Notes on Improvisation and Justice

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These are some reflections on the “Just Improvisation: Enriching child protection law through musical techniques, discourses and pedagogies” symposium at Sonic Arts Research Centre (SARC), Queen’s University Belfast, May 29–30, 2015. I’d like to dedicate this piece to the memory of Pauline Oliveros, friend, colleague, and fellow key-note speaker at the conference who died in late 2016. It was a great privilege to witness her keen insights on listening, children, and play, shared with humour and generosity.

“Just Improvisation” was an intensive, interdisciplinary encounter between participants from the seemingly divergent fields of improvised music and child protection law. We engaged in a series of talks, panels, participatory workshops, and performances. The conference challenged and transformed my thinking about improvisation, trust, and risk. After it ended, I was moved to write the following notes and send them to the organizers, Sara Ramshaw and Paul Stapleton. They represent my highly subjective responses to what I saw and heard over the course of a more than usually provocative and stimulating conference.¹ At the time, I was immersed in co-editing *Negotiated Moments: Improvisation, Sound, and Subjectivity* (Duke University Press 2016), and my notes make several references to the book, which resonates strongly with the conference theme.

I came to “Just Improvisation” thinking that our goal was to examine the ways that improvisers can inform child protection law. Critical studies in improvisation, after all, is a field that seeks to extrapolate from an aesthetic realm to a social realm with the underlying premise that improvised music is meaningful, even (potentially) moral. What I came away with is the insight that those involved in child protection law are themselves practiced improvisers in a field where the stakes are the lives, health, and welfare of children and women suffering from domestic abuse. If the virtues of active listening, responsiveness, engagement, reciprocity, adaptability, risk taking, inclusiveness, and trust-building can be found in musical improvisation, it is equally clear that those entrusted with seeking justice for society’s most vulnerable people are employing skills of empathy, negotiating human relationships, and balancing current behavior against past behavior and future expectations—all within the strict constraints of a system of intricate rules and limited resources. The experience of those working in child protection law, I now feel, has much to offer those of us working in critical studies in improvisation.

The symposium included keynote talks, panels, performances, and workshops. For me this provided an unusually rich opportunity to experience critical studies in improvisation “at work” in a kind of atelier where playing improvised music with skillful musicians was immediately juxtaposed with hearing the insights of lawyers and social workers. These notes are an attempt to capture my initial thoughts immediately following the symposium.

Opening Panel: “Child Protection as a Social Practice: Challenges and Possibilities”

The first panel of the conference consisted of front line workers in child protection—three social workers and a barrister: Marcella Leonard (an independent social worker who works with prisoners as well as families), John Devaney (Senior Lecturer at Queen’s University Belfast in the School of Sociology, Social Policy and Social Work), Siobhan Graham (Belfast and Lisburn Women’s Aid), and Denise McBride QC (Senior Barrister).²

In her lucid introduction, Marcella Leonard stated that ethics is at the core of child protection, and described the social worker’s task as that of assessing human nature. The welfare of the child is always discussed within the context of the family, and assessments are done by a multi-disciplinary team of professionals that meet monthly to conduct a type of SWOT analysis of the case (i.e. strengths, weaknesses, opportunities, and threats). This means that the competing priorities of and constraints upon medical professionals, educators, and social workers are present at each discussion. At the foreground is the need to assess risks and remediate conditions. The context is always one of conflict and contradiction that Leonard described sardonically as “150 shades of grey.” As she and others on the panel repeatedly noted, a child may be harmed within a family but that does not necessarily mean it’s a “bad family.” Another motif that she introduced was that of resources: too many resources are invested in assessments and risk mitigation, not enough in interventions. Improvisational techniques, Leonard suggests, are found in the skills of child protection professionals: their fine use of language (for example non-judgmental words), their ethics, and their evidence-based approach to assessment.

John Devaney, who practiced social work for twenty years before becoming a professor, widened the discourse beyond the immediate protection of children from further harm to considering the need to realize children’s potential

over the long term. Exposure to challenges is important, he noted, since we all learn through struggle; however, the imperative of child protection law is to help those who have been overwhelmed by life's challenges. Families involved in harmful activities often face intergenerational abuse, substance abuse, poverty, and all the ills that follow. The challenge for the child protection system (which he thinks is mainly quite functional) is to balance the remediation of immediate risk (removing a child from the home to prevent grievous harm or death) with the longer-term impact of breaking up families. The system is designed for a linear process: so many inputs result in so many outputs. But human relationships are fluid and dynamic. While many of the linear processes in the system have proven effective, they don't capture the nuances found in family situations. One of the main challenges he identifies is that of reconciling the very different philosophical and theoretical vantage points from which the professionals involved in assessing cases approach their work.

Siobhan Graham, who works with women and children in crisis, gave a chilling account of the kind of situations she sees daily. She spoke of the hidden victim—the child who witnesses domestic violence or who is used as a tool of violence against a mother. She spoke eloquently of her frustration with a society that puts the onus for alleviating domestic violence on the woman: the victim is expected to have the fortitude to leave the situation, to protect her children, to survive. Graham put the idea of risk into a new perspective for me when she stated that the greatest risk for an abused woman comes at the moment when she decides to leave. This is, statistically, the most likely time that she will be very seriously harmed or murdered.

In critical improvisation studies, "risk" is almost always cited as a positive value. Becoming good improvisers will help us learn to take the risks that will allow us to forge new human relationships, new and more ethical ways of interacting. We don't often consider the ways in which improvisation may itself be a technique of violence. I'm reminded of Gillian Siddall's analysis of a chilling passage in Anne Marie McDonald's novel *Fall on Your Knees* in which a father savagely beats his daughter—a scene that McDonald describes in the language of bebop jazz. We need to consider the concept of risk more carefully. To be perfectly honest, the risks I take as an improvising musician are minimal—at worst, I may fail to communicate, perform badly, and lose reputation and employment. The context of child protection law highlights the many negative aspects of risk: from death of a child or woman, to the ironic way that the bureaucratic fetish with risk avoidance clogs up the very systems meant to protect vulnerable people. Improvising is sometimes a question of being caught between a rock and a hard place, as Danielle Goldman has shown:

Dance scholar Danielle Goldman (2010) describes improvisation in terms of negotiating tight places, an image that has much in common with [Fischlin, Heble, and Lipsitz's] idea of making "a way" out of "no way." She finds political potential in improvisation as "practices of freedom" defined and even enriched by the constraints under which they operate. Goldman's thinking is deeply informed by the late work of Michel Foucault. In his "Ethics of the Concern for Self," Foucault draws a distinction between definitive moments of liberation (as an end goal) and practices of freedom (that are necessary in order to continue the effects of liberation) (qtd. in Goldman 4). Goldman cautions, however, that, "there are times when no degree of improvisational skill is sufficient to extract oneself from a situation of duress" (142) whether that situation be a nasty fall in the dance studio or a violent attack on the street. Improvisation, she contends, is "a rigorous mode of making oneself ready for a range of potential situations. It is an incessant preparation, grounded in the present while open to the next moment's possible actions and constraints" (142). From this perspective, improvisation is somewhere between assertiveness training and a survival strategy because it rests on both the acquisition of technique and a quality of constant readiness. (Siddall and Waterman 4)

The final panelist, barrister Denise McBride began by saying that she knew nothing about improvisation but then proceeded to lay out some extremely clear and useful ideas for articulating improvisation with child protection law. She first outlined the central dilemma in the system: the social worker and the judge alike are "damned if they do and damned if they don't." Removing the child from the family contravenes the Right to Family Life; not removing a child can be a fatal decision. Balancing the welfare of the child with the right to family life is an imperative of the UK child protection law that produces major tensions. It is easier, she stated, for judges to look at the child than the family. Safer to deal with the immediate risk to the child than to consider the potential long-term harm of removal. And anyway, there aren't enough resources of time and money and people to provide families with the supports they would need to overcome their difficulties and provide a safe environment for the child. This is a Gordian knot indeed.

McBride's suggestion is that improvisational techniques of active listening, reciprocity, and respect could be best employed very early in the assessment process. Social workers, who must document evidence in cases of child harm, are immediately placed in an oppositional position to families. In assessment meetings the accused parent is

often alone and unable to properly speak for him/herself in front of a daunting panel of child protection professionals. The parent will have had only 24 hours to read the panel's report, and he or she may be ill equipped to understand it and to respond. This formal process doesn't allow for the accused parent's genuine participation. Furthermore, the incident will likely have occurred at least six months earlier by the time the report is produced and during this time, many opportunities for intervention and help have been missed.

Denise McBride made three suggestions:

1. Empower families at an early stage in the process. Provide someone to represent the parents and the children right at the beginning. Lawyers, she suggests, are probably not the right people to do this; what is needed are people trained in mediation and conflict resolution.
2. Allow for a more informal process. Empower social workers to intervene at a much earlier stage.
3. Provide training in mediation skills (improvisation!) to all the different kinds of child protection professionals (social work, medical, education, law).

The discussion that followed the panel focused on the person doing harm. "Perpetrator," it was pointed out, is not an accurate word since harm often emerges out of a complex web of circumstances (financial, emotional, health, substance abuse, and the experience of abuse by the parent him/herself as a child). The sheer scope of the resources needed to truly grapple with child protection beggars the imagination.

What would training in improvisation mean in this context—helping people to express their views, and to respect and to be respected? What about the child? The imbalance of power is truly apparent here: the child is to be heard, but his/her views must be weighed by the court. Since a child is assumed not to be fully responsible (not to be able to say what's best for him/herself), the court may not give the child's views much weight. How does this fact square with the ideology of improvisation as non-hierarchical?

Improvising

Friday ended with two impressive solo improvised performances by DJ Maria Chaves and cellist Okkyung Lee in the wonderful multi-channel performance space at the Sonic Arts Research Centre (SARC). I was so pleased to see two women improvisers featured and I noted the nuance (whether or not the organizers intended it) of ethnic as well as gender representation. But the decision to feature soloists was curious in a conference about the interpersonal skills needed for good improvisation. Each artist has a highly defined vocabulary, each is intense and very skilled. The solo improviser is in intimate conversation with herself and, in a more detached way, with her audience. I felt like a witness (a glad one!) but not like a participant. The silent partner in these improvisations was the sound engineer who played SARC's spatialized and intricately configured multi-speaker array with considerable subtlety. Pauline Oliveros observed that Okkyung Lee played consistently in 4/4 time, though I didn't feel this pulse. For Pauline, I suspect, this tendency marked a kind of closed nature to Lee's virtuosic performance—truly a solo. Chaves was forced to improvise even more intensely than she'd bargained for, since she flew into Belfast shortly before the performance only to find that the airline had lost her luggage containing her precious records! She made do with borrowed records and found objects, which nicely interrupted the self-contained tendency of solo performance.

On Saturday morning we began the day with a "Deep Listening Workshop" by Pauline Oliveros and Ione. Afterwards, a large group of musicians participated in a group improvisation. I'm biased here in that I really love this form of sonic meditation. It opens me up, relaxes me, and I am convinced by Pauline's ethics of listening all the time to everything without judgment (even though I'm bad at it!). At lunch, some of the other improvising musicians invited to the symposium expressed a different view. For them, the workshop felt too directed—commanding them to listen in a particular way that for them didn't make sense. I wonder if our subsequent large group improvising was affected by our different responses to the workshop?

What an interesting and large group of improvisers were here assembled: 14 people (if I counted correctly), four of whom were women. Many players had improvised together in different configurations, but all of us were improvising with some or many of the people for the first time. The sonic range included amplified guitar, bass, electronics, and voice, in addition to acoustic flute, trumpet, saxophone, violin, cello, pianos, and drums. There was a lot of potential here for power plays and sonic mush, always a problem with large group improvisation. But we are experts (presumably) in techniques that should ensure improvisational values of cooperation, reciprocity, active listening, empathy, etc.

What struck me about our playing, which was indeed skillful and often musically satisfying, is that it was also manifestly social. By this I mean that it included many moments of joyful cooperation, but also many moments of ego, cooptation, clashing aesthetics and philosophies, discomfort, desire, and disdain. Truly, we improvisers have a lot to learn about “just” improvisation. Social cooperation is simply not every musician’s goal. For some, self-assertion, or the wish to connect only with likeminded players, or virtuosity is the goal. There wasn’t any particular animosity in this group, just the usual diversity of human relations. Improvising musicians aren’t just artists, they are always also individual people. In the lunchtime and later conversations, I heard tales of politics (why weren’t SARC musicians engaged for the workshop—why bring all these outside people?), of professional pique (so and so just set up beside me and obviously expected me to play with them; I should have been asked), of judgment (so and so was too loud and dominating—not listening at all). I also engaged in a number of pleasant exchanges about satisfying moments in our music-making.

In the public discussion that followed our improvisation, I felt that we didn’t make very useful comments for the research project. That is, I’m not sure that we articulated techniques that could be transposed to child protection law. Many of us responded to Paul Stapleton’s questions about our musical decision-making in mundane ways. For example, I said that I chose to open one of the pieces because the flute can be so easily overwhelmed and I wanted to make sure I was heard. Simon Rose frankly confessed that he played a lot during the performance because he “had come to play and had hauled his tenor saxophone from Berlin.” Bennett Hogg talked about his decision not to play during a certain piece. He said that it wasn’t enough for him simply “to contribute” to the group (though he felt there were many moments when he could have). He simply felt he didn’t have anything urgent to say and so he didn’t play. He seemed to imply that silence is the high road of improvisation, which made me wonder what the rest of us had been doing! It is important to note that some of these performers are also scholars of improvisation and I think it’s quite difficult for us *not* to perceive improvisation through whatever intellectual lens we happen to be peering through at the moment. For example, my focus is clearly on power negotiations and social relations. I confessed that the (to me) anti-social and incessant playing of electric guitarist Han-earl Park (during a piece where we had agreed not to have more than 5 musicians playing at any one time) made me want to tell him to “shut up,” but also that I was nevertheless highly motivated to play along with him. Another example can be found in Deniz Peters, who is conducting empirical research on musical expression with Bennett Hogg, among others. They were united in emphasizing the non-representational nature of improvised music: “Just because I make a sharp gesture doesn’t mean I’m angry.” Peters stated firmly that only occasionally does improvising approach emotion and at that point he always feels he should stop. Okkyung Lee (rightly, I think) observed that you can’t hide your personality when improvising.

Such comments are both revealing and partial; they lead to judgments on the part of listeners that are lacking the proper context. There were also a number of musicians who chose not to speak. In my experience, this is not uncommon. Musical communicators are not always verbal communicators; some are shy in a group, and others may simply not wish to analyse their musicking. But it does raise an interesting methodological problem: how do you account for the contributions of people who choose not to speak for themselves?

Pauline Oliveros’s Keynote, “Safe to Play”

With her usual wisdom, Pauline Oliveros brought the child back into the picture of child protection law during her keynote address on Saturday afternoon. I loved her description of improvising with very small children and babies—their openness to play when they feel most secure, and the importance of listening to and valuing their pre-speech vocalizing. What can we learn about improvisation from children? What can critical studies in improvisation learn from children? What does it mean to make it “safe to play”? And why do so many skilled improvising musicians still feel unsafe in quite benign situations?

Final Panel and Plenary Discussion

The final panel was comprised of Sara Ramshaw, Ellen Waterman, Siobhan Keegan QC (Vice-Chair of the Bar of Northern Ireland),³ His Honour Judge Brian Sherrard, and Her Honour Judge Patricia Smyth.

This panel brought home to me the vital role that individuals play in all institutional processes (and I was moved to make a comparison with bureaucratic university administrations). Judge Sherrard began by noting the constraints placed on judges who have very little room to innovate within the law. Judge Smyth disagreed completely: she finds all kinds of room for improvisation based on close listening and she emphasized the value of ensuring that all the people involved in a child protection case are genuinely listened to and feel that they are heard. I was struck by the

judges' perspective on social workers. If the social workers on our first panel see judges as risk averse, these judges see social workers as completely rule bound and "by the book"! Barrister Siobhan Keegan gave the most practical description of her improvising in child protection law cases—how she negotiates between clients, opposing council, and judge, and how she works to find innovative solutions to particular cases.

All three panelists used the words innovation and improvisation interchangeably. I noted that I don't see them as coterminous. To improvise is to be responsive in a particular context and to draw on all one's skills and knowledge to do so. But to the panelists this is naturally in aid of coming up with an innovative solution (does this mean something not already codified in law?). This linguistic turn deserves careful attention. No doubt I don't know enough about lawyers' training and vocabulary to correctly interpret their understanding of these terms. One thing our critical improvisation project has taught us is that different disciplinary training engenders specific and often divergent understandings of improvisation!

Some Scattered Final Thoughts

Risk: we take risks to understand others and ourselves; we have to know what the stakes are, who is at risk; we have to balance immediate risk with long-term risk.

Responsibility: to self, to others, the imposition of, etc.

Balancing contradictions: family/child; general equality vs. individual; artist/social agent.

Relationships: the non-linearity of human relationships; Pauline Oliveros: "Improvisation implies a relationship with play" (her keynote).

Rules for play: the dichotomy between security and the risk of getting it wrong.

Judgement: Deniz Peters: "To judge something is to put it in its place. Adults make judgements because that makes them feel safe" (comment on Oliveros's keynote).

Being heard: listening must *be genuine*, not pro forma.

Flexibility of mind: this is the goal of training. Those who are flexible are most responsive, most able to improvise and innovate! We need, as Judge Smyth says, to "look at every situation afresh."

Improvisation is intentional, context driven, relational. Training in the social aspects of improvisation would make us all, lawyers and musicians alike, better improvisers.

Notes

¹ I am grateful to Sara Ramshaw and Paul Stapleton for inviting me to present a keynote address at "Just Improvisation" and to participate in performance workshops and as a panel chair. The essay on which my keynote address "Improvisation and the Audibility of Difference" was based is available in the book *Negotiated Moments* (Siddall and Waterman).

² In October 2015, Denise McBride QC was appointed judge of the High Court of Northern Ireland.

³ In October 2015, Siobhan Keegan QC was appointed judge of the High Court of Northern Ireland. She and The Honourable Madam Justice McBride were the first female judges to be appointed to the High Court of Northern Ireland.

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