 12, 2011) [hereinafter *Baelor*] (Maester Aemon telling Jon Snow he was in line for the throne but chose to become a Maester and take the black).

87. See *A GAME OF THRONES*, *supra* note 1, at 522, where the new members of the Night's Watch swear their oath:

Night gathers, and now my watch begins. It shall not end until my death. I shall take no wife, hold no lands, father no children. I shall wear no crowns and win no glory. I shall live and die at my post. I am the sword in the darkness. I am the watcher on the walls. I am the fire that burns against the cold, the light that brings the dawn, the horn that wakes the sleepers, the shield that guards the realms of men. I pledge my life and honor to the Night's Watch, for this night and all the nights to come.

castoffs and convicts.⁸⁸ Individuals imprisoned for the commission of certain crimes were offered the opportunity for clemency in exchange for taking these lifelong vows and becoming a member.⁸⁹ All new members take oaths disavowing birthrights, the rights to own land or marry, and any prior allegiances.⁹⁰ Because of the population base from which it recruits its members, the Night's Watch contains individuals from the highest and lowest strata of Westeros.⁹¹ Almost from the moment of their existence, the Night's Watch established laws and hierarchy to maintain order among men with lifelong obligations and heavy vows.⁹²

The Night's Watch is governed by the Lord Commander.⁹³ The Lord Commander is elected to a life term by his fellow members on the Night's Watch⁹⁴ in a ceremony called the "choosing."⁹⁵ Any member of the Night's

88. *See Game of Thrones: The Kingsroad* (HBO television broadcast Apr. 24, 2011) [hereinafter *The Kingsroad*].

89. A STORM OF SWORDS, *supra* note 26, at 1076. *See also* A GAME OF THRONES, *supra* note 1, at 516 (statement of Lord Commander Jeor Mormont) ("You came to us outlaws . . . poachers, rapers, debtors, killers, and thieves . . . Your crimes shall be washed away, your debts forgiven."), 561 (noting that those accused of treason can generally take the black to redeem themselves).

90. A GAME OF THRONES, *supra* note 1, at 522. By swearing the oath of the Night's Watch, individuals begin a new life with new allegiances. As Lord Commander Jeor Mormont said:

So too you must wash away your former loyalties, put aside your grudges, forget old wrongs and old loves alike. Here, you begin anew. A man of the Night's Watch lives his life for the realm. Not for a king, nor a lord, nor the honor of this house or that house, neither for gold nor glory nor a woman's love, but for the realm, and all the people in it. A man of the Night's Watch takes no wife and fathers no sons. Our wife is duty. Our mistress is honor. And you are the only sons we shall ever know.

Id. at 516.

With these vows comes the understanding that sworn brothers of the Night's Watch cannot leave the Wall without prior consent of their commanding officer. *See, e.g., id.* at 779–80 (Jon Snow attempting to leave the Wall without permission but returning to avoid punishment). If a member of the Night's Watch becomes a deserter, the punishment is death. *Id.* at 516.

91. *Id.* at 516 ("You came to us rich, and you came to us poor. Some of you bear the names of proud houses. Others have only bastards' names, or no names at all.").

92. "The choice of a Lord Commander belongs to the Sworn Brothers, and to them alone." A STORM OF SWORDS, *supra* note 30, at 1075. Indeed, "the Night's Watch has been choosing its own leader since Brandon the Builder raised the Wall. Through Jeor Mormont, we have had nine hundred and ninety-seven Lords Commander in unbroken succession, each chosen by the men he would lead, a tradition many thousands of years old." *Id.*

93. THE WORLD OF ICE AND FIRE, *supra* note 27, at 146.

94. *Id.*

95. *See Game of Thrones: Oathkeeper* (HBO television broadcast Apr. 27, 2014). The canon diverges between the books and television show on the voting requirement. A STORM OF SWORDS, *supra* note 27, at 1048 (requiring a two-thirds majority for election); *Game of Thrones*:

Watch can rise to the position of Lord Commander,⁹⁶ making it one of the few meritocracies in Westeros, and every member holds an equal vote regardless of station.⁹⁷ Underneath the Lord Commander are the First Ranger, First Builder, First Steward, and the Maesters who serve as advisers to the Lord Commander.⁹⁸ As the Night's Watch is a military order with the stated goal of maintaining the integrity of the border, the advisers operate more as military aids than a governing cabinet and focus primarily on the success of the mission.⁹⁹

The nearest modern equivalent to the Night's Watch may be Australia when it was used as a penal colony.¹⁰⁰ As with the Night's Watch, prisoners sent to the Australian penal colony under a "ticket-of-leave" were given full or conditional pardons.¹⁰¹ Like the Night's Watch, the importation of prisoners into the penal colony served as a population growth function. Unlike the Night's Watch, where a prisoner of any offense appeared to be able to "take the black," only those convicted of non-capital offenses were permitted to be sent to the penal colony.¹⁰² While Australia had a larger percentage of non-criminal immigrants than convicts, it is estimated that approximately 20 percent of its current population is traceable to those who came either upon

The House of Black and White (HBO television broadcast Apr. 19, 2015) [hereinafter *The House of Black and White*] (requiring a bare majority for election).

96. A STORM OF SWORDS, *supra* note 27, at 1094 (statement of Ser Denys Mallister) ("Any brother may offer any name for our consideration, so long as the man has said his vows.").

97. *See id.* at 1050–51 (describing the process of electing a Lord Commander).

98. A GAME OF THRONES, *supra* note 1, at 178 (The Maester is one of the highest officers in the Night's Watch.).

99. When Lord Commander Jon Snow decided to allow the Free Folk to pass into the Seven Kingdoms, some construed the move as treasonous to the Night's Watch. That decision spurred some members of the Night's Watch, including the First Ranger Alliser Thorne, to assassinate the Lord Commander. The assassination was ostensibly carried out to preserve the mission of the Night's Watch as each member of the insurrection stated, "for the Watch" during the act. *See Game of Thrones: Mother's Mercy* (HBO television broadcast June 14, 2015) [hereinafter *Mother's Mercy*]. In the books, it was Wick Whittlestick and Bowen Marsh who stabbed Jon Snow because he decided to ride south after he received a letter from Ramsay Bolton. By riding south, he was participating in the wars of the Seven Kingdoms and forsaking his vows. A DANCE WITH DRAGONS, *supra* note 65, at 994–1000.

100. *See, e.g.,* Clyde H. Farnsworth, *This Penal Colony Learned a Lesson*, N.Y. TIMES (Aug. 10, 1997), <https://www.nytimes.com/1997/08/10/weekinreview/this-penal-colony-learned-a-lesson.html>.

101. *Convicts and the British Colonies in Australia*, AUSTRALIAN GOVERNMENT, <https://web.archive.org/web/20160101181100/http://www.australia.gov.au/about-australia/australian-story/convicts-and-the-british-colonies> (last updated Nov. 4, 2014).

102. *See* Farnsworth, *supra* note 100 (noting most sent to the penal colony had been convicted of crimes against property).

release or in exchange for being released into a setting with more freedom than a prison cell allowed.¹⁰³

3. *The Role of Democracy*

The democratic institution of the Night's Watch succeeds in spite of (or perhaps because of) the diversity of its members. In a society accustomed to rigid social structures and birth order, it is surprising that noble-born members have never been able to replicate their positions in the Night's Watch as a matter of right.¹⁰⁴ While noble-born have risen to positions of power within the Night's Watch, they do so on merit rather than parentage.¹⁰⁵ Equally interesting is that the appeal of the democratic process, obviously known for thousands of years in the Seven Kingdoms,¹⁰⁶ never spread further south than the northern border. Feudalism and might-as-right continue to dominate the social structure and reinforce the position of the monarch with the most troops at his or her disposal.

Perhaps the most interesting aspect of democracy in the Seven Kingdoms is that it is only practiced by the societies that are among the lowest in terms of socio-economic status. This could suggest that, at least in the World of Ice and Fire, democracy is considered a lower or lesser-evolved form of government than monarchy. Or perhaps it suggests that societies without wealth do not reward the accumulation of power for the perpetual use of dynastic families. Both thoughts are provocative in our society.

103. See, e.g., *Online Records Highlight Australia's Convict Past*, ABC NEWS, <http://www.abc.net.au/news/2007-07-25/online-records-highlight-australias-convict-past/2512534> (last updated July 24, 2007).

104. This phenomenon may be due to conscious rebelliousness against other social systems. See, e.g., *Night's Watch*, GAME OF THRONES WIKI, http://gameofthrones.fandom.com/wiki/Night%27s_Watch (as of Nov. 26, 2018) (noting the Night's Watch use of "solid black on its banner and shields, which symbolize the erasure of any allegiance to noble Houses").

105. See *Game of Thrones: The Gift* (HBO television broadcast May 24, 2015) [hereinafter *The Gift*] ("Bastards can rise high in the world. Like your half-brother Jon Snow. Born the bastard of Winterfell, now the Lord Commander of the Night's Watch."); see also *Game of Thrones: You Win or You Die* (HBO television broadcast May 29, 2011) (statement of Lord Commander Jeor Mormont) ("Some of you bear the names of proud houses, others only bastard names or no names at all; it does not matter. All that is in the past. Here, on the Wall, are all one house.").

106. See *Choosing*, GAME OF THRONES WIKI, <http://gameofthrones.fandom.com/wiki/Choosing> (as of Nov. 26, 2018) (suggesting that the Night's Watch itself may "stretch[] back a full eight thousand years").

For at least the last several hundred years, the trend in governance (subject to certain outliers)¹⁰⁷ has been towards democratic rule.¹⁰⁸ While the logistics of an election process could be an impediment to a democratic system, it seems more likely that the combination of wealth, military power, and control over any legal system entrenches those who took power with force and are able to successfully consolidate it. Barring any shocks to those systems that might trigger a revolution by the people—or a general move toward self-governance coupled with the voluntary relinquishment of power by the monarch—those systems seem well-designed and equipped to maintain power, provided they maintain sufficient wealth to impose military and/or police control.

The other potential explanation—that accrued power over time without the accrual of wealth is not as desired—also fits the societies of the Night's Watch and the Freefolk. In those societies, the traditional focus of accumulating wealth for dynastic purposes does not exist either because the rules of the society prohibit hereditary titles or procreation,¹⁰⁹ or because the society is subsistence-based with little tangible property. In both the Night's Watch and Freefolk societies, power is wielded for organizational/leadership purposes rather than wealth creation.¹¹⁰ The pursuit of power without monetary reward is likely to be less common based on a simple cost-benefit analysis. Removing wealth from the equation may reduce much of the incentives for military conquest and dynasty building if to the victor there were no spoils.

While the Game of Thrones is beloved because of the constant power struggles, intrigue, and deceit, behind nearly every one of the political maneuvers looms the significant economic benefit of grasping the crown and the potential wealth accompanying it. Power without the possibility of wealth—or wealth without power—is less attractive and sustainable than

107. See, e.g., Felipe Villamor, *Philippines' Top Judge Took On Duterte. Now, She's Out.*, N.Y. TIMES, May 11, 2018 (noting President Duterte's consolidation of power, including with the judiciary).

108. See, e.g., Co Welgraven, *Deeper Democracy*, 48 VICE VERSA, Feb. 2015, at 4.

109. A STORM OF SWORDS, *supra* note 30, at 1020 (“The free folk won't follow a name, and they don't care which brother was born first.”); A GAME OF THRONES, *supra* note 1, at 522 (“I shall take no wife, hold no lands, father no children. I shall wear no crowns and win no glory.”).

110. See, e.g., *Dark Wings, Dark Words*, *supra* note 71 (statement of Mance Rayder (“[Y]ou know how I got moon-worshippers and cannibals and giants to march together in the same army? . . . I told them we were all going to die if we don't get south. ‘Cause that's the truth.”)).

both,¹¹¹ and for the pretenders to the Iron Throne—whether accurate or not—they believe both can be attained.¹¹² Removing wealth from the equation is likely one of the factors that has allowed these “lower” societies to implement and maintain a democratic form of rule that is out of step with the rest of the neighboring societies.

C. *Plutocracy, Theocracy, and the Rest*

1. *Bay of Dragons or Slaver’s Bay*

*Count yourselves fortunate, for Yezzan is a kindly and benevolent master.*¹¹³

Throughout the rest of the known world including Westeros and Essos, many other forms of government exist or have existed. In the Bay of Dragons, formerly known as Slaver’s Bay,¹¹⁴ a coalition of three independent city-states grew as an oligarchy or plutocracy sustained by the slave trade.¹¹⁵ The ruling class, known as the Good Masters in Astapor,¹¹⁶ the Wise Masters in

111. See WILLIAM PLAYFAIR, AN INQUIRY INTO THE PERMANENT CAUSES OF THE DECLINE AND FALL OF POWERFUL AND WEALTH NATIONS 49 (1805).

112. See, e.g., Matthew Yglesias, *Littlefinger Doesn’t Need a Plan to Win the Game of Thrones. He Just Has to be Smart.*, VOX (May 29, 2015, 11:00 AM), <https://www.vox.com/2015/5/29/8685221/game-of-thrones-the-gift-littlefinger> (noting Littlefinger’s overarching desire to obtain great wealth and power); Alessandra Malito, *Why ‘Game of Thrones’ Characters are Smart to Prefer Status over Money*, MARKETWATCH (Aug. 13, 2017, 11:41 AM), <https://www.marketwatch.com/story/why-game-of-thrones-characters-prefer-status-over-wealth-2017-07-12> (noting the goals of accumulating status, power, and wealth in the series as well as in our own world).

113. A DANCE WITH DRAGONS, *supra* note 65, at 681.

114. *The Winds of Winter*, *supra* note 27 (Daenerys changing the name from Slaver’s Bay to the Bay of Dragons after abolishing slavery).

115. Old Ghis, the first empire in Westeros after the Long Night, was known as Slaver’s Bay because the city was built upon slavery. After five wars between Valyria and Old Ghis, Valyria razed the walls surrounding Old Ghis, thus ending the Ghiscari empire (also known as the ‘Old Empire’). After the Doom, the remaining Ghiscari freed themselves from Valyrian control and reinstated the slave trade. Astapor, Yunkai, and Meereen are the remnants of Old Ghis in Slaver’s Bay. THE WORLD OF ICE AND FIRE, *supra* note 27, at 13–14; see also A STORM OF SWORDS, *supra* note 30, at 311–12 (describing the fall of Old Ghis and noting Astapor as descending from the Old Empire).

116. THE WORLD OF ICE AND FIRE, *supra* note 27, at 14; see also A STORM OF SWORDS, *supra* note 30, at 367.

Yunkai,¹¹⁷ and the Great Masters in Meereen,¹¹⁸ dominated the slave trade and thereby the wealth and control of the region until they were unseated by Daenerys Targaryen.¹¹⁹ Daenerys liberated the three city-states of Astapor, Yunkai, and Meereen, and initially abolished slavery in each.¹²⁰ After their military defeats, the remnants of the former ruling masters orchestrated a rebellion to drive Daenerys from the Bay of Dragons.¹²¹ As of the conclusion of Season Six on HBO, the rebellions ultimately failed and the masters again suffered a military defeat.¹²²

Daenerys was never able to establish a transitional government after the masters. She installed a ruling council in Astapor, but that lasted only briefly before the self-styled King Cleon usurped control.¹²³ Eventually King Cleon was deposed by the Good Masters, who once again regained control and reinstated the slave trade.¹²⁴ Likewise in Yunkai, after Daenerys' departure, the Wise Masters retook control and reinstated slavery.¹²⁵ Even in Meereen, where Daenerys maintained a presence, she was never able to quell the insurrectionist Sons of the Harpy¹²⁶ who were secretly funded by the masters of Yunkai and Astapor.¹²⁷

While Daenerys prevailed in her final military confrontation with the masters, it remains to be seen whether she can successfully install a

117. THE WORLD OF ICE AND FIRE, *supra* note 27, at 14; *see also* A STORM OF SWORDS, *supra* note 30, at 574.

118. *See* THE WORLD OF ICE AND FIRE, *supra* note 27, at 14; *see also* A STORM OF SWORDS, *supra* note 30, at 775.

119. *See* A STORM OF SWORDS, *supra* note 30, at 381, 588–89, 979–80.

120. *Id.* at 380–81 (Daenerys instructed the Unsullied to free all slaves in Astapor), 589 (Daenerys freed slaves in Yunkai), 979–80, 984 (noting Daenerys freed the slaves of Meereen and outlawed forced slavery).

121. *No One*, *supra* note 47; *see also* *Game of Thrones: Battle of the Bastards* (HBO television broadcast June 19, 2016) [hereinafter *The Bastards*] (the masters requested Daenerys's surrender prior to their defeat).

122. *The Bastards*, *supra* note 121.

123. A STORM OF SWORDS, *supra* note 30, at 982. King Cleon reinstated slavery upon gaining control of Astapor; however, the Good Masters had been made the slaves and the former slaves became the Masters. A DANCE WITH DRAGONS, *supra* note 65, at 44.

124. The Good Masters' retaking of Astapor and reinstatement of the slave trade only occurred in the TV series. *Game of Thrones: The Red Woman* (HBO television broadcast Apr. 24, 2016). In the books, King Cleon was killed by his own men and succeeded by multiple unsuccessful Kings and Queens. A DANCE WITH DRAGONS, *supra* note 65, at 323. Thereafter, Yunkai laid siege to Astapor, eventually burning it down and slaying any who attempted to flee the city. *Id.* at 439–41.

125. *Id.* at 44.

126. *See id.* at 36–37, 161–62.

127. *Game of Thrones: Oathbreaker* (HBO television broadcast May 8, 2016) [hereinafter *Oathbreaker*].

government that will not tolerate slavery and will retain control.¹²⁸ As many colonists have learned throughout history and in modern times, it can be exceedingly difficult to govern from afar or to impose a governmental structure on other peoples or regions.¹²⁹ In the case of Game of Thrones, that proved to be true even when the creator of that structure designed it for the benefit of the vast majority.¹³⁰ The central problem is that the Bay of Dragons economy has long been powered by one commodity: slavery.¹³¹ Removing that commodity creates a vacuum in the economy that has yet to be successfully filled.¹³² Until it is—and a replacement industry is identified—any political system installed upon them will face tremendous structural challenges from inception.¹³³

2. *King of the Iron Islands*

*I wasn't born to be king, but I paid the iron price, and here I stand.*¹³⁴

– Euron Greyjoy

128. *The Winds of Winter*, *supra* note 27 (Daenerys appointing Daario Naharys to stay in the Bay of Dragons (Meereen) to keep the peace). The Bay of Dragons is not mentioned again throughout Season 7 of the TV Series.

129. See Robin Blackburn, *Haiti, Slavery, and the Age of the Democratic Revolution*, 63 WM. & MARY Q. 643, 643–50 (2006) (detailing several revolutions, including the American Revolution and the Haitian Revolution, of colonies throwing off the yoke of a foreign power).

130. See *supra* notes 119–120 and accompanying text.

131. See THE WORLD OF ICE AND FIRE, *supra* note 27, at 14.

132. See, e.g., A DANCE WITH DRAGONS, *supra* note 65, at 223 (noting that once Daenerys ended slavery, Meereen's trade became non-existent).

133. Recent examples show that Venezuelan and Brazilian countries reliant on the price of oil faced systemic challenges to their leadership structure when the price of that commodity declined sharply. See David Segal, *Petrobras Oil Scandal Leaves Brazilians Lamenting a Lost Dream*, N.Y. TIMES (Aug. 7, 2015), <https://www.nytimes.com/2015/08/09/business/international/effects-of-petrobras-scandal-leave-brazilians-lamenting-a-lost-dream.html> (noting that the combination of the decline in oil prices and governmental corruption led to Brazil's political and economic upheaval); see also Anatoly Kurmanaev & Kejal Vyas, *Economic, Health Crises Grow as Venezuela Oil Output Plunges*, WALL ST. J., Jan. 19, 2018, at A1 (noting the 40% decline in Venezuela's economy over the last four years is due in large part to the country's decreasing oil production). For a historical example, see the Cote d'Ivoire's reliance on the commodity of cocoa and how the collapse in that market triggered long-term economic malaise for the country and political instability. See Zeljko Bogetic et al., *Cote d'Ivoire: From Success to Failure A Story of Growth, Specialization and the Terms of Trade*, 18 (The World Bank, Policy Research Working Paper No. 4414, 2007), https://www.researchgate.net/publication/23550413_Cote_d'Ivoire_From_Success_to_Failure_a_Story_of_Growth_Specialization_and_the_Terms_of_Trade.

134. *Game of Thrones: The Door* (HBO television broadcast May 22, 2016).

There is little information available regarding the mechanics of the Iron Islands' system of government prior to the system which led to the Greyjoys governing as lords of the Iron Islands under the consent of the crown.¹³⁵ Additionally, it is tough to classify as it has transitioned several times in its history from a coalition, to an elected monarchy, to a hereditary monarchy, and then back to an elected monarchy.¹³⁶ Prior to the Andal invasion, the Iron Islands were separate island kingdoms who elected their leaders through the process known as the "kingsmoot."¹³⁷ During this time, the islands operated with two kings: a salt king and a rock king depending on the area to be ruled.¹³⁸ Urras Greyiron united the Iron Islands and consolidated the competing positions into one, the High King of the Iron Islands.¹³⁹

At the kingsmoot, only ship captains were entitled to vote or to be elected.¹⁴⁰ It has been suggested that the candidates engaged in typical, modern-day electioneering behaviors—speaking out on his or her positions, bragging about prior deeds, and promising patronage or gifts to the voting crowd.¹⁴¹ The tradition of the kingsmoot devolved into a hereditary line of

135. The Ironmen are considered an illiterate people, with the majority of those living on the Iron Islands unable to write. Thus, the majority of the history of the Iron Islands comes from the writings of the victims of the reavers of the Ironborn. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 177.

Two differing historical accounts relay the development of the Iron Island's current governance structure. According to legend and the priests of the Drowned God, the Grey King was the first monarch of all the Iron Islands and the sea itself. Upon his death, the Grey King left a hundred sons who killed each other until only sixteen survived. The remaining sons partitioned the Iron Islands between themselves, and all but one of the great houses of the Ironborn can trace their lineage back to one of the sixteen surviving sons. *Id.* at 179.

In contrast, according to the records of the Citadel, the Iron Islands were each a separate kingdom. Each island kingdom was ruled by two kings—a rock king and a salt king—each of whom was chosen by a kingsmoot rather than by hereditary succession. It was not until Galon Whitestaff called a kingsmoot to choose a "high king" to have supremacy over the rock kings and salt kings, that the Iron Islands were united into a single kingdom. Urras Greyiron became the first high king of the Iron Islands. Urras Greyiron's (also known as Urras Ironfoot) eldest son was unsuccessful in making the position of the high king a hereditary position when he declared himself King Erich I upon Urras Greyiron's death. Galon Whitestaff called a kingsmoot to decide the new high king. King Erich I (later known as Erich the Ugly) was condemned to death, but he avoided his punishment by destroying his father's driftwood crown and casting it into the sea. *Id.*

136. *Id.*

137. *Id.* A kingsmoot could also be called to remove an unworthy ruler. *Id.*

138. *Id.* The Rock King governed the island itself while the Salt King governed while at sea. *Id.*

139. *Id.* at 182.

140. *Id.* at 179. As Hake writes, "[t]he man who owns a boat need never be a thrall . . . for every captain is a king upon the deck of his own ship." *Id.* at 176.

141. See *A FEAST FOR CROWS*, *supra* note 37, at 385–93.

succession when Urron Greyiron, also known as Urron Redhand, seized power.¹⁴² At the kingsmoot, Urron Greyiron had his men slaughter the captains, kings, priests, and prophets who had gathered to choose their new leader, claimed the throne, and made the position hereditary.¹⁴³ Following his ascension to the throne, Greyiron was able to consolidate power in his family for a thousand years.¹⁴⁴

Historical examples of a transition away from democracies are not uncommon.¹⁴⁵ The Roman Republic—which gave the modern era much of the foundation for self-determination and self-governance—lasted several hundred years until it collapsed and transitioned to an empire when the Roman Senate granted Octavius (Augustus) power to act essentially as a military dictator.¹⁴⁶ Upon Augustus' death, he was succeeded by his adopted son Tiberius in a move that saw Rome continue as an empire rather than a republic.¹⁴⁷ Romans were happy with the transition, as Augustus ushered in an era of peace known as the Pax Romana, which allowed Augustus to focus on securing and growing his territory and work on tactically important infrastructure projects.¹⁴⁸

Recent events in our world show that democracy is not a guaranteed governing model and can be more fragile than previously thought.¹⁴⁹ In Venezuela, Hugo Chavez was elected president and then preceded to push forward a constitutional amendment to remove term limits.¹⁵⁰ In 2017, Venezuelan president Nicolas Maduro presided over calamity, corruption, and

142. THE WORLD OF ICE AND FIRE, *supra* note 27, at 182.

143. *Id.*

144. *Id.*

145. See, for example, the Kuomintang government in China, which initially rose to power following the Qing Dynasty and participated in China's relatively short transition to a republic. *Kuomintang*, NEW WORLD ENCYC., <http://www.newworldencyclopedia.org/entry/Kuomintang> (last visited Oct. 2, 2018); U.S. Dept. of State, Off. of the Historian, *Milestones: 1945–1952, The Chinese Revolution of 1949*, <https://history.state.gov/milestones/1945-1952/chinese-rev>.

146. Michael Grant, *Augustus Roman Emperor*, ENCYC. BRITANNICA, <https://www.britannica.com/biography/Augustus-Roman-emperor> (last updated Aug. 15, 2018).

147. *Id.*

148. *Id.*

149. See Yascha Mounk & Roberto Stefan Foa, *Yes, People Really Are Turning Away From Democracy*, WASH. POST (Dec. 8, 2016), https://www.washingtonpost.com/news/wonk/wp/2016/12/08/yes-millennials-really-are-surprisingly-approving-of-dictators/?utm_term=.b49713f97fe5.

150. See, e.g., William Partlett, *Hugo Chavez's Constitutional Legacy*, BROOKINGS INST. (Mar. 14, 2013), <https://www.brookings.edu/opinions/hugo-chavez-constitutional-legacy/>.

crime.¹⁵¹ In what is being widely described as a rigged or sham election, Maduro's party seeks to rewrite the constitution and create a new congress while eliminating the prior one.¹⁵² In fact, during such times of uncertainty, the people themselves can begin to prefer what they see as the "certainty" of life under a dictator to the "messiness" of a democracy.¹⁵³

3. *The Dothraki*

*"The Dothraki follow only the strong."*¹⁵⁴

— Ser Jorah Mormont

The Dothraki are nomadic warriors who move from conquest to conquest across the Dothraki sea (plains).¹⁵⁵ There are various independent bands of Dothraki called khalasars, and their leaders are known as khals, and the wives of the khals as khaleesi.¹⁵⁶ Each khalasar is further subdivided into khas which are led by kos.¹⁵⁷ The khal is replaced upon death or disability.¹⁵⁸ Khas may also break away and form their own khalasars.¹⁵⁹ Prior to Daenerys Targaryen, the bloodriders of a khal would not allow themselves to be commanded by a khaleesi.¹⁶⁰ The Dothraki practice is nearly the opposite of hereditary succession. In the event a khal dies with a minor child (khalaka), the rival kos will fight among themselves to take the place of the khal and kill the child to prevent a future rivalry.¹⁶¹ Upon the death of the khal, his khaleesi is required to join the dosh khaleen (council of crones) who preside over the only Dothraki city, Vaes Dothrak.¹⁶² The dosh khaleen are the leaders of the

151. David Horsey, *Venezuela's Descent into Dictatorship Shows Democracy Can Be Lost*, L.A. TIMES (Aug. 2, 2017, 5:00 AM), <http://beta.latimes.com/opinion/topoftheticket/la-na-tt-venezuela-democracy-20170801-story.html>.

152. See Horsey, *supra* note 151; see also Fred Imbert, *Venezuela's 'sham' election just made a very bad economy that much harder to fix*, CNBC (July 31, 2017, 9:27 PM), <https://www.cnbc.com/2017/07/31/venezuelas-sham-election-has-made-economic-recovery-much-harder.html>.

153. See Mounk & Foa *supra* note 149 (noting the increased skepticism millennials have in a democratic government, and their increased willingness to consider authoritarian rule).

154. A GAME OF THRONES, *supra* note 1, at 758.

155. See THE WORLD OF ICE AND FIRE, *supra* note 27, at 288–89.

156. See A GAME OF THRONES, *supra* note 1, at 558, 758.

157. See *id.* at 707.

158. A khal who cannot ride is abandoned by the khalasar. *Id.* at 705–07.

159. See *id.* at 758.

160. *Id.* at 588. "Only a man can lead a khalasar or name a ko." *Id.* at 800–01.

161. A GAME OF THRONES, *supra* note 1, at 707.

162. See *id.* at 491–92.

Dothraki religion, and work as soothsayers and mystics interpreting the future.¹⁶³ They have such great influence that even the most powerful of the khals abide the instructions of the dosh khaleen.¹⁶⁴ With current international boundaries there are no modern equivalents to the Dothraki. George R.R. Martin likely based the Dothraki on the nomadic warrior tribes of the Eurasian Steppe such as the Alans, Huns, and Vandals, all known for their ability to conduct cavalry-based warfare.¹⁶⁵

4. *The Free Cities & Qarth*

*Frankly, the nine of them are more alike than they would care to admit. They hire the same soldiers, to fight the same wars, for the same rulers . . . the rich, be they called Magisters, Archons, or what have you. When a Dothraki khalasar approaches, they give the same tribute to avoid the same sacking. For thousands of years, the disgraced of Westeros have rained east to pool in the Free Cities.*¹⁶⁶

The Free Cities are scattered throughout Essos, and their style of governance varies with their history and geography. Leaders include magisters, archons, merchant princes, and dynasts,¹⁶⁷ and many came into existence as Valyrian colonies.¹⁶⁸ Braavos, the most economically successful of the Free Cities,¹⁶⁹ is led by the Sealord of Braavos, which is an elected, life-time position.¹⁷⁰ The Sealord is elected by the city's magisters and elites; their elections are subject to the influence of the upper class.¹⁷¹ A semi-modern comparison to the Sealord would have been the doges of Venice or Genoa, which are also canal-based cities which may have been the inspiration for Braavos.¹⁷² The doge was an elected lord of a city-state. In Venice, the

163. *Id.* at 492.

164. *Id.*

165. See, e.g., Oleksandr Symonenko, *Warfare and Arms of the Early Iron Age Steppe Nomads*, in OXFORD RESEARCH ENCYC., ASIAN HISTORY 4-5 (2016), <http://asianhistory.oxfordre.com/view/10.1093/acrefore/9780190277727.001.0001/acrefore-9780190277727-e-237?print=pdf>.

166. A GAME OF THRONES, *supra* note 1, at 28–29, 31; *Game of Thrones: The Complete Second Season, Histories and Lore, The Free Cities* (HBO television broadcast Feb. 19, 2013).

167. A GAME OF THRONES, *supra* note 1, at 28–29, 31; A STORM OF SWORDS, *supra* note 30, at 116–18.

168. THE WORLD OF ICE AND FIRE, *supra* note 27, at 253.

169. *Id.* at 271.

170. *Id.*

171. *Id.*

172. See generally *Doge*, ENCYC. BRITANNICA, <https://www.britannica.com/topic/doge> (last visited Oct. 2, 2018).

doge institution existed from 1172 until as recently as 1797.¹⁷³ The only modern city-state with an elected ruler for life is the Vatican City with the Pope.¹⁷⁴ Monaco and Singapore are also city-states, but Monaco is run, in part, by a prince whose power is based on a hereditary line of succession,¹⁷⁵ and Singapore is controlled by a parliamentary republic led by a prime minister.¹⁷⁶ Historically, the city-state model finds its roots in the *poleis* of ancient Greece. Each *polis*, or city-state, contained its own set of political, legal, police, and military institutions.¹⁷⁷ Likewise, city-states existed among the Babylonians, Etruscans, and Phoenicians, as they provided stable, manageable-sized political entities that incorporated the benefits of protection and control through police or military units.¹⁷⁸

Volantis, the oldest of the Free Cities,¹⁷⁹ was originally founded as a colony of Valyria but gained independence when Valyria fell.¹⁸⁰ In Volantis, the triumvirate, or “Triarchs,” are elected annually to one-year terms and may be re-elected without term limits.¹⁸¹ All freeborn landowners, men and women, can vote for those candidates who qualify by being able to trace their bloodlines to the time when Volantis was still a colony of Valyria.¹⁸² Volantis has two political parties: the tigers, who advocate expansion and conquest, and the elephants, who prize commerce.¹⁸³ Perhaps the most comparable triumvirates in modern times come from the Soviet Union, which had three triumvirates, or troikas, in the twentieth century. The first troika was established in 1922 when Vladimir Lenin suffered a stroke,¹⁸⁴ the second in

173. *Id.*

174. *State and Government*, <http://www.vaticanstate.va/content/vaticanstate/en/stato-e-governo.html> (last visited Dec. 3, 2018) (noting the head of state of the Vatican City State is the Pope who is an absolute monarch).

175. *Sovereign Powers of Monaco*, GOUVERNEMENT PRINCIER, <http://en.gouv.mc/layout/set/popup/layout/set/popup/layout/set/popup/layout/set/popup/Government-Institutions/Institutions/Sovereign-powers> (last visited Oct. 2, 2018); *Institutions*, EMBASSY OF MONACO, <http://monacode.org/institutions.html> (last visited Oct. 2, 2018).

176. *System of Government*, PARLIAMENT OF SINGAPORE, <https://www.parliament.gov.sg/about-us/structure/system-of-government> (last visited Oct. 2, 2018).

177. *See, e.g.*, MOGENS HERMAN HANSEN, *POLIS: AN INTRODUCTION TO THE ANCIENT GREEK CITY-STATE* 31 (2006).

178. *Id.*

179. *A DANCE WITH DRAGONS*, *supra* note 65, at 205.

180. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 267–69.

181. *A DANCE WITH DRAGONS*, *supra* note 65, at 101.

182. *Id.* at 205.

183. *Id.* at 187–88.

184. *See, e.g.*, NIKOLAS K. GVOSDEV & CHRISTOPHER MARSH, *RUSSIAN FOREIGN POLICY: INTERESTS, VECTORS, AND SECTORS* 21–22 tbl.1-1 (2014) (noting Grigory Zinoviev, Lev Kamenev and Josef Stalin shared power beginning in 1924).

1953 upon the death of Joseph Stalin,¹⁸⁵ and the third in 1964 upon the removal of Nikita Khrushchev.¹⁸⁶ While the first two troikas were established upon a debilitating event of the prior leader, the third lasted for more than a decade and only ended when Leonid Brezhnev consolidated sufficient power to wrest control as the Presidium chairman.¹⁸⁷

Although Norvos has a council of magisters like many of the other Free Cities, the magisters are elected by the bearded priests, making Norvos a theocracy, as its founders intended when they founded the city as a religious colony.¹⁸⁸ Among the modern theocracies of the Holy See, the exiled government of the Central Tibetan Administration, and some of the Islamic states, Iran may be the closest modern equivalent. In both the Holy See and the Central Tibetan Administration, the religious leaders (Pope and Dalai Lama, respectively) are also the political leaders.¹⁸⁹ In Iran, however, the religious authority has also allowed the popular election of a president (whom the Supreme Leader must approve prior to taking office, and who may be dismissed by the Supreme Leader at any time).¹⁹⁰ In addition, the Supreme Leader has greater authority than the president, and with it the ability to appoint individuals into many of the highest offices of power in the country.¹⁹¹

The remaining Free Cities are sparsely described. Pentos is similar to an oligarchy or plutocracy, as it is run by the wealthy ruling class of magisters.¹⁹² While the magisters elect a prince, the prince is a figurehead with little actual authority.¹⁹³ The magisters routinely sacrifice the prince to appease the gods

185. See, e.g., *Khrushchev and the Twentieth Congress of the Communist Party, 1956*, OFFICE OF THE HISTORIAN, <https://history.state.gov/milestones/1953-1960/khrushchev-20th-congress> (last visited Oct. 2, 2018) (noting the consolidation of power in 1953 by Georgi Malenkov, Vyacheslav Molotov, and Nikita Khrushchev and their collective assassination of Lavrentiy Beria).

186. See, e.g., 1 ENCYC. OF THE SIXTIES: A DECADE OF CULTURE AND COUNTERCULTURE 352–53 (Abbe A. Debolt & James S. Baugess eds., 2011) (noting the “collective leadership” of Leonid Brezhnev, Anastas Mikoyan, and Alexei Kosygin).

187. *Id.* at 352–53.

188. THE WORLD OF ICE AND FIRE, *supra* note 24, at 257–58.

189. E.g., *U.S. Relations with the Holy See*, U.S. DEP’T OF STATE (Feb. 22, 2018), <https://www.state.gov/r/pa/ei/bgn/3819.htm>; David Brenna, *Tibet can Stay in China, Dalai Lama Says*, NEWSWEEK (Apr. 24, 2018), <http://www.newsweek.com/tibet-can-stay-china-dalai-lama-says-899463>.

190. See, e.g., Max Fisher, *How do Iran’s Supreme Leader and President Split Power? Here’s a Chart Explaining it*, WASH. POST (June 14, 2013), <https://www.washingtonpost.com/news/worldviews/wp/2013/06/14/how-do-irans-supreme-leader-and-president-split-power-heres-a-chart-explaining-it/>.

191. *Id.*

192. THE WORLD OF ICE AND FIRE, *supra* note 27, at 266–67.

193. *Id.* at 266.

in the event of famine, war, or a poor harvest and then appoint a new one.¹⁹⁴ In Pentos, as in many parts of the world, wealth is power.

Like Pentos, without the pretense of a figurehead, conclaves of magisters govern Lys and Myr.¹⁹⁵ In Tyrosh, the wealthy noblemen chose the Archon to rule their city.¹⁹⁶ Lorath has three ceremonial roles: the Harvest Prince, Fisher Prince, and Prince of the Streets,¹⁹⁷ thought the true power in Lorath is held by a council of magisters.¹⁹⁸ Finally, Qohor has no information available as to its ruling class, but as trade has made it one of the richest of the Free Cities,¹⁹⁹ it likely is a merchant-run city-state like Pentos, Lys, Myr, and Tyrosh.

Qarth, east of Slaver's Bay (not one of the Free Cities),²⁰⁰ is an ancient city.²⁰¹ In the television series, it is ruled by the Thirteen, a council chosen from among the Pureborn, descendants from ancient Qartheen kings and queens, a warlock, and merchants invited to the council due to their wealth.²⁰² In this, it is much like Pentos, Lys, Myr, and Tyrosh. Due to its position on the other side of a desert wasteland, entrance to Qarth is important to travelers, and visitors can be denied entry by the Thirteen.²⁰³ However, the Qartheen have a tradition of Sumai, or a blood oath, that allows a resident to vouch for the visitor's entry, with the inference that the vouching party will be responsible for any misconduct.²⁰⁴ In the books, the Thirteen are only one of three guilds who compete for power in the city while the true rulers are the Pureborn.²⁰⁵ Ultimately, in both book and television, Qarth is another plutocracy ruled by those with money—"Qarth is a city of merchants, and they love the clink of silver coins, the gleam of yellow gold."²⁰⁶

194. *Id.* at 266–67.

195. *Id.* at 261.

196. *Id.*

197. *Id.* at 256.

198. THE WORLD OF ICE AND FIRE, *supra* note 27, at 256.

199. *Id.* at 259.

200. *Id.* at 287–88, 292.

201. *Id.*

202. *Game of Thrones: Garden of Bones* (HBO television broadcast Apr. 22, 2012).

203. *Id.*

204. *Id.*

205. A CLASH OF KINGS, *supra* note 9, at 202, 424, 426, 574–75.

206. A DANCE WITH DRAGONS, *supra* note 65, at 326.

5. *Faith of the Seven*

*Every one of us is poor and powerless. And yet together . . . we can overthrow an empire.*²⁰⁷

– High Sparrow

While not a political entity in the form of a delineated territory, the Faith of the Seven is the religious order accepted by the majority of the Seven Kingdoms.²⁰⁸ Traditionally, the leader of the religion is the High Septon—who resides in the capital and advises the monarch.²⁰⁹ Although the High Septon is the leader of the faith, he is advised by the Most Devout, a council of members comprised of the clergy known as septons or septas.²¹⁰ There appears to be little or no information as to how the members of the Most Devout are chosen.

In addition to the role of leader of the faith, in historical times and very recently, the Faith of the Seven possessed a military arm known as the Faith Militant.²¹¹ At one time, the Faith Militant participated in an ultimately unsuccessful uprising against King Aenys I Targaryen.²¹² King Maegor Targaryen suppressed the uprising throughout his life both in battle and through his power as king.²¹³ He issued Maegor's Laws, which prohibited clergy from bearing arms.²¹⁴ Maegor's successor, King Jaehaerys I Targaryen, ultimately succeeded in disbanding the military branch of the

207. *Game of Thrones: Home* (HBO television broadcast May 1, 2016) [hereinafter *Home*].

208. In the North, the old gods of the Weirwood trees remains the predominant religion. A *GAME OF THRONES*, *supra* note 1, at 22. In the Iron Islands, the Drowned God is worshiped, and in other areas R'hllor, the Lord of Light or the Red God is followed. A *CLASH OF KINGS*, *supra* note 9, at 169 (“The Drowned God had made [the Ironborn] to reave and rape, to carve out kingdoms and write their names in fire and blood and song.”), 473 (suggesting that, while the Lord of Light has a strong following in the Free Cities, his religion is not a predominant one within the Seven Kingdoms).

209. The High Septon is an elected position, usually selected from the ranks of the Most Devout, but not always. A *FEAST FOR CROWS*, *supra* note 37, at 510. Once elected, the High Septon sets aside his individual and family name and is only known as the “High Septon” from that point forward. *Id.* at 586–87.

210. *Id.* at 587; A *GAME OF THRONES*, *supra* note 1, at 23.

211. The Faith Militant is also known as the “Warrior’s Sons,” “Poor Fellows,” and the “Swords and Stars.” A *FEAST FOR CROWS*, *supra* note 37, at 713.

212. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 53–54.

213. A *FEAST FOR CROWS*, *supra* note 37, at 713.

214. A *GAME OF THRONES*, *supra* note 1, at 601.

faith²¹⁵ until it was restored centuries later by Queen Regent Cersei Lannister acting as the agent of her son, King Tommen Baratheon.²¹⁶

The rearming of the Faith of the Seven through the Faith Militant proved to be ill-conceived,²¹⁷ as it allowed the faith to possess military might sufficient to challenge the sovereignty of the crown.²¹⁸ In Season Six of the television series, the distinction between church and state as had existed informally was dissolved as King Tommen declared, “[t]he Crown and the Faith are the twin pillars upon which the world rests.”²¹⁹ Politically, such a move would have left in place a political structure that was beginning to develop similarities to the United Kingdom, where the monarch is both the Supreme Governor of the Church of England as well as the figurehead of the United Kingdom,²²⁰ while the prime minister is the highest ranking member of the U.K. government.²²¹ It also bears similarities to modern day Iran where the Supreme Leader is the political head of state and the highest ranking religious official.²²² Such a union would not have been unprecedented, as Baelor the Blessed, prior to becoming King of the Seven Kingdoms, held the position of septon.²²³

6. *The Order of Maesters*

*[I am] [o]nly a maester of the Citadel, bound in service to Castle Black and the Night's Watch. I will not tell you . . . to stay or go. You must make that choice yourself, and live with it for the rest of your days. As I have.*²²⁴

215. *Id.* at 653, 713.

216. Cersei was motivated to restore the Faith Militant to discharge debts the crown owed to the Faith of the Seven. *Id.* at 602.

217. Ultimately, the Faith Militant, the High Septon, and many others are destroyed on the orders of the Queen Regent Cersei Lannister. This attack also killed Queen Margaery and left King Tommen so distraught as to drive him to commit suicide. *The Winds of Winter*, *supra* note 27.

218. King Tommen was unable to procure, when desired, the release of his mother the Queen Regent, as well as the release of his wife, Queen Margaery. *Blood of my Blood*, *supra* note 50.

219. *No One*, *supra* note 47.

220. *The Queen, the Church, and Other Faiths*, THE ROYAL FAMILY, <https://www.royal.uk/queens-relationship-churches-england-and-scotland-and-other-faiths> (last visited Oct. 1, 2018).

221. *The Queen and Prime Minister*, THE ROYAL FAMILY, <https://www.royal.uk/queen-and-government> (last visited Oct. 1, 2018).

222. *Supreme Leader*, BBC NEWS, http://news.bbc.co.uk/2/shared/spl/hi/middle_east/03/iran_power/html/supreme_leader.stm (last visited Oct. 1, 2018).

223. A GAME OF THRONES, *supra* note 1, at 724.

224. *Baelor*, *supra* note 86.

– Maester Aemon

Maesters' roles in the Seven Kingdoms are that of scientists, doctors, academics, advisors, couriers, and archivists.²²⁵ The Order of Maesters is an all-male order similar to the Night's Watch in that, when maesters take their position, they abandon lands and title and are supposed to be apolitical.²²⁶ The Order of Maesters itself has never seized power, though it has long operated behind the scenes to influence the political climate.²²⁷

The Order of Maesters maintains a fairly rigid hierarchy somewhat similar to that of the Faith of the Seven.²²⁸ The ruling body of the Order is the Conclave, which is comprised of Archmaesters.²²⁹ Archmaesters are experts in their individual subject matters.²³⁰ The Grand Maester is elected by the Conclave and is, in essence, the figurehead of the order.²³¹ The Grand Maester sits on the Small Council as an adviser to the king and is typically a distinguished and prestigious member of the order.²³² Unlike modern religious orders, however, the Conclave retains the power to replace the Grand Maester.²³³

Maesters have many parallels in modern society. With increased size, complexity, and sophistication, modern governments must rely on technical experts and advisers. They are specialists appointed to their roles for their technical expertise. In the United States, the President relies on the U.S.

225. See A GAME OF THRONES, *supra* note 1, at 450 (Each link of a maestar's chain is made of a different metal, representing mastery in different areas of learning).

226. A STORM OF SWORDS, *supra* note 30, at 1079.

227. See, for example, the following statement of Samwell Tarly:

Everyone in Westeros trusts and respects you. If you tell people the threat is real, they'll believe it. If you advise all the Lords to send their men North to hold the wall, they'll do it. And if you tell every Maester in the Citadel to search every word of every faded scroll about the Long Night, they may find something that lets us defeat the army of the dead for good.

Game of Thrones: Eastwatch (HBO television broadcast Aug. 13, 2017). Maester Luwin, of Winterfell, also counseled Theon Grejoy during the time commanded Winterfell. "My order serves . . . [t]he realm . . . and Winterfell. . . . [S]o long as you hold Winterfell I am bound by oath to give you counsel." A CLASH OF KINGS, *supra* note 9, at 916–17.

228. See *supra* Section II.C.5. and accompanying text.

229. In addition to electing the Grand Maester, the Conclave also appoints the Seneschal who is tasked with the day-to-day administration of the Citadel, the seat of the Order of Maesters. The Seneschal is selected by lot rather than election. A FEAST FOR CROWS, *supra* note 37, at 969.

230. *Id.* at 4, 7, 12.

231. A STORM OF SWORDS, *supra* note 30, at 162–63.

232. *Id.*

233. "Only the Conclave may make or unmake a Grand Maester." *Id.* at 162. However, a Grand Maester can be "unmade" if they are killed on the King's command. *Id.*

President's Council of Advisors on Science and Technology²³⁴ for advice on matters of science and technology such as climate change, cybersecurity, and public health, among others. Another parallel would be the U.S. Surgeon General, who is the designated head of the U.S. Public Health Service Commissioned Corps and is the federal government's administrative head for public health matters.²³⁵ Likewise, the United Kingdom, Australia, and New Zealand also have chief scientific advisers.²³⁶ In other countries, there is no one person designated as scientific adviser; systems such as advisory councils, advisory committees, and national academies have been created to provide the additional technological expertise to the ruling class.²³⁷

III. CRIMINAL LAW & PROCEDURE

[T]he man who passes the sentence should swing the sword. If you would take a man's life, you owe it to him to look into his eyes and hear his final words. And if you cannot bear to do that, then perhaps the man does not deserve to die. . . . A ruler who hides behind paid executioners soon forgets what death is.

— Eddard Stark²³⁸

234. *President's Council of Advisors on Science and Technology*, NETWORKING INFOR. TECH. RESEARCH DEV. PROGRAM, <https://www.nitrd.gov/pcast/Index.aspx> (last visited Oct. 1, 2018).

235. *About the Office of the Surgeon General*, SURGEON GENERAL, <https://www.surgeongeneral.gov/about/index.html> (last visited Oct. 1, 2018).

236. *United Kingdom's Chief Scientific Advisers*, GOV.UK, <https://www.gov.uk/government/groups/chief-scientific-advisers> (last visited Oct. 1, 2018); *Australia's Chief Scientist*, AUSTRALIAN GOVERNMENT, <http://www.chiefscientist.gov.au/about/the-chief-scientist/> (last visited Oct. 1, 2018); *The Role of the Chief Scientific Advisor*, OFFICE OF THE PRIME MINISTER'S CHIEF SCIENTIFIC ADVISOR, <http://www.pmcas.org.nz/the-role-of-the-chief-scientific-advisor/> (last visited Oct. 1, 2018).

237. See, e.g., ZENTRUM FÜR SOZIALE INNOVATION, *Ministry of State for Research and Technology, Indonesia*, <https://www.zsi.at/en/object/partner/1693> (last visited Oct. 1, 2018); ISLAMIC REPUBLIC OF IRAN: MINISTRY OF SCIENCE, RESEARCH AND TECHNOLOGY OF THE ISLAMIC REPUBLIC OF IRAN, *About Ministry*, <https://www.msrt.ir/en/page/14/about-ministry> (last visited Oct. 1, 2018); MINISTRY OF SCIENCE, RESEARCH AND TECHNOLOGY OF THE ISLAMIC REPUBLIC OF IRAN, <https://www.msrt.ir/en/page/14/about-ministry> (last visited Feb. 26, 2018); Sabine Louët, *EC appoints Science and Technology Advisory Council*, EUROSCIENTIST, Mar. 4, 2013, <https://www.euroscientist.com/ec-appoints-science-and-technology-advisory-council/> (Following the appointment of the European Union's first chief scientific adviser, the European Union created the Science and Technology Advisory Council which is tasked to "look at the big picture and advise the president on how to stimulate societal debates about science.").

238. A GAME OF THRONES, *supra* note 1, at 16.

Perhaps no legal aspect of Game of Thrones has captured attention more than its treatment of criminal conduct. Executions for treason, clemency for service, and trial by combat all feature prominently in the storyline.²³⁹ Many other laws, almost all dealing with criminal conduct, are referenced throughout the series.²⁴⁰ Of particular interest for this article is that Westeros is a world with relatively few jail cells.²⁴¹ The lack of an ability to incarcerate many has necessitated punishment mechanisms which are immediate and do not require simple captivity. A Game of Thrones works criminal law and procedure into the fabric of its story and shows how the criminal laws can be used for justice as well as advancing unjust political objectives. The overarching legal system is that of the King's Peace, under which each lord is tasked with administering the judicial power in their realms.²⁴² In administering this power, the punishments meted out in *A Song of Ice and Fire* are rich and varied.

A. Criminal Law

1. Treason

*So long as I am your King, treason shall never go unpunished! Ser Ilyn! Bring me his head!*²⁴³

– Joffrey Baratheon

Treason n. (13c) The offense of attempting to overthrow the government of the state to which one owes allegiance, either by making war against the state or by materially supporting its enemies.²⁴⁴

What you suggest is treason.

– Ned Stark

239. See *infra* Section II.B.2. and Part III.

240. See *infra* Sections III.A.1–3.

241. *Laws and Customs*, GAME OF THRONES WIKI, https://gameofthrones.fandom.com/wiki/Laws_and_Customs (as of Nov. 26, 2018) (“As a feudal society, the Seven Kingdoms do not maintain long-standing dedicated prisons.”).

242. *Game of Thrones: The Complete Fourth Season, Histories and Lore, Justice of the Seven Kingdoms* (HBO television broadcast Feb. 17, 2015) (suggesting that, “[i]f you are in the capital, it’s the King’s Justice who takes your head. Elsewhere in the south, the headsman of the local lord. But in the North, it’s the lord himself.”).

243. A GAME OF THRONES, *supra* note 1, at 726.

244. *Treason*, BLACK’S LAW DICTIONARY (10th ed. 2014).

Only if we lose.

– Petyr Baelish

Given the continuous Machiavellian struggle for power, it is no surprise that one of the most common capital crimes in *A Game of Thrones* has been treason. Beginning with Robert's Rebellion, this war was incited in part when Prince Rhaegar Targaryen kidnapped Lyanna Stark, the betrothed of Robert Baratheon.²⁴⁵ King Aerys II arrested Brandon Stark for treason when he protested the abduction of his sister, and when their father, Rickard Stark, appeared before the King to ransom his son, both were executed for treason.²⁴⁶ Eddard (Ned) Stark suffered the same fate at the hand of King Joffrey when he uncovered the true parentage of Joffrey and his siblings.²⁴⁷ Robb Stark, then King in the North, executed Rickard Karstark for treason when Karstark murdered two Lannister hostages.²⁴⁸ Catelyn Stark herself committed treason when she freed the prisoner Jaime Lannister against the King in the North's orders.²⁴⁹ Theon Greyjoy committed treason against the King in the North when he betrayed Robb Stark and captured Winterfell. Tyrion Lannister was tried for regicide for the death of King Joffrey²⁵⁰ (and found guilty in his trial by combat although he ultimately escaped).²⁵¹ Cersei Lannister was arrested for regicide for the killing of her husband, Robert Baratheon. Petyr Baelish was put on trial (very briefly) prior to execution by Arya Stark for the crimes of: murdering Lysa Arryn, conspiring to murder Jon Arryn, causing Lyssa Stark to send a letter which potentially triggered the War of the Five Kings, and conspiring to betray Ned Stark.²⁵² The sheer number of treasonous acts in the series prevents a complete description here.

245. Robert Baratheon's rebellion itself was also clearly treasonous, but as he prevailed, the affected king was no longer in a position to pass judgment. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 127–29.

246. *A CLASH OF KINGS*, *supra* note 9, at 797.

247. *See A GAME OF THRONES*, *supra* note 1, at 282, 528, 725–26.

248. *Game of Thrones: Kissed by Fire* (HBO television broadcast Apr. 28, 2013) [hereinafter *Kissed by Fire*].

249. *Game of Thrones: A Man Without Honor* (HBO television broadcast May 13, 2012); *Game of Thrones: The Prince of Winterfell* (HBO television broadcast May 20, 2012).

250. *Game of Thrones: The Old Gods and the New* (HBO television broadcast May 6, 2012) [hereinafter *The Old Gods and the New*].

251. *Game of Thrones: The Mountain and the Viper* (HBO television broadcast June 1, 2014) [hereinafter *The Mountain and the Viper*].

252. *The Old Gods and the New*, *supra* note 250; *Game of Thrones: The Children* (HBO television broadcast June 15, 2014).

The word treason is used loosely in the series.²⁵³ Technically, treason can only be committed against the state; however, when the identity of the state is in flux, an act may be loyal to one side, treasonous to the other, and totally dependent on who has captured you.²⁵⁴ For example, the treasonous nature of the act by Catelyn Stark in freeing Jaime Lannister—or Theon Greyjoy’s taking of Winterfell—depends on whether the North is a proper state; those same actions would be heralded by the Lannisters controlling the Iron Throne.

In the United States, treason is constitutionally defined and is limited to acts of war against the United States, adhering to its enemies, or giving them aid and comfort.²⁵⁵ The founding fathers purposefully adopted a restrictive definition of treason to avoid broad charges of treason by people in power against those out of power,²⁵⁶ and the definition was included in the constitution to prevent legislative or judicial changes that could seek to broaden it.²⁵⁷

In modern times, the types of treason described in *A Game of Thrones* take place wherever revolution is ongoing. From the Revolutionary War in the United States, through the French Revolution and the Bolshevik Revolution, to the modern revolutions in Syria, Iran, Libya, and Yemen, citizens have taken up arms against the established government. At a less violent level, 2017 protests in Venezuela against the ruling government and a vote in Catalonia to declare independence from Spain have elements of overthrowing an extant government. However, even with the amount of revolutions and civil discord that exists and has existed, reported prosecutions for treason are low and are almost exclusively related to espionage.²⁵⁸ The dual reasons for low numbers of prosecution in the United States is likely a combination of avoiding the political taint that a charge of treason may bring,

253. See *The Dragon and the Wolf*, *supra* note 49, where Sansa Stark, Lady of Winterfell, orders the execution of Petyr Baelish for treason even though this act benefitted the current monarch, Queen Cersei.

254. As Rickard Karstark harshly noted, “[h]ow can it be treason to kill Lannisters, when it is not treason to free them?” *STORM OF SWORDS*, *supra* note 30, at 276.

255. U.S. CONST. art. III, § 3, cl. 1.

256. THE FEDERALIST NO. 43 (James Madison) (Lodge ed. 1908) (noting with concern how “new-fangled and artificial treasons have been the great engines by which violent factions, the natural offspring of free government, have usually wreaked their alternate malignity on each other . . .”).

257. RONALD D. ROTUNDA & JOHN E. NOWAK, 1 TREATISE ON CONST. LAW § 6.14 (*History and Purpose of the Treason Clause*) (2017).

258. *The Case for Treason*, CBSN (Dec. 17, 2001, 11:17 AM), <https://www.cbsnews.com/news/the-case-for-treason/>.

as well as the prosecutorial expediency of charging an individual with a crime with less onerous constitutional protections.²⁵⁹

2. *Murder (and Attempted Murder)*

“Murder n. (bef. 12c) The killing of a human being with malice aforethought.”²⁶⁰

Almost as common as treason in the series is murder. The series opens with the image of murdered wildlings north of the Wall,²⁶¹ and progresses through multiple attempts of the murder of a child,²⁶² political assassinations,²⁶³ avengement,²⁶⁴ theft, and even training to become a professional assassin.²⁶⁵ Although the crime of murder is a capital crime, the current state of perpetual war allows many murders to go unpunished. Murder with malice aforethought, typically an intent to kill or seriously harm, reckless indifference to human life, or the intent to commit a felony, is so prevalent in the series that only cursory recognition can be had.

In Westeros, as in our world, murder usually occurs because of means, motive, and opportunity. The murder may be a politically motivated assassination, as with the mass murder Cersei Lannister ordered with the destruction of the Great Sept to consolidate her power and remove rivals,²⁶⁶ or Petyr Baelish killing Lysa Arryn to take power in the Vale,²⁶⁷ a murder for love, as when Baelish convinced Lysa Arryn to poison her husband Jon

259. In fact, when U.S. citizen John Walker Lindh was captured in 2001 fighting for the Taliban, it was reported that in the history of the United States, fewer than thirty individuals have been charged with treason. *Id.* Even Mr. Lindh was not charged with treason, but rather mainly for charges of conspiracy and aiding the Taliban and Al Qaeda. Susan Candiotti, *Walker Lindh Sentenced to 20 Years*, CNN.COM (Oct. 4, 2002, 11:44 PM), <http://edition.cnn.com/2002/LAW/10/04/lindh.statement>.

260. *Murder*, BLACK’S LAW DICTIONARY (10th ed. 2014).

261. *Game of Thrones: Winter is Coming* (HBO television broadcast Apr. 17, 2011) [hereinafter *Winter is Coming*].

262. *Id.*; *The Kingsroad*, *supra* note 88.

263. *See Game of Thrones: The Rains of Castamere* (HBO television broadcast June 2, 2013; *The Winds of Winter*, *supra* note 27; *Game of Thrones: The Lion and the Rose* (HBO television broadcast Apr. 13, 2014) [hereinafter *The Lion and the Rose*].

264. *See The Winds of Winter*, *supra* note 27; *Mother’s Mercy*, *supra* note 99; *Oathbreaker*, *supra* note 127.

265. *The House of Black and White*, *supra* note 95.

266. *The Winds of Winter*, *supra* note 27.

267. *Game of Thrones: First of His Name* (HBO television broadcast May 4, 2014).

Arryn,²⁶⁸ or spiteful revenge, as when Tyrion Lannister dispatched his purported²⁶⁹ father Tywin with a cross bolt or his lover by strangulation.²⁷⁰

Arya Stark accuses Gregor Clegane, the Hound, of killing her friend Mycah; however, this taking of life was at the instruction of Prince Joffrey, so it may have been lawful.²⁷¹ Arya herself, however, has murdered many. Beginning with a stable boy in King's Landing whom she may have killed accidentally,²⁷² she then kills a Frey soldier involved with the killing of her mother and brother.²⁷³ As she begins her personal quest for revenge, she kills Polliver, who killed her friend Lommy to reclaim her sword,²⁷⁴ followed by Rorge.²⁷⁵ She eventually arrives at the House of Black and White, where she trains to join the Faceless Men, a guild of assassins.²⁷⁶ Murder is so widespread and death so prevalent that the books maintain a list of all characters with names struck through in order to keep track of all the departed.

Just as in many modern societies, we have degrees of murder—from first degree, premeditated, to involuntary manslaughter. The series also delineates differences. Different degrees of murder in the series include regicide/kingslaying,²⁷⁷ kinslaying/murder of family,²⁷⁸ and infanticide, among others.²⁷⁹ Of these, kinslaying was perceived as the most offensive—“[k]inslaying was worse than kingslaying, in the eyes of gods and men.”²⁸⁰ In

268. *Id.*

269. I say purported because there is growing evidence, at the time of this writing, that Tyrion may be a Targaryen and not a Lannister. He is one of three to have a successful interaction with the dragons (the others being Jon Snow and Daenerys). *Home*, *supra* note 207. He has had a fascination with dragons since birth, Aerys Targaryen was infatuated with Tyrion's mother, Tywin Lannister disclaims him as a child, and, in the books, Tyrion is depicted as a mixture of pale blond or whitish hair, and lastly, Daenerys heard a prophecy in the House of the Undying in Qarth that, “the dragon has three heads.” A CLASH OF KINGS, *supra* note 9, at 874–76. Tywin told Tyrion, “Men's laws give you the right to bear my name and display my colors, since I cannot prove that you are not mine.” A STORM OF SWORDS, *supra* note 30, at 65.

270. A STORM OF SWORDS, *supra* note 30, at 1071–73.

271. A GAME OF THRONES, *supra* note 1, at 159.

272. *Game of Thrones: The Pointy End* (HBO television broadcast June 5, 2011).

273. *Game of Thrones: Mhysa* (HBO television broadcast June 9, 2013).

274. *Game of Thrones: Two Swords* (HBO television broadcast Apr. 6, 2014).

275. *Game of Thrones: Mockingbird* (HBO television broadcast May 18, 2014).

276. *The House of Black and White*, *supra* note 95.

277. *See Blood of my Blood*, *supra* note 50 (Jaime Lannister's assassination of the Mad King); *The Lion and the Rose*, *supra* note 263 (Joffrey Baratheon's poisoning by Olenna Tyrell).

278. *See* A STORM OF SWORDS, *supra* note 30, at 1071–73 (Tyrion's murder of his father, Tywin Lannister); A CLASH OF KINGS, *supra* note 9, at 613, 621 (Stannis Baratheon and Melisandre's murder of Stannis' brother Renly); *Home*, *supra* note 207 (Euron Greyjoy's murder of his brother Balon).

279. *See* A CLASH OF KINGS, *supra* note 9, at 129 (Cersei's order to kill all the illegitimate offspring of Robert Baratheon).

280. A STORM OF SWORDS, *supra* note 30, at 850.

Westeros, there is a powerful social and religious stigma that is especially attached to kinslaying. “Old gods or new, it makes no matter, no man is so accursed as the kinslayer.”²⁸¹ That stigma, of course, does not prevent multiple instances in the series. It also stands in stark contrast to the United States, where murder of family members is one of the most common types of murder.²⁸²

Many of the murders in the book and television series are depicted as morally acceptable or as karma revisiting the original bad actors. Sansa Stark’s murder of her abhorrent husband Ramsay Bolton—by feeding him to his hounds in retribution for the abuse and rape he has perpetrated on her—is one such case.²⁸³ Olenna Martell’s successful poisoning of Joffrey Lannister to protect her granddaughter Maegary is another.²⁸⁴ Cersei Lannister’s murder of Tyene Sand in retribution for the murder of her daughter Myrcella could be argued to be another.²⁸⁵ From a morally relativistic point of view, such murders are condoned by the reader/viewer as “fair”; under the U.S. legal system, however, all would likely be subject to legal punishment.

One of the guilty pleasures of the series is the purposeful manipulation of individuals to embrace retributive justice, especially when it occurs extra-judicially. Of course, Martin, in his counter-trope style, often then makes the “hero” who engages in such behavior reap the negative karma later. Olenna Martell is poisoned by Jaime and Cersei Lannister.²⁸⁶ Ellaria Sand, who murdered Princess Myrcella in revenge for the death of her lover Oberyn Martell, is then forced to watch her daughter’s death from the same poison.²⁸⁷ Tyrion Lannister killed his father for orchestrating a false trial against him, and was then captured and sold into slavery.²⁸⁸ This relativism might be the trick of the series—convincing people to cheer or condemn the same conduct

281. *Id.* at 281.

282. *See, e.g.*, U.S. DEP’T OF JUSTICE, CRIME IN THE UNITED STATES, 2011, at 2 (2012), <https://ucr.fbi.gov/crime-in-the-u.s/2011/crime-in-the-u.s.-2011/offenses-known-to-law-enforcement/expanded/expandhomicidemain.pdf> (noting that in incidents of murder for which the relationship status of the parties was known, 24.8% of the victims were slain by family members); U.S. DEP’T OF JUSTICE, FAMILY VIOLENCE STATISTICS INCLUDING STATISTICS ON STRANGERS AND ACQUAINTANCES 1 (2005), <https://www.bjs.gov/content/pub/pdf/fvs02.pdf> (noting that in 2002, 22% of murders were family murders).

283. *Game of Thrones: Battle of the Bastards* (HBO television broadcast June 19, 2016); *The Lion and the Rose*, *supra* note 263.

284. *Game of Thrones: The Queen’s Justice* (HBO television broadcast July 30, 2017) [hereinafter *The Queen’s Justice*].

285. *Id.*

286. *Id.*

287. *Id.*

288. *Game of Thrones: Unbowed, Unbent, Unbroken* (HBO television broadcast May 17, 2015).

depending solely on whose point of view you prefer. In *A Game of Thrones*, murder is not good or evil unless you know who was murdered and why.

3. *Smuggling, Abandoning the Black, Oathbreaking, Adultery, and Guest Right*

Other crimes in the series receive passing mention. Ser Davos Seaworth was a smuggler who, when forced to account for his past crimes, suffered the loss of the tips of his fingers on one hand as punishment.²⁸⁹ Kurz and Koss were recruited to the Night's Watch while imprisoned in the Black Keep for poaching.²⁹⁰ Desertion from the Night's Watch is another capital crime.²⁹¹ Both the books and show commence at the desertion and execution of Will, a member of the Night's Watch.²⁹² Oathbreaking, including desertion, can be a capital offense as well.²⁹³ Jaime Lannister earned his nickname, "kingslayer," for breaking the oath of a member of the Kingsguard.²⁹⁴ Janos Slynt was exiled to the Wall due to his corruption and his ordering of the murder of Robert Baratheon's illegitimate children.²⁹⁵ Cersei Lannister was forced to atone for her crimes of false statements and adultery by walking shorn and naked through the streets of the capital.²⁹⁶

Another type of oath that has historical roots is guest right. North²⁹⁷ and south²⁹⁸ of the wall, the tradition of guest right had been considered sacred and inviolable. Violators of guest right expected to receive their punishment from the gods.²⁹⁹ Since the Red Wedding, however, the guest right is not

289. A CLASH OF KINGS, *supra* note 9, at 10. *See generally* David Barr Kirtley, 7 Key Ways *Game of Thrones* Deviates from George R.R. Martin's Novels, WIRED (Apr. 2, 2012, 5:53 PM), <https://www.wired.com/2012/04/book-curmudgeon-game-of-thrones/> (discussing that the injured hand varies between the books and the series due to the actor being left-handed).

290. A CLASH OF KINGS, *supra* note 9, at 138.

291. A GAME OF THRONES, *supra* note 1, at 16.

292. *Id.* at 13–15; *Winter is Coming*, *supra* note 261.

293. A GAME OF THRONES, *supra* note 1, at 574.

294. *Id.* at 391.

295. A CLASH OF KINGS, *supra* note 9, at 125–27.

296. *Mother's Mercy*, *supra* note 99. In creating the walk of atonement, George R.R. Martin was inspired by the walk of Jane Shore, a mistress of King Edward IV who was forced to walk barefoot through London wearing only a shift and a white sheet. Randy Dotinga, *What Inspired That Excruciating 'Walk of Shame' Scene in 'Game of Thrones'?*, CHRISTIAN SCI. MONITOR (June 16, 2015), <https://www.csmonitor.com/Books/chapter-and-verse/2015/0616/What-inspired-that-excruciating-walk-of-shame-scene-in-Game-of-Thrones>.

297. *See* A STORM OF SWORDS, *supra* note 30, at 102 (statement of Maence Rayder) ("The laws of hospitality are as old as the First Men, and sacred as a heart tree.").

298. *See id.* at 671 (statement of Catelyn Stark) ("Once you have eaten of his bread and salt, you have the guest right, and the laws of hospitality protect you beneath his roof.").

299. *See id.* at 764 (statement of Old Nat) ("It was not for murder that the gods cursed [the

considered as sacrosanct in Westeros.³⁰⁰ In our world, the roots of guest right go back millennia.

In the Arab peninsula, both religious and secular forms for guest right have existed for thousands of years.³⁰¹ Anyone who was granted refuge was given protection, and any harm committed on them was considered a sacrilege.³⁰² Echoing a line from the series, “[t]o share bread and salt” meant that a hospitality agreement and a protection pact had been concluded with the stranger.³⁰³ Ancient Greek societies also had guest right principles.³⁰⁴ One of the core themes of Homer’s *Odyssey* is that of *xenia*, the law or custom of offering protection to guests or strangers.³⁰⁵ Indeed, as in Westeros, ancient Greeks considered *xenia* as the will of the gods.³⁰⁶ Also as in Westeros, for as long as guest right has existed, there are reports of it not being honored.³⁰⁷

Later societies also continued some form of guest right.³⁰⁸ Two of the most egregious breaches of it were likely the inspiration for the Red Wedding.³⁰⁹ The Black Dinner and the Massacre of Glencoe, both in Scotland,

Rat King] . . . [b]ut he slew a guest beneath his roof, and that the gods cannot forgive.”), 457 (statement of Jeor Mormont) (“The Gods will curse us . . . there is no crime so foul as for a guest to bring murder into a man’s hall.”); *Game of Thrones: Breaker of Chains* (HBO television broadcast Apr. 20, 2014) (a farmer stating, “The gods will have their vengeance. Frey will burn in the seventh hell for what he did”).

300. See, e.g., *Breaker of Chains*, *supra* note 299 (Sandor Clegane stating, “Guest right don’t mean much anymore.”).

301. See, e.g., GHASSAN MAÂROUF ARNAOUT, *ASYLUM IN THE ARAB-ISLAMIC TRADITION* 11–21 (1987).

302. *Id.* at 13.

303. *Id.* at 14.

304. Under *xenia*, a host could not “fail ‘to protect his guest.’” NIGEL GUY WILSON, *ENCYC. OF ANCIENT GREECE* 370–71 (2006).

305. Elena Isayev, *Between Hospitality and Asylum: A Historical Perspective on Displaced Agency*, 99 *INT’L REV. OF THE RED CROSS* 75, 80 (2017).

306. *Id.* at 89. The Argive king Pelasgos feared the retribution of the god Zeus for failure to properly address a claim for protection, King Kleomenes of Sparta supposedly went mad due to killing a claimant of protection, and other natural disasters of the time were attributed to divine retribution for the mistreatment of those seeking protection. *Id.* at 92–94.

307. In the *Iliad*, Paris’ abduction of Helen is a breach of *xenia* that sparks the Trojan War. See WILSON, *supra* note 304, at 370–71.

308. JAMES DALRYMPLE STAIR, *THE INSTITUTIONS OF THE LAW OF SCOTLAND* 5 (3d ed. 1759) (noting “the mutual trust betwixt the host and the guest, whom he hath willingly received in his house, whereby neither of them can act any thing prejudicial to the life or liberty of the other, while in that relation”).

309. *Gory Edinburgh Killing Inspired Game of Thrones ‘Red Wedding’*, *EDINBURGH EVENING NEWS* (Apr. 4, 2016, 4:16 PM) [hereinafter *Gory Edinburgh Killing*], <https://www.edinburghnews.scotsman.com/news/entertainment/gory-edinburgh-killing-inspired-game-of-thrones-red-wedding-1-4090317>.

violated the prevalent cultural tradition of hospitality.³¹⁰ In 1440, in what was to later become known as the Black Dinner, the 16-year-old Earl of Douglas and his 10-year-old brother arrived at Edinburgh Castle.³¹¹ As part of an ancient Scottish tradition, the two boys, after they had eaten, were served the severed head of a black bull, indicating that they would be executed.³¹² A little over two centuries later (in 1692) after twelve days of being housed by Clan MacDonald, Captain Robert Campbell, on orders of the crown, killed their hosts as they slept in the infamous Glencoe Massacre.³¹³ Those who escaped into blizzard conditions died of exposure shortly thereafter.³¹⁴ With the Red Wedding, *A Song of Ice and Fire* once again shocked its audience with its audacity and violence. The subtler feat is that, without telling us so, the series reveals itself yet again as more a mirror than window. In the words of George R.R. Martin, “[n]o matter how much I make up, there’s stuff in history that’s just as bad, or worse.”³¹⁵

B. Criminal Procedure—The Trial

Criminal Procedure in *A Game of Thrones* is one of the most interesting aspects of the series. As mentioned above, crime is rampant,³¹⁶ yet incarceration is minimal.³¹⁷ Determinations of guilt may be speedy, and due process may be lacking in whole or in part. Punishments can be swift and severe.³¹⁸ It is not surprising that authorities would seek a cheaper alternative to the cost of incarceration, and perhaps because of the limited number of cells, amnesty can be had through a repayment of the debt owed to society through lifetime service in the Night’s Watch.³¹⁹

310. See discussion *supra* Section III.A.3. See generally SAMUEL RUTHERFORD CROCKET, *THE BLACK DOUGLAS* 226, 251–53 (Cedric Chivers., LTD Portway, Bath. 1969) (1899); JOHN L. ROBERTS, *CLAN, KING AND COVENANT: HISTORY OF THE HIGHLAND CLANS FROM THE CIVIL WAR TO THE GLENCOE MASSACRE* 230, 232–35 (2000).

311. *Gory Edinburgh Killing*, *supra* note 309.

312. CROCKET, *supra* note 310, at 226, 251–53.

313. ROBERTS, *supra* note 310, at 230, 232–35.

314. *Id.* at 235.

315. *Gory Edinburgh Killing*, *supra* note 309.

316. See discussion *supra* Sections III.A.1–3.

317. See *supra* note 241 and accompanying text.

318. See, e.g., *A GAME OF THRONES*, *supra* note 1, at 16 (detailing the execution of a deserter after a few questions); *The Dragon and the Wolf*, *supra* note 49 (showing the immediate order of execution for Petyr Baelish).

319. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 146; *A GAME OF THRONES*, *supra* note 1, at 447.

The first “trial” in *A Game of Thrones* takes place in the first episode of the series when Ned Stark executes a deserter from the Night’s Watch.³²⁰ The prisoner confessed in front of Ned Stark, Lord of Winterfell, who then sentenced him to death, and executed him.³²¹ The justice delivered was swift, as the entire sequence took place in less than two minutes.³²²

When guilt is contested, the trial process varies. The accused is given the options of trial by combat,³²³ trial by the faith,³²⁴ or a court trial by a lord or council.³²⁵ The procedures vary greatly depending on the process chosen.

1. Trial by Combat

*I know I’ll get no justice here, so I will let the gods decide my fate. I demand a trial by combat.*³²⁶

— Tyrion Lannister

In *A Song of Ice and Fire*, the trial process that most captivates the imagination of the audience is trial by combat.³²⁷ The accused may represent him or herself in combat, or, in some circumstances, may be allowed to pick a champion to fight on his or her behalf.³²⁸ The designated individuals then fight until one surrenders or dies. It is understood that the victor has prevailed through the judgment of the gods, and therefore the outcome is just and righteous.³²⁹ Victory by the defendant or the defendant’s champion results in acquittal, while victory by the accuser results in a guilty verdict and sentence of death. Trial by combat, like our right to trial by jury, is guaranteed (or rather was guaranteed until the laws were recently changed by King Tommen).³³⁰

320. See *supra* note 292 and accompanying text.

321. *Winter is Coming*, *supra* note 261.

322. *Id.* This approach varied from King Joffrey’s approach to Ned Stark’s public trial for treason. Ned falsely confessed to treason in response to a promise for his daughter Sansa’s safety and his own clemency to join the Night’s Watch. In that trial, King Joffrey used an executioner to perform the act when he sentenced Ned Stark to death for treason. *A GAME OF THRONES*, *supra* note 1, at 725–26.

323. See discussion *infra* Section III.B.1.

324. See *infra* notes 399–400 and accompanying text.

325. See discussion *infra* Section III.B.2.

326. *Game of Thrones: The Laws of Gods and Men* (HBO television broadcast May 11, 2014).

327. *A GAME OF THRONES*, *supra* note 1, at 422–23.

328. *Id.* at 422–23.

329. “A trial by combat, deciding a man’s guilt or innocence in the eyes of the gods by having two other men hack each other to pieces. Tells you something about the gods.” *The Mountain and the Viper*, *supra* note 251.

330. *A GAME OF THRONES*, *supra* note 1, at 421.

Trial by Combat appeared early in the series, when Tyrion Lannister was tried in the Vale for conspiracy to murder Bran Stark and Lord Jon Arryn.³³¹ Tyrion's first appointment of his brother Jaime Lannister as his champion was rejected, as Jaime was not present and the trial would not be delayed for him to attend.³³² At that point, a mercenary interested in pecuniary benefit volunteered and ultimately prevailed, thereby earning Tyrion's freedom.³³³

The right to trial by combat is so widely recognized that it extends beyond the traditional proceedings carried out by governing powers. The Brotherhood Without Banners, a group of outlaws in open revolt against the Lannisters, captured Sandor Clegane and forced him to undergo trial by combat for the alleged murder of a friend of Arya Stark at the behest of Prince Joffrey prior to Joffrey's ascension to the throne, as well as for Clegane's abandonment of the post of Kingsguard.³³⁴ The accused prevailed and was found innocent in the eyes of the gods.³³⁵

Later, Tyrion Lannister was wrongfully accused of murdering King Joffrey.³³⁶ Following a brief trial, which was more show trial than actual trial, Tyron elected once again to face trial by combat.³³⁷ In this case, his champion was Oberyn Martell, one of the original members of the three-judge panel from his court trial who agreed to the role to avenge the death of his sister at the hands of Gregor Clegane, the Crown's champion.³³⁸ Upon Oberyn's death in the trial, Tywin Lannister immediately passed judgement: "The gods have made their will known. Tyrion Lannister . . . you are hereby sentenced to death."³³⁹

The series also refers to a trial by combat known as the Trial of Seven that involved the accused and six champions fighting the seven champions of the accusers.³⁴⁰ Duncan the Tall is reputed to have defeated Aerion Targaryen in this type of battle.³⁴¹ The only other referenced Trial of the Seven involved King Maegor the Cruel against the champions of the Faith Militant.³⁴² While

331. *Id.* at 420–23.

332. *Id.* at 422–23.

333. *Id.* at 423, 443.

334. *Kissed by Fire*, *supra* note 248.

335. *Id.*

336. *See supra* note 269.

337. *See supra* note 326 and accompanying text.

338. *See supra* note 272.

339. *The Mountain and the Viper*, *supra* note 251.

340. *Game of Thrones: The Complete Fourth Season, Histories and Lore, Justice of the Seven Kingdoms* (HBO television broadcast Feb. 17, 2015).

341. GEORGE R.R. MARTIN, *A KNIGHT OF THE SEVEN KINGDOMS* 84 (2015).

342. In 42 A.C., King Maegor, through the Trial of Seven, maintained his claim to the throne, in part, based on his defeat of the challengers. *THE WORLD OF ICE AND FIRE*, *supra* note 27, at 55.

the right to trial by combat had existed for centuries—apparently as an absolute right—it was abolished by King Tommen prior to the trial of his mother, Cersei Lannister, to prevent her from naming the revived Ser Gregor Clegane as her champion.³⁴³

In our world, trial by combat was part of some European countries' legal systems through the 16th century.³⁴⁴ It was used in Germanic and Scandinavian settlements, codified and regulated in the laws of the Frankish Empire,³⁴⁵ and used in Great Britain and Ireland through at least the 16th century.³⁴⁶ In fact, one historian noted that it was adopted by nearly "all the tribes which founded the European states"³⁴⁷

Nothing was too high for it, nothing too low. It would establish the virtue of a queen, test the veracity of a witness, or reargue the decision of a judge; it would hang a traitor, a murderer, or a thief; it would settle a disputed point of succession, give a widow her dower, or prove a questioned charter.³⁴⁸

Interestingly, after trial by combat had disappeared in Burgundy, the King of Burgundy revived it to deal with rampant perjury in other settings, countering religious opposition with words reminiscent of *A Game of Thrones*: are not "private combats [] directed by the judgement of God? And does not Providence award the victory to the juster cause?"³⁴⁹

In fact, the church and trial by combat were very much intertwined. St. Patrick threatened to expel members of the clergy if they relied on trial by combat in the year 456.³⁵⁰ Clerics fought in trials by combat until at least the year 1140, in which it was forbidden by Pope Innocent II and reiterated by the

343. "The Crown has decided that from this day forward, trial by combat will be forbidden through the Seven Kingdoms. The tradition is a brutish one, a scheme devised by corrupt rules in order to avoid true judgment from the gods." *No One*, *supra* note 47.

344. *See, e.g.*, GEORGE NEILSON, TRIAL BY COMBAT 1–3 (1891) (noting that trial by combat appears to have originated with Central Europe among Scando-Gothic tribes). *See also* HENRY C. LEA, SUPERSTITION AND FORCE 98 (First Greenwood ed. 1968) (1870).

345. NEILSON, *supra* note 344, at 6, 10–11.

346. *Id.* at 6.

347. LEA, *supra* note 344, at 91. "The laws of the Angles, the Saxons, and the Frisians, likewise bear testimony to the universality of the custom." *Id.* at 95.

348. NEILSON, *supra* note 344, at 7.

349. *Id.* at 6. *See also* LEA, *supra* note 344, at 87 (translating, "Thou hast lied against me. Grant me the single combat, and let God make manifest whether thou hast sworn truth or falsehood") (L. Baioar Tit. XIV c. i. § 2).

350. LEA, *supra* note 344, at 93. By the year 819, members of the clergy were largely exempt or prohibited from dueling on religious grounds. *Id.* at 120–21.

following two popes.³⁵¹ It appears there was good reason to repeat the prohibition, as an accounting of a British bishop's records from the late 1200s shows multiple payments to champions, and, indeed, that a champion was on retainer for the bishop.³⁵² In Hungary, the King of Hungary provided champions for all suits against the abbey.³⁵³ Perhaps one of the reasons for the persistence of trial by combat and the involvement of the church stemmed from the fact that the church received significant benefit in the form of fees and penalties from presiding over the duels, and so was keen to maintain that right.³⁵⁴

As for subject matter jurisdiction, that also varied greatly by country and tribe. The Burgundians are reported to have used it to resolve almost all disputes, to the extent of restricting the introduction of evidence or witnesses.³⁵⁵ Other jurisdictions would only allow judicial combat upon the complaint of perjury; however, that practice appears to have encouraged parties who deemed their position a losing one to simply declare an individual a perjurer and therefore demand combat.³⁵⁶ Some jurisdictions limited trial to combat to criminal cases of murder, treason, or false testimony, while others employed it widely for both criminal and civil matters.³⁵⁷ In Normandy in the 1200s, in trials with a deadlocked jury (not unanimous), combat was ordered regardless of the desire of the parties.³⁵⁸ In eleventh century England, trial by combat existed as a matter of right for any Englishman accused by a Norman of murder, robbery, or perjury.³⁵⁹

Many jurisdictions had an "amount in controversy" requirement below which trial by combat would be unavailable. The Baioarians set the threshold

351. *Id.* at 121; NEILSON, *supra* note 344, at 14 (noting that when a priest's champion killed his opponent in trial by combat that such killing was homicide, and that the priest should no longer continue in his holy orders).

352. NEILSON, *supra* note 344, at 51.

353. LEA, *supra* note 344, at 122.

354. *Id.* at 126; NEILSON, *supra* note 344, at 13 ("We give to God and Saint Denis the law of the duel.").

355. LEA, *supra* note 344, at 100.

356. *Id.* at 101.

357. *Id.* at 108–09, 111 (noting that Béarn only allowed trial by combat for serious criminal matters or perjury, while in Beauvoisis, it was allowed extensively subject only to limitations imposed by the municipal code). England only allowed the wager of battle for felonies or other crimes of importance. *Id.* at 114. In Beauvoisis, in 1283, in criminal cases defendants were required to accept trial by combat if offered or confess guilt unless an exception was available such as an alibi, the accuser was known for dishonesty, or the accusation was a bare attempt to cast blame elsewhere. *Id.* at 108. If the accused demanded trial by combat, the judge was required to permit it unless the "guilt was too notorious for question." *Id.*

358. *Id.* at 112.

359. NEILSON, *supra* note 344, at 31.

at the value of a cow, while others set a value that, according to historians, was equivalent to thirty-six francs in 1870, or nearly two-hundred U.S. dollars in 2018.³⁶⁰ In England, under the Laws of Henry I, trial by combat was prohibited in civil trials unless the amount in controversy was at least ten shillings.³⁶¹

Limitations based on health, gender, and religious orders³⁶² abounded. In fourteenth century Rheims, we find evidence in the municipal code permitting the use of “champions” or delegates to fight only on behalf of the physically infirm or elderly.³⁶³ In England as well, injured individuals were not required to submit to trial by combat.³⁶⁴ That rule led to a finding that, for an individual who had lost teeth, a loss of molars would not prevent trial by combat, whereas loss of incisors, since they may be used as weapons, would be a sufficient physical infirmity to avoid the trial.³⁶⁵

In Germany, women were allowed to fight, and it was sufficiently common that procedures were adopted to provide some parity between combatants of different genders.³⁶⁶ In battles between a man and a woman, the man was buried to waist level,³⁶⁷ had his left arm bound behind him, and was provided only a mace as a weapon, while the woman had free motion and was provided a weapon that was a stone of four to five pounds in a sling.³⁶⁸ In Bigorre, widows whose husbands had died in war were immune from any legal proceeding that could result in a trial by combat until they remarried or had adult sons.³⁶⁹

The style of battle varied from barefoot without arms to full battle dress on horseback with sword and shield,³⁷⁰ though these limitations sometimes varied depending on the status of the litigants. In some jurisdictions, serfs could not challenge freemen, men of illegitimate birth could not challenge those of legitimate birth, and lepers were prohibited from challenging healthy

360. LEA, *supra* note 344, at 113 n.1.

361. NEILSON, *supra* note 344, at 33.

362. *See supra* notes 292–96 and accompanying text.

363. LEA, *supra* note 344, at 102.

364. *Id.* at 111.

365. NEILSON, *supra* note 344, at 47.

366. LEA, *supra* note 344, at 119–20.

367. NEILSON, *supra* note 344, at 8.

368. *See* HANS TALHOFFER, FECHTBUCH (1467), illustrating battles between men and women (often spouses) and providing advice to both. Illustrations available at Kenneth L. Hodges, *Trial by Combat Between a Man and a Woman*, U. OF OKLA., http://www.aemma.org/onlineResources/trial_by_combat/combat_man_and_woman.htm (last visited Sept. 25, 2018).

369. LEA, *supra* note 344, at 112.

370. NEILSON, *supra* note 344, at 7–8.

individuals.³⁷¹ In Germany, an individual of a superior rank could decline a challenge from an inferior.³⁷² Another judicial protection allowed an individual to decline combat if he presented seven witnesses on his behalf.³⁷³ The conditions of the battle also varied depending on the region and parties involved. In France, if a villager accused a gentleman, the villager was limited to fighting on foot with shield and staff while the gentleman could be mounted on horseback with “knightly weapons.”³⁷⁴ In Wales, due to a peculiar quirk of their law of treating twins as one person—and entitled to only one share in an inheritance—both were allowed to engage in “single” combat against a third party.³⁷⁵ Lastly, as seemingly uncommon as it is in *A Song of Ice and Fire*, in Norway there is evidence of a trial by combat where twelve men faced another twelve men with the defeated party being banished after defeat.³⁷⁶

The punishment in trial by combat (if the parties survived) was often for the defeated party to lose the lawsuit, suffer fines, and also to suffer the penalty of perjury—which was the loss of a hand.³⁷⁷ In capital cases in England, if the accused was defeated, he was executed and forfeited all property.³⁷⁸ If the accuser was defeated, he was treated as a perjurer and imprisoned.³⁷⁹ In other jurisdictions, the defeated accused or accuser were susceptible to equal punishment including death, mutilation, or confiscation of property.³⁸⁰ Losing litigants were even able to challenge a judge to combat as a means of appeal.³⁸¹ However, in some jurisdictions the right to an appeal was lost if the appellee was able to slay a bull with a single blow.³⁸²

In those cases where allowed, either by custom or legal disability, champions were frequently hired.³⁸³ When champions were employed by the parties, some jurisdictions required they use identical weapons.³⁸⁴ However, the profession was inherently risky, as the defeated champion was, at best, fined and prevented from ever giving testimony in the future, to, at worse,

371. LEA, *supra* note 344, at 108.

372. *Id.* at 109.

373. *Id.*

374. *Id.* at 117.

375. *Id.* at 135.

376. NEILSON, *supra* note 344, at 24.

377. LEA, *supra* note 344, at 129; NEILSON, *supra* note 343, at 47.

378. LEA, *supra* note 344, at 130.

379. *Id.*

380. *Id.* at 131.

381. *Id.* at 104–05 (citing the 1195 customs of St. Quentin allowing the losing party recourse against the judge).

382. NEILSON, *supra* note 344, at 9.

383. LEA, *supra* note 344, at 136–39.

384. A three-foot long club and a shield. *Id.* at 134.

being hanged or suffering amputation of a limb as a perjurer.³⁸⁵ In fact, many champions were either family of one of the parties, a criminal, or had weapons experience.³⁸⁶ Indeed, by the 14th century champions had become infamous, and were often prohibited from offering testimony, denied legal rights such as inheritances, and deemed incapable of receiving an insult as theirs was the lowest class.³⁸⁷

In contrast to the prevalence of trial by combat in *A Song of Ice and Fire*, trial by combat in modern times has faded away—though, curiously, there is more than a passing argument to say that it did exist in the United States. As part of the common law, trial by combat was not outlawed in Britain until 1819.³⁸⁸ As such, it would have been part of our legal system at the time of the founding of the United States;³⁸⁹ however, there are no recorded cases in the United States of a judicial trial by combat, though it has been sought.³⁹⁰

2. Court Trial

*If you are indeed innocent of Joffrey's death, you should have no difficulty proving it at trial.*³⁹¹

— Tyrion Lannister

The first time *A Game of Thrones* presented a full court trial was when Tyrion Lannister was tried for the assassination of King Joffrey Baratheon.³⁹² The trial was conducted by a three-judge panel consisting of Tywin Lannister,³⁹³ Hand of the King and Tyrion's father, Mace Tyrell, and Oberyn Martell. The trial was presided over by Tywin, father of the accused and grandfather of the victim, and it was apparent that he harbored no love for his

385. *Id.* at 140.

386. *Id.* at 141–42.

387. *Id.* at 143–44.

388. In the year 1818, a defendant in Britain successfully raised the right to trial by battle. It was prohibited the following year. Christina Sterbenz, *Trial by Combat May Still be Legal in America*, BUSINESS INSIDER (Nov. 12, 2013, 1:14 PM), <http://www.businessinsider.com/trial-by-combat-in-the-united-states-2013-11>.

389. *Id.*

390. *McNatt v. Richards*, No. 6987, 1983 WL 18013, at *1 (Del. Ch. Mar. 28, 1983) (“I also note that defendant’s offer to waive its counterclaim on the condition that plaintiff accept a challenge of trial by combat to death is not a form of relief this Court, or any court in this country, would or could authorize.”).

391. A STORM OF SWORDS, *supra* note 30, at 894.

392. *Id.*

393. *Id.*

son.³⁹⁴ Witnesses presented fabricated³⁹⁵ and circumstantial evidence, and some were coerced or bribed into providing their testimony against Tyrion.³⁹⁶ Additionally, Tyrion was given essentially no opportunity to cross-examine the witnesses.³⁹⁷ As the conclusion appeared foregone, Tyrion demanded instead his trial by combat as described above.³⁹⁸

The other type of court trial in the series is a trial by the faith. When Cersei Lannister reinstated the Faith Militant, she also reinstated the ability to conduct trials.³⁹⁹ It was the Faith that was also supposed to try Cersei for her crimes, though she avoided the trial by destroying the Sept of Baelor and murdering those within it.⁴⁰⁰

The history of the trial in U.S. jurisprudence is lengthy and owes much to its English forebears,⁴⁰¹ and anything beyond a cursory examination is beyond the scope of this brief overview. Early courts in England were entirely local and handled more menial affairs.⁴⁰² Alfred the Great is thought to have adopted the County Courts system in the late 800s.⁴⁰³ Freeholders were the judges of these County Courts, and the courts were overseen by a higher power, typically an earl, bishop, or sheriff.⁴⁰⁴ From 1041 through 1066, Edward the Confessor administered a circuit-based court-system with judges adjudicating matters, a precursor to the traditional English assizes.⁴⁰⁵ In order to deal with the quantity of cases—and the cost and expense of travel for court—many local, private jurisdictions administered by lords or the clergy flourished, though there is disagreement as to whether justice was served.⁴⁰⁶ Then, in the 1100s, King Henry I established the King's Courts, which began to operate in true circuit form and established more uniform judgements or precedents upon which the common law was based.⁴⁰⁷

394. *Id.* at 884–911.

395. Shae testified that Sansa and Tyrion plotted together to murder Joffrey. *Id.* at 961.

396. *Id.* at 897, 902–03.

397. *Id.* at 902.

398. *See supra* note 326 and accompanying text.

399. “Yet who is truly fit to judge a queen, save the Seven Above and the godsworn below? A scared court of seven judges shall sit upon this case. Three shall be of your female sex. A maiden, a mother, and a crone.” A FEAST FOR CROWS, *supra* note 37, at 930–31.

400. *The Winds of Winter*, *supra* note 27.

401. *See generally* BERNARD O'DONNELL, CAVALCADE OF JUSTICE (1952).

402. *Id.* at 10–11. The local courts were called Shire-moots and Hundred Courts, and handled ordinary matters. *Id.*

403. *Id.* at 11.

404. *Id.*

405. *Id.* at 15.

406. *Id.* at 16.

407. *Id.* at 17.

Within this system emerged the trial by jury. There are many potential precursors to the English trial by jury, from the “thing” of Scandinavia with its sworn tribunal open to the public,⁴⁰⁸ to Teutonic compurgators of which there were twelve,⁴⁰⁹ or Roman criminal trials where members from a class would vote on the guilt or innocence of the party.⁴¹⁰ However, many commentators have decreed it to be uniquely English.⁴¹¹

The former colonies that became the United States engaged in widespread adoption of the jury trial.⁴¹² The United States itself, from its founding, embedded the right to a jury trial within the Constitution.⁴¹³ The Sixth Amendment to the Constitution guarantees the right to a jury trial for all criminal prosecutions, and the Seventh Amendment guarantees the same rights to a jury trial in civil suits that was permitted in 1791.⁴¹⁴ For both criminal and civil trials, the jury is to be comprised of randomly selected individuals in society who sit to hear and decide questions of fact relating to culpability or liability,⁴¹⁵ with both processes allowing for a voir dire process through which litigants may strike biased individuals.⁴¹⁶

In *A Game of Thrones*, King Tommen outlawed trial by combat and reinstituted trial by the faith, which consists of a trial heard by seven septons.⁴¹⁷ The seven septons hearing the case ostensibly represent each of the seven persons: the Father, the Mother, the Maiden, the Crone, the Warrior, the Smith, and the Stranger.⁴¹⁸ While the trial by the faith consists of seven finders of fact, given that all seven are septons rather than representatives from each of the seven categories, the ideal of a jury by one’s peers has not yet come fully to King’s Landing.

408. WILLIAM FORSYTH, TRIAL BY JURY 7 (photo. reprint 1994) (2d ed. 1875).

409. *Id.* at 6.

410. *Id.* at 10.

411. *Id.* at 11; Neil Vidmar, *A Historical and Comparative Perspective of the Common Law Jury*, in WORLD JURY SYSTEMS 1–2 (Neil Vidmar ed., 2000); MAXIMUS A. LESSER, THE HISTORICAL DEVELOPMENT OF THE JURY SYSTEM 6–9 (1992).

412. Stephan Landsman, *The Civil Jury in America*, in WORLD JURY SYSTEMS 385 (Neil Vidmar ed., 2000) (describing the right to trial by jury as “probably the only one universally secured by the first American state constitutions”).

413. U.S. CONST. art. 3, § 2; U.S. CONST. amend. VI; U.S. CONST. amend. VII.

414. Landsman, *supra* note 412, at 386.

415. *Id.* at 381; Nancy Jean King, *The American Criminal Jury*, in WORLD JURY SYSTEMS 108–09 (Neil Vidmar ed., 2000) (noting the Sixth Amendment clearly delineated an “impartial” jury).

416. King, *supra* note 415, at 112–13; Landsman, *supra* note 412, at 389–91.

417. *No One*, *supra* note 47.

418. *See supra* note 399 and accompanying text.

IV. IMMIGRATION LAW

*Why is it that when one man builds a wall, the next man immediately needs to know what's on the other side?*⁴¹⁹

— Tyrion Lannister

Immigration policy in Westeros appears fairly flexible. There is commerce and travel between Westeros and the Free Cities of Essos with no apparent impediments to travel between them.⁴²⁰ The only apparent immigration policy appears to be the massive Wall that is thousands of years old,⁴²¹ 300 miles in length, and 700 feet tall.⁴²² The Wall was constructed along the northern border to protect the inhabitants south of the Wall by keeping out the Others and the Free Folk that live north of it.⁴²³ The Wall has its own border patrol in the Night's Watch, who are sworn to protect it.⁴²⁴

In lore, the Wall was built by Brandon the Builder 8,000 years ago to repel and keep out the White Walkers.⁴²⁵ In more recent times, the Wall has been pivotal in repelling or containing invasions by the wildlings and their King-Beyond-the-Wall,⁴²⁶ as well as preventing more frequent raids on the southern side of the Wall.⁴²⁷ The policy of exclusion and execution remained in place until Jon Snow, Commander of the Night's Watch, agreed to grant the wildlings refuge.⁴²⁸

Snow ultimately decided to allow the wildlings to cross in order to ensure their safety and to increase the size of the forces he had at his disposal for battle against the Others.⁴²⁹ In addition to allowing the wildlings passage through the Wall, Commander Snow also gave them amnesty for past offenses

419. A GAME OF THRONES, *supra* note 1, at 184.

420. Caroline Hsu, *The Westeros economy: A Financial FAQ for GoT fans*, INVESTOPEDIA (last updated Nov. 10, 2017), <https://www.investopedia.com/articles/investing/021816/westeros-economy-financial-faq-got-fans.asp>.

421. A DANCE WITH DRAGONS, *supra* note 65, at 783.

422. See A GAME OF THRONES, *supra* note 1, at 183–84, 206.

423. A DANCE WITH DRAGONS, *supra* note 65, at 783–84.

424. See *supra* note 87 and accompanying text.

425. See A GAME OF THRONES, *supra* note 1, at 25, 46.

426. See, e.g., A CLASH OF KINGS, *supra* note 9, at 747 (describing a failed invasion by King-Beyond-the-Wall Bael).

427. See, e.g., A STORM OF SWORDS, *supra* note 30, at 1019.

428. Jon Snow's revision of this policy ultimately leads to mutiny at Castle Black and his assassination. "What you propose [allowing the wildlings to cross south] is nothing less than treason . . ." A DANCE WITH DRAGONS, *supra* note 65, at 783.

429. *Id.* at 780–83.

in exchange for their promise to fight with the Night's Watch.⁴³⁰ The decision to allow them to cross was tactical—it was also humanitarian to grant refuge to the woman and children in the camp.⁴³¹

In our world, equivalents to the Wall are well known. Hadrian's Wall, built by Romans across northern England, inspired Martin's version.⁴³² Hadrian's Wall was estimated at eight to twelve feet wide and fourteen to eighteen feet tall,⁴³³ and slightly over seventy miles in length.⁴³⁴ The Romans constructed the wall, in part, to deal with roaming war parties coming from the Scottish lowlands.⁴³⁵ The Romans attempted to move further north with the Antonine Wall approximately twenty years later; however, due to invasions from the Scottish lowlands, they were forced to retreat back to Hadrian's Wall,⁴³⁶ which was used continuously until the early 400s.⁴³⁷

Other walls worth mentioning as inspiration include the Great Wall of China, the Berlin Wall, and the Sumerian Amorite Wall.⁴³⁸ Notably, however, the commonality with these walls and the Wall is that any success they enjoyed as a barrier was limited.⁴³⁹ Crossings were common, and the cost to patrol and defend the entire length of the wall was not feasible for any extended period of time.⁴⁴⁰ In further parallel with *A Game of Thrones*, the walls of antiquity were largely rendered useless with the advent of new

430. "If we want the free folk to fight beside us, we must pardon their past crimes as we would for our own." *Id.* at 780.

431. "There are children in that camp, hundreds of them, thousands. Women as well . . . Along with mothers and grandmothers, widows and maids . . . would you condemn them all to die, my lord?" *Id.*

432. Sarah Scott, *Game of Thrones Writer Reveals Hadrian's Wall Inspired Hit TV Series*, THE JOURNAL, <http://www.thejournal.co.uk/news/north-east-news/game-thrones-writer-inspired-hadrians-7214397> (last updated June 5, 2014, 9:24 AM).

433. J. COLLINGWOOD BRUCE, *THE HAND-BOOK TO THE ROMAN WALL* 19–20 (8th ed. 1927).

434. *Id.* at 261.

435. *Id.* at 23, 257 (noting that "the Wall undertook the harder duty of warding off the professedly hostile tribes of Caledonia . . ."). However, given the prevalence of crossing points, it is likely that non-warring traffic was common between the north and south of the wall. GERAINT OSBORN, *HADRIAN'S WALL AND ITS PEOPLE* 22 (2006).

436. *Id.* at 261; OSBORN, *supra* note 435, at 8.

437. OSBORN, *supra* note 435, at 94–95.

438. See, e.g., Evan Andrews, *7 Famous Border Walls*, HISTORY (Feb. 1, 2016), <https://www.history.com/news/7-famous-border-walls>.

439. *Id.* (noting that the Sumerian wall was effective "for a few years," the Great Wall of China "often proved ineffective as a defensive barrier," and the Berlin Wall saw thousands of escapees who scaled, tunneled, and flew over it).

440. *Id.*

weaponry such as artillery, just like the Wall was rendered useless against a dragon under the control of the Night King.⁴⁴¹

In *A Song of Ice and Fire*, Jon Snow grants refuge to the wildlings who “looked neither wild nor free—only hungry, frightened, numb.”⁴⁴² The parallels to our own time are patently obvious. The identified threat is foreign invaders who may cause crime, refuse to assimilate, or take opportunities away from native-born individuals. In the United States, a wall along the expanse of our southern border is sought to exclude those others fleeing persecution, crime, and violence.⁴⁴³ Daily news is saturated with stories of people turned away, separations of families at the border, and new policies to further limit the reach of U.S. law on asylum protection.⁴⁴⁴

The historical lessons from our society suggest that a wall as a border solution will largely be ineffective, especially in the long run. *A Song of Ice and Fire* suggests that a humanitarian approach can be positive for both the destination country and the immigrants, although certainly a high political and human price may be paid for electing that approach. The wildlings fleeing south would almost certainly be characterized as fleeing persecution on account of their national origin or membership in a particular social group at the hands of those White Walkers in power.⁴⁴⁵ Turning them back would certainly represent the spirit and the purpose of the Wall, but it may come at a high cost for society, for “what are these wildings, if not men?”⁴⁴⁶

V. CONCLUSION

That's what I do. I drink and I know things.

— Tyrion Lannister⁴⁴⁷

441. *Game of Thrones: Beyond the Wall* (HBO television broadcast Aug. 20, 2017).

442. A DANCE WITH DRAGONS, *supra* note 65, at 147.

443. See, e.g., Jacob Pramuk, *Trump Wants More Money from Congress for His Border Wall*, CNBC (June 26, 2018, 12:41 PM), <https://www.cnbc.com/2018/06/26/trump-wants-to-ask-congress-for-more-border-wall-money.html>.

444. See, e.g., Michael D. Shear, Sheryl Gay Stolberg, & Thomas Kaplan, *G.O.P. Moves to End Trump's Family Separation Policy, but Can't Agree How*, N.Y. TIMES (June 19, 2018), <https://www.nytimes.com/2018/06/19/us/politics/trump-immigration-children-separated-families.html>; Katie Benner and Caitlin Dickerson, *Sessions Says Domestic and Gang Violence Are Not Grounds for Asylum*, N.Y. TIMES (June 11, 2018), <https://www.nytimes.com/2018/06/11/us/politics/sessions-domestic-violence-asylum.html>.

445. See 8 U.S.C. § 1101(a)(42) (defining the term “refugee”).

446. A DANCE WITH DRAGONS, *supra* note 65, at 784.

447. *Home*, *supra* note 207.

A Song of Ice and Fire is magical—literally as well as figuratively. It has captivated audiences worldwide with its depiction of brutality and the depths of the human condition. It is perhaps the great allegory of our time. A fantasy series disguised as a medieval piece prodding and poking at our modern human nature. It is a rich and detailed world with varied and complex legal structures and institutions. At every turn, however, we see the parallels and threads that Martin followed in the series' creation.

Political institutions and power struggles pave the way for intrigue, attacks, and counterattacks. Political structures—both simple and complex—clash repeatedly in an ever-present struggle for supremacy. In this world of violence, the criminal laws and procedures are equally violent and swift. Overarching the entire series is the fear of invasion from the Others and the precautions that are taken to prevent it.

Every step of analysis into the legal structures in *A Song of Ice and Fire* is a step toward reflecting on our own ways and traditions. Martin has said that the series is about a battle between good and evil and the conflict that comes from power and responsibility.⁴⁴⁸ However, in his conception, the true battle between good and evil is not between the hero on one side and the villain on the other, but rather it “is waged within [] individual human hearts.”⁴⁴⁹ That belief—and the way Martin portrays his characters as a result—is what makes *A Song of Ice and Fire* so human and so relevant to our own lives, and is ultimately the reason that *A Song of Ice and Fire*—or *A Game of Thrones*—will long live on.

448. Abbie Bernstein, *Interview: Game of Thrones Creator George R.R. Martin on the Future of the Franchise—Part 2*, ASSIGNMENTX (June 19, 2011, 4:33 PM), <http://www.assignmentx.com/2011/interview-game-of-thrones-creator-george-r-r-martin-on-the-future-of-the-franchise-part-2/>.

449. *Id.*