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RISA GOLUBUFF: Hello, and welcome to *Common Law*, a podcast from the University of Virginia School of Law. I'm Risa Goluboff, Dean of the Law School.

LESLIE KENDRICK: And I'm Leslie Kendrick, the Vice Dean. Thus far on the first season of our podcast, we've been talking about the future of law. But today, we're taking a little detour from that theme. And that's because there's a very special event just around the corner. Risa, do you want to tell our listeners what that is?

RISA GOLUBUFF: Well, Leslie, winter is coming.

LESLIE KENDRICK: Oh my.

RISA GOLUBUFF: That is, *Game of Thrones* is about to premiere its eighth and final season on HBO on April 14th. So for this episode of *Common Law*, Professors Toby Heytens and Mila Versteeg are here to discuss the law and ethics of *Game of Thrones*. They have taught a class in the past multiple times called the Seminar of Ice and Fire, as a way to explore ethical issues to our law students.

LESLIE KENDRICK: So this is where I have to say I have never seen *Game of Thrones*. Actually, I saw one time. My husband Micah was watching the show, and I walked through the living room. And what I saw was graphic sex, incest, and a kid getting pushed out of the window. That was, like, the one thing that I saw. And I was like, I am done with this show, right? I've watched five minutes of it, and that's enough for me. Because it turns out I'm a prudish First Amendment person. Right? There are some of us.

RISA GOLUBUFF: You know when you see it, Leslie.

LESLIE KENDRICK: I know it when I see it. And there are more of us than you would think. So I've never watched it. I've never read any of the books. So I've got to say the whole question of how this fantasy world relates to ethics,

particularly kind of professional legal ethics and the ethics of the world around us, I'm very curious about that. Because I know nothing about this topic.

RISA GOLUBUFF:

Well, I will say I know what five minutes you mean. And they were a pretty key five minutes that you saw there early on.

LESLIE KENDRICK:

I mean, I'm sure that was a spoiler. I guess now is the time to add a spoiler alert, right?

RISA GOLUBUFF:

That spoiler was spoiled.

LESLIE KENDRICK:

We're going to talk about some things, right? We're going to talk about the show.

RISA GOLUBUFF:

We are. But that was way, way early. So anyone who knows anything - and I will confess that I have read every book, and I have seen every episode. So I know more, but I will say it had not occurred to me until hearing about Toby and Mila's class that this show would be an opportunity to talk about legal professional ethics, politics, and justice. So I'm excited to hear about that.

LESLIE KENDRICK:

OK, so my first question is going to be what is *Game of Thrones*? And maybe, Risa, instead of my subjecting our guests to that, maybe you could answer that question for me right now. What is *Game of Thrones*?

RISA GOLUBUFF:

I would be delighted. So as I've said, I have read every book and seen every episode. So it started out as books written by George R.R. Martin that became an HBO series that has overridden the books, actually. The series is now ahead of the books, even though it started in the books. But it basically takes place in a place called Westeros, which is a lot like medieval England, except there's some magic and surreality to it.

There are various branches of the royal family. Those branches are known as houses. They've got their standards. They've got their

armies. They've got their prominent people, royal people. And they're all scheming to maintain power, right? They're all fighting for the iron throne, which frankly, doesn't look very comfortable. So I don't know why they want to sit on it, but that's the goal, is to sit on the iron throne.

And meanwhile, as they're having all of these battles and shifting alliances, within Westeros itself, there's this land to the north of Westeros, where it's always winter. And there is an army of the undead there. I know, stay with me. Stay with me. This is where I think you lose some people who would say, oh, I could do with the historical fiction type, but then we move into fantasy.

LESLIE KENDRICK:

The army of the undead, yep, yep.

RISA GOLUBUFF:

Then there's this army of the undead, and so the question is, as the army of the undead moves south into Westeros, and threatens to kill everyone, and make everyone part of their army of the undead, will these houses unite? Will they find a way past their own internal internecine skirmishes? And it looks like that that's going to happen, at least many of them will unite. And so in this final season, we are gearing up for a grand final battle between the army of the undead and the people in Westeros. And we're not sure what's going to happen.

But I think what is appealing about the show-- there are things that aren't appealing. There's a lot of violence. There's a lot of violent sex.

LESLIE KENDRICK:

Right, right. That's why I don't watch it.

RISA GOLUBUFF:

You've heard the critiques, right? Those are fair critiques. Yeah. So I think those are fair. But what makes it so fascinating is that partly through the history, partly through the fantasy, there's all kinds of metaphors. And you can watch it on lots of different levels about truths about human nature. And there's man against man. There's man against nature. There's man against himself. You see it all in there. And I think there are a lot of interesting lessons and

meditations on what society is and what human nature is. And of course, you guessed it. Law, philosophy, ethics, all the kinds of things that we're concerned about on *Common Law*.

LESLIE KENDRICK:

It sounds like it. It sounds like there's a lot to talk about in there. And for me, this is going to be like going to an English class when you haven't read the book, which thankfully, I have some experience with this. So this will be fun.

[MUSIC PLAYING]

RISA GOLUBUFF:

Let's introduce our guests, shall we? Toby Heytens is not only a professor at UVA Law School, but he's also currently serving as Virginia's Solicitor General. He was previously an attorney in the US Solicitor General's Office. And he has argued before the Supreme Court nine times so far. And that's counting, because I don't think that's done. And I would say, having done that, Daenerys' dragons would not faze him. He is an expert on civil rights, criminal procedure, and federal courts. Welcome, Toby.

TOBY HEYTENS:

Thank you.

LESLIE KENDRICK:

And Mila Versteeg is co-director of the Human Rights Program at the University of Virginia School of Law. She recently won an Andrew Carnegie fellowship for her work analyzing the world's constitutions and researching their connections to how well rights are upheld in various countries, which I would say maybe prepares you very well to think about Westeros values in some ways. She's recognized as a pioneer in the field of applying empirical analysis to constitutions. And we're so delighted to have you as well, Mila.

MILA VERSTEEG:

Thank you.

LESLIE KENDRICK:

Yeah, thank you both for being here. So how did you guys come up with the idea for this class?

TOBY HEYTENS:

So this is 100% Mila's idea. So it was four or five years ago. And there

was some sort of faculty event, after which I had a bunch of people over to my house. And I vividly remember being in my kitchen. And somehow, Mila and I started talking-- I think about a whole series of sort of fantasy novels and fantasy shows. And we started talking about *Game of Thrones*.

And then at some point, we started, I thought jokingly, talking about teaching a *Game of Thrones* class. And then I basically got an email like at 6:00-- probably not 6:00, because Mila doesn't get up that early-- but first thing the next morning from Mila, who-- I think the subject line of the email was basically, no, I'm serious. We should actually do this. And so that is the origin of the class. And that was probably four or five years ago.

MILA VERSTEEG:

Yeah, and I can say, so from my perspective-- so I teach comparative constitutional law, and I'm sort of used to analyzing societies that I don't know very well. And I love to do this with students as well. But I felt like I needed Toby because there is only one world leading expert on Westeros-- or there's multiple. But Toby's definitely one of them. He's read every book five times. And he has much better memory for all of the different parts of the show than myself. So I think we sort of complement each other there.

LESLIE KENDRICK:

So and the format of this class, just for some background, the Law School has a series of classes called seminars and ethical values that are one credit pass fail classes for students that are deliberately supposed to be talking about kind of contemporary values and ethics. And they meet in professors' homes and often meet on weekends. And they're kind of different format from the regular law school class, where you're coming and meeting in a lecture room or a seminar room and meeting during the day in the law school.

RISA GOLUBUFF:

I personally would love to see the cold call serious lecture version--

LESLIE KENDRICK:

Yeah, the lecture, the three credit--

RISA GOLUBUFF:

Of *Game of Thrones* and law, right?

LESLIE KENDRICK:

Yeah, yeah, with an exam at the end.

RISA GOLUBUFF:

Exactly.

LESLIE KENDRICK:

This will be on the test. So you say you decided together you have to do this. But why? Why was that appealing?

TOBY HEYTENS:

So I remember the thing that I think Mila suggested. I don't remember which one of us first thought of it, but the idea that convinced me that this class would work. So I guess, you probably just need to put a spoiler warning on this whole podcast because--

MILA VERSTEEG:

Spoiler.

TOBY HEYTENS:

That is one of the things that we actually say in our course description, which is that there will be no-- if you walk into this class, we're going to talk about everything that's happened in every single episode, in every single book, and in every single-- all the expanded material, even. So this is something that takes place at the very end of season one. I think it's in the third to last episode of season one. It's the very end.

And for those who haven't seen the show, this is a monarchy. And the monarch is dead. And the question now arises, who is in charge, now that the monarch is dead? And there are two competing claimants. There's the monarch's wife and the mother of-- well, we think then is his son-- on one side. And on the other hand is the best friend of the former monarch, who's asserted that he's essentially been named the hand of the king-- sorry, the regent.

He insists that his friend, with his sort of dying words, named him the regent to rule on behalf of his son until his son becomes an adult. And the queen is asserting essentially that she's the regent until her son becomes an adult. And there's literally a face-off between two armed groups of people in the throne room. And at one point, our protagonist, the main character, sort of pulls out a scroll that he says

has been signed by the previous king.

And it's going to resolve the question of who's in charge. And he hands it to sort of the head military person in the room, who, because he says you're the most trustworthy person here, if you say this is real, everyone will believe you. And it's got a seal, and it's signed by the king. And he reads it. And he says, this says that this guy is in charge. And then the queen says, may I see that?

[AUDIO PLAYBACK]

- May I see that letter, Ser Barristan?

TOBY HEYTENS:

And she reads it over. And she looks him dead in the eye. And the line she says, is this to be your shield, this piece of paper?

- Is this meant to be your shield, Lord Stark?

[PAPER RIPPING] A piece of paper.

TOBY HEYTENS:

And then she rips it up, and she drops it on the ground.

- Those were the king's words.

- We have a new king now.

[END PLAYBACK]

MILA VERSTEEG:

And that's kind of the null hypothesis, if you want, for the class, right? So there is no law here. The sort of legitimate seal that we have on the piece of paper, she just rips it up. So but then I think what the challenge--

TOBY HEYTENS:

And she wins. She wins that confrontation.

MILA VERSTEEG:

And he's dead by the end of season one.

TOBY HEYTENS:

He's dead, right.

RISA GOLUBUFF:

Right, OK.

MILA VERSTEEG:

So then the challenge in the class, I guess, is OK, so this is our null

hypothesis. There's no law in this lawless world. But then if you look closer, there's many places where we do see these seemingly powerful or all powerful figures be constrained by certain norms or certain other people's reputations, certain rules that are not written, but they're there, right? So the rules of succession is one thing we talk about. And so there's different places where they are constrained, even though it seems like they're not, right? So the challenge is then to look where's the law here.

RISA GOLUBUFF:

Where's the law? All right, so tell us some of it. So let's start with succession because you just told a story, where-- and to use the characters, for those who know them, right? Where Cersei wins and Ed Stark, who, as you say, we think is our protagonist-- it's pretty rare for a show to kill off the protagonist before the end of the first season. And that doesn't seem like there's much law there. That seems like it's all power and might makes right. But so tell us where you think law fits in succession.

MILA VERSTEEG:

Yeah, so without rules for succession, there is just chaos and contestation all the time, right? So in some ways, the rules of succession, they're often inconvenient for these powerful leaders. But at the same time, without them, they would constantly be fighting each other. And every time somebody dies, there'll be a war, right? So they really all benefit from having these rules. So I guess, the sort of broader theoretical point we make there is sometimes it's in their self-interest of those with power to constrain themselves somewhat.

So for example, we have this scene where Randyll Tarly wants to disown his son, Sam. Right? Because Sam isn't good enough, and he tells him, either I'm going to kill you or you're going to have to take the black. But he can't just simply disown him.

TOBY HEYTENS:

But even Randyll Tarly, who's a deeply unpleasant person, never seems to view it as an option to simply say, I'm disinheriting my son.

MILA VERSTEEG:

So yeah, exactly. So that's one example where we see this play out.

RISA GOLUBUFF:

Cersei seems to me to represent power, and manipulation, and self-interest. And so are there examples where Cersei actually withholds power or is constrained?

MILA VERSTEEG:

Yeah, I mean, she keeps insisting that her children are Robert Baratheon's children, right? She would not simply say, oh, hey, they're Jamie's. Because I hold all the power. No, because doing so would break these very strong rules of how we succeed.

RISA GOLUBUFF:

Interesting.

MILA VERSTEEG:

Yes, so she has all the power, and yet, she doesn't always use it all the time, right? So because then sometimes it's not in your interest to do so. So these are kind of constitutional rules, right, or an unwritten constitution, if you want, in Westeros. Yeah. I mean, another example, different kind of example is that the Starks outlaw flaying in the north, right? So they hold all the power, but yet, they think torturing prisoners is really cruel.

And then we see Robb Stark at some point going to the south, and he would still say, no, we're not torturing, right? And why does he do that? Because the Starks are good? Maybe. But maybe it's also because, well, if we're torturing their prisoners, they'll torture ours. So it's in our interest to treat each other's prisoners humanely because then we're all better off, right? So I think we are looking for the constraints from the perspective of self-interest, right? Sometimes it's in these rulers' interest to not torture or play by those rules of the game, even though there's not that many.

TOBY HEYTENS:

And there is a great clip, actually, in early season two that we've used in the class a lot, where Robb Stark and Roose Bolton essentially have a conversation about torture that lasts about 20 seconds. And basically, Bolton is the pro-torture argument, and Stark is the anti. And Stark offers about four different arguments against it.

[AUDIO PLAYBACK]

- And my family would say a naked man has few secrets. A flayed man, none.

- That's why they outlawed flaying in the north.

- We're not in the north.

- We're not torturing them.

- The high road's very pretty, but you'll have a hard time marching your enemy down.

- The Lancasters hold prisoners of their own. I won't give them an excuse to abuse my sisters.

[END PLAYBACK]

TOBY HEYTENS:

So there's idealistic. There's a legal-- he cites a legal reason. He cites an idealistic reason. He cites a reciprocity reason. And he cites that they have one of our prisoners.

MILA VERSTEEG:

Consequentialist reason.

TOBY HEYTENS:

Consequentialist reason, all in about a 20 second clip.

RISA GOLUBUFF:

That's impressive. That's a lot of law per second.

LESLIE KENDRICK:

It is. It is.

RISA GOLUBUFF:

So I mean, I think if we're talking about schools of international relations, this is like the realist school of international relations that's happening here, right, which would suggest that people are going to act-- and nations and actors are going to act in their individual self-interest or in the collective self-interest of their nation. Is that what's happening here, or are there other things going on in terms of the values and their goals?

MILA VERSTEEG:

Well, not entirely. I mean, it seems, of course, this world when we think about the international relations in this world, where, I mean, these different houses, they have to make alliances with each other, and there's no real international law. So how do they make alliances? We talk about this, right? They marry each other. They have hostages, right? Hostages as one way to make sort of commitments credible. Because you have something that's very valuable to them, but that's not valuable to you, right?

But it's not all realism, right? So there's other schools of international relations that also assumes self-interest. So one is very much focused on reciprocity and reputation. So one thing that we see play a role here is reputation, right? Jon Snow has a really strong reputation, and that's why Cersei says if you stand down as the King of the North, then we'll do this truce, right? Because he's somebody's reputation's he trusts. So reputation plays a role. Reciprocity plays a role. Maybe it's not only just pure realism maximizing our own power, although of course, that's the starting point, right? That's the null hypothesis, if you want.

TOBY HEYTENS:

I mean, in terms of reputation, we spend a lot of time talking about Tyrion particularly in season one, who literally talks himself out of jail, then talks himself out of confinement, then talks a group of mountain tribes that have never met him into taking him home entirely on the strength of his family's reputation. By just saying you know who I am, I'm a member of the Lannister family. I'm promising to help-- I'm promising that if you help me, you'll be rewarded. And you know you can believe me. Why? Because the one thing that literally everybody knows about the Lannisters is that they always pay their debts. I mean, that's an incredibly powerful instance of reputation.

RISA GOLUBUFF:

Although I mean, do you think-- I would think of Tyrion and Jon Snow in slightly different categories. They both do have the reputations of their families, but I feel like for Jon Snow, it's his personal reputation. And for Tyrion Lannister, it's his family reputation.

MILA VERSTEEG:

Yeah. I think they're slightly different, but I think one of the things we do in the class is we analyze what role does reputation play in a world where we don't have a lot of law, right? So this idea of their taking oaths, and that's important, or not, right? Some people take a lot of oaths, and the oaths become meaningless. But for those people who only take one oath, that still means something. And that's one way we can do business in a world where we don't have a lot of law.

TOBY HEYTENS:

And also, if you're looking for predictions at the end-- and I will give credit to this one to my spouse, who is also a *Game of Thrones* obsessive-- in terms of negative reputation, I mean, one prediction for the end of this series that things are likely to end very badly for the Freys, who now have a terrible reputation, who have a reputation for betraying their alliances constantly. And one very easy prediction is that people are going to turn on the Freys, and absolutely nobody is going to lift a finger to defend them. Because they're the anti-Starks.

RISA GOLUBUFF:

Because they've betrayed everyone, right.

TOBY HEYTENS:

They've betrayed everyone.

RISA GOLUBUFF:

They have no loyalty of any kind.

LESLIE KENDRICK:

What's kind of the overall object of this whole story? What is it that everyone's-- besides just power in a sort of localized way, what is it that everyone's trying to get to? And what is this all leading toward?

MILA VERSTEEG:

So let me give you my interpretation of it. And I don't think that's George Martin's view of it. But I think for me, a really interesting question is that Dany, at a number of occasions, says she's going to break the wheel and take this to a different type of society. So I think something we've discussed in class and what very much fascinates me is how is he going to break the wheel of Westeros, of this great houses, aristocracy, fighting each other? The ordinary people don't count for anything. There's not anything closely resembling democracy in this world, other than maybe the Night Watch and how they elect their leaders, right?

So is she going to break the wheel? I mean, she thinks she can have no children, and she's the last Targaryen. And she's probably going to end up ruling this world, right? So is she going to break the wheel somehow? Maybe it is become a democracy. I mean, one of the things we did in the class is do an exercise. Like if this world-- if Dany were to win and she were to write a constitution, how would we write it?

RISA GOLUBUFF:

So it's dystopian on many levels, and it's kind of a mix. Leslie, I'll tell you this, right? So it's kind of a mix between historical fiction, medieval historical fiction, fantasy, dystopian, futuristic, right? So it mixes all of those things. So you can think about, well, what's going to happen in terms of governance? But then you can think about what's going to happen in terms of the environment and the climate? And maybe you have an optimistic story, or you can think of an optimistic story about the governance. But I'm curious. How does that fit with the climate story?

MILA VERSTEEG:

Yes, so the White Walkers-- I mean, we talk about this in the course. They're kind of climate change, right? So we had--

LESLIE KENDRICK:

What are they?

MILA VERSTEEG:

So the White Walkers is the army of the dead that lives beyond the wall. So they're in the north, and they're separated from Westeros with this giant wall. But winter is coming--

RISA GOLUBUFF:

A wall of ice.

LESLIE KENDRICK:

A wall of ice, OK.

MILA VERSTEEG:

And with winter come the White Walkers. And there is this sort of all these different house-- we're all engaged in the civil war, fighting each other. But at the same time, the real threat is the army of the dead that's rising. And that if they break through the wall, which they will, or they do, then we're all going to be dead, right? So all our little battles

mean nothing in comparison to this real threat that lurks there.

And we're denying it, for the most part. I mean, the Starks, they know what winter is coming mean. And some of the Night Watch has seen the White Walkers. But for the most part, people are like, that's far away. It's in the north. We don't care about it. Or it's not going to be here first, right? That's very much a climate change analogy here.

LESLIE KENDRICK:

Yeah, there's a lot of allegory going on there, OK.

TOBY HEYTENS:

So my spouse and I have started to rewatching the first season. And it's amazing because the first scene of the first episode of the first season takes place north of the wall and involves this threat of the White Walkers. And then what's interesting is that the series itself kind of ignores it for a while. And in fact, throughout the entire first season, a bunch of the characters, whenever it's mentioned, pooh pooh it and say, this isn't even real. I can't believe you still believe in things like that. And it builds very slowly throughout the season.

One of the other challenges is that this threat, for the moment, is to the north, at the very north of this kingdom, which is sort of, roughly speaking, shaped like Great Britain. Which means that it's also going to affect different parts of the community first differently, right? The people, not surprisingly, as Mila was saying, perhaps that the people who take it least unseriously at first are the people who live in the north, who are the people who will be first affected by it if it happens. And the people who take it least seriously are the people that are farthest away from it.

And so it's a massive collective action problem. And it's not just a collective action problem it's a collective action problem that will affect people differently on different time horizons. And so--

MILA VERSTEEG:

Although there's still a possibility that they'll all die.

TOBY HEYTENS:

That they'll all die.

MILA VERSTEEG:

Yeah, right? This is one possible outcome of this--

RISA GOLUBUFF: The time horizons might not be that far apart, right, as they march from the north to the south.

MILA VERSTEEG: I know, and one thing that happens is once a White Walker kills you, you also turn into a White Walker yourself. So it's possible that the whole-- all of Westeros will be-- there is only dead people in it left by the end of the show.

TOBY HEYTENS: Another theme that is sort of very apropos of events in the world and events in Charlottesville of the last couple of years, the show is also obsessed with the past, and things that happened in the past, and injustices that happened in the past, and how if at all different groups are supposed to deal with them. And one of the things that Mila and I have talked about a lot in the class is that in some ways, one of the most successful examples in the show of people grappling with and dealing with the past are people who are directly faced with a severe external threat, that they, in some ways, have more success.

So there's a there's a scene-- what season is it? Four or five? Where Jon Snow actually kind of makes peace with the wildlings, which is incredible because the Night's Watch and the wildlings have literally been killing each other for thousands of years.

RISA GOLUBUFF: Leslie, do you want to know who the wildlings are?

LESLIE KENDRICK: Sounds like they're people who kill the other people.

TOBY HEYTENS: The wildlings--

LESLIE KENDRICK: Is that all I need to know?

TOBY HEYTENS: The wildlings are human beings who live north of the wall.

LESLIE KENDRICK: So they're out there in the same place where the White Walkers are?

TOBY HEYTENS: Correct.

RISA GOLUBUFF: And they're not part of any house, right? And they don't have the

same--

MILA VERSTEEG:

They're sort of free folk.

LESLIE KENDRICK:

Right.

RISA GOLUBUFF:

And they're stateless, but they're also not part of a hierarchy, right?
They're not part of the aristocratic system.

TOBY HEYTENS:

And there's a suggestion. In fact, Tyrion even says this in a season 1 episode. When Tyrion is basically saying that he doesn't believe in the White Walkers or any of that nonsense, Tyrion just says this thesis. He says, I believe the wildlings are exactly like us. I believe the only difference between us and them is that when that wall went up, their ancestors lived to the north of it. And our ancestors lived to the south of it. Which is against the grain of what-- the show at the beginning presents the argument that's not true. But there's this remarkable scene where now it's at least clear to the people in the north that the White Walkers are in fact coming.

And Jon Snow, who, at this point, is the head of the Night's Watch, which is the group that mans the wall, basically has this remarkable scene with the wildlings and says, look, I get it. People on my side of the wall have done horrible things to people on your side of the wall, and people on your side of the wall have done horrible things to my side on the wall. He even says something like we're not going to become friends today. We're not going to become friends tomorrow. But if we don't work together, we're all going to die. And that's actually the beginning of the Night's Watch and the wildlings getting along.

RISA GOLUBUFF:

So this is reconciliation.

MILA VERSTEEG:

Yes, exactly. But you can contrast that with another situation where it is played out, which is Dany, once she takes the city of Meereen, and she has to deal with sort of this past injustice of slavery that's very much present in that society. And once she arrives there, she sees these slave children that are crucified, 166 of them. And then she

arrives in the city, and she's like-- famously said, I'm going to answer injustice with justice.

And she decides to pick a random 166 masters who were the slave owners and also crucifies them. So there is this question, like is that justice when you say I pick a random 166 of them to-- it's really an eye for an eye kind of approach. But she's constantly grappling with like she wants to take Meereen from an unjust society with slavery to a just society. So how is she going to punish the former slaveholders, if at all?

RISA GOLUBUFF:

And can you say-- I mean, this is something you're an expert in. So how do you compare this to real world transitional justice moments, right? That's what we call the field, transitional justice. So how do those two examples map on, or what are the other kinds of models that we have for transitional justice?

MILA VERSTEEG:

Yeah, so in transitional justice, the big question is always, are we going for peace or justice, right? So peace meaning we're just going to give amnesties, maybe amnesties when telling the truth, as they did in South Africa. But basically, we're just going to have the sense we're going to have to move on and make peace. And we're not going to deal necessarily with the past very much in the interest of peace, right?

So this is what happened in South Africa, many would say. They had the Truth and Reconciliation Committee, and if you told what happened, you would basically get off the hook. And you could just live your life, and you wouldn't be punished. All you had to do was tell the truth. There's many other situations. Chile, for example, where there's just amnesties given in the interest of getting a peace deal. And then the other side of it is like maybe you want justice, right? And then justice meaning those who perpetrated crimes are going to have to be held responsible for their crimes. So Germany after World War II--

RISA GOLUBUFF:

The Nuremberg.

MILA VERSTEEG:

The Nuremberg trials and many other trials that were held throughout the country, or Rwanda after the genocide, everybody was being tried and punished. So this is always a dilemma. Because if you defeat your enemy, you can go for justice. But if you don't, there is often more pragmatic choices that have to be made. So in some ways, the wildlings and Jon Snow, they're going for peace, right? But they haven't really addressed their tensions, right? That comes out when Jon gets killed-- sorry, spoiler-- by what's his name again, the kid?

TOBY HEYTENS:

Olly.

MILA VERSTEEG:

Oh yeah, by Olly. So Olly really can't get over the fact that Jon made peace with the wildlings.

TOBY HEYTENS:

Olly is a child who lives south of the wall, whose parents were killed by wildlings. Wildling raiders sort of killed his parents in front of him in a very brutal way.

MILA VERSTEEG:

Now he can't get over it. It's really hard. So this may be something. Once the common enemy is gone, it turns out they're going to have all this unaddressed issues in the past that they're going to come up in various ways. Whereas Dany is really going for I want justice. And her version of justice is a little unjust. But in any case, there is a sense I'm going to punish those who committed those crimes. So in that sense, it maps onto the sort of peace versus justice debate.

RISA GOLUBUFF:

Although in thinking about something like South Africa and comparing it to the wildlings and Jon Snow, they did have the truth and reconciliation process, right? Where the idea was that by telling the truth one can reconcile truly, right? So I think they weren't going for peace by papering over the past. They were going for peace by transparency and exploration of the past. And I don't know if that would make a difference to Olly, right? But he didn't have that process. He didn't have someone, a wildling stand before him and say, yes, I killed your parents, and I'm sorry for it. And so I just--

MILA VERSTEEG:

Yeah. So the clearest example of just going for peace is like unconditional amnesties, right? We're just all giving you an amnesty if you're going to give up power, and then we make peace. South Africa's somewhat of an intermediary approach because you would get your amnesty if you told the truth. And I think there's a lot of South Africans that think this was a really important process.

Interestingly enough today, the South African approach wouldn't fly with international criminal laws we have today because you can't give amnesties for crimes against humanity under the Rome Statute. So it's now sort of given up as an example of somewhere more too much on the [INAUDIBLE] spectrum compared to what's tolerated by international law today.

RISA GOLUBUFF:

Are there any other big themes that you see in the show, watching from the vantage point of 2019 or 2018? What other big legal themes do you see?

TOBY HEYTENS:

So one of the things that the show spends a lot of time on is what legal scholars would call the principal agent problem. This is basically the idea that anybody who wants to exercise sort of real significant power in the world is going to need other people to help them do it. And so one of the things the show is obsessed with is how the various powerful people or the people who aspire to be powerful are both helped and probably even more often, limited by the need to rely on other people, who probably have their own agendas, their own goals, and their own histories that they're themselves grappling with. And one of the things the show is obsessed with is people who are supposedly working on behalf of other people, who are constantly running their own agendas, which is--

RISA GOLUBUFF:

So it's really hard for the principal to control the agent.

TOBY HEYTENS:

Yes. So who are good agents, right? Good agents are hard to find. I mean, the show tosses out various hypotheses. But one option is your family, perhaps because of either familial loyalty or because

often, members of your family have interests that are very similar to yours, and that making you better off also makes them better off, and presumably, familial loyalty.

RISA GOLUBUFF:

That makes the familial betrayals all the more stark, right?

TOBY HEYTENS:

Or you can pay them, so then there's Bronn. And Bronn is available to anybody for a price, which is why one of the things that when Tyrion Lannister first brings Bronn into his service, he basically says, basically, if my sister ever comes to you and offers to give you money to betray me-- he doesn't appeal to Bronn's sense of loyalty because he knows Bronn has no loyalty. He just says, I'll double whatever she offers you. Whatever my sister offers you to betray me, I'll give you twice whatever she offers you.

And what I think is ultimately one of the thesis statements, is in season two, there's a character named Lord Varys, who basically says power is an illusion. And the thesis essentially is power resides where people think power resides. That's what power is. There's also that riddle that he tells very early on. He says in a room stand three great-- he says men-- three great men, a king, a rich man, and a priest. And before them stands a common sellsword. And each one of the three people tells the sellsword to kill the other two. And the king says, do it because I'm your king. And the priest says, because God commands you. And the rich man says, because I'll pay you. And then he says, who lives and who dies?

[AUDIO PLAYBACK]

- Who lives? Who dies?
- Depends on the sellsword.
- Does it? He has neither crown, nor gold, nor favor with the gods.
- He has a sword, the power of life and

death.

- But if it's swords men who rule, why do we pretend kings hold all the power? When Ned Stark lost his head, who was truly responsible? Joffrey, the executioner, or something else?

- I've decided I don't like riddles.

- Power resides where men believe it resides. It's a trick, a shadow on the wall.

[END PLAYBACK]

TOBY HEYTENS:

That same character later throws in with Daenerys Targaryen in about season six. And there's this incredible scene between the two of them that takes place on Dragonstone, the place where Daenerys was born, her ancestral homeland, where they basically replicate the Trump Comey conversation. I mean, it is inconceivable to me that the people who wrote this scene did not base it overtly on former FBI director Comey's account of his honest loyalty conversation with President Trump.

Because Daenerys starts out the conversation by saying, you say you're with me now, but you were previously with other people. And how do I know that I can trust you? Because you served my father, and then you served the person who usurped my father. And now you claim that you're throwing in with me. Why should I believe a word you say? And he says because I've always done everything that I've done for one reason, which is to serve the realm. And then she says, but what will happen the day when your assessment of what's best for the realm is different than mine? And he says, well, I trust that won't happen. And she says, no, but what happens if that happens?

[AUDIO PLAYBACK]

- I did what had to be done.

TOBY HEYTENS:

And he basically says, I'm always going to be guided by what I think is best for the realm. And she says, but I need you to tell me that you'll be loyal to me.

- If he dislikes one monarch, he conspires to crown the next one. What kind of a servant is that?

- The kind the realm needs. Incompetent should not be rewarded with blind loyalty. As long as I have my eyes, I'll use them. I wasn't born into a great house. I came from nothing. I was sold as a slave and carved up as an offering. When I was a child, I lived in alleys, gutters, abandoned houses. You wish to know where my true loyalties lie? Not with any king or queen, but with the people, the people who suffer under despots and prosper under just rule, the people whose hearts you aim to win.

If you demand blind allegiance, I respect your wishes. Grey Worm can behead me, or your dragons can devour me. But if you let me live, I will serve you well. I will dedicate myself to seeing you on the Iron Throne because I choose you. Because I know that people have no better chance than you.

[END PLAYBACK]

TOBY HEYTENS:

And it's a very tense moment because she has all the power in the situation. She could not merely fire him. She could summarily have him executed. And he is not a military person. She has dragons. She has people with swords. And what's sort of notable about Varys, who, up until this moment, has been presented as one of the least constant ethical people-- in the series, he's constantly betraying people. And

he basically says I won't promise that I'm going to tell you you're right, even when I think that you're wrong. And she lets him get away with it. It's actually kind of amazing that she lets him get away with it, although even then she can't resist ending even that scene with a threat.

[AUDIO PLAYBACK]

- And I swear this. If you ever betray me, I'll burn you alive.

[END PLAYBACK]

TOBY HEYTENS:

But it is almost-- I mean, Mila, do you agree? It is stunningly similar to Comey's account of his conversation with President Trump, where the president asks him to pledge his loyalty.

RISA GOLUBUFF:

So one other question I was curious about is the role of people who seem like lawyers, or advisors, or counsel, right? So the hand of the king and Tyrion's role in various ways, and even Lord Varys, right? So what role do we see those folks playing? Do you think they're like lawyers, or are they not like lawyers?

MILA VERSTEEG:

And so one group that comes to mind are the masters, for example. They play this role in advising, and they're supposed to be-- I mean, we're not really sure who exactly the masters are, but they seem to be this independent order that has knowledge and spreads knowledge. They're kind of the scholars of this world, and they serve--

RISA GOLUBUFF:

And they have a monopoly on licensing themselves, right? Yeah.

MILA VERSTEEG:

Yes. And every castle or every family has a master that works with them. I mean, it's hard to say there's really lawyers. I think this is a world where there's not a lot of law, but there's, nonetheless, constraints. And I think all of these actors, they know what their constraints are or when they're constrained. I don't know what you--

TOBY HEYTENS:

I was just trying to think of what the closest thing to an actual trial we have. I think it's Tyrion's trial for killing Joffrey. That's the closest thing that resembles an actual-- our conception of a trial. As I recall, Tyrion essentially represents himself. I'm trying to remember, who was the prosecutor in the Tyrion trial? It's sort of an inquisitorial model because it seems like the judges are also calling and questioning the witnesses.

MILA VERSTEEG:

Wasn't it Tywin?

TOBY HEYTENS:

Yeah, Tyrion's father, so there seems to be a recusal problem. But that's the closest thing to what we would think of as a trial that you see at any point. And there doesn't appear to be-- there are judges, although there isn't really any separation between church, state, and executive. Because the judges are basically usually just the executive power.

RISA GOLUBUFF:

Right.

MILA VERSTEEG:

But for example, when Tyrion demands a trial by combat from Lady Arryn, right, he does appeal to something like, oh, this is the law. I'm entitled to a trial by combat if you're going to convict me. But I mean, he doesn't get a lawyer, right? So I don't know. It's hard to say there's lawyers. But there already is norms that they're all over.

RISA GOLUBUFF:

Well, and there's a system of justice, is what you're talking about. And it may be a corrupt system of justice or not one that complies with our understandings of due process. But there is a system of justice, not always, right? Daenerys can execute the 166. But--

MILA VERSTEEG:

In the name of justice.

RISA GOLUBUFF:

Right. But the system that creates the trials, right, and that allows for trial by battle if that's the choice, right? There are there are procedures that are in place. And I mean, one question would be, what are the values underlying those procedures? What are those procedures meant to vindicate?

TOBY HEYTENS:

Well, one pretty consistent theme that we've talked about in our class is, it's not clear that anybody other than the nobility have any sort of trial related rights. People who aren't members of the nobility seem to be executed summarily all the time. The people who can claim trial by combat or can claim the right to confront their accusers are almost invariably extremely high born people. And so one thing we talk about is that this is essentially just a reciprocity system between the great houses.

So there is that remarkable scene in season one, where Tyrion Lannister-- I mean, he's a member of an extremely important family, but he is all alone. He is in the Eyrie, the stronghold of one of the other great houses. Every single other person in that room is basically affiliated with one of the other great houses. And Mila said that he insists on a trial by combat, and he actually gets it, which is sort of remarkable, in a way, because he has no power in that situation. I mean, except that he does, of course, which is to say that his family is, at that point, believed to be-- we discover later is not. But his family is believed to be the richest family in Westeros.

RISA GOLUBUFF:

He has the power of reprisal.

TOBY HEYTENS:

Correct.

RISA GOLUBUFF:

And he has the power of what are the consequences down the line for treating him in a particular way in this moment.

TOBY HEYTENS:

And he essentially says to them, if my father hears that you have executed me, even though I've demanded trial by battle, basically, my very rich and very powerful father will be extremely unhappy with you. My father, who, by the way, is in addition, not just my father, but is also the father of the queen and the grandfather of the current crown prince.

MILA VERSTEEG:

I mean, and the other thing in the scene is it's not just Lady Arryn. The room is full of nobility, right? So I think there is a certain I, as a

member of the nobility have this right to trial by combat. And I'm asking for this right. And in a room full of peers, it would be really hard to deny that, right? Because they are--

TOBY HEYTENS:

Right, he does appeal to the other people in the room. He says is this how you do justice in the Vale, sort of implicitly saying, if they do this to me, they could do this to any of the rest of you. And do you really want to?

MILA VERSTEEG:

Yeah. And then he even gets away with asking for a champion, right? So they're like, OK, let's give him a trial by combat. That's funny. Have the dwarf fight. And then he's like, actually, now I have the right to demand a champion.

TOBY HEYTENS:

Right. He gets a trial by battle. She reluctantly says yes, seemingly potentially in part because Tyrion is, in addition to being a dwarf, is not a fighter. He has no possible chance of winning a trial by battle against one of the knights of the Vale. So she says OK. And then he tries to name his brother, who is sort of legendarily, at that moment, widely believed to be--

MILA VERSTEEG:

The best.

TOBY HEYTENS:

The toughest SOB in Westeros, right? And so he's that, but he's also far away. And Lady Arryn, right, she wants to summarily execute him. She's willing, I guess, to give him a trial, but then he says I name my brother, who is, A, the best fighter in Westeros, and B, is not here. And so it's going to take a while. And she says no, no, no. We're not going to do that. We are not going to delay this trial two months, so your brother can get here and fight for you.

MILA VERSTEEG:

But then he gets lucky because Bronn steps up, the sellsword.

TOBY HEYTENS:

Right, the sellsword.

RISA GOLUBUFF:

Right. So I'm thinking about Tyrion and my question about the lawyers. And maybe lawyer is the wrong term. And maybe what I really mean is to think about the relationship between physical power

and mental power, right? And the way in which people use language and arguments. And Tyrion seems to be the best example of that, but there are clearly others. And you've got the dragon. So you've got, as you say, the nuclear option. But what's the relationship there? To what extent are people making logical arguments to norms or values of some kind that are successful? And to what extent are we really in a world in which might overpowers physical might?

MILA VERSTEEG:

I think it's a world where these arguments sometimes win the day, especially if they speak to the self-interest of those at the other side, right? And I think we see Tyrion do this on a number of occasions. But there's probably other examples.

TOBY HEYTENS:

There are a number of others. I mean, so one of the most interesting things that happens in the series is the evolution of the character of Sansa, who is the oldest daughter of Ned Stark, who is presented as a non-serious insubstantial character at the beginning of this series. And one of the evolutions of this series is that Sansa actually becomes an increasingly sophisticated actor, despite having no physical power, despite having a lot of bad horrible things happen to her. Right, being horribly physically abused.

And despite actually at one point basically being in a completely powerless situation, sort of gets herself into a surprisingly powerful position. And one thing she becomes extremely good at doing is convincing other people to do things. It even starts when she's engaged to Joffrey, when she convinces Joffrey not to summarily execute someone by, as far as we can tell, literally making up an old superstition and passing it off as a serious everybody knows x rule. And she prevents someone from being executed this way.

She then, in many ways, out manipulates the character of Petyr Baelish, who at that point is presented as the most cunning, manipulative person in Westeros. I mean, Petyr Baelish is the person who, more so than any, is in some ways responsible for Ned Stark getting killed. Because Ned Stark was fatally naively optimistic in

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dealing with Petyr Baelish. And in some ways, in many ways, Sansa ultimate-- actually, in the television series she just defiantly gets the best of Baelish by out thinking him.

I think the character of Davos Seaworth basically sometimes wins arguments with Stannis Baratheon by appealing to reasonable, sensible-- I mean, Stannis essentially convinces the Iron Bank to lend Stannis a huge amount of money after Stannis himself had horribly failed to do so by appealing to logic and reason in their self-interest. So there are these characters who sort of perform this role, despite I'd say a lack of physical power.

RISA GOLUBUFF:

So I'm curious. We talked a bunch about where law is in this world that doesn't seem to have a lot of law. But one of the kind of abiding themes that legal scholars often think about is the relationship between law and norms. And I'm curious to what extent the law that you're talking about here and the law that you see here, is it really law, or is it norms? And what do you think the difference is between those two things are? And why would you call it one or the other?

MILA VERSTEEG:

Yeah, it's hard to call it law in the sort of positivist sense, right? It's not law that's been written down. I mean, I think maybe it's like if you think about the Constitution of the United Kingdom, right, it consists of this thing called conventions, whatever that means, where we follow them out some sort of sense of obligation. And there would be outcry if we wouldn't follow them. So maybe there's conventions that have the force of law that-- so maybe it's a little bit more than norms in some cases. But it's definitely not law in the modern sense of the word.

LESLIE KENDRICK:

So I bet for our listeners who follow the show, they would love to hear some predictions about what's going to happen. I can't ask many questions about that, not knowing anything about what's happening myself. But maybe Risa has a few questions to ask.

RISA GOLUBUFF:

Well, you can offer your general predictions, and then if you don't answer the ones that are burning in my mind, I'll follow up.

MILA VERSTEEG:

Well, I guess, the big question we always ask in class at the end of the class is like, who will sit on the Iron Throne at the end of all of it? And I think my optimistic take on this is that there will not be an Iron Throne left because Dany's going to break the wheel. And her dragon's going to burn the Iron Throne. And there'll be a different kind of society that comes out of this--

RISA GOLUBUFF:

A better society.

MILA VERSTEEG:

A better society because again, she will not have children. She thinks she's the last Targaryen. And she's going to think of a system that is not sort of hereditary monarchy, but something else. And the Iron Throne is evil. And it's also a very uncomfortable chair.

RISA GOLUBUFF:

Who wants to sit on it anyway? Toby, do you agree with that prediction?

TOBY HEYTENS:

No.

MILA VERSTEEG:

It's my optimistic [INAUDIBLE].

RISA GOLUBUFF:

We've got optimist and pessimist here.

TOBY HEYTENS:

Probably my single strongest prediction at this point is that Daenerys Targaryen, who is one of-- one of the things that's been interesting throughout this series is who the protagonist is, or who the main character is. We thought it was Ned Stark. It turns out it wasn't Ned Stark. By far at this point, the two leading contenders are Daenerys Targaryen and Jon Snow, who are the two characters who've been major characters since the very beginning of the series.

They both have interesting aspects of being the traditional fantasy. Here I think one of the most interesting things about this series that I don't think we're going to know until the end is at the end of the day, what is this series' fundamental take on and relationship to traditional fantasy literature? Because if this is traditional fantasy literature, Jon and Dany get married and live happily ever after ruling over

Westeros.

MILA VERSTEEG:

I'm hoping for that.

TOBY HEYTENS:

I don't think that's going to happen. I am reasonably confident that Daenerys Targaryen is going to die in the final season of Game of Thrones. And I think she will die some sort of hero's death sacrificing herself for some greater good, which at least will be an interesting inversion of the narrative. Because then the main female character would die sacrificing herself to save other people, which normally does not happen in this genre.

RISA GOLUBUFF:

And then what happens after she dies? Is it utopia or dystopia?

TOBY HEYTENS:

No. I think it's somewhere in between because I think the show has been meditate-- it's not utopia because I think this show has made clear from the very beginning, there is no happily ever after in this universe. It would be fundamentally in tension with the entire narrative thrust of this work to have a they all lived happily ever after. But I also don't think and then the world ends in fire and darkness. I also don't think-- I think one of the fundamental theses of the series is that that's not how the world works. There is no and then everything's over.

MILA VERSTEEG:

No, because we have four seasons, right? Winter is coming, but winter will end eventually. So we may have spring somehow. Right?

TOBY HEYTENS:

My other prediction is that the Iron Throne will be physically destroyed. I think no one is going to sit on the Iron Throne. I don't think there's going to be--

MILA VERSTEEG:

So we agree.

RISA GOLUBUFF:

So you agree on that.

LESLIE KENDRICK:

You both think the throne is going down.

TOBY HEYTENS:

Well, but I think the throne will be physically destroyed somehow.

RISA GOLUBUFF:

But you don't know that it will be metaphorically destroyed.

TOBY HEYTENS: Not clear if it'll be metaphorically destroyed.

RISA GOLUBUFF: In the way that Mila thinks.

MILA VERSTEEG: I don't like your predictions.

RISA GOLUBUFF: They mess with Mila's positive world view.

MILA VERSTEEG: I always hope for a happy ending. Everything's good.

LESLIE KENDRICK: Yeah, absolutely.

RISA GOLUBUFF: Well, thank you both so much for being here. I'm so excited for season eight. And I feel like such a more sophisticated watcher, now that I see it through your eyes and the eyes of your class.

LESLIE KENDRICK: Thank you.

TOBY HEYTENS: Thank you.

MILA VERSTEEG: Thanks.

[MUSIC PLAYING]

RISA GOLUBUFF: So Leslie, does that make you want to watch *Game of Thrones* more than it used to? I mean, you thought this was a show about sex and violence. But it turns out to be a show about law, and norms, and climate change, and legitimacy, and international relations.

LESLIE KENDRICK: It's true. It's about so much more than sex and violence. I think probably the sex and violence is still too much to bring me in. But it does sound like it's really rich. Maybe I should try reading the books.

RISA GOLUBUFF: The books are a much longer endeavor, thousands and thousands of pages.

LESLIE KENDRICK: Fair enough. I'm going to take the long way around. I understand. I understand.

RISA GOLUBUFF:

Well, that's going to do it for us for this special format busting episode of *Common Law*. And we'd love to hear from you about this one. Are you a *Game of Thrones* fan, who also happens to be a lawyer or a law professor? And do you have thoughts about how the two realms intersect? Tweet those thoughts to us @commonlawUVA, or leave a comment on our Facebook page at UVA Law.

LESLIE KENDRICK:

Our next episode is going to go back to our regular theme, our regularly scheduled programming. And that's about the future of law. It's going to feature a fascinating conversation with our colleague, Dayna Matthew. She's working on a new model of primary health care known as medical legal partnerships. Here's a little taste of that.

DAYNA MATTHEW:

One of the things we know is that the organization of where pollution gets to live, where it gets located, can be contested, as well as reorganized, by law. So again, the structural kind of involvement of lawyers in health-related issues is what a medical legal partnership is best at.

RISA GOLUBUFF:

Common Law is a production of the University of Virginia School of Law. It's produced by Mary Wood, Tyler Ambrose, and Tony Field. We record the show at the studios of Virginia Humanities. I'm Risa Golubuff.

LESLIE KENDRICK:

And I'm Leslie Kendrick. We'll talk to you in a couple of weeks.