

## **Panel: Law, Truth, and Improvisation**

**Chair: Karen Crawley (Faculty of Law, McGill University)**

### **Abstracts:**

#### **Benjamin Authers: “Nothing but the Pure, Entire, and Unblemished Truth?: Improvisation, Truth, and the Trial”**

As Philip Auslander has argued, one of the central tenets of the trial is its valourisation of “liveness,” a belief that “live confrontation can somehow give rise to the truth in ways that recorded representations cannot.” This understanding of the trial manifests both in the ways that extemporized performances of memory function as idealized forms of evidence, and in the interrogative nature of the adversarial process, which establishes truth through a highly structured, yet nominally improvised, dialogue between judge, lawyers, and witnesses. In this paper I will unpack the connection between liveness, improvisation, and veracity in two texts that critically interrogate the trial’s production of truth: Justice Cory’s findings in the Inquiry Regarding Thomas Sophonow, and Margaret Atwood’s novel *Alias Grace*. Through these legal and literary representations I will question the assumptions about truth that are said to come from live recollection and its purportedly improvised interrogation, and ask how a more complex theory of improvisation and the trial might better explicate the nature of the findings that the adversarial system establishes as juridical truth.

#### **Valerio Nitrato Izzo: “Law as a Two-stage Art: Performance and Improvisation in Legal Interpretation and Legal Reasoning”**

Law, as music, can be conceived as a two stage art for it needs to be interpreted to exist. The dialectical tension between the production of the legal text and its enforcement through legal interpretation and legal reasoning can be highlighted by using concepts such as performance and improvisation. The self proclaimed autonomy of law is constantly challenged by the legal practice that shows the irreducible dimension of law to its form. Improvisation, as a process based on competence and skills previously acquired by the performer/interpreter, can be a useful theoretical tool for a different reconstruction of legal reasoning. Examining the 'law as performance' theory, as elaborated by J. M. Balkin and S. Levinson, as well as the concept of 'two stage art', as developed by H. Gouhier, this paper’s aim will be to illustrate a possible framework for a useful use of the concept of improvisation in the interpretation and enforcement of law. Stressing the possibilities those concepts open to the inclusion of law in a wider context of social interaction means trying to be aware of the contingencies that legal language, first enforcement of new statutes, critic of established precedents and other issues pose.

## **Sara Ramshaw: “Just Unpredictability: Law on the Side of Life”**

Improvisation takes place. One time alone. Extempore. Out of time. And yet absolutely of the time, in tune with time. Creating its own time. Bringing Jacques Derrida and Hélène Cixous together here through the concept of the ‘gift’ offers an opportunity to think critically about the temporal structures of improvisation, law and justice. Derrida reads both justice and improvisation as an impossibility that is only ever possible as the impossible. Cixous dreams of the possibility of improvisation, of the possibility of poetic contradiction, which make the impossible improvisation possible. Here, law and justice are given over to Cixous, to the side of life. The out of timeness of improvisation finds resonance in the legal extempore which, as a condition of justice, creates its own law in relation to the legal tradition and the world beyond. This paper explores the structural qualities of legal judgement as matters of timing. What is at stake is the continued depiction of law out of time as a kind of necessary deadness, and a depiction of law’s out of timeness which should pertain to the life-affirming vibrancy of the musical extempore.