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The International Law of Game of Thrones

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THE INTERNATIONAL LAW OF *GAME OF THRONES*

*Perry S. Bechky**

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Game of Thrones depicts a Hobbesian world: lives are often nasty, brutish, and short; deaths are also nasty and brutish, but not always short. It is a world that is “dark and full of terrors.”¹ It is a world of war and oppression, rape and castration, torture and slavery—and a world where viewers may cheer a dragon burning a mob of people.

The titular “game” is about power: gaining power, using and abusing power, desperately trying to keep and bequeath power. As Queen Cersei said, “When you play the game of thrones, you win or you die.”²

In keeping with this theme of power, monarchs rule absolutely. To quote King Robert, “I’m the king. I get what I want.”³ And the monarchs have wanted to use their power, often horribly, to protect or boost their power: King Joffrey slaughtered his half-siblings, even babies, to purge possible rivals;⁴ King Stannis immolated his own daughter, thinking the sacrifice would bring him more power.⁵ All of this was apparently lawful, because done by a king.

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1. This is the favorite threat by Melisandre, who delights in bringing one form of light into the dark world: fires to burn her enemies at the stake. See, e.g., *Game of Thrones*, Episode 201, *The North Remembers* (HBO television). Transcripts are available at <http://transcripts.foreverdreaming.org>, though it is better to watch the show at www.hbogo.com (subscription required).

2. See Episode 107, *You Win or You Die*.

3. Episode 106, *A Golden Crown*; see also Episode 208, *The Prince of Winterfell* (“You have every right. You’re a king.”); Episode 508, *Hardhome* (“Your queenly prerogative.”); Episode 502, *The House of Black and White* (“The King’s word is law.”); Episode 201, *The North Remembers* (Joffrey’s priceless look on hearing the words, “You can’t.”).

4. See Episode 201, *The North Remembers*.

5. See Episode 509, *The Dance of Dragons*.

When rulers cannot get what they want, the constraints are those of power, not law.⁶ For example, Queen Cersei advised her son Joffrey that he should not provoke a rebellion he could not crush: “The North cannot be held. . . . It’s too big and too wild. . . . A good king knows when to save his strength—and when to destroy his enemies.”⁷

To build their power, the monarchs must engage in diplomacy, they must reach understandings with other rulers, they must form alliances. As one would expect, a set of norms governs these inter-monarchical dealings—for example, “safe conduct” for diplomats,⁸ a basic condition for face-to-face diplomacy.⁹ In other words, even in a world where law’s impact is notably light, a viewer can discern in *Game of Thrones* several rules of international law.

This article identifies rules of international law observable on the show and relates them to real-world international law. Observable rules include some fundamentals of the law of treaties. Some rights are asserted and accepted, apparently out of a sense of legal obligation (*opinio juris*)—thus constituting customary international law. Surprisingly, at least one humanitarian peremptory norm (*jus cogens*) is emerging.

Part I briefly introduces *Game of Thrones* for non-viewers. Part II discusses the Mormont Rule on territory and sovereignty. Part III addresses the Lannister Rule on treaty obligations and responsibility for breaches of legal obligations. Part IV explains the special legal status of the Night’s Watch. Part V examines Daenerys’ Rule banning slavery.

This article is based on *Game of Thrones* through Season 5 and it includes spoilers. It is based entirely on the show, with no reference to George R.R. Martin’s books, which may have more, fewer, or different rules of international law. It takes the world of *Game of Thrones* on its own terms, discussing rules of international law as characters on the show might understand them, without considering the knowledge or intentions of the show’s creators.

6. A stunning exception emerged in Season 5, which might portend the rise of religious law as a constraint on monarchical power. At an investigation of Queen Margaery’s brother, the leader of the Faith Militant called the queen to testify:

Margaery: You call me forward?

High Septon: Yes, we have some questions for you.

Margaery: I am the queen.

High Septon: You are. And, according to the law of the Seven [gods], neither kings nor queens are exempt from testimony at a holy inquest.

Episode 506, *Unbowed, Unbent, Unbroken*. The scene ended with Margaery’s arrest for perjury over her protest, “You can’t do this. I am the queen.” *Id.* When the Faith Militant turned against Queen Cersei, she made the same protest: “I am the queen.” Episode 507, *The Gift*.

7. Episode 103, *Lord Snow*.

8. See Episode 307, *The Bear and the Maiden Fair*.

9. Cf. WILLIAM SHAKESPEARE, HENRY V, act I, sc. II (“Convey them with safe conduct.”).

A variety of political entities appear on the show, including Westeros' seven kingdoms under one king, other kingdoms and city-states, and assorted tribes and clans. Not all these entities would qualify as sovereign states in the real-world international system,¹⁰ but this article treats all of them as international legal persons with relationships governed by international law.

I. BACKGROUND

Game of Thrones concerns both the fantastical and the political. The fantastical appear in the show's very first scene, where viewers learn that monsters known as White Walkers, thought long extinct, are living in the arctic wilderness. The pilot's title captures the threat they pose to humanity: "Winter is Coming." Humanity's best hope seems to depend on fire-breathing dragons. Dragons are also thought extinct at the show's start, but Daenerys Targaryen later brought three of them to life and became "The Mother of Dragons."

The coming battle between White Walkers and dragon-aided humans, between ice and fire, promises to reshape the world of *Game of Thrones*, but it has little connection to law. By contrast, a legal question lies at the heart of the political drama: who is the rightful heir to the Iron Throne, the ruler of "the Seven Kingdoms of Westeros"?

Westeros had been ruled for centuries by the Targaryen Dynasty. A generation ago, however, the "Mad King" provoked a rebellion led by Robert Boratheon and his best friend Ned Stark, the ruler of the North. King Robert formed an alliance with the Lannister family, cemented by marrying Cersei Lannister. Robert did not know of Cersei's long-running affair with her brother Jaime. Cersei had three children, all by Jaime, but Robert believed them to be his. When Ned Stark discovered the incestuous truth, Cersei had Robert murdered and Ned arrested.

Robert's death sparked a battle for succession. Joffrey Boratheon, backed by the Lannisters, inherited the throne by primogeniture as "Robert's eldest son." Stannis Boratheon revolted, claiming the throne as Robert's next oldest brother absent any legitimate children. Robert's youngest brother Renly Boratheon also revolted; he had no plausible legal claim to precede Stannis, but thought his charm and political skill would make him the better king. Meanwhile, Daenerys Targaryen and one of her brothers survived Robert's Rebellion in exile, and they claimed title from their father over the heirs of "the usurper."

10. Statehood classically requires "a) a permanent population; b) a defined territory; c) government; and d) capacity to enter into relations with other states." Montevideo Convention on Rights and Duties of States art. 1, Dec. 26, 1933, 49 Stat. 3097, 165 L.N.T.S. 19.

King Joffrey beheaded Ned Stark for treason, for denying his legitimacy. Ned's oldest son, Robb Stark, then declared the North to be a "free and independent kingdom" separate from Westeros. The Northern rebellion fizzled when the Lannisters arranged Robb's murder.

At the northern border of Westeros lies a giant wall built to protect people from the White Walkers. The Night's Watch patrols the Wall. Some people live north of the Wall; they are known as Free Folk or wildlings. The Free Folk traditionally lived in separate clans, but they united to move south of the Wall, away from the White Walkers.

Further information about the Night's Watch and Daenerys Targaryen is provided, respectively, in Parts IV and V below.

II. THE MORMONT RULE

"Your roof, your rules."

Jeor Mormont was the Lord Commander of the Night's Watch, an able and honorable leader dedicated to his mission and his men. Mormont led a force north of the Wall. He sought to stay at Craster's Keep and had to negotiate terms with Craster. This exchange ensued:

Craster: Any man lays a hand on one of my wives, he loses the hand. And I see this one [Jon Snow] staring too long, I might just gouge his eyes out.

Mormont: Your roof, your rules.¹¹

Mormont deferred to Craster knowing the full scope of Craster's awfulness: he kept his daughters in a grotesque harem and gave his infant sons to White Walkers in a devil's bargain to keep his Keep.¹² Of Craster's missing sons, Mormont asked Jon Snow, "What business is that of yours?"¹³

The Mormont Rule articulates the inter-related principles of territory and sovereignty. It accords with Robert's dictum that the king gets what he wants. It declares territory the sole basis for exercising jurisdiction: you make the rules under your roof, I make the rules under mine. It therefore suggests a neat division of the world into separate houses, which may be possible given the primitive state of government, economy, and technology in *Game of Thrones*, but is simply impracticable in our world. Paul Schiff

11. Episode 201, *The North Remembers*.

12. Episode 203, *What Is Dead May Never Die* (after Jon Snow told Mormont that Craster was killing all his sons, he paused for dawning realization and said, "You know.").

13. *Id.*

Berman has described the modern world as a complex hybrid of overlapping communities in which it does not “make sense to think that satellite transmissions, online interactions, and complex financial transactions have any territorial locus at all.”¹⁴ Accordingly, international law is experiencing “a gradual movement towards bases of jurisdiction other than territoriality,” “a slow but steady shifting to a more extensive application of extraterritorial jurisdiction.”¹⁵

The Mormon Rule aligns with a view of sovereignty that had been dominant before World War II, though contested even then. In *The Lotus* case, the Permanent Court of International Justice announced a state-centric view of sovereignty that minimized constraints on state discretion:

The rules of law binding upon States . . . emanate from their own free will . . . Restrictions upon the independence of States cannot therefore be presumed. . . . This discretion left to States by international law explains the great variety of rules which they have been able to adopt without objections or complaints on the part of other States . . . [A]ll that can be required of a State is that it should not overstep the limits which international law places upon its jurisdiction; within these limits, its title to exercise jurisdiction rests in its sovereignty.¹⁶

Under this sovereigntist approach, states had discretion to abuse their own citizens in their own territory. Echoing Mormon’s rhetorical question—“What business is that of yours?”—William Schabas has described this view of sovereignty as “a form of *quid pro quo* by which States agreed, in effect, to mind their own business.”¹⁷ At its most vulgar, the Mormon Rule could be restated as the Joffrey Rule: “Everyone is mine to torment.”¹⁸

Following the horrors of World War II and the Holocaust, modern international society has sought to constrain sovereigntism with law—in particular, human rights law. Human rights law limits state action, even action within the state’s own territory affecting its own citizens. It makes abuses within a state a legitimate concern of others outside the state. Human rights law transformed international law from law between nations

14. PAUL SCHIFF BERMAN, *GLOBAL LEGAL PLURALISM: A JURISPRUDENCE OF LAW BEYOND BORDERS* 4 (2012).

15. Arrest Warrant of 11 April 2000 (D.R. Congo v. Belg.), 2002 I.C.J. 1, 63 ¶73 (Joint Separate Opinion of Judge Higgins, et al.).

16. S.S. Lotus (Fr. v. Turk.), 1927 P.C.I.J. (ser. A) No. 10, at 18–19 (Sept. 7).

17. WILLIAM A. SCHABAS, *GENOCIDE IN INTERNATIONAL LAW: THE CRIME OF CRIMES* 2 (2d ed. 2009).

18. Episode 310, *Mhysa*.

to law across nations.¹⁹ Philip Jessup thus located the birth of “the modern law of nations,” or “transnational law,” at the postwar start of human rights law.²⁰ The real world has moved past the Mormont Rule, accepting that (for some purposes) all of humanity lives beneath one roof.²¹

III. THE LANNISTER RULE

“A Lannister always pays his debts.”

The unofficial family motto of the Lannisters can be seen as a promise of credit-worthiness. Tyrion used it this way when he induced a jail-keeper to carry a message for him and tribal fighters not to kill him.²² More often, however, the Lannisters use these words to promise revenge. The family even has a song about their annihilating another house: “now the rains weep o’er their halls, and not a soul to hear.”²³ This exchange between Lannister siblings exemplifies the usage as threat:

Cersei: You shipped off my only daughter. And now you want to send my eldest son to the battlefield to die. . . . [A] Lannister always pays her debts. . . .

[Cersei reveals that she had a woman beaten, because she believes Tyrion is in love with the woman.]

Tyrion: I will hurt you for this. A day will come when you think you’re safe and happy and your joy will turn to ashes in your mouth. And you will know the debt is paid.²⁴

The need to pay one’s debts—or, more generally, to meet one’s obligations—is a central theme of *Game of Thrones*. One nice example of the Lannister Rule involves sovereign debt:

We all live in [the Iron Bank’s] shadow You can’t run from them. You can’t cheat them. You can’t sway them with excuses. If

19. In this regard, human rights law restored modern international law to the pre-Benthamite position of Blackstone’s “law of nations.” See MARK WESTON JANIS, *AMERICA AND THE LAW OF NATIONS 1776–1939*, at 13 (2010).

20. PHILIP C. JESSUP, *A MODERN LAW OF NATIONS: AN INTRODUCTION* 2 (1948); PHILIP C. JESSUP, *TRANSNATIONAL LAW* 3 & n.6 (1956).

21. For more about sovereignty and human rights, see generally Perry S. Bechky, *Lemkin’s Situation: Toward a Rhetorical Understanding of Genocide*, 77 *BROOK. L. REV.* 551 (2012).

22. See Episode 106, *A Golden Crown*; Episode 108, *The Pointy End*.

23. Episode 308, *Second Sons*. Cersei elaborates, “Every man, woman, and child put to the sword.” *Id.*

24. Episode 208, *The Prince of Winterfell*.

you owe them money and you don't want to crumble yourself, you pay it back.²⁵

If a king fails to repay the Iron Bank, “the bank will fund [his] enemies.”²⁶ (This has not been a major plot point yet, but one senses the die is cast.²⁷)

Military alliances are often sealed with marriage.²⁸ Given the crucial importance of alliances and marriages in the competition for power, the obligation to honor them is especially sharp. Witness the tragedy of Robb Stark. Robb's army needed to cross a bridge, so Robb struck an alliance with the lord who controlled the bridge, Walder Frey. Robb promised to marry a Frey daughter. Robb fell in love with another woman, however, and married her. He ignored warnings that this marriage was a grave error, putting love before duty. Robb tried to repair relations with the Freys by apologizing and marrying his uncle to them instead. Frey was not assuaged: he slaughtered Robb and many others at the bloodbath known as the Red Wedding.²⁹

Alliances by marriage come with assurances of safety for the bride and wedding guests. These assurances may be seen as either implicit parts of marriage pacts or separate customary norms. They might be named:

- The Martell Rule: “[W]e do not mutilate little girls for vengeance.”³⁰
- The Rat Cook Rule: “It wasn't for murder the gods cursed the Rat Cook or for serving the king's son in a pie. He killed a guest beneath his roof. That's something the gods can't forgive.”³¹

Walder Frey has not yet been punished for murdering his guests at the Red Wedding, but one suspects he will be. The Lannisters' rape and murder of Elia Martell years ago has just come home to roost with the vengeance-driven murder of Queen Cersei's daughter.³² One anticipates the Lannisters

25. Episode 405, *First of His Name*.

26. Episode 303, *Walk of Punishment*; see also Episode 406, *The Laws of God and Man*.

27. See Episode 504, *The Sons of the Harpy*; cf. Chekhov's Rule on Guns.

28. See Episode 203, *What Is Dead May Never Die*.

29. See Episode 109, *Baelor* (the original deal); Episode 206, *The Old Gods and the New* (“You are promised to another, a debt that must be paid.”); Episode 306, *The Climb* (the revised deal); Episode 309, *The Rains of Castamere* (the Red Wedding).

30. Episode 502, *The House of Black and White*.

31. Episode 310, *Mhysa*; see also Episode 403, *Breaker of Chains* (“Walder Frey committed sacrilege that day. . . . He offered them guest right. . . . The gods will have their vengeance.”). This rule might be analogized to the privileges and immunities of visiting heads of state, diplomats, and consular officials.

32. See Episode 510, *Mother's Mercy*.

will treat this latest murder as a breach of the Rat Cook Rule and will try to “pay the debt.”³³

The Lannister Rule finds a real-world parallel in the norm of *pacta sunt servanda*—agreements must be honored.³⁴ In reality as in fiction, sovereigns need assurance that their counterparties will honor their obligations. This is “an antecedent, underlying ‘constitutional’ principle” on which “the normative character of a treaty depends”³⁵ and is, therefore, “the fundamental principle of the law of treaties.”³⁶

As crucial as it is, *pacta sunt servanda* is not absolute. It is subject to various limitations and *Game of Thrones* illustrates several. First, some agreements are void *ab initio*—an example is discussed in Part V. Second, other agreements may be terminated due to a fundamental change of circumstances (*rebus sic stantibus*).³⁷ For example, King Joffrey invoked a fundamental change—namely, Ned Stark’s supposed treason—to nullify his obligation to marry Ned’s daughter, so that he could instead forge another marriage-alliance with Margaery Tyrell.³⁸ Finally, a “material breach” of a bilateral treaty “entitles the other [party] to invoke the breach as a ground for terminating the treaty or suspending its operation in whole or in part.”³⁹ The following exchange between Queen Cersei and Olenna Tyrell after Cersei engineered the arrest of Queen Margaery’s brother, the heir to House Tyrell, illustrates treaty suspension:

Olenna: Has the crown suddenly stopped needing the troops, gold, and wheat my house supplies?

Cersei: I can assure you, our alliance with House Tyrell remains—

Olenna: Do you expect the alliance to continue after you’ve thrown our future into prison?

33. That said, the Lannisters’ ability to rain vengeance on their enemies is now at its weakest. *See* Episode 510, *Mother’s Mercy* (the Faith Militant forced Queen Cersei to confess (some of) her sins and shame-walked her naked through the city); *see also* Episode 504, *The Sons of the Harpy* (the Iron Bank “called one tenth of the Crown’s debts,” which it cannot afford to pay).

34. *See* Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 26 (“Every treaty in force is binding upon the parties to it and must be performed by them in good faith.”).

35. LOUIS HENKIN, *INTERNATIONAL LAW: POLITICS AND VALUES* 28 (1995).

36. Draft Articles on the Law of Treaties with Commentaries, 2 Y.B. INT’L L. COMMISSION 211 (1966).

37. *See* Vienna Convention, *supra* note 34, art. 62.

38. *See* Episode 210, *Valar Morghulis*:

Joffrey: I am promised to another. A King must keep his word. . . .

Pycele: [Y]our father . . . made this pact before the Starks revealed their falseness. . . .

[T]heir crimes against the realm free you from any promise you have made to them. . . .

39. Vienna Convention, *supra* note 34, art. 60.

Cersei: As I said, I didn't imprison anyone. As for your veiled threats—

Olenna: What veil?⁴⁰

Accordingly, in various respects, the Lannister Rule conforms with the law of treaties.

The Lannisters' tit-for-tat retaliation also calls to mind the customary law of belligerent reprisals. The U.N. Charter bans the use of force, with only two express exceptions for self-defense and force authorized by the Security Council,⁴¹ thus severely limiting military reprisals.⁴² Even before the U.N. Charter, however, international law mercifully forbade inhumane reprisals, departing from Lannister practice in favor of the Martell Rule.⁴³ Indeed, international law today strives even to limit non-military reprisals (known dryly as "countermeasures") in favor of humanity, proportionality, and peaceful settlement of disputes.⁴⁴

IV. THE NIGHT'S WATCH

"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 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."

The Night's Watch is an ancient military order, charged with defending the northern border of Westeros. It exists outside the normal governance structures of Westeros: the Lord Commander does not take orders from the king, but the Watch must not interfere in Westerosi politics or wars.⁴⁵ In

40. Episode 506, *Unbowed, Unbent, Unbroken*.

41. See U.N. Charter, art. 2, ¶ 4; see also *id.* arts. 42, 51.

42. See Articles on Responsibility of States for Internationally Wrongful Acts, in Report of the International Law Commission, 53d. Sess., U.N. Doc. A/56/10, art. 50(1)(a), cmts. 4–5 (2001).

43. *Id.* art. 50(1)(b)–(d), cmt. 6 ("In the *Naulilaa* arbitration [of 1928], the Tribunal stated that a lawful countermeasure must be limited by the requirements of humanity and the rules of good faith applicable in relations between States").

44. See *id.* at 325 cmt. 3 (defining countermeasures to exclude military reprisals); arts. 22, 49–54 (describing the law of countermeasures).

45. For example: King Stannis neither punished Jon Snow for undercutting his order to burn a prisoner to death nor ordered Jon to help him conquer the North, but instead offered Jon a deal, which Jon declined out of respect for his Night's Watch Oath. See Episode 501, *The Wars to Come* to Episode 504, *The Sons of the Harpy*.

ancient times, the Night's Watch played a key role in defending humanity from the onslaught of White Walkers. But the White Walkers have not attacked for thousands of years—until now—and the Night's Watch had been allowed to shrink and decay. Only a few families, including the Starks, continue to send good men to the Watch. The Watch is allowed to find recruits across Westeros, mainly in dungeons.⁴⁶ Anyone who joins the Watch is “beyond reach of the law. All his past crimes are forgiven.”⁴⁷ However, enlistment is forever: desertion is punishable by death—the Deserter's Rule.⁴⁸

The Night's Watch oath is the most obvious legal “text” in *Game of Thrones*. James Boyd White has observed, “[L]aw is in the first place a language, a set of terms and texts and understandings that give to certain speakers a range of things to say to each other.”⁴⁹ Samwell Tarly, the most lawyer-like character on the show, illustrates White's observation by challenging conventional understandings of the oath. Samwell argues, for instance, that the oath does not prohibit sex, as long as it is done outside marriage and without producing children.⁵⁰ Far more importantly, Samwell argues that the Night's Watch must guard the “realms of men”—realms plural—meaning that they must protect “wildlings” as well as Westerosi.⁵¹ Samwell persuades Jon Snow, then the Lord Commander, to accept that the Watch has misconstrued the oath for millennia, thereby setting the legal basis for Jon to ally with the wildlings.⁵² The fact that the alliance rests on Samwell's construction of the oath, gives Samwell's Rule—“[w]ildlings are people”⁵³—a claim to legal status.⁵⁴

It is fitting that the Night's Watch is the focus of the show's “law talk,” because of its unique status in Westeros. The Watch serves a core governmental function, defense of the northern border. But it is also a threat, an autonomous military force. Moreover, it is composed of men whose loyalty might be questioned: criminals, second sons (who do not

46. See, e.g., Episode 105, *The Wolf and the Lion* (“I'm here to find men for The Wall, see if there's any scum in the dungeons that might be fit for service.”).

47. Episode 210, *Valar Morghulis*.

48. See, e.g., Episode 101, *Winter is Coming*.

49. JAMES BOYD WHITE, *HERACLES' BOW: ESSAYS ON THE RHETORIC AND POETICS OF THE LAW*, at xi (1985).

50. See Episode 409, *The Watchers on the Wall*. In any event, the ban on sex may be enforced less strictly than other parts of the oath. See Episode 401, *Two Swords* (“If we beheaded every ranger who lay with a girl, the Wall would be manned by headless men.”).

51. See Episode 310, *Mhysa*.

52. See Episode 505, *Kill the Boy*.

53. Episode 508, *Hardhome*.

54. Admittedly, Season 5 ended on a note that puts that claim in grave danger. See Episode 510, *Mother's Mercy*; but see Geoff Foster, *Odds-makers on Who Will Win the Iron Throne*, WALL ST. J., June 19, 2015 (reporting Jon Snow has the second-best odds of winning the “game of thrones” notwithstanding his recent setback).

inherit lands and ranks under primogeniture), illegitimate sons (ditto), and men who resigned, or were ousted, from positions of political or military power. Law both enables the Watch and constrains its threat.⁵⁵

The Night's Watch may be seen as a transnational organization. It differs from real-world international organizations, like the United Nations, in that its membership consists of individuals not states. Nevertheless, it shares with international organizations the idea of privileges and immunities: the Westerosi kingdoms must not interfere with the Watch, freeing it to perform its mission.⁵⁶

The Deserter's Rule highlights another parallel to real-world international law. Judgment may be passed and the sentence meted by whoever catches the deserter, as shown in the very first episode when Ned Stark beheaded a deserter. The execution is portrayed as the simple delivery of justice: "The law is the law."⁵⁷ The Deserter's Rule illustrates universal jurisdiction, one of the legal bases used in the real world to prosecute (for example) pirates.⁵⁸ Universal jurisdiction facilitates enforcement in a decentralized world. In this regard, the Deserter's Rule calls to mind Raphael Lemkin's argument for universal jurisdiction against perpetrators of genocide: it "makes the soil burn under the feet of . . . offenders" who try to flee.⁵⁹

V. DAENERYS' RULE

*"You will release every slave. . ."*⁶⁰

Daenerys Targaryen was born on the run, the baby of the "Mad King," who was overthrown and killed in Robert's Rebellion. Her brother raised her, then married her off to a Dothraki tribal warlord in exchange for a promise of an army. Her brother deemed Daenerys mere chattel, a pawn for his ambitions: "I would let his whole tribe [rape] you, all 40,000 men and their horses too, if that's what it took."⁶¹ The Dothraki are ruthless

55. Frankly, given the Oath's crucial role in constraining the Night's Watch from interfering in Westerosi politics and war, one might have expected the wording to be more explicit on this point. The words are vague enough to allow Davos Seaworth to make "law talk" in his effort to persuade Jon Snow to join forces with King Stannis. See Episode 503, *High Sparrow*.

56. See, e.g., Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, art. 2, 21 U.S.T. 1418, 1 U.N.T.S. 15.

57. Episode 101, *Winter Is Coming*.

58. See M. CHERIF BASSIOUNI, INTERNATIONAL EXTRADITION: UNITED STATES LAW AND PRACTICE 427–32 (6th ed. 2014) (universal jurisdiction for piracy is firmly established in principle and increasingly accepted by national courts).

59. Raphael Lemkin, *Genocide as a Crime Under International Law*, U.N. BULLETIN 70, 70 (Jan. 15, 1948).

60. Episode 307, *The Bear and the Maiden Fair*.

61. Episode 101, *Winter Is Coming*.

warriors, known for raping, enslaving, and pillaging.⁶² When Daenerys got her first taste of power—as Khaleesi, the warlord’s queen—she used it to stop the rape of captured women, standing up to the warriors’ claim of a right to rape.⁶³ Later, she built an army of freed slaves, which she used to take more lands and free more slaves.⁶⁴

Construed as a ban of slavery, Daenerys’ Rule aligns perfectly with real-world international law. The illegality of slavery is firmly established: it is *jus cogens* and violators are subject to universal jurisdiction.⁶⁵ *Jus cogens* norms are peremptory, meaning that agreements that conflict with such a norm are void.⁶⁶ For example: Daenerys has the only three dragons on the show; she agreed to sell one dragon for an army of 8,000 slaves; at the closing of the deal, she took ownership of the slaves, then ordered the dragon and slaves to kill all the former slavers; Daenerys freed the slaves and asked them to fight for her freely.⁶⁷ The show does not depict Daenerys as an untrustworthy oathbreaker, like the degenerate portrayal of Walder Frey, nor even as a Machiavellian schemer, but as a strong, principled leader worth following. Slavery’s wrongness freed Daenerys from any obligation under the deal. Daenerys’ actions do not violate the Lannister Rule duty to meet obligations, because Daenerys’ Rule trumps the Lannister Rule just as *jus cogens* overcomes *pacta sunt servanda*.

Likewise, Daenerys’ condemnation of rape accords with international criminal law. After several half-steps and unseemly formulations, international law has finally come to specify expressly that raping prisoners

62. See, e.g., Episode 107, *You Win or You Die* (a war cry, to cheers, “I will rape their women, take their children as slaves. . .”). Alas, the epidemic of rape in *Game of Thrones* is not limited to the Dothrakis, but is presented as a standard part of war and of life. Indeed, the prevalence of rape and the way it is presented (especially Jaime’s rape of Cersei) have repulsed many viewers. See, e.g., Sonia Saraiya, *Rape of Thrones*, A.V. CLUB (Apr. 20, 2014), <http://www.avclub.com/article/rape-thrones-203499>.

63. See Episode 108, *The Pointy End* (translated by HBO from the original Dothraki):

Drogo: Mago says you have taken his spoils, a daughter of a lamb man who was his to mount. . . . This is the way of war. These women are slaves now to do with as we please.

Daenerys: It pleases me to keep them safe. If your riders would mount them, let them take them for wives.

Mago: You are a foreigner. You do not command me.

Daenerys: I am Khaleesi. I do command you.

64. In this regard, while Daenerys is genuinely committed to ending slavery and rape for moral reasons, she also needs an army to seize the throne herself as heir, after her brother’s death, to her father. Freeing slaves serves both her moral and military aims.

65. See RESTATEMENT (THIRD) OF FOREIGN RELATIONS LAW OF THE UNITED STATES § 702(b) cmt. n & reporters’ n.4 (1987).

66. See Vienna Convention, *supra* note 34, arts. 53, 64.

67. See Episode 303, *Walk of Punishment* (making the deal); Episode 304, *And Now His Watch Is Ended* (voiding the deal).

of war or conquered civilians is a war crime and a crime against humanity.⁶⁸

A fuller quotation of Daenerys' Rule in context shows more international law parallels. A negotiator for the slaveholding city of Yunkai offered Daenerys gold and ships on condition that she sail away and "leave us to conduct our affairs in peace," implicitly invoking the Mormontian right to reign abusively under one's own roof. Daenerys spurned his offer:

I have a gift for you as well. Your life. . . . And the lives of your wise masters. But I also want something in return. You will release every slave in Yunkai. Every man, woman, and child shall be given as much food, clothing, and property as they can carry as payment for their years of servitude. Reject this gift, and I shall show you no mercy.⁶⁹

Daenerys' Rule thus includes restitution and threatening force, specifically force with "no mercy."

Daenerys' call for restitution fits with the *Chorzów Factory* principle of international law: "reparation must, as far as possible, wipe out all the consequences of the illegal act."⁷⁰ In practice, however, international law struggles with compensating victims of international crimes.⁷¹

Daenerys' threat to use violence to end slavery calls to mind the modern debate over humanitarian intervention, especially when she declares, "I will continue that fight here and beyond."⁷² The real-world debate is quite delicate, however, because it pits three core values against each other: ending atrocities vs. ending war and respecting sovereignty.⁷³ Waging war to end atrocities invites debate whether it is or should be legal under the U.N. Charter and even whether it may be justified though

68. See Rome Statute of the International Criminal Court arts. 7(1)(g), 8(2)(b)(xxii), 8(2)(e)(vi), July 17, 1998, U.N. Doc. A/CONF.183/9 (1998), 37 I.L.M. 999. For the evolution of international law's prohibition of rape, from emphasizing "family honor" and the "sacredness of domestic relations" to the "sea change" in which the Rome Statute recognized that "sexual atrocities are acts of violence," see generally Kristen Boon, *Rape and Forced Pregnancy under the ICC Statute: Human Dignity, Autonomy, and Consent*, 32 COLUM. HUM. RTS. L.R. 625, 627 & n. 4 (2001). The Rome Statute also innovated with "gender-sensitive court procedures; the inclusion of judges, officials, and staff with legal expertise on violence against women; and gender-sensitive treatment of victims and witnesses." Valerie Oosterveld, *Women's Rights In International Criminal Law*, in David P. Forsythe, ed., *ENCYCLOPEDIA OF HUMAN RIGHTS* (Oxford 2009).

69. Episode 307, *The Bear and the Maiden Fair*.

70. *Factory at Chorzów* (Germ. v. Pol.), 1928 P.C.I.J. No. 17, at 47 (Sept. 13).

71. See DINAH SHELTON, *REMEDIES IN INTERNATIONAL HUMAN RIGHTS LAW* 1 (2d ed. 2005) ("[H]uman rights law . . . still lacks a consistent practice of remedies for victims of human rights violations.").

72. Episode 508, *Hardhome*.

73. Cf. Bechky, *supra* note 21, at 606–09 (discussing "genocide prevention" as an ideograph of the international legal order).

illegal.⁷⁴ By contrast, *Game of Thrones* does not appear to have any *jus ad bellum* restrictions on when a regime can use force, thus freeing Daenerys to threaten Yunkai without any need for “law talk” about whether her *casus belli* is lawful.

Finally, Daenerys’ “no mercy” policy violates real-world international law. For example, upon conquering Meereen, she crucified 163 slavers to retaliate for Meereen’s crucifying an equal number of slaves, without any consideration of who was individually responsible.⁷⁵ This mass crucifixion violated international norms.⁷⁶ Likewise, when she fed a Meereenese nobleman to her dragons to intimidate other nobles,⁷⁷ Daenerys committed torture.⁷⁸

Daenerys has been, therefore, a flawed champion of human rights, simultaneously heroic and criminal. She may learn: after all, when she rejected advice for mercy and re-legalized gladiator fights, both backfired badly.⁷⁹

Other sprouts of decency can also be seen in the *Game of Thrones*. John Rawls described the concept of decency: decent peoples fall short of liberal ideals but nevertheless secure core human rights.⁸⁰ The contrast between decent and indecent is captured in this exchange between Robb Stark and Roose Bolton:

Roose: We’ve nowhere to keep all these prisoners. Barely enough food to feed our own.

Robb: We’re not executing prisoners, Lord Bolton.

Roose: Of course, Your Grace. The officers will be useful. Some of them may be privy to Tywin Lannister’s plans.

74. See, e.g., *NATO’s Kosovo Intervention*, 93 AM. J. INT’L L. 824 (contributions by Henkin, Wedgwood, Charney, Chinkin, Falk, Franck, Reisman).

75. See Episode 404, *Oathkeeper*.

76. Leaving aside the question whether international law prohibits the death penalty altogether, Daenerys’ crucifixions violated (at least) rules concerning arbitrary deprivation of life, fair trials, cruel punishments, and treatment of civilians in occupied territories. See International Covenant on Civil and Political Rights, arts. 6–7, 14; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, E.S.C. res. 1989/65; Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, E.S.C. res. 1984/50; Geneva Convention (IV), Aug. 12, 1949, arts. 31–33, 64–75.

77. See Episode 505, *Kill the Boy*.

78. See U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“UNCAT”), G.A. Res. 39/46, arts. 1–2 U.N. Doc. A/RES/39/46 (Dec. 10, 1984) (prohibiting absolutely torture, including inflicting severe pain on one person to intimidate others).

79. See Episode 509, *The Dance of Dragons*.

80. See JOHN RAWLS, *THE LAW OF PEOPLES* (1999).

Robb: I doubt it.

Roose: Well, we'll learn soon enough. In my family we say, "A naked man has few secrets. A flayed man none."

Robb: My father outlawed flaying in the North.

Roose: We're not in the North.⁸¹

Robb: We're not torturing them.⁸²

Robb went even further: he gave medical treatment to prisoners and punished allies who killed prisoners.⁸³

This conversation shows the divide separating the decent from the evil, the uncivilized, and the vengeful. The humane team boasts Robb Stark, Jon Snow, Tyrion Lannister, Doran Martell, Brienne of Tarth,⁸⁴ and Davos Seaworth. The other side includes King Joffrey, Roose Bolton, his son Ramsay Bolton (a serial torturer and murderer), Rickard Karstark (who murdered two Lannister children as revenge for the acts of another Lannister), Theon Greyjoy (especially Theon 2.0, the version who sacked the Starks' home), Styr the Thenn (a cannibal), and Dothraki tribes.

The Stark Rule—"We're not torturing [prisoners]"—had been the law in the North, though apparently not as a universal norm. Ned and Robb Stark are dead, however, and Roose Bolton now reigns in the North. His flag features a flayed man, so presumably he has repealed the Stark Rule against flaying.

For the *Game of Thrones* to end with a decent legal order, it will have to overcome this setback. The sprouts of decency will have to take root and spread: Daenerys' Rule against slavery, the Stark Rule for humane treatment, and Samwell's Rule recognizing a common humanity with all that entails for equality and human rights.

81. Roose's "law talk" reverberates in current debates about whether UNCAT applies to U.S. actions in Guantánamo and foreign "black sites." See Charlie Savage, *U.S. to Revise Bush Policy on Treatment of Prisoners*, N.Y. TIMES, Nov. 12, 2014.

82. Episode 204, *Garden of Bones*.

83. See Episode 207, *A Man Without Honor*; Episode 305, *Kissed by Fire*.

84. The aftermath of Stannis' failed assault on Winterfell is instructive: both Brienne and Ramsay killed people wounded in the battle, but Ramsay cruelly stabbed a surrendering soldier, while Brienne is portrayed as honorably executing Stannis for his role in assassinating King Renly. See Episode 510, *Mother's Mercy*.

Will this happen? On the one hand, the sadist Ramsay Bolton has said, “If you think this has a happy ending, you haven’t been paying attention.”⁸⁵ But Bob Dylan may prove more prescient:

And don’t speak too soon
For the wheel’s still in spin
And there’s no tellin’ who that it’s namin’
For the loser now will be later to win
For the times they are a-changin’.⁸⁶

85. Episode 306, *The Climb*.

86. BOB DYLAN, *The Times They Are A-Changin’*, on *THE TIMES THEY ARE A-CHANGIN’* (Columbia Records 1964).