

“I Made a Promise to a Lady”: Critical Legal Pluralism as Improvised Law in *Buffy the Vampire Slayer*¹

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Introduction

Given traditional understandings of law, one might be sceptical of a claim that improvisation and justice are not mutually exclusive concepts. Does not the significance of the rule of law, the requirement that we be governed by rules and not arbitrary, *ad hoc* discretion, call into question the legitimacy of improvisation in law? To this very lawyerly question, I provide a very lawyerly answer: it depends.

Legal orthodoxy may indeed refuse to acknowledge any role for improvisation in law, but other theories of law are likely to be more accommodating, particularly the theory of critical legal pluralism articulated by M.M. Kleinmans and Roderick Alexander Macdonald (25). Critical legal pluralism rejects the characterization of law as an external force obeyed by legal subjects. Legal subjects are not law-obeying but rather law-creating, generating their own legal subjectivity and establishing normative authority as a knowledge process of creating and maintaining reality.

In this article, I analyze *Buffy the Vampire Slayer (BtVS)*, a popular television series, to explore the concept of critical legal pluralism as improvised law. Read jurisprudentially, the series provides numerous examples of the improvised nature of law as the social construction of legal meaning. As I argue in Part II, the account of law provided by the theoretical perspective of critical legal pluralism is consistent with an understanding of law as an exercise in improvisation. In Part III, I respond to anticipated objections that improvisation renders judgment uncertain and arbitrary. Improvisation in law does not imply anarchy, no more than improvisation in music implies cacophony. The legal subjects of critical legal pluralism do not follow a fixed, immutable script, but rather create legal meaning in real time by evaluating a range of narrative alternatives. Narrative commitment is thus the essence of judgment, a response to the specificity of the moment that cannot be scripted in advance.

Within the Buffyverse,² the character of Spike provides a particularly compelling illustration of narrative commitment as legal improvisation. True to the traditional (pre-*Twilight*, pre-*True Blood*) genre, Spike is an evil vampire, a demon without a soul whose capacity and appetite for violence have earned him the title of William the Bloody. Yet viewers readily accept a character arc in which Spike, motivated by chivalry (the genre of knights-in-armor, not vampires), vows to protect a human being even at the expense of his own existence. As is demonstrated in Part IV, as a law-creating legal subject Spike is bound by his commitment to both genre-hybridism and the improvised legal meaning of his circumstances; he has made a promise to a lady, and such promises must be kept, even by soulless vampires.

Critical Legal Pluralism as Improvised Law

Imagining law as improvisation, as an understanding of legal meaning taking place in the moment, is inconsistent with traditional and arguably predominant perceptions of law as a reified entity, fixed in space and time, a normative grid that descends from above to bring order and fairness to human affairs. Reified law is understood as an externally verifiable object, the existence of which is sustained by commitment to certain specific assumptions, described succinctly by Macdonald as follows:

Law is about externally-imposed rules and analogous normative statements (prescriptivism). Law is formal and institutionalized such that a single legal order has a normative monopoly over a given geographical territory (monism). Law is exclusively the product of the political state (centralism). There can be an *ex ante* hard criterion for distinguishing that which is law, from that which is not law (positivism). (390)

The difficulty with reification is that we conflate explanation and phenomenon. No one would mistake Newton's Law of Universal Gravitation expressed in symbolic form³ with the actual phenomenon of objects with mass attracting one another. Similarly, we should not mistake the symbolic expression of either state-law (normative authority expressed in the form of codes, legislative enactments, judicial decisions) or legal pluralism (normative authority expressed in a variety of forms) for the actual phenomenon of humans acting legally, that is to say, acting from a sense of obligation. Law is an explanation, not an artefact; it is an explanation of human behaviour from a legal perspective.

To describe acting legally as acting from a sense of obligation may invite certain ontological objections; when cast in such broad terms, no suitable criterion exists to distinguish law from other forms of behaviour with a normative dimension. The description becomes both more comprehensible and compelling, however, when situated within the theoretical framework of critical legal pluralism articulated by Kleinhans and Macdonald. This involves shifting the focus of inquiry away from law as reification in favour of law as an “exercise in hermeneutics”: “A critical legal pluralism . . . rests on the insight that it is knowledge that maintains and creates realities. Legal subjects . . . produce legal knowledge and . . . fashion the very structures of law that contribute to constituting their legal subjectivity” (38n1). Legal subjects are law-creating rather than law-obeying in the sense that law is not an object (in textual or institutional form) but rather a form of knowledge, which itself is “a process of creating and maintaining myths about realities” (39n1). This shift from law as object to law as meaning allows us to analyze human activity in legal terms, as a study of obligation, in the same manner as an economist might analyze human activity in economic terms, as a study of the production, distribution, and consumption of goods and services.⁴

To describe law as a sense of obligation originating with law-creating rather than law-obeying legal subjects may raise concerns regarding enforcement. How can the concept of obligation have any normative authority when generated by legal subjects themselves? But if we reject reification of law in favour of a hermeneutic approach, we must also accept the constitutive capacities of legal subjects. Simply stated, legal meaning does not generate itself. We are not governed by a reified law, whatever may be the ostensible form of expression, but rather by our own understanding of law, of what we are obliged to do.

To take a simple and (hopefully) illustrative example, a traffic sign displaying the word, “STOP,” cannot physically compel me to stop my car as I approach an intersection. The relevant legislative provision setting out the requirement that I stop when I see this traffic sign is similarly ineffectual; a line of text cannot stop a moving car. A judicial decision can only penalize my failure to stop by depriving me of my liberty or my money after the deed is already done. These presumptive artefacts of reification are completely ineffectual in and of themselves.

What stops my car is not a legislative provision, nor a judicial decision, but rather my own understanding of what is legally required in this situation, that is to say, my own understanding of what I am obliged to do. I understand the necessity of predictable traffic rules. I understand the potentially fatal consequences of ignoring such rules, particularly for vulnerable pedestrians and cyclists. Or perhaps I am more self-interested than mindful of the needs of others, in which case I understand at the very least that powerful state forces (democratic or otherwise) will penalize me if I violate traffic rules.

My understanding is certainly influenced by law originating with a political state, but other influences contribute as well—my relationship with my father, who taught me to be a responsible driver, what I imagine my father will think, how disappointed he will be if I fail to live up to the standards he provided, my understanding of the social and civic significance of all those Elmer the Safety Elephant films I watched in public school, my lived experience of fatal collisions and the emotions of grief and anger that follow—this entire, complex web of experience and conversation is equally relevant.

This simple example is an attempt to provide a concrete illustration equal to the task of explicating a key premise in critical legal pluralism; legal subjectivity is not externally imposed but is instead called into being by the legal subject itself. The law-obeying subject of legal orthodoxy ostensibly reacts to a reified rule. A law-creating legal subject's act of obligation does not originate with the form or content of a reified legal system, the *deus ex machina* of a rule-book in the sky, but rather with the social construction of legal meaning.

This is not to say that a critical legal pluralist account of law is an invitation to anarchy, in the sense that accountability to others no longer makes sense in a world where a different legal order exists for each legal subject.⁵ But if we characterize law as improvisation, if we acknowledge the very real possibility of normative authority in the absence of a pre-authorized script, then we must address the persistent anxiety over endless relativity that accompanies any postmodern account of law. Without a fixed, externally-verifiable reference point such as one might find in a reified conception of law, how are we to judge right from wrong? For as Richard Sherwin argues, when we discredit the concept of objective truth, we also call into question the possibility of an objective, externally verifiable act of judgment: “If it is all being constructed, we can hear postmodern anxiety whisper, isn't one construction as true (or as false) as any other? . . . [A]s the modernist benchmark for ideal truth and objective reality gives way to constructivist insights, the task of judgment becomes a far more complicated matter” (220).

With many anxieties, rational reassurance is generally ineffective (as many anxieties are irrational to begin with) but nonetheless, the appropriate response is to remain calm. Neither a constructivist account of law, nor the proliferation of legal meanings that follows upon such an account, renders judgment impossible. Judgment as an act of

interpretation will necessarily be contingent, but contingency is not an indication of arbitrariness or unfairness. As Silbey observes, the focus merely changes from finding the 'right' interpretation to finding the most reasonable or persuasive interpretation, as assessed with reference to a particular interpretive methodology (165).

This response may simply displace the source of anxiety, from finding the "right" answer to finding the most persuasive answer. But this is the nature of judgment, to identify the most persuasive account of what is an appropriate response to a particular situation. If judgment were simply a process of identifying externally verifiable states of being (presumably labelled "right" and "wrong"), no real judgment would be required at all; judgment would amount to nothing more than acute observation. Thus improvisation is an ideal metaphor for understanding law, particularly from the theoretical perspective of critical legal pluralism. Judgment is always a response in the moment;⁶ the specificity of understanding what one is obliged to do at a particular time in a particular set of circumstances defies the application of a fixed and immutable script.

Judgment is also, significantly, a decision, which implies choice, as opposed to fidelity to an *a priori* script. Paradoxically, judgment understood in these terms involves far more responsibility than a command-and-control model of normative authority (Manderson 123-124). Legal subjects cannot avoid responsibility for creating legal meaning by delegating this task to a reified legal order, thus absolving themselves of the consequences. Instead, legal subjects must assume for themselves the task of normative evaluation, in essence an endless process of evaluating their own behaviour. When I ask myself, what am I obliged to do, I am really asking myself, what kind of person am I? This is why Kleinmans and Macdonald characterize the nature of legal meaning as autobiographical: "legal subjects hold each of their multiple narrating selves up to the scrutiny of each of their other narrating selves, and up to the scrutiny of all the other narrated selves projected upon them by others. . . . The very idea of law must be autobiographical" (46n1).

When we understand legal subjectivity from this perspective, we understand the significance of narrative commitment rather than reified rules as the origin of normative authority. Our capacity to create legal meaning is a function of our ability to commit to a narrative we find persuasive.⁷ This is not to say that the creative capacity of legal subjects is not limited by external constraints. We may commit to dominant narratives not because we find them persuasive but because they have been forced upon us (Kleinmans and Macdonald 43n1). But even in the presence of compelled commitment, law can be understood as an exercise in improvisation. The law-obeying subjects of legal positivism may follow the presumptive certainty of fixed, *a priori* scripts. The law-creating subjects of critical legal pluralism improvise, working to reconcile competing and conflicting narrative options, composing a sense of obligation in the moment that responds, as justice must, to the specificity of the moment.

Bound by Genre: Critical Legal Pluralism, Improvisation and Narrative Commitment

Having characterized critical legal pluralism as improvised law, as the creation of legal meaning through a process of narrative commitment, the objective of this section is to identify and analyze an example of narrative commitment in popular culture. In other words, my objective is to examine an expression of popular culture that instantiates both the theory of critical legal pluralism and my characterization of this theory as an account of improvised law.⁸ A legitimate question may arise as to why expressions of popular culture, e.g., films, television series, literature, graphic novels, should serve as a virtual field for exploring legal theory. Would it not make more sense to refer to primary rather than secondary sources, to consult real life (whatever that might be), as opposed to fiction? To this I would answer that while many reasons exist for studying the ways in which law intersects with and is part of popular culture,⁹ the themes of autobiography and narrative work through both the theory of critical legal pluralism and expressions of popular culture in a rather interesting way.¹⁰

First, Kleinmans and Macdonald have defined critical legal pluralism as a "continuing autobiography of meaning" (42n1). I would add to this that popular culture is a collective and continuing autobiography of meaning, performed in real time, without a point of fixation and thus not so much continually revised as always in the process of being written. Second, I have characterized an understanding of law derived from this perspective as improvised law, calling particular attention to the role of narrative. If improvised law is a function of narrative commitment, then a useful analogy can be made with the way in which genre is used as an organizing framework for many forms of popular culture. While genre is not an unproblematic concept (Berry-Flint), works of a particular genre do tend to encourage certain narrative expectations, and a generic work will succeed to the extent that it meets (or skilfully innovates in relation to) these expectations (Grant 21). Genre, like law, is a narrative commitment, an obligation to act in accordance with narrative expectations.

As to the virtual field, I have chosen the popular television series, *Buffy the Vampire Slayer (BtVS)*. The protagonist, Buffy Summers, is a typical high-school student from Sunnydale, California, whose destiny is to be The Slayer, also known as The Chosen One. The Slayer is a supernatural heroine who battles vampires, demons, and other mystical and supernatural evils. The series is episodic, with each season's narrative built around the defeat of low-key villains on a weekly basis, while battling throughout the season against a well-matched antagonist. Included among the "Big Bad" each season are a master vampire, a good vampire who becomes a bad vampire, a demonic mayor, a secret government initiative, and a hell-god from a demon dimension. The narrative device used to explain this intense concentration of mystical activity is that Sunnydale High School is located on The Hellmouth, a sort of supernatural hotspot for connecting to the underworld.

The prophecy from which The Slayer derives her mystical powers has a very limited jurisdiction; Slayers are chosen one at a time, a new one called in the event of the previous Slayer's demise. But while Buffy is the chosen "one," she does not fight alone. She is assisted by a number of close friends, collectively referred to as the "Scooby Gang," and by Mr. Giles. Ostensibly the school librarian, Mr. Giles is also a member of the Watcher's Council, a secret organization that possesses extensive human capital in the field of supernatural phenomena, but exercises rather ineffectual authority over the current Slayer. Situating Buffy, a mystical (but human) protagonist, within a relational context of family, friends, and community provides an opportunity to combine multiple and varied story arcs. The series is as much a story about the complex relationships of friends (and chosen family) as it is a story of the prototypical forces of good fighting against evil.

BtVS is a particularly compelling choice for two reasons. The first is the manner in which normative authority is established as a process whereby the characters create legal meaning, rather than by reference to a reified normative order. In particular, the apparatus of state law, which includes legal codes and enforcement authorities such as police officers, is understandably presented as inadequate and irrelevant. No matter how ambitious its reach, state law simply does not contemplate the regulation of supernatural and mystical forces. The absence of state law, however, does not leave the characters in a normative vacuum. Indeed, the characters are governed by a much more onerous sense of obligation than would typically be imposed by law originating with a political state.¹¹

The characters in the series often refer to ancient books purporting to contain relevant knowledge of all things mystical, but the texts are not precedents and rarely provide explicit guidance. In situations of crisis, they comprise one of many competing narratives, including intra- and intersubjective conflicts amongst the characters as to what constitutes the correct course of action in a particular set of circumstances. Nor does the hierarchy of characters' statuses provide a clear methodology of resolution. The Slayer has mystical powers, but she is a teenager after all, even if she is The Chosen One, and she is at least nominally supervised by her Watcher, Mr. Giles, who has expert knowledge and experience. Members of the Scooby Gang exhibit a diverse range of extraordinary abilities, such as sophisticated computer hacking, mystical talents and, occasionally, supernatural strength (in the form of a teenage werewolf). Although none of them is as powerful as The Slayer,¹² Buffy not only relies on their expertise but often defers to their opinions as well.

Unprecedented is also an apt description of the normative conflicts that arise. Should The Slayer have a lover who is a vampire, even a vampire who exceptionally has a human soul and a human conscience? If a vampire regains possession of his human soul, does he also regain his moral standing in the community of humans? Can humans and ex-demons marry each other? Is The Slayer subject to state-based criminal law if her actions, however inadvertently, harm a human being? Can a human friend who has used her magical powers to commit a particularly brutal, vengeful murder be rehabilitated? Should she be forgiven and, if so, should this act of mercy nonetheless be withheld from a demon friend who commits a similar vengeful act under similar circumstances? In responding to these questions and dramatic tensions, the characters in the series consistently act out amongst themselves the types of conversations that create legal meaning in the moment, as a process of evaluating narrative possibilities.

Critical legal pluralism thus has unique explanatory power in the fictional world of the Buffyverse, just as the Buffyverse provides an ideal virtual field for modelling critical legal pluralism as improvised law. A law purporting to exist in reified form, formulated and codified in advance, would by definition be incapable of governing unknowable and inexplicable forces, as is demonstrated by several instances in which ancient prophecies intended for guidance are either misinterpreted or otherwise fail to materialize. Instead, the characters continually improvise law, composing legal meaning each time a commitment is made to a particular narrative.¹³

The second reason why *BtVS* is particularly relevant is the manner in which the series blends a number of different genres, including drama, comedy, romance, horror, and, memorably, one episode of musical comedy. Just as musicians improvise in relation to the guidance provided by their understanding of established musical styles, so too do the legal subjects of critical legal pluralism improvise within a framework of established narratives, being those

narratives that are sufficiently familiar and/or persuasive for the legal subject to recognize their normative authority. Critical legal pluralism acknowledges a constitutive role for the legal subject, but creative capacity is not a licence for perpetual indeterminacy. At some point, negotiation amongst the multiplicity of narrating intra- and intersubjective selves must produce a narrative commitment sufficient to create legal meaning in a particular circumstance. Given genre's function in organizing narrative expectations (Grant 21n24) genre has sufficient persuasive force to shape and validate choice amongst competing narrative possibilities.

Significantly, the narrative expectations of genre also provide guidance regarding the content of the obligation that governs behaviour in given circumstances. To describe legal meaning as socially constructed rather than as existing in reified form does not leave legal subjects inhabiting a demon dimension of indeterminate, chaotic contingency. Within the context of a genre film or television series, we have certain expectations as to how characters will respond to situations. The same sense of expectation is present when a law-creating legal subject, following a period of negotiation, creates legal meaning in the moment by expressing a narrative commitment. The legal subject knows what is expected, knows what she is obliged to do, based on the narrative expectations she has acknowledged.

Within the Buffyverse, we see the operation of narrative commitment most clearly in the character of Spike, a vampire introduced in Series Two as a nemesis to Buffy. His single-minded objective is to kill The Slayer. Spike is evil, although not without the requisite amount of sexual attractiveness, and unlike Buffy's vampire lover, Angel, he is not troubled with a human soul. He refers to humans as "Happy Meals," enjoys torturing them and causing them pain as much as he enjoys using them as a source of food, and places his self-interest above all. And yet, viewers readily accept what might be a rather implausible character arc, from his introduction in Series Two to the season finale of Series Five. Here we find Spike, a.k.a. "William the Bloody," not only fighting alongside Buffy against that season's antagonist, but also promising Buffy that he will protect her younger sister, Dawn, even if he has to sacrifice his own life to do so.

Why is it that viewers can readily accept this rather radical turn of events? One pragmatic reason might be a popular culture version of legal realism. Compared to a novel or a film, a television series is composed of multiple episodes. In order for a popular character to remain on the show, that character may need to develop in atypical ways that would seem out of place in the more limited confines of a single novel or film. No one expects Shane to turn his horse around and return to the town he has just saved, no matter how yearning Joey's plea may be.¹⁴ How, exactly, would the nomadic gunslinger occupy his time in a way that film audiences would find interesting and entertaining? Heroic sacrifices have been made, bad guys have been defeated, what could possibly follow this act? Best to just keep riding away. But in a television series, such dramatic tension has to be created, resolved and recreated on a weekly basis. If Shane existed in a long-running television series instead of film, he would have to expand his repertoire significantly, which arguably means developing the character in unexpected ways.¹⁵

Another reason why viewers accept Spike's transition from foe to friend, albeit rather narrowly defined, is that throughout the transition the character does not deviate from generic expectations. The significance of *BtVS* as a genre-blending series is the potential this provides for character development. Every story, whether told in the form of a novel, film, or television series, provides for character arcs. The status and perspective of the character is shaped and changed by the course of events as the story progresses. Part of the appeal of generic forms of novels, films, and television series is that the character arcs are familiar and recognizable to the viewers, and thus a predictable source of pleasure. Viewers will tolerate a certain amount of deviation from generic expectations, particularly since deviation is the process through which genre evolves (Grant 21n24). But we are going to be disappointed if a generic character arc veers off in a completely unfamiliar and thus undesirable direction. Do we really want to pay cinema-plex prices to see an action film in which John McClane¹⁶ spends his time talking to a therapist about his anger and control issues?

As Spike's character arc develops, his ostensibly contradictory behaviours are all equally plausible to viewers (and within the frame, to other characters) because his behaviour always meets narrative expectations. Significantly, viewer acceptance in this analysis functions similarly to proof of concept.¹⁷ The development of the character of Spike is a study of the process of narrative commitment within a critical legal pluralist account of law. Normative authority is derived from the legal subject's creation and recognition of legal meaning, which in turn is derived from commitment to a persuasive narrative. From a legal perspective, we can examine the ways in which Spike acts from a sense of obligation originating with the narrative expectations of a specific genre. Even as an ostensible outlaw, Spike is bound by genre, just as the legal subject of critical legal pluralism is bound by the narrative possibilities available.

The Many Genres of Spike

What follows in this section is, for lack of a better term, a brief ethnographic analysis of the character of Spike, beginning with his appearance in Series Two and ending with the season finale to Series Five.¹⁸ The objective is to use the character as a fictional instantiation of the legal subject of critical legal pluralism, specifically to demonstrate the manner in which legal subjects continually improvise law, composing legal meaning each time a commitment is made to a particular narrative.¹⁹ Spike's transformation from evil nemesis to unrequited love may appear arbitrary and inconsistent, two characteristics that exemplify postmodern anxiety over social construction of legal meaning. Such anxiety appears misplaced, however, given that characters within the frame and viewers outside the frame find Spike's character to be consistently credible. Viewers readily accept what might appear to be contradictory behaviours because, while such behaviours may indeed contradict each other, they are nonetheless consistent with specific narrative commitments made at the time.

As to the plurality of Spike's narrative commitments, this too is consistent with a critical legal pluralist account of law. A narrative commitment is a response to a call for judgment, the distinction between what is right and wrong, within the context of the specificity of the moment. This specificity is what defeats the ability to commit to a meta-narrative, a fixed, *a priori* legal script. From a legal perspective, we meet each moment as it arrives under conditions of moral uncertainty. To judge fairly is to interpret for each moment not what is required in the abstract, but rather what is required in the particular circumstances.²⁰ Viewed from this perspective, genre singularity is a simplifying assumption, a way to make sense of a particular narrative, but not a viable model for living in complex relation to others. For this, we need a range of narrative alternatives; we need to create legal meaning, as Spike does, under conditions of genre-hybridism.²¹

Punk rock: "... a little less ritual and a lot more fun ..."

Viewers are first introduced to the character of Spike in Series Two, Episode Three, when he arrives in Sunnydale with his girlfriend, Drusilla, a rather insane vampire with a tendency towards non sequiturs and a decidedly Victorian manner of dress. In contrast, Spike has a contemporary punk appearance, perhaps best described as an amalgam of Billy Idol and Sid Vicious.²² His clothing seems to consist entirely of a long black leather coat, straight-leg black jeans, heavy black boots, and a tight black t-shirt, which he is often in the course of putting on or taking off, the better to show his superior muscle definition. He has the cheek bones of a fashion model, platinum blonde hair precisely delineated with product, black nail polish, and a Zippo-style cigarette lighter. The visual cues could not be more straightforward: Baby, he's always been bad.²³

Prior to Spike's arrival, the other vampires in Sunnydale had informally organized under the leadership of "The Anointed One," a small vampire boy who, according to prophecy, is immune to the powers of The Slayer. Spike refers to him as "The Annoying One," demonstrating not only his attitude towards all forms of authority but also his dry sense of humour. Spike states his intention to kill Buffy, his confidence perhaps justified given that he has killed two Slayers already (the odds are usually exceedingly high in The Slayer's favour). Spike does not succeed in his first attempt, but he does establish his place in the world of Sunnydale vampires in a suitably dramatic manner. When chastised for his failure by "The Anointed One," Spike's response is to kill him and take over the leadership role, telling the other vampires that, "[f]rom now on, we're going to have a little less ritual and a little more fun around here."

Analyzed from the perspective of legal orthodoxy, Spike would be characterized as an outlaw, a person who violates normative authority originating with a formal institution such as the political state. Analyzed from the perspective of critical legal pluralism, Spike is inescapably bound by law. As a way of making sense of the world, we participate in normative communities created by our own narratives (Kleinmans and Macdonald 43n1). If we search for meaning, we cannot help but find law. Drawing an analogy between genre and legal meaning, we can see that Spike has fulfilled his obligation to meet narrative expectations. Consistent with his initial punk persona, his behaviour is nihilistic, anti-authoritarian, and confrontational.

Double-agent: "There's no deal without Dru."

When I argue in favour of the legitimacy of Spike as a law-creating rather than law-obeying legal subject, I am not arguing that Spike, or the legal subjects of critical legal pluralism, are able to act with impunity towards others, so long as they act consistently with their own narrative commitments. Nor do I mean to recall the anxiety of moral relativity. Those committed to dominant narratives, which they come to believe through a process of either power or persuasion, tend to be supported by sufficient apparatuses to defend their interests, which in turn are justified with reference to the dominant narratives. But to say that Spike is acting inconsistently with a dominant narrative is not to

say that Spike is acting without reference to normative authority. Spike's behaviour is indeed normative, in the sense that his actions are consistent with the expectations of his narrative commitment. This is why the source of normative conflict is not incompatible, reified legal orders, but rather the legal subject's own recognition of multiple, competing, and conflicting narrative possibilities (Kleinmans and Macdonald 46n1).

The recognition of the self as the source and reconciliation of normative conflict confirms the inevitability of genre-hybridism. Committing to a particular narrative is an act of judging the appropriate response to the moment. Since each moment is unique, without prior existence and thus defying repetition, judgment cannot follow a script but must be improvised. This is not to say that narrative commitments cannot be repeated, should similar circumstances arise, but rather that the initial commitment must be reconsidered. A decision must be made as to whether the circumstances are indeed sufficiently similar. If the circumstances have changed to the extent that a prior narrative commitment will no longer suffice, other narrative possibilities must be considered.

We see this process demonstrated as the status of Spike's character changes towards the end of Series Two. Spike and his love interest, Drusilla, appear in numerous episodes throughout Series Two, always positioned as antagonists towards Buffy. Two developments take place, however, which alter the expected course of events. First, Spike is seriously injured and becomes dependent on Drusilla to care for him while he heals. Second, Buffy's lover, Angel, the vampire with a soul, loses his soul (again) and becomes evil (again). He decides to rejoin his old friends, Spike and Drusilla. At this point, Angel is now the more dangerous antagonist. He has become the latest unofficial leader of the vampires, and his stated objective is not only to kill Buffy but to end the world as well. Along the way, he also finds time to alienate Spike, taunting him about his lost powers and lack of virility while becoming a rival for Drusilla's attention.

For Spike, Angel's return to the fold is decidedly problematic, leading to divided loyalties. Spike and Angel have a long-standing friendship, dating from the period in which Angel was the evil Angelus, before he regained his human soul. But Drusilla is Spike's obsession, and he wants her to himself. Being an evil vampire, he does not consider ways to regain her devotion and undivided attention, but rather how to take her back by force. Nor does Spike harbour any ambition to end the world, unlike the rest of the vampires following Angel's lead. In relation to Angel, Drusilla, and the other vampires, this places Spike in the midst of a classic narrative from the genre of spy fiction; he is an agent who no longer believes in the cause.

Within the spy genre, an operative who does not believe in the cause is ideally placed to become a double-agent, one who now merely professes loyalty to his organization and/or nation state while secretly acting against its interests.²⁴ This explains Spike's unexpected alliance with Buffy against Angel and the vampires who follow him. Betrayal involves complex motivations, personal and political, both of which Spike openly acknowledges, perhaps because evil vampires do not feel the need to rationalize. Spike does not share Angel's grand plans for demonic domination, but arguably his more pressing concern is that he wants Drusilla to himself. Spike negotiates a standard double-cross in which he agrees to help Buffy kill Angel, in return for which Buffy will allow Spike to leave town with Drusilla. Buffy is reluctant to include Drusilla in the bargain, but Spike is firm: "There's no deal without Dru."

This change in Spike's status is significant. He has betrayed his former friend to his enemy, and has agreed to help his enemy kill his former friend. As a vampire, he has forged a pact with The Slayer, whose mystical destiny includes a single, clear objective: to exterminate his species. While Angel and Buffy as lovers also constituted an unprecedented vampire/vampire Slayer alliance, this could be explained by the fact that Angel had regained his human soul. Spike's initial punk persona, while sufficient to justify acting in self-interest, cannot provide normative guidance for the unique form of cooperation that must take place with Buffy. For this, Spike needs to construct a new legal meaning.

The narrative of a double-agent is a familiar and persuasive account of what he is obliged to do in the circumstances. Within the frame, expectations are sufficiently clear that Buffy is able to trust Spike to deliver as promised, although she would no doubt respond accordingly if he reneged on their deal. Outside the frame, viewers accept what would otherwise be an unlikely partnership, which includes a visit to Buffy's house (and even an introduction to her mother), since it takes place within the context of familiar generic expectations.

Saved by the love of a good woman: "You treat me like a man."

Having left Sunnydale with Drusilla at the end of Series Two, Spike appears only once in Series Three. By Series Four, however, he has become a regular character. The most significant change in Spike's status at this time is that a secret government initiative has implanted a microchip in his brain, rendering him incapable of violence. An

intertextual reference to *A Clockwork Orange*²⁵ is evident, given the manner in which the microchip operates. Spike is not rehabilitated, but constrained; whenever he attempts to inflict violence on human beings, he suffers intense neurological pain, thus making him averse to engaging in activities he once enjoyed. He is pleased, however, to discover that while he is now incapable of killing humans, he can still kill non-humans, including demons, monsters, and other vampires. Spike's role gradually expands, from that of a single-minded antagonist to an opportunistic (and mostly unacknowledged) ally of the Scooby Gang.²⁶

Series Five involves a significant multiplication of generic expectations as Spike's character arc further develops. While no longer capable of harming humans, Spike is still violent and evil. He may be a casual ally of the Scooby Gang when it suits his purposes, but he still considers The Slayer to be his enemy. Spike is thus understandably dismayed to discover that he has developed an obsessive sexual attraction to Buffy, one which manifests in ways reminiscent of stalking narratives. He stands outside her house in order to watch her, secretly, for long periods of time. He takes items of her clothing and photographs back to his crypt, where he arranges them in a shrine. He has numerous sexual fantasies of the two of them together, and becomes increasingly frustrated as his attempts to win Buffy's approval are met with rejection and indifference.

Spike reveals his sexual obsession to Buffy in Episode Seven, when in the midst of a tense stand-off he tries to kiss her. Buffy rejects him, contemptuously, and he responds with murderous rage. He returns to his crypt to collect a shotgun, an act which most clearly marks this development as a stalking narrative. Throughout the series, the characters make frequent use of a variety of gothic and mediaeval-style weapons, from wooden stakes to broadswords, but not firearms, which are ineffective against vampires and demons.²⁷ Fully armed, Spike then goes out to find Buffy, intent on killing her. That Spike wants to kill Buffy is not new; this has been his stated intention since the introduction of his character in Series Two. Significantly, however, and consistently with a stalking narrative, his motivation is no longer the predestined animosity between vampires and The Slayer, but rather his rage at being rejected by her.

Spike finds Buffy at her house that night, but what happens next is an unexpected change in the narrative. Buffy is sitting outside on the back porch, visibly upset and crying, having just learned that her mother may have a serious illness. Spike takes aim but hesitates. He then walks over to Buffy, sits down next to her, and puts the shotgun aside. He tries to comfort her, awkwardly at first, by patting her back, an intimacy that Buffy allows. As the episode ends, they sit in silence together, and viewers are left with the impression that Buffy finds some degree of comfort in Spike's wordless presence.

From this point, viewers see a gradual change in Spike's attraction towards Buffy, from sexual obsession within the context of a stalking narrative to unselfish love. So strong are his feelings for Buffy that he even withstands torture from the Series Five antagonist, a hell-god named Glory, who is trying to locate Buffy's younger sister, Dawn. Nor does he seek to capitalize on his act by letting Buffy know what he has done for her. He refuses to betray Buffy not because he thinks she will ever love him, but because he cannot bear to see her in pain.

Note that the dramatic change in Spike's character arc as Series Five progresses cannot be explained by the presence of the microchip, which prevents him from acting violently towards humans but does not compel any affirmative behaviours or emotions. What does explain his transformation is the introduction of elements of a generic narrative from romance fiction, that of the bad man who is saved by the love of a good woman. Consistent with this narrative, the love of a virtuous woman can redeem a man who otherwise lacks virtue, motivating him to engage in heroic acts and self-sacrifice.

The narrative is arguably problematic in its usual format,²⁸ women may be imbued with moral authority but remain in unequal relations with men, who retain their power and autonomy.²⁹ Within the Buffyverse, however, the generic narrative, while still recognizable, is altered; Spike is not redeemed by Buffy's love for him, but rather by his love for her. Buffy does not come to love Spike in Series Five, but her behaviour towards him is moderated. She begins to trust him and comes to rely on his skills and strength to the point where she is treating him as an ally in her fight against Glory. Viewers accept Spike's radical transformation because his behaviours are consistent with the obligations of redemption and thus meet narrative expectations. As he says to Buffy, "I know you'll never love me. I know that I'm a monster. But you treat me like a man." Buffy may not love Spike, but she has come to respect him and rely on him; in turn, Spike governs himself accordingly.

Courtly love: "I made a promise to a lady."

Perhaps the most compelling instantiation of critical legal pluralism as improvised law occurs during the final episode of Series Five. Each season's narrative culminates in a dramatic confrontation with the season's primary antagonist. In Series Five, this antagonist is Glory, a hell-god from an alternative demon dimension, trapped in a quasi-human existence, albeit in the form of a beautiful young woman with a fabulous wardrobe; her typical attire is a body-hugging red dress and high heels. As a god (and a real diva), Glory is stronger and more powerful than The Slayer, who as a mystical warrior is arguably somewhat lower in the hierarchy of those possessed of supernatural powers. The Chosen One needs everyone's help to have any hope of defeating Glory.³⁰

The plan is that Buffy and the Scooby Gang, along with Mr. Giles, will attack Glory. The important task of rescuing Dawn, Buffy's younger sister, is an assignment that Buffy entrusts to Spike alone. Dawn is being held captive at the top of a very tall, unsteady tower built by Glory's minions. The mystical premise is that Dawn's blood will open a temporary portal between demon and human dimensions, allowing Glory to return home but also, unfortunately, allowing a vast array of demons to enter the human dimension at will. Standing with Dawn is Doc, a demon who has come to assist Glory (her minions being rather unreliable) by cutting Dawn so that she bleeds. The mystical premise in this case also involves some complicated timing and an ethical dilemma. The only way to prevent the portal from opening is to stop Glory, or kill Dawn before the ritual begins. Once the ritual begins, the only way to close the portal is to kill Dawn.

With a plan in place, Buffy and company set off for battle, their prospects sufficiently grim that Mr. Giles and Spike are moved to cite a well-known line from the St. Crispin's Day Speech of Shakespeare's *Henry V*.³¹ Buffy, Mr. Giles, and the Scooby Gang focus their efforts on Glory, hoping to distract her and delay the start of the ritual. The stage is now set for Spike's heroic act. He fights his way through Glory's minions and begins to climb the tower. When he reaches the top, Doc is understandably surprised to see him, particularly since Spike has come not to help Glory but to rescue Dawn. Spike is not playing by the rules of legal orthodoxy. Glory is a demonic hell-god who rules by command, so why does Spike not obey? As a vampire, Spike's loyalties should be with Glory, not with humans, and certainly not with The Slayer, not to mention her younger sister. As Doc says to Spike, "I don't smell a soul anywhere on you. Why do you even care?"

Within the frame, Doc is unimpressed by Spike's simple explanation: "I made a promise to a lady." Outside the frame, however, viewers know what to expect. Spike's love for Buffy is unrequited but, still, his love for her ennobles him. Spike's increasingly complex genre-hybridism now includes the genre of chivalry and courtly love.³² Love of this nature involves the motivation to undertake noble acts, particularly those that acknowledge the depth of your feelings. Risking your life to rescue the younger sister of your object of desire is both dangerous and ultimately frustrating, since the object of your desire does not desire you, but also entirely consistent with the narrative expectations of the genre. As a law-creating legal subject, Spike is bound by his commitment to both genre-hybridism and the improvised legal meaning of his circumstances. He has made a promise to a lady, and such promises must be kept, even by soulless vampires.

Conclusion

In this article, I have argued that improvisation and law are not mutually-exclusive concepts. A theory of critical legal pluralism, which rejects reification of law in favour of a constructivist account, can be characterized as improvised law. Legal subjects are not law-obeying but rather law-creating, improvising law in the moment, not as unthinking obedience to *a priori* reified rules but as the inter-subjective creation of legal meaning. When we understand law as belief, we understand the role and significance of narrative commitment as a source of normative authority. The legal subject of critical legal pluralism improvises law in real time, working to reconcile competing and conflicting narrative options, composing a sense of obligation in the moment that corresponds, as justice must, to the specificity of the moment.

If improvised law is a function of narrative commitment, then a useful analogy can be made with the way in which genre is used as an organizing framework for many forms of popular culture. Works of a particular genre encourage certain narrative expectations, and generic works succeed to the extent that they meet these expectations. Genre, like law, is a narrative commitment, an obligation to act in accordance with narrative expectations. Significantly, the narrative expectations of genre provide guidance regarding the content of the obligation that governs behaviour in the given circumstances. Just as musicians improvise in relation to the guidance provided by established musical styles, the legal subjects of critical legal pluralism improvise within a framework of established (generic) narratives, those narratives that are sufficiently persuasive and/or familiar for the legal subject to recognize their normative authority.

Buffy the Vampire Slayer provides an ideal virtual field for exploring these themes in detail. In particular, the development of Spike's character is a study of the process of narrative commitment within a critical legal pluralist account of law. Viewer acceptance in this analysis functions similarly to a proof of concept. Spike's contradictory behaviours are plausible to viewers (and within the frame, to other characters) because his behaviour meets generic narrative expectations. From punk rocker to double-agent, from stalking to a declaration of courtly love, Spike is bound by genre, just as the legal subject of critical legal pluralism is bound by the obligations of narrative commitment. However improvised, however contingent, when law is meaning, we are bound by law.

Notes

¹ The inspiration for this title is Anthony Bradney's article "I Made a Promise to a Lady': Law and Love in *BtVS*."

² Many fans refer to the fictional universe of the characters of *BtVS* as the Buffyverse. See the Wikipedia entry on "Buffyverse."

³ See, for example, the Wikipedia entry on the "Law of Universal Gravitation."

⁴ For a more detailed development of the argument for comparing legal analysis to other forms of analyzing human behaviour, specifically economics, anthropology and feminism, see: Macdonald (393n4). ("The pluralist hypothesis is that law is a particular way of symbolizing human conduct and interaction—namely, as governed by rules".)

⁵ Paradoxically, a theory of critical legal pluralism is actually inconsistent with idiosyncratic behaviour, which is arguably a closer fit with legal liberalism's unitary, autonomous self. From the perspective of critical legal pluralism, the legal subject is better understood as a person situated simultaneously within a multiplicity of discourses, as a plural rather than singular subject, projecting understandings while simultaneously reflecting and refracting the projected understandings of other plural selves. (See, for example, Desmond Manderson, "Beyond the Provincial: Space, Aesthetics, and Modernist Legal Theory.") Idiosyncratic behaviour, understood as the individualized response of a singular subject, is arguably impossible in the absence of a unitary self.

⁶ See, for example, Jacques Derrida's "The Force of Law: The Mystical Foundation of Authority": "To be just, the decision of the judge . . . must not only follow the rule of law or a general law but must also assume it, approve it, confirm its value, by a reinstating act of interpretation, as if nothing previously existed of the law, as if the judge himself invented the law in every case. No exercise of law can be just unless there is a 'fresh judgment' . . . This 'fresh judgment' can very well—must very well—conform to a preexisting law, but the reinstating, reinventive and freely decisive interpretation, the responsible interpretation of the judge requires that his 'justice' not just consist in conformity, in the conservative and reproductive activity of judgment. In short, for a decision to be just and responsible, it must, in its proper moment if there is one, be both regulated and without regulation: it must conserve the law and also destroy it or suspend it enough to have to reinvent it in each case, rejustify it, at least reinvent it in the reaffirmation and the new and free confirmation of its principle. Each case is other, each decision is different and requires an absolutely unique interpretation, which no existing, coded rule can or ought to guarantee absolutely" (961). Note, however, that Derrida makes this argument in the course of explaining an inherent tension between the demands of justice, which are incalculable, and the implementation of justice through law, a defining characteristic of which is its calculability. A critical legal pluralist account is not predicated on the assumption that law, to be law, must be "stabilizable and statutory, calculable, a system of regulated and coded prescriptions" (959).

⁷ "For law is the belief of those whose narrative of its prospects succeeds for the narrator" (Kleinhans and Macdonald 46n1). This situates within critical legal pluralism an argument advanced by David Hume, that governments rule by opinion, not force, "as Force is always on the side of the governed, the governors have nothing to support them but opinion. It is, therefore, on opinion only that government is founded; and this maxim extends to the most despotic and the most military governments, as well as to the most free and most popular" (32).

⁸ Analysis of law and popular culture takes many different forms and employs many different methodologies. See, for example, Orit Kamir, "Why 'Law-and-Film' and What Does it Actually Mean? A Perspective" (255) and Douglas Goodman, "Approaches to Law and Popular Culture" (757). My focus in this analysis is on the representation of law within a specific expression of popular culture. This is not to imply that law and popular culture, however defined, are distinct, or to ignore mutually constitutive relationships.

⁹ This perspective is consistent (at a fairly general level) with Clifford Geertz's concept of law as a system of meaning, embedded within culture rather than having an independent, self-referential existence; that is to say, that law is meaning, not mechanisms. Perhaps the most concise (and frequently quoted) articulation is that law is not merely "a bounded set of norms, principles, rules, values, or whatever from which jural responses to distilled events can be drawn, but part of a distinctive manner of imagining the real" (173).

¹⁰ The author's avoidance of social contact in favour of hours spent staring at flickering, rectangular screens also figures into the equation.

¹¹ For example, given that common law generally does not even recognize a duty to rescue, I would imagine that saving the entire world would be outside its jurisdiction as well.

¹² Although in the author's opinion, the characters of Willow and Buffy are fairly evenly matched. Buffy has mystical powers, but Willow is a powerful witch and a skilled computer hacker.

¹³ The cycle necessarily continues without end, for just as we cannot step in the same river twice (see Heraclitus on this point), neither can we apply the same legal meaning twice. Judgment responds to the particularity of the moment, which means that legal meaning must be created anew; we cannot simply recycle legal meaning from a prior moment without an arbitrary decision (not a judgment) that two moments for all relevant purposes are sufficiently alike such that no judgment is actually required.

¹⁴ "Shane! Come back!": *Shane*, directed by George Stevens.

¹⁵ This may explain why the television series, *Shane*, lasted only one season.

¹⁶ See the films *Die Hard*; *Die Hard 2*; *Die Hard: With a Vengeance*; and *Live Free or Die Hard*.

¹⁷ References to viewer acceptance in this paper are not intended as claims based on empirical analysis of audience reception, but refer instead to the concept of an implied viewer, similar to that of the implied reader of narratology. See, for example, Orit Kamir, "Judgment by Film: Socio-Legal Functions of *Rashomon*" (42n11) (discussing the use of the term "implied viewer" and the assumption of a close resemblance between a "film's implied viewer and its actual Western audience").

¹⁸ The character of Spike continues in Series Six and Series Seven, which is the final season for *BtVS*. The decision to restrict the scope of examples to Series Two through Five is based on significant developments which take place at the end of Series Five and Six with respect to the characters of Buffy and Spike. These developments significantly reconfigure the dynamic between the two characters, and would require a lengthy and detailed discussion of the implications for a number of different story arcs before resuming the more relevant analysis of narrative commitment and genre-hybridism. In addition, a discussion of these events would be quite the spoiler for anyone who has not yet watched the series.

¹⁹ The development of the character of Spike contains many examples capable of demonstrating a fictional instantiation of legal subjectivity from the theoretical perspective of critical legal pluralism, and this brief review is not intended as a complete account. The emphasis is on the use of the series as a virtual field for exploring the implications of a legal theory, rather than a comprehensive study of a particular character, story or theme within the series *per se*. Examples were chosen based on both their pedagogical value and the author's own viewing preferences, but selectivity does not discount the value of the demonstration. Developments in the character of Spike that have not been included do not contradict a basic premise of critical legal pluralism, which is self-constitution of legal subjectivity through acts of improvisation, predicated upon narrative commitment.

²⁰ Even in a legal system bound by precedent, a rule of law that requires us to judge like cases alike, does not absolve responsibility for judgment. The first judgment that must be made is whether these two cases are indeed alike.

²¹ The absence of a unitary self arguably precludes the presence of genre singularity. To argue otherwise would be to argue either that multiple narratives are sufficiently similar to be classified within a single genre, or that the legal subject of critical legal pluralism, in constructing legal meaning as required, commits each time to the same generic narrative.

²² An intertextual reference in the series underscores this point. In Series Seven, Episode Eight, when someone refers to Spike as a “Billy Idol wannabe,” Buffy’s response is that Billy Idol actually took his look from Spike.

²³ This is a reference to a statement by Spike’s character in Series Five, Episode Seven: “What can I tell you, baby? I’ve always been bad.”

²⁴ Within the frame of *BtVS*, this is an interesting parallel to the closeted existence of vampires, who look like humans and live amongst them, the better to take advantage of their hidden identities to prey upon humans for food and sport.

²⁵ See *A Clockwork Orange*, directed by Stanley Kubrick, and Anthony Burgess’s novel, *A Clockwork Orange*.

²⁶ His change in status also provides numerous opportunities for the injection of comedic elements in the midst of more dramatic and tragic story arcs.

²⁷ Nor do vampires and demons use firearms against The Slayer, even though Buffy is mortal, and not faster than a speeding bullet.

²⁸ Why is it that the world can only be saved by the redemption of a bad man? Assuming without deciding that a man is indeed called for, are there no good men equal to the task? And what happens when a good woman decides she does not want to love the bad man, assuming she has a choice in the matter? The narrative seems to imply that the world can only be saved when good women are sacrificed for bad men.

²⁹ See, for example, Mary Evans, “The Love of a Good Woman: Morality v. Law in Clint Eastwood’s *Unforgiven*.”

³⁰ The necessity of cooperation is a theme that occurs throughout the series. The Slayer’s destiny as the chosen “one” is to fight alone, but defeating the “Big Bad” each season requires a collective effort.

³¹ “We few, we happy few, we band of brothers.” Spike, being Spike, says “buggers” in place of “brothers”.

³² For an account and analysis of medieval laws of love and courts in which such disputes were adjudicated, see Peter Goodrich, *The Laws of Love*.

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