

## **Panel: Justice, Democracy, and Improvisation**

**Chair: Eric Lewis (Department of Philosophy, McGill University)**

### **Abstracts:**

#### **Jonathan A. Neufeld: “Democratic Virtuosity: Improvisation in Law and Music”**

An illuminating analogy can be drawn between musical performance and legal interpretation. It has been argued that, in both music and law, being sensitive to and performing according to the values of the present audience is perhaps the only legitimate performance goal for both judges and musical performers. According to Sanford Levinson and Jack Balkin, this goal calls for “virtuoso performers” who are not tied to a fixed conception of a law or work, but treat it as a living document by improvisatorily bringing contemporary audience values to bear on it. While this argument is promising, it obscures the central problem of pluralism in modern constitutional democracies and threatens to displace, rather than facilitate, democratic deliberation. An acceptable account of democratic improvisation is possible only if the authority of performers and the diversity of modern audiences are taken seriously. I suggest that virtuoso performances ought not identify and confirm the values of the audience—they should not be the conclusion of substantive deliberation. Rather they should open and restructure spaces of deliberation. I will ground these rather abstract arguments in two recent performances, one by the U.S. Supreme Court and one by Daniel Barenboim.

#### **Tracey Nicholls: “Speaking Justice, Performing Reconciliation”**

This paper will analyze problems of injustice within the law as arising from a standardization that derives from an emphasis on efficiency. To bring justice back in to legal spaces, we will (at least sometimes) need to improvise processes and institutions, and one increasingly popular way to do that is through establishing truth and reconciliation commissions. I shall explore the efficacy of these commissions, understood as improvised justice, drawing on the concerns that Fuyuki Kurasawa identifies in *The Work of Global Justice: Human Rights as Practices* about how we can know whether wrongdoers involved in these processes are truly (or adequately) repentant. One way of assessing particular commissions in light of Kurasawa’s concerns is, I think, by employing norms like ‘listening trust’ that we see at work in improvised music ensembles. Since the common element that unites truth and justice commissions and jazz ensembles is their performativity, I hope to show that these norms are indeed transferable, albeit perhaps with some modifications, and that they do address concerns about insincerity and injustice.