

Speaking Justice, Performing Reconciliation: Twin Challenges for a Postcolonial Ethics

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Confronting Difference: Playing with Fire

A funny thing happened at the 2004 Guelph Jazz Festival: an event that was supposed to produce a resonant hybrid of different musical traditions exploded into a “censorship” controversy that remains a hot topic of debate among those who witnessed it (and, even, some who didn’t). The event in question was a performance which brought together experimental jazz, in the person of bassist William Parker and drummer Hamid Drake, and Tuvan throat-singing, in the person of Sainkho Namtchylak. Their concert still lingers in my mind these many years later, not because of the musical experience it offered, but because of what it revealed about the centrality of political and ethical values in the production of improvised music. It was one of the events that prompted me to start theorizing an “ethos of improvisation”—an ethic drawing on attitudes and practices that help improvising musicians negotiate fruitful courses of action in uncertain situations. As this ethos has taken shape, it has become progressively more useful as a way for me to think about the political challenges faced by societies who are struggling with the question of how best to reconcile justice claims arising out of their colonial pasts. In the discussion that follows, I offer an account of this musical performance as both an analogy and an instructive lesson for postcolonial social reconstruction.

The event began normally enough: as both a newcomer to improvised music and one who was completely ignorant of even the existence of Tuvan throat-singing, I had no reason to think that what I was hearing was not what the concert organizers had promised. So, Namtchylak’s seemingly monotonous singing and its apparent lack of connection to Parker and Drake’s playing did not signal anything to me.¹ Other members of the audience, more aware than I of what Namtchylak’s singing was supposed to sound like, immediately realized that she was not performing as advertised. Some of them had attended a workshop that she had participated in earlier that day and there formed the conclusion that she was upset or hostile for some undefined reason, which supported their later perception that her obvious glances at her watch during the onstage performance were a gesture of contempt and dismissal. About thirty minutes into the performance, after some members of the audience had already walked out, concert organizers interrupted and called Namtchylak offstage, an action that some members of the audience who later dissected the event online attributed to the rationale that her repetitive vocalization was not meeting expectations.² Despite some scattered calls from the audience for Parker and Drake to keep playing, they put down their instruments and remained silent onstage, until Namtchylak finally returned to the stage and expressed in song her anger about the poor treatment she perceived herself to have received from the concert organizers. Parker and Drake then proceeded for the rest of the concert to work out their own musically interesting ideas in dialogue with Namtchylak’s expression of grievances, acknowledging what she was articulating even as they worked to re-engage the dissatisfied, angry, and confused audience members. In essence, this unexpected “second set” was their second distinct improvisatory reconciliation that evening; the first was their initial, pre-interruption attempt to coordinate their playing around Namtchylak’s unexpected deviation from the singing style for which she is renowned.

While much of the controversy surrounding this incident focuses on Namtchylak’s singing and the concert organizers’ decision to intervene, it is the politics and the ethics of Parker and Drake’s commitment to performing as a trio that I find most worthy of attention. Despite opportunity and urgings, they refused to dump their difficult performing partner, not out of conformity to rules or contractual obligation (indeed, contract considerations might suggest that they ought to have continued performing without her) but out of a commitment to the integrity of their performance community, a solidarity that embodies the justice out of which reconciliation may prove possible.³ This model Parker and Drake offered, of a commitment to work together to build something even in circumstances that may be much less than ideal, is the heart of my “ethos of improvisation.”⁴ The performance, as a guiding example, has all of the elements I want to draw out in the discussion that follows: otherness that was seemingly treated as marginal or expendable (Namtchylak’s musical traditions, which the audience came to hear and, indeed, demanded to hear, regardless of what she wanted to perform),⁵ a fragmented majority community, genuine anger on Namtchylak’s part (which, depending on one’s perspective, may or may not be justified), some reconciliation gestures that worked (Parker’s tuneful striking of a Tibetan singing bowl to introduce the trio’s “second set”) and others that didn’t (apologies from the floor manager of the event), and a resolution that didn’t entirely satisfy but may help advance our discourse about the right things to do when someone is asserting claims about a harm we don’t quite understand.

What I want to explore, in this article, is the creative possibility for societal change suggested by the Parker, Drake, and Namtchylak performance: the potential of commitments to improvisation and solidarity to help reconcile an insufficiently concerned mainstream with communities it has marginalized. This focus is informed by my belief that

postcolonial reconciliation projects require acceptance and participation on the part of a majority of a society's members if they are to succeed; we are simply mistaken if we believe that we can delegate the task of reconciliation to elected political representatives or to law courts. I want to make clear, however, that I am not claiming legal and governance mechanisms have no role to play in processes of decolonization and social justice. In both Canada and New Zealand, the two societies with which this article is concerned, law has, at times, played a critical role in revealing our justice obligations to us. But fulfilling those obligations—addressing the grievances and inequities, and reconceiving social institutions and national identities—is necessarily a political project, one that cannot take place without a consensus of the polity. Commitment to social justice means that, at least sometimes, we will need to improvise processes and institutions in the broader political community, rather than relying on the more narrow, specialized solutions that government offers.

I make this argument in two parts. The first part examines sustained restructurings of society so that it can make amends for psychological and material harms done to members of indigenous communities. Here I sketch an example—the changes in New Zealand's social relations that have been made possible by the 1975 resuscitation of the Treaty of Waitangi, the historic 1840 accord signed by representatives of the British Crown and co-operating Maori chiefs (Larner and Spoonley 39)—and then speculate on the possibility of developing something similar in the Canadian context. My exploration of the efficacy and pitfalls of the social improvisation that can arise from justice movements like the Waitangi revitalization pays particular attention to the possibilities of truth and reconciliation commissions, because the latest promise of progress in Canada appears to lie in the recently-constituted Indian Residential Schools Truth and Reconciliation Commission. As part of interrogating that promise, I consider truth and reconciliation commissions more generally in the second part: the sense in which they can coherently be seen as improvised justice, the ways in which they may be inadequate vehicles, or even distortions, of justice, and the possibility that these potential defects can be overcome through behaviours and practices that constitute an "ethos of improvisation."

Speaking Justice: Reinvigorating Treaties

To "speak justice" means, quite simply, taking discourses about justice and injustice seriously, to the point of privileging them above self-interested concerns of holding power and stoking economic growth. For instance, speaking justice in a postcolonial context entails a critical examination of the historical harms and marginalization that a nation has visited on its indigenous peoples, and a sustained attention to the obligations set forth in the promises and treaties that government—in the name of the polity it purports to represent—has made in the course of its dealings with these communities. It demands that we set aside our narrow conceptions of politics as the cut and thrust of partisan policy debates, and take up instead a broader notion of politics as responsiveness to the material needs and human rights of all of the members of the polity. Precisely because the speaking of justice implicates the whole of a polity, this discourse must draw in as many members of the general population and as many creative strategies for outreach as possible; it may begin with smaller conversations in legislative committees and judicial chambers but, if justice is ultimately to be done, it must not rest there. Speaking justice is a process of stepping outside the status quo and negotiating new, more inclusive, social relations. Depending on the direction these negotiations take—something that is impossible to predict in advance, if they are truly open to input by those outside official corridors of power—a justice that aims at reconciling colonized communities may be effected through a return to force of previously ignored treaties or the drafting of new ones. At any rate, it is reinvigoration of the spirit of treaties—their implicit acceptance of the sovereignty and self-determination of all contracting parties—that postcolonial justice discourses ought to be seeking.

Once upon a time New Zealand's Treaty of Waitangi had been treated just the same as many of the treaties signed by North American settler governments and First Nations/Native-American communities: it had been ignored. Indeed, students of law in New Zealand universities prior to about the 1980s were trained to think of the treaty as a "nullity." In 1975, however, following a long campaign by Maori communities to reassert their sovereignty, the New Zealand government established the Waitangi Tribunal, which had as its mandate the responsibility to research and make recommendations concerning Maori claims of injustice, primarily with respect to new legislation that might potentially violate the principles of co-existence outlined in the 1840 treaty (Minority Rights Group International 3). A decade later, recognizing the inadequacy of the initial scope of that mandate, the government gave the tribunal expanded powers which allowed it to consider claims of land and resource appropriation and other injustices that occurred between the signing of the treaty in 1840 and the present day (Larner and Spoonley 39).⁶

Merely establishing the tribunal itself was, for some, enough to dramatically change the social compact of New Zealand. Then-chairman of the tribunal Justice Edward Taihakurei Durie said that it was "an acknowledgement of Maori existence . . . and of an intent that the Maori presence would remain and be respected" (Minority Rights Group International 3). Indeed, he credits the tribunal with creating the socio-political conditions within which New Zealand's

distinctive “bi-culturalism” could take hold (Minority Rights Group International 3).⁷ According to documentary maker Moana Sinclair, the tribunal’s work made possible a new body of law—Treaty jurisprudence—that rescued the historic 1840 accord from its status as historical curiosity and made it instead the basis of a new national project of constructing a truly postcolonial identity. The social impact of this treaty reinvigoration has been a new attention to both the historic rights and the contemporary living standards of Maori communities and we now see in New Zealand new ways of making and thinking about public policy that foreground claims to social justice (Larner and Spoonley 40). This fundamental change in relations between Maori and Pakeha (white New Zealander) communities is exactly the kind of “social engineering” project that would be objected to if we accept the status quo as “natural, uncoerced, and good” (Minow 54).⁸

It is now easier—more morally consistent and more inclusive—to speak of justice in the New Zealand context because what began as an indigenous community’s attempt to obtain justice from the government has resulted in the widespread change in attitude and outlook that I think can only come about through expansion of the initially narrowly-bounded discursive community to the whole polity. The goal that initially emerged in the Maori activist movement to restore their sovereignty (encapsulated in the term *tino rangatiratanga*) was “control over those economic and social resources which would contribute to a form of Maori independence within the New Zealand nation-state” (Larner and Spoonley 49), a conception that is finally consistent with the agreement the Maori chiefs who signed the Treaty of Waitangi understood themselves to be making. The resistance-assimilation conflict that marked post-treaty signing Maori-Pakeha relations arose at least in part out of different conceptions of what it meant to cede sovereignty (Larner and Spoonley 42). Maori believed themselves to be giving a formal (nominal) stewardship to the British while still retaining the right to inhabit the land and manage its resources; as one of the chiefs noted, “the shadow of the land goes to the Queen but the substance remains with us” (Walker, qtd. in Larner and Spoonley 42). The “us” here is significant: until the Native Land Acts of 1862 and 1865 established a provision for transferring title from communities to individual chiefs, the *iwi* (the tribes) had “held” land communally, in a kind of intergenerational trust that binds the present members of the *iwi* to both their ancestors and their descendents (Larner and Spoonley 43).⁹ There appears to have been no philosophical acceptance in Maori culture of a “right” of chiefs to decide the fates of the communities they represented; the European-imposed concept of leadership distorted, and over time broke down, the communal decision making traditions of the *iwi*. More than a century later, the New Zealand government would, in the late 1980s, identify “Maori disadvantage [as] a direct result of land alienation and the effects of colonization” (Larner and Spoonley 51). For this reason, the *tino rangatiratanga* movement emphasized economic sovereignty—effected through claims to ancestral land and reactivation of historical stewardship of resources—as the means to reclaim cultural capital: social status, tribal traditions, access to education, and language rights (Duffie 51).

This strategy seems to have succeeded admirably: the initial discursive emphasis on economic empowerment implicated the far more significant cultural concept, *mana*, a Maori concept that translates very loosely and imperfectly as tribal or community honour which can be deployed as influence or authority. One Pakeha supporter of this postcolonial reconstruction, Jill Duncalfe, recalls points at which *mana* seemed clearly “more important than economics”; for example, an Auckland-area *iwi*’s decision to gift back to the people of Auckland the prime waterfront land to which they had successfully laid claim. This generosity, largely inexplicable in a European legal framework, was perhaps at least partly due to the particular relationship that Maori have with land. Land is not a resource but a marker of identity, explains Duncalfe. She recounts a conversation she had once with a Maori woman she had known for some years; on finding out where Duncalfe had been born, the woman remarked, “I feel like I know you now.” This is not to say, however, that economic empowerment is not an important part of *tino rangatiratanga*. It is the primary means by which Maori justice claims are changing New Zealand society, but what constitutes economic empowerment is conceived within an entirely different set of cultural assumptions. While the goal of economic sovereignty that initiated this movement is important and is being constructed in New Zealand’s Maori communities to a much greater extent than is the case in Australia’s aboriginal communities, the Native American communities of the United States, or the First Nations, Métis, and Inuit communities of Canada, the aspect of cultural transformation that I think sets New Zealand apart from the rest of these cases is the extent to which this movement for indigenous rights has permeated and altered the dominant, formerly explicitly colonial, white New Zealand population (who now, for the most part, call themselves ‘Pakeha’ precisely to communicate this embrace of the Maori-ness of the nation that both cultures share).

There are, of course, significant differences between Maori cultures and First Nations cultures, and significant differences between the ways that British settler culture entrenched itself in New Zealand and in Canada. However, there are also parallels in these national histories: questions we are asking only now about how indigenous people understood their sovereignty over the lands they inhabited, about treaties signed and then cast aside, about forced assimilation practices, poverty, marginalization, and systemic racism. The current Canadian government’s attempt to address historic injustices is an Indian Residential Schools Settlement Agreement whose central feature is a truth and reconciliation commission, established, said Stephen Harper in his 2008 official apology to former residential school

students, “to educate all Canadians on the Indian residential schools system.”¹⁰ That Canadians need to confront the past misdeeds of their country, acknowledge the truth of the damage done to aboriginal peoples, and seek a reconciliation that moves us all to a more just and equitable playing field, is undeniable. The burning question, in my view, is whether a truth and reconciliation commission with such a narrowly-defined mandate can be the catalyst for a social transformation that would allow us to speak justice without hypocrisy—that is, whether it can inspire the same sense of responsibility for national transformation among non-aboriginal Canadians that the Waitangi revitalization stimulated in New Zealand. It is, I think, too easy for Canadians to see residential schools as a project of the government and the churches, and thereby deny their own complicity.

This question of the possibilities and limitations of the Indian Residential Schools Truth and Reconciliation Commission was also a concern of the Commission’s former chair, Justice Harry LaForme. In a 2008 television interview, Justice LaForme noted that residential school abuses occurred in the larger context of a deliberate campaign, by both the Canadian state and the churches that ran the schools, to extinguish First Nations cultures (7). He attributes to the government the policy objective that “[w]e are not going to have an Indian problem because we’re not going to have Indians” (7). Given this context, the Commission can only be seen as, at best, an initial overture towards the real project: changing the social landscape of Canada so that aboriginal people and their cultures can flourish. Speculating on the work that lies beyond this commission (from which he has resigned as chair),¹¹ LaForme thinks we need to correct the “flawed basis” of Canadian-First Nations relations: “the premise that aboriginal people were [not] sovereign nations that entered into peace and friendship treaties” (12). What we need as a corrective, he thinks, is a meaningful rights-based argument for power-sharing and resource-sharing (12).¹² In essence, what is needed is internalization on the part of the members of Canadian society of the recognition and respect given to Canada’s aboriginal communities in the landmark judgements that Canadian courts have handed down, both as a prelude to (see *Calder*¹³), and as a consequence of (see *Sparrow*¹⁴), the *Constitution Act*’s recognition of aboriginal and treaty rights in section 35 (*Rights of the Aboriginal Peoples of Canada*). These decisions affirm the existence of aboriginal land title, regardless of the existence of treaties, and acknowledge that title as “a unique communally held property right” grounded in the historical relationship a particular aboriginal community has had to the land it is claiming (“Why Treaties?”).

Let me acknowledge frankly here how implausible my speculation on a Canadian Waitangi transformation really is. First, while legal recognition of aboriginal rights is significant, it cannot, in itself, bring about the social and political reconciliation of settler and native communities. Like the Waitangi Tribunal, Canadian courts can set the stage, but the hard work of overcoming the history of eradication and assimilation attempts has to be a political (extra-legal) process, as was the case in New Zealand. Depending on the courts as a tool of reconciliation is problematic because the law cannot bring about a change in people’s hearts. My central worry in this regard is that leaving the hard work to the law—or even to the government, in the form of the combined efforts of the judiciary and the legislatively directed bureaucracy—is counter-productive: as long as the majority (settler) population believes it can delegate “handling” of the native minority to its government representatives, there is no impetus for widespread social engagement in the project of postcolonial justice.¹⁵ Second, there is considerable resistance within the Canadian polity for the constitutional changes such a transformation would require. Given the unnatural, coerced, and uneasy standoff that is the “status quo” of Canadian politics, native-settler reconciliation is unlikely because of the historically insurmountable (or, for the more optimistic among us, the historically unsurmounted) barriers to articulating minority group rights which might provide for substantial power redistribution. I’m thinking, for instance, of the sometimes vicious resistance to the idea of “distinct society” status for Québec, and of the failure of the Charlottetown Accord, which would have redefined the Canadian constitutional framework to allow for, among other things, greater First Nations self-determination (Stasiulis and Jhappan 95).¹⁶

Transformation of the constitutional framework is so difficult because it would require a prior philosophical shift in how we understand the imperatives of cultural pluralism and cross-cultural negotiation within our national identity, change of the kind suggested by indigenous activist George Manuel back in 1974. Thinking of the conditions of possibility for social justice in Canada, Manuel writes:

The greatest barrier to recognition of aboriginal rights does not lie with the courts, the law, or even the present administration. Such recognition necessitates the re-evaluation of assumptions, both about Canada and its history and about Indian people and our culture . . . Real recognition of our presence and humanity would require a genuine reconsideration of so many people’s role in North American society that it would amount to a genuine leap of imagination. (qtd. in Regan 3)

Whether Canadians are willing to engage in such a leap remains an open question—not “open” in the sense of Karl Popper’s “open society,” but “open” in the sense of the open wound that Gloria Anzaldúa uses as a metaphor for the borderlands, the place “where the Third World grates against the First and bleeds” (25). There is, in settler Canada,

an extraordinary level of ignorance about the suffering and the lack of resources (access to health and education services, for instance) in First Nations communities, an ignorance caused in no small part by the *de facto* segregation of settler and indigenous populations.¹⁷ Because we don't mingle in integrated communities, many of us who form the majority never really get to know members of the minority group we have colonized. They live with the lingering wounds of colonization and we persist in seeing as special privileges the paltry band-aids given to them to cover up the marks of their suffering.

Canada could shift in the direction of correcting this ignorance and isolation. For instance, the kind of broad-based education movement that Saskatchewan's Office of the Treaty Commissioner has engaged in stresses the role played by treaties in our multicultural society, instead of implicitly casting our national identity as a choice between a multicultural nation and one with a colonial past. We are both of these, the commissioner insists (Office of the Treaty Commissioner). And there is, theoretically, space in our commitment to multiculturalism to acknowledge this; Canada's multicultural identity is typically glossed in terms of a "cultural mosaic"—fragments of difference contributing to a larger coherent whole—rather than an overtly assimilationist melting pot boiling all differences down into a single identity. However, the "mosaic" concept may be flexible enough to open up conversations about difference within our national identity, yet still be inadequate to the social transformation that justice demands of us. In New Zealand, the discourse constituted by the reinvigorated Waitangi movement casts multiculturalism as the "soft option," mere lip service to tolerance and diversity without any redistributive obligations (Larner and Spoonley 52). This "soft option" is typically contrasted with the notion of "bi-culturalism" that is supposed to represent a more robust and less homogenizing set of social relations (40). Although more work needs to be done to distinguish bi-culturalism from multiculturalism at a theoretical level, the former is widely understood as a kind of shorthand for social justice, cultural integrity, redistribution of resources, and most importantly, the view that both indigenous and settler cultures have a connection to the land that justifies a robust claim of belonging there (52), the attitude of sharing and solidarity that, for Duncalfe, is better encapsulated in the term "partnership" (see endnote 8).

Obviously, the term "bi-cultural" is inadequate to the Canadian context, with its history of two settler cultures; one could conceivably be "bi-cultural" in the sense that many Montréal households are—due to marriages between francophones and anglophones—and still never engage the question of justice for aboriginal populations. The leap of imagination I think we need to take as a nation comes out of a lunch-time conversation that I had at a social policy workshop in 2009 with Ian Peach, a long-time civil servant in the province of Saskatchewan and veteran of many First Nations land claims negotiations. Quoting a popular observation amongst Western Canadian communities—who live in much closer proximity to First Nations communities than those of us in Central and Eastern Canada tend to—Peach observed that "we are all treaty people." This concept underscores the point I wanted to bring out in my first reason for pessimism concerning a Canadian Waitangi: the social transformation we so desperately need cannot take place as long as most Canadians accept that negotiations properly take place between First Nations communities and federal and provincial governments. We—ALL of us—are parties to these treaties (implicit or otherwise), and we can have a decolonized, and therefore *truly* postcolonial, future only if we all take part in negotiating what new, more socially just Canadian identities might look like. This, it seems to me, is precisely what New Zealand has been able to achieve, and I think that is why it has been able to address the justice claims of Maori communities without stoking Pakeha "white flight."

It is necessary, I think, to acknowledge frankly at the outset the difficulty that attends this project of reconstructing identity. Duncalfe's recollection of living through the cultural awakening that Waitangi triggered in New Zealand is one in which guilt figures prominently. She speaks of the guilt she felt in response to Maori accusations of racism, in response to the uncovering of historical wrongdoings by the British colonizers, and in response to her growing awareness of her ethnocentricity. "It was," she recalls, "hard to figure out what to do." I think her description of that experience is worth quoting at length because it rings so true as a reaction to social upheaval that delegitimizes one's privilege, and because there is a deeply perceptive insight here about the psychological common ground that I believe we need to inhabit in any such rebuilding project. Speaking of New Zealand in the 1970s and 1980s, Duncalfe says:

[T]hese were the days of aggressive anti-racism workshops. I think they colluded with Pakeha guilt. The guilt immobilized me. It stopped me in my tracks, and helped me listen. This was the crucially important contribution that guilt made to my journey. Before that, I thought I knew something, or that I had problem solving abilities, and I needed to learn that I didn't, and had to listen instead. I know many Pakeha felt similarly in those days. I think it was just part of the journey—anger, accusations, and guilt . . . [T]he guilt disempowered us, and although this stalled action, I think it was important to experience disempowerment as it deepened our appreciation of many Maori experiences.

This brings us back again to the sense in which the Parker, Drake, and Namtchylak performance is such an instructive moment for postcolonial thinking about justice. Witnessing what looked like an instance of artistic censorship at a jazz festival renowned for its commitment to artistic freedom was a profoundly jarring experience. Realizing that Namtchylak was deeply angry and not quite understanding why was equally discomforting. And Parker and Drake's attempt at reconciliation was a lesson in listening without having the privilege of knowing where the experience is going, an instructive disempowerment.

Performing Reconciliation: Improvising Accountability

If we, postcolonial societies, seek reconciliation through broad-based social movements for more just relations with our aboriginal communities, then I think we have to step back and examine the possibilities that truth and reconciliation commissions offer. There may be possibilities for reconciliation in which we have no law to guide us and we need to improvise—as Parker did, in striking the Tibetan singing bowl that dragged the attention of the Guelph Jazz Festival audience away from Namtchylak's conflict with the floor manager and towards the music the trio played as their impromptu second set. I think it makes intuitive sense to see truth and reconciliation movements as attempts to improvise a path to justice that we recognize we cannot reach from our status quo. From this view, the testimonial function of a truth and reconciliation commission is an improvisatory representation of the perspectives and judgements of the fractured community. It acts where law and trials cannot—where we recognize that it is reconciliation, not punishment, that we most need. In a discussion of the relevance of value pluralism to theorizing truth and reconciliation commissions, Jonathan Allen describes these commissions as “practical responses to the political challenge of finding ways to confront a violent past and move beyond it” (236). As practical responses, what they do for us, says Allen, is educate, provoke reflection, and stretch our sense of justice; “the stories of abuse provide an object lesson in the importance of respect for . . . equality before the law and basic individual rights . . . by showing the damage done to a society when that is absent” (247).

Improvisation theorist Ben Authers stresses that “testimony” is not memories themselves, but is in fact the performance of remembering. This is the key sense in which I think truth and reconciliation commissions are best understood as improvisatory mechanisms: the very act of coming together to speak the harms and motivations that a commission is concerned to uncover is a process of creation (of awareness, and potential for solidarity) *through* performance. Like improvised musical performances, these improvised performances in pursuit of justice are—ideally—concerned with process rather than finished product, with the presentation of multiple voices rather than imposition of a coherent perspective, and with interrogation of real-world power differentials among participants rather than endorsing a formal—even fictitious—egalitarianism. This, Allen argues, is the significant contribution value pluralism makes to political thought—a contribution I think is explicated by improvisation theory: it “remind[s] us of the nature of an adequate response to moral conflict” which should include committing ourselves to recognizing the importance of the values involved, acknowledging the seriousness of the conflict, and seeking the best possible compromise” (249). All of these elements were present in Parker and Drake's response to Namtchylak being called offstage: they embraced their commitment to performing as a trio, staunchly refusing any position other than solidarity; they displayed awareness of the significance of the interruption; and, on resumption of the performance, they brought their considerable musical skills to the project of mediating between Namtchylak's anger and the audience's desire for aesthetic experience in such a way that careful listeners might—and did—gain insight. In both truth and reconciliation movements and musical improvisations, the process of performance opens up a space for richer appreciation of otherness. Without this richer appreciation of the ways in which others are different from us and—equally important—the ways in which they are the same, it is enormously difficult for us to understand the ways in which they may be harmed by the status quo from which we are benefitting and to commit ourselves to attempts at social reconciliation.¹⁸

Conceiving of them as both performative and improvisatory brings us to the first significant potential defect of truth and reconciliation processes, the possibility that an improvised mechanism inserted into our socio-legal traditions could ultimately undermine the rule of law. This is, of course, a “slippery slope” worry, and carries with it as much, or as little, weight as one is inclined to give to all such worries about sliding from a seemingly reasonable first step to an untenable conclusion.¹⁹ The concern that we might use improvisation as a pretext to subvert inconvenient legal frameworks is one that I think we need to meet head on, and the best way to do that is to borrow from H.L.A. Hart his justification for retroactive law. In “Positivism and the Separation of Law and Morals,” Hart responded to the “Nazi wife” puzzle posed by German legal theorist Gustav Radbruch: how do we punish a deliberate attempt to cause someone's death when the actions—informing the authorities that one's husband has criticized the Fuhrer, so that he would be punished by being sent to fight on the German Army's Eastern Front—were consistent with the law promulgated by the government of the day? Hart concurred with post-World War II legal opinion that misdeeds like this did have to be punished, and reluctantly conceded that a retroactive law was the mechanism least likely to do lasting damage to the principles of rule of law. However, he noted, that damage could be minimized only if we all

clearly understand the retroactive law in question as a rare, sharp break with the status quo, a singular event meant to address justice where existing law could not, and not meant to set a precedent for future actions (619).

I think a similar understanding of truth and reconciliation commissions as singular events, one-time patches to bring law and justice (back) into alignment, could also address the “slippery slope” worry. Indeed, a commitment on the part of the Canadian Government to fully publicize the process and outcomes of the Indian Residential Schools Commission could be a catalyst for the philosophical shift that would make a constitutional change like aboriginal self-determination politically possible. It is equally important, though, to take note of the limitations of truth and reconciliation commissions: while the current residential schools commission *could be* the first step in a process of political transformation, it cannot, in and of itself, completely change our existing socio-legal framework. It is not a first step down a slippery slope, but a first step—maybe—up a rocky incline. Like New Zealand’s experience of the Waitangi Tribunal, the Indian Residential Schools Commission could be a valuable symbolic affirmation of our willingness to address past wrongs. If it were genuinely embraced, it could inspire a change of perspective such that the institutions which currently promote aboriginal cultural capital—things like the Aboriginal Peoples Television Network (www.aptn.ca), the First Nations University of Canada (www.firstnationsuniversity.ca),²⁰ and the “Four Host First Nations Society” that partnered with the Vancouver Olympics organizing committee to foreground First Nations contributions to the distinctive identity of coastal British Columbia (www.fourhostfirstnations.com)—could cease to be seen as exclusive elements of “native” culture and become instead cultural institutions of a Canada that includes and values its indigenous heritage. This would be reconciliation on a sweeping cultural scale. No longer would First Nations heritage (and, for that matter, Métis and Inuit heritage) be *their* segregated history and culture that we habitually ignore. Instead, we could expect to see more respectful cross-cultural collaboration, on the model of Governor General Michaëlle Jean’s participation in a 2009 Inuit seal harvest, an act that was so controversial in the media only because we, as a society, are so unaccustomed to what respect for these marginalized cultures looks like (“Governor General’s seal snack”). As with New Zealand’s transformation, though, this would require non-aboriginal Canadians to embrace aboriginal culture as an inherently valuable and indispensable aspect of Canadian identity. This willingness is the missing piece of the puzzle, and the reason for my current pessimism about what are otherwise profoundly hopeful reconciliation efforts on the part of Canadian courts.

The second significant potential defect that attends truth and reconciliation commissions in general is the equally plausible concern that the process can be “gamed.” In the interview with Justice LaForme that I mentioned earlier, interviewer Peter Mansbridge made this suggestion, recalling the spectacle of white South Africans who had received guarantees of immunity, “coming forward and telling their stories, tearfully . . . pleading for understanding, forgiveness, but doing it because they knew they would not be prosecuted” (LaForme 10).²¹ In his excellent book on global justice as social labour that must be put into practice “from below” rather than dispensed from above through formal institutions, Fuyuki Kurasawa also addresses this concern. Noting that repentance, and therefore forgiveness, is typically measured by “visible signs of a contrite wrongdoer’s intentions,” Kurasawa asserts that an emphasis on intentions will only mislead us (77).²² The belief that we can see into people’s hearts and determine the full extent of their remorse, and the authenticity of their desire for the forgiveness of those they have wronged, privileges those who can fake the appropriate emotions (77). It also penalizes those who might be genuinely willing to submit themselves to a public judgement of their accountability but are, by nature, less articulate and expressive than their judges expect them to be. Kurasawa suggests instead a “consequentialist” framework “in which repentance is ascertained through the content and effect of wrongdoers’ and beneficiaries’ public rituals and discourses of acknowledging responsibility, and making amends for their past deeds” (78). This could include a wrongdoer’s willingness to listen to the testimony of those he or she has harmed and to answer the questions of victims and their families (78). Rather than guessing intentions, we could assess the sincerity of wrongdoers’ remorse through their behaviour, their demonstrated willingness to perform accountability.

Overall, I think that concerns about these sorts of processes being distorted by the unscrupulous—the equivalent of a virtuoso who hijacks a performative space in order to assert his or her own prowess—can be managed through incorporating the ethos of improvisation I referred to in my introductory comments. Improvisation as a model has something to tell us that we can’t learn from mainstream political theory literature. Specifically, it can tell us *how* to go about building and rebuilding community across a diverse population when we hope to have the active participation of all members. First, we need to commit ourselves to the greatest inclusiveness consistent with carrying on a process in which testimonies can be heard and responded to. Closely related to this principle of inclusiveness is the notion of listening trust (Smith and Waterman); even those negotiating participants whom we suspect of bad faith or impure motives must be allowed to have their say and must be listened to. Rather than judging in advance, we need to commit ourselves, in the moment, to listening closely—even to that which sounds unsettling, false, or incomprehensible. Later, once the entire contribution can be assessed, each of us, individually, can make assessments about the value of the message we think the participant was trying to articulate, and then, subsequently, negotiate with each other about which of these assessments—or which set of these assessments—

best captures our own experience of the contribution (on the model of ongoing debates about the Parker, Drake, Namtchylak performance).

An ethos of improvisation builds on these initial commitments to inclusiveness and attentive reception in ways that aim to make us more responsive to the performances of others and more attuned to the nuance of messages conveyed in our own performances. In the context of musical ensembles, this attunement of ourselves to others enables performers to challenge each other to greater heights of collaborative creation, and enables audiences to enter into this community that the musicians have constituted—when the improvisation works. In the context of truth and reconciliation commissions, our performance of openness to others makes it possible for them to open themselves to us—again, when the improvisation works. In the successful instances, we create a space in which we can collaboratively construct new blueprints and new narratives for our society through performing our testimonies of how and when we have failed to be just to each other. However, improvisation does not always work; working without a script amounts to working without a safety net. Improvisation involves risk, therefore practicing an ethos of improvisation means learning how to live with, even welcome, risk.

What we are risking, of course, is failure, the possibility that we might reach out and be rebuffed, ignored, manipulated, or misrepresented. Taking one's chances, instead of trying to rig the situation to increase one's own chances of success, is the sense in which the improvisatory attitude I endorse is not just performative, but transformative. Acknowledging the possibility of failure and mustering up the courage to reach out anyway is an act that departs from the social status quo. It is also the precondition of the other virtues that an ethos of improvisation fosters: for instance, the courage to take risks generates a particular kind of generosity with respect to others—a willingness to support people who are struggling to articulate their ideas and an enhanced capacity to forgive mistakes they might make in that struggle. It also encourages development of a respect for process; a willingness to trust oneself and others to find creative ways out of what might seem to be impassés; the ability to integrate, adopt, or even switch between different perspectives and different types of tools. As a participatory ethos, improvisation valorizes many of the same things that deliberative democracy theory endorses,²³ but it is not limited to discourse. Improvisation's emphasis on performativity means that responsiveness, respect, acceptance, and its other ethical commitments can be telegraphed non-discursively, emotionally, through, for example, behaviour and facial expressions.²⁴

As fruitful and transformative as an ethos of improvisation can be for the questions that challenge nations like ours—those with colonial pasts who nonetheless aim at some form of cultural pluralism (be it New Zealand's bi-culturalism or Canada's cultural mosaic)—putting it into place in any meaningful sense necessitates considerable work on the part of improvisation theorists. We have a critically important role to play in educating people about what to expect of improvisatory practices and how to participate constructively and respectfully within these practices. Theorization of improvisation as a cultural tool is still developing and still addressing the many misconceptions about it that exist in the public imagination. Most importantly, education about improvisation must teach people that it does not endorse an "anything goes" anarchic chaos. As Simone de Beauvoir observes about the existentialist notion of freedom, "to be free is not to have the power to do anything you like" (91). Like existentialism, improvisation offers up opportunities to explore future paths and ranges of possibilities for organization—social or musical—that we had perhaps not fully been aware of before. But this opportunity goes hand-in-hand with responsibility to others, and requires us to always be prepared to account for our choices of human possibilities, the justice *non scripta* that we are intent on creating.

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Notes

¹ I did know enough about the kind of experimental music that the Guelph Jazz Festival specializes in to know that the appearance of non-communication among performers cannot be taken as the reality; in many performing ensembles I have seen, before and since, the coordination was too subtle to notice.

² This, at least, was the interpretation placed on the interruption in Josef Woodard's review of the 2004 festival which described the interruption as motivated by perceptions of "sham or . . . protest" on Namtchylak's part. There is, however, an enormous conceptual difficulty in glossing improvisatory performances as being "not up to expectations." Although improvisation in music exists on a spectrum that ranges all the way from adding flourishes to a scored piece to creating a "free" (non-planned) musical experience, there is a fairly wide acceptance among performers *and* audiences of improvised music that one should approach performances in an attitude of openness to possibility and not—insofar as is possible—allow preset expectations to constrain one's inspirations or one's evaluations. From this view, judgement about the merits of a particular performance ought not to be made—indeed, cannot really *be* made—until the performance is over and one can assess the entirety of what the performers seemed to be trying to achieve.

Other explanations of the interruption can be drawn from online discussion in the comments appended to Carl Wilson's review of the Namtchylak, Parker, and Drake performance, "Guelph Fest's Fantastic Fiasco." Perhaps the most interesting of these contributions is a recollection by Luke Bowden who describes himself as the volunteer responsible for managing the needs and expectations of this particular trio. He describes a fairly chaotic impromptu consultation among the concert organizers, out of which emerged the decision to pull Namtchylak from the stage. While some of what he says supports the view that the interruption was due to frustrated expectations, Bowden does, for instance, also make reference to Namtchylak having "an episode"—which adds credence to the organizers' subsequent statement that their concern was with Namtchylak's emotional state, not a failure on her part to live up to their expectations.

³ I say "may prove possible" not in an attempt to hedge my bets, but to acknowledge that any reconciliation of conflict only comes about after much negotiation. I think it is crucial to be aware of the central point that Bruno Latour makes in his post-9/11 essay *War of the Worlds: What About Peace?*, that genuine negotiation (as opposed to empty accords or coerced consensus) must be undertaken in the full knowledge that resolution might not be achieved. The kind of social reconciliation I am concerned with in this article requires the hard work of self-awareness, honesty with others, and equitable reciprocity that those of us who are socially privileged are unaccustomed to offering and those of us who are socially marginalized are unaccustomed to receiving. As such, it is, as Latour correctly observes, fraught with risk and the ever-present possibility of failure.

⁴ As the above description of the performance should show, there is considerable skill involved in Parker and Drake's practice of this ethos. It took both finely honed musical abilities and exquisite emotional and political sensibilities on the part of these two performers in order to successfully respond to and shape Namtchylak's unexpected contributions into a potentially powerful musical expression. Mediation as successful as theirs was requires more than just a desire to be good to each other (as necessary as that desire may be): it requires the ability to draw, immediately, on a capacity for social negotiation that must have been developed in advance. Although one might think this reference to skill draws us outside the boundaries of an ethos of improvisation, I think that it centrally implicates a kind of responsibility directly connected to the exercise of skills. To be ethical includes being responsible (and responsive) enough to know how to act, when to act, even whether to act.

⁵ This is a form of "cultural tourism" that bell hooks refers to as "eating the other": an appropriation of nonwhite cultures that she links explicitly to colonization (115). The power dynamics of the performance—Parker and Drake's familiar jazz traditions, Namtchylak's more foreign Eastern European/Asian folk traditions, and the collective affluence of the audience (some of those who walked out were financial sponsors of the festival)—basically precluded Namtchylak from speaking in any voice other than what the audience expected to hear. Because Parker and Drake drew on traditions more familiar to the audiences attracted to the Guelph Jazz Festival, they had more (not complete, but more) freedom to improvise; audiences could hear them do something different from whatever they expected as "jazz" and not feel ripped off. Namtchylak, however, had a more constrained role to play; the festival guide advertised her as a Tuvan throat singer and primed audience expectations such that her performance in the "first set" struck many as a violation in ways that Parker and Drake's deviations did not. This is remarkably similar to the dynamics we see in postcolonial negotiations: if, for instance, First Nations communities want to be heard within Canadian society, they have to speak in ways that the mainstream understands—they must speak on the colonizer's terms. It also suggests a hierarchy of otherness, in which "familiar others" are given more latitude than "foreign others": Parker and Drake, as African-Americans, were arguably listened to more sympathetically than was Namtchylak, the non-North American female folk musician. This lack of respect for her, as a person, seems to have contributed greatly to the anger that Namtchylak expressed during the interruption when she complained about not being met at the airport and how the performance was advertised in the festival schedule, grievances that struck some audience members as petty but clearly represented to her a devaluing (marginalization) of her artistry.

⁶ It was this subsequent extension of the tribunal's mandate that materially addressed the balance of economic power in New Zealand, by making it possible for dispossessed Maori communities to pursue land and resource claims in the courts. The first articulation of the Waitangi mandate had not really been much more than a governmental recognition of Maori cultural uniqueness, coupled with both a promise to respect that uniqueness in future legislation and official acknowledgement of such treaty principles as the duty of the Crown to publicly consult Maori communities who had historically demonstrable relationships to land and resources that might be the objects of legislation. Without the 1985 rearticulation, there would have been no legal mechanism through which historic injustices could have been redressed, only a promise to go forth in the future without further injustices.

⁷ This term, "bi-culturalism," is also the term that Larner and Spoonley employ in their analysis of the native-settler politics of postcolonial New Zealand, intending it to describe the co-existence of two distinct sets of cultural traditions and perspectives: those of the Maori who settled the north and south islands of the country in the 13th century CE and those of the Europeans who colonized it several hundred years later as a British territory. The term is not, however, necessarily viewed as adequate by the people who live this postcolonial renegotiation of identity. One Pakeha commentator, Jill Duncalfe, observes that, for her, "'partnership' . . . is a much stronger concept than 'bi-culturalism' [and] best reflects the social change that's happening in New Zealand." In her view, "partnership" better captures the ideal of power-sharing and the obligation to develop systems and institutions capable of reflecting each culture's way of doing things, such that people's traditions and values are respected *and* their attention is drawn to the traditions and values of the other culture. My interest is in the concept of respectful and productive co-existence of distinct cultures so I have no particular *a priori* interest in licensing one terminological choice over any other, provided the emergent label does adequately capture, for the people who use it, a sufficiently complex appreciation of both differences and solidarity. I do think, however, that Duncalfe's articulation of partnership as a network of relations that draws us into interaction such that we can simultaneously *be* ourselves and see the others with whom we interact is a very good way of describing the ethical behaviour that jazz musicians Parker and Drake modelled in the guiding example of my introduction.

⁸ This characterization of the status quo by legal scholar Martha Minow figures prominently in her analysis of what she calls "the dilemma of difference" (31). Minow argues that the reason we have such trouble figuring out what differences matter, and deciding whether our goal in a given situation should be equality of access or equality of treatment, is because we bring to our discussions unstated assumptions that present our existing rules as incontestable fairness and delegitimize any attempts to critique or negotiate the game that is being played (31-32). Among the assumptions she identifies is our tendency to see difference as a characteristic of "the other" rather than a property that supervenes on our relationships (34). Another such assumption is our tendency to accept the possibility of perfect neutrality, to accept that the law, for instance, can see without a perspective (45). Perhaps most important, however, is our tendency to believe that "the status quo is natural, uncoerced, and good" (54). "The assumptions make it seem that departures from unstated norms violate commitments to neutrality," Minow observes; "[w]hereas, in fact, it is] adhering to the unstated norms [that] undermines commitments to neutrality—and to equality" (58).

⁹ This legislative reallocation of land title to the chiefs was the first step in the process by which the colonizing government initiated the transfer of tribal lands and consolidated the wealth of white/European New Zealand. It was easier to persuade or manipulate a single individual than a tribal council.

¹⁰ The history of Canadian government commissions concerning aboriginal needs and rights does not suggest a promising outcome for the residential schools commission. A background report prepared by Indian and Northern Affairs Canada situates the commission within the context of the Royal Commission on Aboriginal Peoples, constituted in the wake of the 1990 Oka armed stand-off between Mohawk activists and the Surêté du Québec (the provincial police, later supported by the Canadian Army) over development of a golf course on historically Mohawk territory. This first commission submitted a report in 1996 which recognized that concrete, comprehensive steps towards healing the native-settler rift in Canada had to include a public forum in which residential school survivors could share their stories and bring to the attention of all Canadians this hidden and shameful past of abuse and "aggressive assimilation" ("Indian residential schools FAQ"). All of the recommendations of this report, including the proposal that land claims be settled by tribunals composed of aboriginal and non-aboriginal Canadians (rather than the courts) were ignored ("This land is my land"). Pressure from aboriginal groups, notably the Assembly of First Nations, has resulted in a series of efforts to resolve abuse claims by residential school survivors, from the 2001 establishment of the Office of Indian Residential Schools Resolution Canada to the 2006 Indian Residential Schools Settlement Agreement, but there is a strong sense of resentment among survivors and their children that the government has dragged its feet waiting for survivors to die before compensation payment processes are instituted (see Indian and Northern Affairs Canada and "Indian residential schools FAQ"). Hopes that this human rights abuse would finally be adequately addressed have been shaken by the conflict and resignations that marred the first (2008)

attempt to constitute the residential schools commission, under Justice LaForme, leading Governor General Michaëlle Jean to insist that we must recommit ourselves to this process. "When the present does not recognize the wrongs of the past," she insisted in her 2009 relaunch of the commission, "the future takes its revenge" (qtd. in "GG relaunches Truth and Reconciliation Commission").

¹¹ Following LaForme's 2008 resignation—citing the inevitable failure of the commission because of irreconcilable differences with his two co-commissioners, who also subsequently resigned—the commission was relaunched by the Governor General, Michaëlle Jean, in October 2009 ("GG relaunches Truth and Reconciliation Commission"). With a new slate of commissioners committed to its mandate of uncovering the abusive assimilation practices in residential schools, a report is now expected in 2014. The current commissioner, Justice Murray Sinclair, is, unsurprisingly, far more optimistic about the commission's ability to fulfill its mandate than LaForme was. Sinclair has publicly announced the mutual commitment of all of the commissioners to producing a report that incorporates "the stories of all those connected to the schools who are still alive, from the students and the teachers, to the managers and the janitors, as well as the officials who planned and carried out the whole thing," in the belief that this truth-telling will indeed bring about the substantive social change that is needed (Sinclair, "Address to the Assembly of First Nations").

¹² LaForme is not alone in his call for power- and resource-sharing; many legal commentators and experts in aboriginal law call for greater aboriginal input into what happens on tribal lands and use the growing body of court decisions affirming native title as precedent for these rights-based claims. An interesting inversion of my own argument that law can be a trigger to action on the part of the polity but not a complete solution is the strategy currently being deployed by aboriginal law specialist Jack Woodward on behalf of the Beaver Lake Cree of Alberta. He has filed suit against the governments of Canada and Alberta, arguing that tar-sands production violates Cree treaty rights to a viable environment in which to hunt, fish, and trap. Rather than depending on a legal precedent to stimulate a broad-based political movement (as I argue Waitangi achieved in New Zealand), Woodward is harnessing existing environmental activism against the tar sands (by Greenpeace and the Suzuki Foundation, for example) in support of the Cree's treaty claim. This not a complete inversion, however; the broad-based movement does drive the legal strategy, but with the ultimate outcome (if the case is successful) of giving environmental opponents a way of ending the environmental crisis through human rights protections. "Only First Nations can stop or force modifications to [tar-sands mining] now," Woodward has observed; "[w]e all depend on First Nations to do the heavy lifting on environmental protection" (qtd. in Sandborn).

¹³ *Calder* was a 1973 Supreme Court decision that aboriginal title to land exists independently of recognition by colonial governments in Canada. Their finding that the Nisga'a of British Columbia could justify their claim to territorial lands based on a demonstrated historical connection was a landmark for aboriginal justice in Canada and prompted the institution of a federal land claims process (doomed to failure by the province's refusal to participate). The judges did not, however, decide on the question of whether title still existed or had been extinguished by colonial legislation prior to Confederation. Years later, in *Delgamuukw*, the Supreme Court found that aboriginal title did still exist in British Columbia.

¹⁴ *Sparrow* was a 1990 Supreme Court decision that followed the principle established by *Calder* and upheld the traditional fishing rights of the Musqueam of British Columbia.

¹⁵ This would be the equivalent of the kind of offloading of responsibility that appeared to characterize that section of the audience of the Parker, Drake, and Namtchylak performance who endorsed the interruption by the concert organizers and encouraged Parker and Drake to play on without Namtchylak, revealing a desire to gloss over the challenge that Namtchylak's difficult difference posed to them by leaving it to management to "deal with the problem." This is reminiscent of the move that critical race phenomenologist Lewis R. Gordon, following W.E.B. DuBois, describes as creating "problem people." They are "treated by dominant organizations of knowledge as problems instead of people who face problems. Their problem status is a function of the presupposed legitimacy of the systems that generate them. In effect, being presumed perfect, the systems resist blame for any injustice or contradiction that may be avowed by such people" (5).

¹⁶ While, according to some interpretations (like that offered by Stasiulis and Jhappan), aboriginal Canadians stood to gain from passage of Charlottetown, there was also aboriginal opposition to it. For a more comprehensive discussion of the Accord, see Jhappan, "Inherency, Three Nations and Collective Rights: The Evolution of Aboriginal Constitutional Discourse from 1982 to the Charlottetown Accord."

¹⁷ This segregation is one of the most significant differences between Canada and New Zealand. Duncalfe, for example, notes that social change followed familial change in New Zealand; as she puts it, “few of we Pakeha have families that don’t include Maori members, and even fewer Maori families don’t have Pakeha members.” The personal experience of culturally-blended families helps people, especially those who benefit from colonization’s legacies of privilege, to accept that they do have a vested interest in addressing questions of recognition, restitution, and, ultimately, reconciliation. Geographical distancing of native communities from settler ones in Canada has militated against the kind of emergent solidarity that has changed New Zealand, a point supported by observations of areas of Canada where aboriginal justice *is* a priority: these tend to be precisely the areas reporting higher native populations (14.9% in Saskatchewan and 85% in Nunavut—the territory that represents the Canadian government’s historic land settlement response to Inuit demands for greater recognition—compared with 2.0% in Ontario and 1.5% in Québec). See Statistics Canada’s 2006 census, for detailed demographic breakdowns by province. Another significant (and related) difference is that between the overall population sizes in both countries: Maori represent 15% of New Zealand’s population, whereas native Canadians (First Nations, Métis, and Inuit combined) account for a mere 4% of Canada’s population (Statistics Canada).

¹⁸ As an example of this need to appreciate the other’s sameness and difference, I would like to point to a recent Environics study, the *Urban Aboriginal Peoples Study*. Even as the study documents differences that aboriginal Canadians face in terms of social attitudes (racism), access to education, and equal treatment under the law, an April 6 interview that Environics president Michael Adams did with CBC television stressed three points that he identified as “key findings”: (1) the city is home for many aboriginal Canadians; (2) the elements of “the good life” to which they aspire are remarkably similar to those sought by non-aboriginal Canadians—education, good jobs, stable families, travel; and (3) identity matters. It is, for me, a little unnerving to hear the facts (urbanization) and aspirations (the good life) that we know to be present in non-aboriginal communities presented as “key findings” about aboriginal Canadians; while one might reasonably expect cultural differences, desires to be recognized, respected, and productive seem universal enough to discount their qualifying as “findings.” Even as a justice-based reconciliation movement must recognize the differences of the other in order to respect him or her, it must also recognize our shared humanity and our common human rights.

¹⁹ I am personally inclined to take “rule of law” worries seriously these days; one of the legacies of the Bush Administration’s casual disregard of Geneva Conventions, and its resulting slide into war crimes, is an awareness of how truly fragile the protections of law can be, how easily law can be dismissed. Allen too is concerned with the potential these commissions have to undermine law. He describes two untenable justifications for these processes—the “simple sacrifice view” in which some value (forgiveness, reconciliation, truth) is deemed more important than considerations of “bringing criminals to justice” (235, 239), and the “restorative justice view” which sees punishment as a “contingent feature” of justice and argues that failure to punish does not equal the sacrifice of justice (241). Both of these fail, he thinks, because of their “monistic” attempt to fit all recognized values into a unitary account or package that “deplete[s] the critical vocabulary available to . . . political life” (233). Instead, we need to see truth commissions (his terminology—chosen, I take it, to avoid begging the question of the priority of either justice or reconciliation) as “complex compromises,” extra-legal political processes that—as I have been arguing throughout this article—supplement law rather than replacing it (243).

²⁰ My suspicion that we Canadians are currently much further away from a respectful postcolonial society than New Zealanders is confirmed by recent reports of both the federal and Saskatchewan governments pulling their annual funding of the First Nations University of Canada (FNUC). These funding cuts, which amount to roughly 50% of the university’s annual budget, cast the future of the university into serious doubt. While the reasons given for withdrawing funding—alleged financial irregularities and stacking the board of governors with political appointees—seem, on their face, to be quite plausible, it strikes me as unlikely that such a move would be made if the university in question were a white settler institution like McGill University or University of Toronto, instead of Canada’s only aboriginal university. The blithe, disingenuous assurances that students could finish out the year at FNUC and then finish their degrees at the University of Regina belie the lack of support for aboriginal students within the mainstream university system that warranted an aboriginal university in the first place. I do not, of course, mean to suggest that governments should turn a blind eye to financial mismanagement when it happens in aboriginal communities or institutions—that would be an equally cynical, equally patronizing, and equally destructive disregard. But I have no doubt that if these allegations had been made against the administration of McGill or U of T, the form of oversight that would have been instituted would fall conspicuously short of placing the future of the institution itself in jeopardy. This differential treatment speaks to a lack of social consensus concerning the value of institutions that can empower and enrich aboriginal Canadians. For an overview of this withdrawal of support, see “Sask. cuts funding to First Nations University” and “Ottawa cuts funding to First Nations University.”

²¹ In his theoretical analysis of the purposes and limitations of truth and reconciliation commissions, Allen acknowledges the influential yet problematic status the South African Truth and Reconciliation Commission has among scholars of transitional justice. It is controversial for precisely the reason that Mansbridge notes—the moral unacceptability, for many, of its willingness to grant immunity in exchange for testimony—but it is also a powerful model of a process which, due in part to its public nature, opens up the possibility of moving to a new social framework (Allen 231, 237). The similarities of format and motive between the South African Truth and Reconciliation Commission and the Indian Residential Schools Truth and Reconciliation Commission are, I think, instructive, giving us insight into current residential schools commission chair Justice Sinclair's optimism (see endnote 12). Allen describes the South African version as “a forum for victims to tell their stories” and its aim as “mak[ing] the dark truth of the past public . . . mov[ing] forward into the dawn of a new society” (237, 239). Sinclair has likewise promised attention to testimony from all perspectives, and committed the reconstituted commission to going to whatever lengths are necessary in order to gather that testimony and publicize it so that the abuse never happens again (“Address to the Assembly of First Nations”).

²² Allen notes that the extent to which any truth and reconciliation commission incorporates aims of forgiveness makes the process extremely controversial, quite apart from Kurasawa's worry about faked remorse. The idea of forgiveness is, he claims, “arguably dependent on religious beliefs not shared by all citizens,” and is therefore an imposition of a culturally-situated value as a universal, a violation of the commitment to perspectival pluralism that has to underpin any ultimately efficacious reconciliation process (Allen 238).

²³ Deliberative democracy theory emphasizes the need for extensive public consultation in order to legitimize policies instituted by governments. Some of the more well-known theorists contributing to deliberative democracy theory include Seyla Benhabib, Joshua Cohen, Amy Gutmann, Jürgen Habermas, and John Rawls. In their demands for inclusion of the population as a whole in political discourse, their work is entirely consistent with the argument I have been making in this text for broad-based participation in social transformations. But, as I also argue, improvisation theory has non-discursive resources that give it added range in devising strategies for reconciliation with aggrieved communities.

²⁴ Legal theorist Hanne Petersen makes this point also in the course of a fascinating exploration of the role of song duels in Greenlandic culture. She recounts the role they played as conflict resolution and community-building mechanisms in the indigenous societies of pre-colonization Greenland, and uses this particular cultural tradition to explore the extent to which both law and music, as cultural forms, promote social reconciliation. “If music plays an important part in resolving individual and social conflicts, perhaps it is the emotional or immaterial aspects of these conflicts which are addressed in this way rather than the material aspects,” she hypothesizes (80). While highly speculative, raising more questions about the law-music relation than it answers, Petersen's article is particularly interesting because of the strong similarity her description of song duels bears to a description of experimental jazz: “There was no impartial third party judge,” she tells us, “but rather the audience seems to have served as ‘judge.’ The roles of public opinion, community participation in the conflict, and the ambiguity and ritual isolation of the conflict are repeatedly underlined . . . The purpose of the song duel seems to have been not so much to declare guilt or recognise right as to reintegrate conflicting community members into the community” (77).

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