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NIETZSCHE, DEMOCRACY, AND EXCELLENCE: POLITICS AS JAZZ

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In this paper I would like to advance further, with the help of a musical analogy, some of the themes of my recent book, *A Nietzschean Defense of Democracy*.[1] In that work I attempt a deconstruction of Nietzsche's critique of democracy by redescribing democratic politics in Nietzschean terms. Nietzsche's main objections to democracy stem from his presumption that democracy represents the ascendancy of egalitarian mediocrity, normalizing conformity, and a generalized model of rational agency—all of which are taken to subvert the development of cultural excellence, particularly those rare creators who are essential to the furtherance of life. Accordingly, Nietzsche appears to advocate an aristocratic, authoritarian political order on behalf of fostering and ordaining the excellent few, whose value-creation can animate a kind of trickle-down cultural economy reminiscent of Plato's political hierarchy (*A* 57).

My deconstruction of Nietzsche depends in part on refusing an overly broad conception of "the political" and sustaining a distinction between cultural and political production. In matters of cultural production pertaining to creativity and normalcy, excellence and mediocrity, I take Nietzsche's diagnosis of egalitarianism to be insightful and defensible. In matters of political production, however, pertaining to the formation and structure of political institutions, the concrete problems and practices of political life, the legitimacy of coercion, and the extent of sovereignty, I take Nietzsche's anti-democratic posture to be an impoverished and naive political program. At the same time, I do not want to let Nietzsche off the hook by separating the cultural and political spheres, as some have done. I argue, first of all, that the kind of nonfoundational openness marking Nietzsche's cultural and philosophical reflections (particularly agonistics, perspectivism, and suspicion) would seem to undermine the kind of closure intrinsic to his authoritarian politics. Secondly, I argue that there is significant overlap between Nietzschean predilections and life in a democratic society, especially the extent to which certain nonegalitarian arrangements can and do operate in democratic politics.

My contention is that democracy, in both a cultural and political sense, is more amenable to Nietzsche's interests than he imagined, that democracy dictates neither the hegemony of a normalizing order nor the egalitarian denial of excellence or social stratification. Rather than depend on notions of substantive equality or rationalized constraint,

democracy can be construed in another register as a fundamental openness with regard to meanings, purposes, and performances in both political and cultural spheres. Democracy can be called an open-ended experiment that generates both the creation and interrogation of social goods, rather than a politics derived from fixed assumptions about the nature, origins or locations of social goods. I should address, however, an apparent misunderstanding of my work on the part of some readers. I do not argue that democratic politics necessarily elicits distinguished results (it can, for instance, impeach a President over a definition of sex), but simply that mediocrity is not essential to democracy, and that aristocratic alternatives cannot hold up under the weight of Nietzsche's thought.

It is important to stress a particular contribution Nietzsche can make to a reconsideration of democracy. There are many philosophies of difference in a postmodern vein that can and have come to speak on behalf of democratic openness, some even in Nietzsche's name. But few writers have embraced Nietzsche's affirmation of excellence. There is difference and then there is difference. Excellence is a form of difference that implies gradation and judgments concerning superior and inferior, better and worse performances. Many have embraced a Nietzschean openness to difference on behalf of a generalized liberation of diverse life styles and modes of self-creation. Such a generalized emancipation, however, was not Nietzsche's vision. He was interested in fostering special individuals and achievements. I question whether certain postmodern celebrations of difference conceal a kind of egalitarianism in their avoidance or suppression of Nietzsche's clear comfort with social stratification. It is important, in my view, to sustain a sense of excellence that is vital for both democratic politics and cultural production.[2] Excellence and democracy are compatible as long as excellence is understood in a contextual and performative sense, rather than a substantive sense of permanent, pervasive, or essential superiority.

The main issues in my discussion here revolve around the following three dyads: structure and openness, socialization and individuation, normalcy and innovation. It is important to note that Nietzsche affirms both terms in each dyad, but he stresses the latter term in each on behalf of culture-creation, and he thinks that democracy represents the rule of the former term in each dyad at the expense of the latter term. It is this Nietzschean complaint that I question. Democracy can accommodate both terms in each dyad and thus admit a kind of excellence of performance that is not restricted to or by common, ordinary domains. First of all, I think it is simply untrue that democratic societies engender a decline or eclipse of artistic creativity or high-level intellectual work. Mass markets and sensibilities are indeed evident and effectual in democratic cultures, but they are not exhaustive. Moreover, many so-called popular cultural works can hold their own compared to so-called serious works, as I will argue shortly with respect to the musical form of jazz. In general

terms, I wonder if the actual ratio of quality work to mediocre achievement ever has changed or ever will change to any appreciable degree, irrespective of different historical eras, political formats, or social structures. One advantage of a democratic society is that it does not presume vested origins of excellence, and indeed it might harvest more excellence by casting out a wider net than more restrictive societies have done. Secondly, I think that democratic political practice has always exhibited certain elitist tendencies in executive, legislative, and judicial spheres of government. More on this shortly.

It must be emphasized that Nietzsche recognizes the importance of both the rule and the exception, both socialization and individuation in cultural life. Nietzsche also does not advocate a generalized ideal of individual freedom. First of all, he calls the philosophical notion of an atomic individual an error (*TI* "Skirmishes" 33; *BGE* 12), and claims that most of what we understand as human nature is a factor of socialized, communicative structures (*GS* 117, 354). Individuated freedom, for Nietzsche, is restricted to select divergences from the norm that prompt cultural innovations. Freedom, therefore, is not for everyone but for the excellent few who generate creative work (*GS* 76; *Z*:1 "On the Way of the Creator"; *BGE* 29). The exception and the rule are both essential for human culture: the exception furthers the species, while the rule preserves the species (*GS* 55). Even creative freedom, for Nietzsche, is not an abandonment of structure and constraint. Creativity disrupts existing structures in order to bring forth new structures. Nietzsche calls innovation a kind of "dancing in chains" (*WS* 140). Since creativity is a shaping process, it requires long periods of preparatory obedience (*BGE* 188). For Nietzsche, certain "fetters" are needed both to prepare cultural departures from purely natural states (*HH* 221) and to give a discernible shape to new cultural forms (*WS* 140). Creative excellence, then, is a complex intersection of freedom and form, divergence and constraint, openness and structure.

Since normalcy, constraint, and structure are not rejected by Nietzsche, his objections to democracy cannot stem from the existence of such forces per se in democratic societies, but from the presumed sovereignty of such forces that suppresses creative excellence. I want to focus my interrogation of Nietzsche on this point by considering the phenomenon of jazz, which I suggest can stand as a model of "democratic excellence" in a number of ways.

Jazz is a distinctive and exceptional musical form that emerged not only in a democratic culture, but from a significantly disadvantaged segment of American society that was decidedly less than equal in social status. Jazz is an art form that represents, I think, a mortal blow to the elitist binary of "high" culture and "popular" culture that for so long has animated Western intellectual circles, Nietzsche included. From a formal standpoint, it can be said that jazz is a perfect instantiation of the dyadic

intersections of structure and openness mentioned earlier in the context of Nietzsche's philosophy. Not only can jazz exemplify a Nietzschean model of creative excellence, it can also be taken as an effective metaphor for democratic political practice, in such a way as to disrupt Nietzsche's assumptions about democracy, and to significantly modify standard assumptions in traditional democratic theory as well. In short, I want to frame my discussion of jazz on two distinct levels: 1) jazz as a "democratic" art form that exhibits certain Nietzschean elements, and 2) jazz as a metaphor for certain nonegalitarian and nonformulaic elements in democratic political life, particularly with respect to political leadership, legislation, and judicial practice.

Jazz is a musical form that is directly animated by the confluence of structure and openness, socialization and individuation, normalcy and innovation—with a clear (Nietzschean) tilt toward the latter element in each dyad. A distinctive feature of jazz is the pride of place given to improvisation. The word improvisation comes from Latin and Italian roots meaning something sudden or unforeseen. Jazz performance begins with establishing a melodic theme, tonal structure, and rhythmic pattern, followed by individual soloists improvising spontaneous musical adventures amidst the background of the basic order of the piece sustained by the rest of the ensemble.[3] The openness of improvisation therefore is launched by, and never completely exceeds, the background musical structure.[4] At the same time, ensemble backup playing in jazz is not completely constrained or passive. The soloist and the other musicians can play off each other and spur mutual experiments in the performance. The complex dynamic of theme and improvisation, collectivity and individuation, show that an essential element of jazz performance is a fluid reciprocity. The openness of improvised freedom is not a sheer departure from musical form of the collective effort. That is why sheer egoism or self-regard is considered a dispositional vice in jazz. Part of the discipline of jazz is learning how to integrate creative invention with the overall effect of the musical ensemble. Jazz playing cannot be construed along the lines of individual agency alone.

Another way to understand the role of order and constraint in jazz is to consider the formal structure of musical training. Jazz entails rigorous instruction and practice to gain proficiency in musical patterns and instrumental techniques. Most jazz players are serious students of music. The freedom of jazz performance cannot be dissociated from an organized cultivation of musical habits and skills.

With regard to openness, in addition to the role of improvisation, there are a number of ways in which jazz exceeds the more rigid constructions of order in the Western tradition and classical musical forms. Unlike the static plastic arts, jazz, like all music, is a temporally structured movement and performance that is essentially a mode of becoming. And unlike the temporal structure of literary texts, jazz allows for a poly-

phonic concurrence of different voices and rhythms running simultaneously in a single performance.

The temporal structure of jazz can be distinguished from most Western classical forms in its African-inspired rhythms and syncopations, which have a freewheeling quality compared to more regular, symmetrical cadences. African influences also gave jazz a more visceral, corporeal, and sensual register. Jazz excites the limbs and the loins as well as the ears, as contrasted with more staid structures and effects in much of Western music. This is why jazz has often been perceived as startling and threatening in many circles, and not without reason—the movements of jazz have always prompted a certain carnal excitement. The word "jazz" in fact was a slang term associated with enthusiasm and sexual intercourse.

Finally, syncopation in jazz is better captured by the term "swing." Swing is syncopation smoothed out with a certain give, a limber lilt and sway that cannot be rendered in any formal indication. Syncopation can be indicated in musical notation, but swing cannot. As they say, you either got it or you don't. Put it this way: The Lawrence Welk Orchestra can play syncopation, but they cannot swing. Inappropriate performances of jazz and related popular music have long been an embarrassment. Think of white performances of black music in the 50s and 60s, aptly called "covering" (I still cringe when I hear Pat Boone covering Little Richard). Or even worse, think of classically trained opera singers trying to perform jazz tunes or popular ballads. If there is a hell, surely one of its circles is called "Pavarotti Sings Gershwin."

From the preceding discussion, it is not hard to construe jazz—in its temporality, structured openness, passional corporeality, and stylistic finesse—as a decidedly Nietzschean art from. Indeed, jazz seems to be a perfect embodiment of the Apollonian-Dionysian dyad that Nietzsche insisted was the mark of a healthy culture, with its blend of moderated form and passionate excess. It could be said that jazz interjected a Dionysian element into Apollonian predispositions of Western music. I think Nietzsche would have liked jazz, but I'm not sure. Frankly, I have a hard time picturing Friedrich Nietzsche at a jazz club, in a groove, so to speak. Be that as it may, jazz is an art form that exhibits many Nietzschean features, and at least it stands as one counterexample to the charge that a democratic society cannot generate creative excellence.

Next I want to explore the possibilities of jazz as a (Nietzschean) metaphor for political practice in a democratic society. Before I begin, I must address a prejudice that stands in the way. Many readers of Nietzsche downplay or disregard political ramifications of his thought, maintaining that Nietzsche is primarily interested in self-creation and is even contemptuous of political institutions and structures. But consider the Apollonian-Dionysian dyad, which is usually interpreted as an aesthetic dynamic permeated by ecstatic excess. In *The Birth of Tragedy* 21,

the Apollonian indeed is associated with the political order, while the Dionysian is associated with the counter-political energy of dissolution. We must remember, however, that Nietzsche does not advocate a purely Dionysian conception of tragedy or culture. The Apollonian allows for the shaping of culture and meaning. As Nietzsche says, a pure Dionysian force would prompt "orgiastic self-annihilation." Tragedy is the "fraternal union" of Apollo and Dionysus, as "a whole without denial of individual existence." In fact, Nietzsche specifically reads tragedy here from a political standpoint as a "mixture," a "mediator" between "ecstatic brooding" and "worldly power." This overtly political section of *The Birth of Tragedy* closes with the proclamation that in tragedy, Apollo and Dionysus "speak each other's language," which can be read, then, as both an affirmation of politics and a notification of the ineluctable finitude of politics.

For those who think that pressing Nietzsche into such political territory would be a distortion of a thinker who championed the transgression of social boundaries and who diagnosed modern institutions as progeny of slave morality, I would recall Nietzsche's affirmation of the norm cited earlier, and I would also point to a fascinating passage regarding law and justice in *On the Genealogy of Morals* (II:11) that, as far as I know, has not received much attention. There Nietzsche claims that although the larger economy of nature is "unjust," nevertheless the historical force of human law *creates* social conceptions of justice and injustice. What is surprising is that Nietzsche does *not* diagnose such forces as sheer infirmities. Legal arrangements are called "exceptional conditions" *(ausnahme-Zustände)* that modify natural will to power in social directions and that represent not an erasure of conflict, but an instrument in the ongoing conflict of various power complexes—something akin, I would suggest, to the notion of separation of powers or an adversarial legal system.[5] More pointedly, the historical development of law is attributed *not* to reactive resentment but to active, worldly forces that in fact check and redirect the "senseless raging of revenge," that even reconstitute offenses as more "impersonal" violations of law rather than sheer personal injury. Here we find Nietzsche analyzing a legal system as a life-promoting cultural force that simply refashions natural energies in less savage and more productive directions. This passage surely undermines many interpretations of Nietzsche as an anti-institutional transgressor. We should also take note of a passage from *Twilight of the Idols* ("Skirmishes" 39) that diagnoses a repudiation of institutions and authority as a form of decadence.

With these notices of political elements in Nietzsche's thought, let me now explore the possibilities of democratic politics as a kind of jazz along Nietzschean lines. I want to suggest democracy as a polyphonic collective gathering for political decision-making that, like jazz, in many respects is improvisational and selective: improvisational in the sense of

a confluence of structure and openness that marks most political practices; selective in the sense of certain stand-out performances that lead or advance political undertakings to a degree disproportionate to the role and influence of other citizens in the body politic.

An improvisational model of politics steers a middle course between anarchical and foundationalist political theories, and it is particularly suited to the democratic notion of ongoing interrogation of both political decisions and statutory provisions, and also to the dialogical reciprocity of political exchanges in democratic discourse. For all the citations of metaphysical principles in the history of democratic movements (e.g., natural rights, substantive equality), the actual life-blood of democratic practice has been its structured openness, which I would call experimental improvisations on provisional themes rather than strict axiomatic applications of principles. We should note that Nietzsche associates democracy in a general way with improvisation and experiments. In *The Gay Science* 356, he directly identifies democratic movements with a sense of improvisation that challenges other eras where human nature and its possibilities were fixed and constrained by traditional patterns. In *The Wanderer and His Shadow* 292, he says that democracy "thirsts for innovations and is greedy for experiments." Surely we notice a connection here with Nietzsche's own advocacy of an experimental disposition in philosophy (see *GS* 51, 319; *BGE* 42).

To help flesh out the model of politics suggested here, we should explore further the meaning of improvisation.[6] We can distinguish between weak, moderate, and strong senses of improvisation: 1) *weak improvisation* in the sense of fixed performances of a set piece with stylistic variations in each case, as in different interpretations of compositions in classical music; 2) *moderate improvisation* in the sense of spontaneous invention within a structured setting, as in the case of jazz; 3) *strong improvisation* in the sense of spontaneous invention of a setting per se, as in the case of improvisational comedy. It should be said that these three senses of improvisation can overlap in a number of ways and cases, and all three alike are distinguishable from sheer duplication or axiomatic application. Moreover, even strong improvisation is not sheer inventiveness, since it depends on various background settings, expectations, habits, and so forth. Strong improvisation in many ways reflects everyday social life, where we spontaneously construct our dealings and projects in an informal network of promptings, possibilities, problems, and solutions. Moderate improvisation fits well many of the more formalized arrangements of political practice, but as structured openness, political life has many elements of both weak and strong modes of improvisation. I should add that the kind of educational training that fosters effective political participation provides a kind of background cultivation of proficiency that is analogous to the role of musical training mentioned in the context of jazz.

Political performance in democracy is improvisational in all three senses, considering such activities as electoral campaigns, legislation, adjudication, judicial review, constitutional amendment, executive leadership, representative government, and general citizen participation. Different activities can reflect different degrees and combinations of strong, moderate, and weak improvisation. For instance, electoral campaigns and citizen participation are more in the strong mode, legislation and amendment more in the strong to moderate mode, a court trial more in the weak mode, judicial review more in the weak to moderate mode, political leadership more in the moderate to strong mode. All such activities, then, as instances of political life and practice, possess some degree of improvisation, construed as modes of structured openness rather than fully grounded replications or exemplifications.

One way to understand many standard political theories is their discomfort with the improvisational nature of politics, and their preference for a compositional model, wherein guidance for political practice is securely established in some *Urtext* or set of principles (e.g., constitutional provisions, Hobbesian axioms, Kantian maxims, utilitarian calculations) that can regulate political decisions in a manner analogous to scientific techniques of rationality. Political theorists of such stripes usually regret or even resent political practice, in much the same way that a musical composer might complain in the wings that performers are taking too many liberties with the score. A more pragmatic approach to politics, on the other hand, would be comfortable with at least comparable status given to composition and performance, and perhaps even a kind of political jazz, where a composition launches performances and yet yields in favor of experimental variations. Improvisational politics, to be sure, must be bounded by certain generic parameters, but it is not restricted to administrative control or a priori regulation. One advantage of such an open-ended conception of politics is that it helps smoke out certain nondemocratic propensities in some professed democratic theories, whose declarations of openness, inclusiveness, and neutrality stammer and sputter when confronted with citizens who simply will not come to practice politics in the right way, for the right ends, or with the right disposition (e.g., citizens who are not impartial enough, rational enough, secular enough, deliberative enough, communal enough, virtuous enough, and so on).

An improvisational politics can be called hermeneutical and it fits well Nietzsche's advocacy of interpretation in philosophy (*GS* 374). Rather than conceive politics as the application or administration of ready-made rules or objective principles that simply inform the content of particular situations with their proper sense and direction, a hermeneutic approach to, say, legislative and judicial practice would construe constitutional provisions as directed potentialities, as open-ended launchings of possibilities calling for deliberation and judgment in particular

cases. Hermeneutical politics runs counter to versions of "originalism," which holds that constitutional doctrines or passages have a fixed, discernible meaning or reflect some specific authorial intent. Proper political practice would involve strict adherence to such meanings and intentions, and a renunciation of an "activism" that bends, alters, or corrupts original constructs. The problem with originalism is that it disdains the possibility of historical change, misconstrues the linguistic and social milieu of constitutional composition, and, in the case of the American Constitution, is challenged by one of its own framers.[7] Central concepts such as liberty can have multiple meanings and nuances, and can change registers in changing circumstances. Moreover, as Derrida suggests, the very nature of language, particularly in written texts, is unstable, intertextual, and countertextual, and so is not traceable to some essential meaning or authorial intent that can ward off variations or transformations.[8] Even if one could demonstrate the specific intent of a constitutional author, the single-author fallacy ignores the fact that the American Constitution was composed amidst the contentious, polyphonic collaboration of many authors, with countless instances of compromise, sacrifice, horse-trading, and modulation in the final product. Moreover, James Madison, in *Federalist* 37, is almost postmodern in his recognition that language, particularly political language, is intrinsically ambiguous, vague, and imprecise. Accordingly, constitutional provisions cannot give automatic direction for particular cases, but can only provide parameters for deliberative judgments that are case-specific. Originalism, then, defies and constrains the flexibility intrinsic to an experimental conception of democracy.

The above discussion highlights the error of conceiving judicial practice as essentially different from the more political spheres of electoral and legislative practice. Even the Supreme Court can be called improvisational, albeit in a weak sense, since it too has to wrestle with interpretation of ambiguous constitutional language, and is itself not immune to weighing political implications of its decisions or to its own political machinations among justices.[9] Constitutional legal "standards" (e.g., restrictions on unreasonable search and seizure) are different from, say, procedural "rules" that dictate specific types of action. Deliberation on constitutional standards can elicit reasonable disagreements, hence the common outcome of split decisions in Supreme Court cases. An improvisational/hermeneutical model of politics would take split decisions as inevitable outcomes of judicial deliberation, while foundationalist models would be prone to call split decisions deficient, in the sense that some justices must not be reasoning in the right way.

Considering the American political system, one obvious way in which democracy is improvisational is the amendability of the Constitution. Hannah Arendt goes so far as to define the Constitution's authority in terms of its "inherent capacity to be amended and augmented."[10] Indeed,

both Arendt and Derrida have approached American political documents as performative rather than constative utterances, and therefore as exhibiting a kind of abyssal, decisionist quality, despite historical appeals to "self-evident truths."[11] The possibility of a constitutional convention is the ultimate provision for a strong sense of improvisation in American democracy, which is one reason why such a prospect would rattle the nerves of a foundationalist. Nonetheless, we can, with Claude Lefort, describe an improvisational democracy as one that

> invites us to replace the notion of a regime governed by laws, of a legitimate power, by the notion of a regime founded upon *the legitimacy of a debate as to what is legitimate and what is illegitimate*—a debate which is necessarily without any guarantor and without any end.[12]

To conclude my discussion, improvisational politics not only is a challenge to foundationalist theories, it also disrupts egalitarian sentiments that have continued to influence democratic theory. Assuming that direct democracy is an impractical and even undesirable prospect in many matters of government practice, much of the improvisational performances described above require the contribution of select, competent players in executive, legislative, and judicial settings. Such instances of unequal power and influence in political leadership, representative government, and judicial expertise have often been taken to be undemocratic and elitist, owing to their disproportionate status and effect compared to the mass of citizens. But again, a Nietzschean-inspired, improvisational model of democratic politics can affirm such select roles as political solos within a structured, collective effort. Democracy as jazz is not offended by stand-out performances. Political leadership, for instance, can be construed as a kind of creative excellence that charts new directions for the ensemble. One burden of leadership is making decisions without anchored support, i.e., charting a course in the midst of temporal, empirical, and cognitive limits, marked by uncertain, unpredictable, complex, and conflicting elements. Deliberation in such a setting (in, say, deciding whether to use force in a dangerous situation) calls for a kind of improvisational finesse that can size up a situation and venture an effective outcome—a function quite different from decisions in a "political science" mode that presume to judge particular cases by some universal standard. And continuing the jazz ensemble analogy, the improvisations of leadership must involve a reciprocal relation with the rest of the players in the group. Political leadership in a democracy is not equivalent to domination; there must be a symbiotic confluence of leaders and followers that informs both sides of the relation.[13]

In a wider sense, the political activity of citizens in a democracy has been called a "stratified pluralism."[14] Not all citizens are concerned with, or interested in, politics. Stratified pluralism suggests that there is only a certain segment of concerned, attentive citizens, and then an even smaller

segment of activists and opinion leaders who tend to influence political outcomes to an extent disproportionate to their numbers. Such a democratic elite, however, is not vested in any restricted social location; it is rather more a function of motivation, effort, and talent, and can cross the entire spectrum of interests in the social landscape. Democratic political practice, then, can be called elitist in a certain way, but with an openness and flexibility that sustains a democratic base, especially if we keep in mind the structure of improvisational group dynamics.

My aim in exploring the jazz metaphor has been to sketch some features of democratic politics that are consonant with a Nietzschean resistance to formalized constraint and substantive egalitarianism. Some may consider this quite a stretch with respect to Nietzsche's thought. Suspicion here is certainly warranted. I can only say that a significant part of my argument comes from my perplexity about Nietzsche's political intentions. It is not clear to me that Nietzsche ever had actual concrete politics in mind when he railed against democracy. In any case, I argue that if the issue is in fact concrete political practice, democracy can and does exhibit a certain Nietzschean character.

1 Lawrence J. Hatab, *A Nietzschean Defense of Democracy: An Experiment in Postmodern Politics* (Chicago: Open Court Publishing Co., 1995).

2 An important figure in this regard is Leo Strauss, who tries to reconcile liberal democracy with classical elitism. See especially *Natural Right and History* (Chicago: Univ. of Chicago Press, 1953). For an insightful analysis, see Robb A. McDaniel, "The Nature of Inequality: Uncovering the Modern in Leo Strauss's Idealist Ethics," *Political Theory* 26:3 (June 1998): 317–45.

3 The roots of jazz in early New Orleans ensemble playing did not involve individual soloists, but rather multiple, contemporaneous improvisations.

4 Even "free form" jazz has its own parameters within a set piece and its own sense of emergent order.

5 Consider in this vein Nietzsche's acknowledgement of rights as recognized and guaranteed degrees of power, as concessions of one's own power to the power of others (*D* 112).

6 See Robert P. Crease, "The Improvisational Problem," *Man and World* 27 (1994): 181–93.

7 I am indebted here to Terence Ball, *Reappraising Political Theory* (Oxford: Clarendon Press, 1995), chap. 11.

8 See Jacques Derrida, "The End of the Book and the Beginning of Writing,"

chap. 1 of *Of Grammatology*, trans. Gayatri Chakravorty Spivak (Baltimore: Johns Hopkins Univ. Press, 1974).

9 See Bob Woodward, *The Brethren: Inside the Supreme Court* (New York: Simon and Schuster, 1979).

10 Hannah Arendt, *On Revolution* (New York: Penguin Books, 1963), p. 202.

11 For a discussion, see Bonnie Honig, *Political Theory and the Displacement of Politics* (Ithaca, NY: Cornell Univ. Press, 1993), pp. 104–15.

12 Claude Lefort, *Democracy and Political Theory*, trans. David Macey (Minneapolis: Univ. of Minnesota Press, 1989), p. 39. In this vein we can consider the 9th Amendment on unenumerated rights—which holds that the constitutional listing of rights should not be taken to mean a denial of other rights retained by the people—to be an open-ended invitation for further judicial consideration.

13 See J. Roland Pennock, *Democratic Political Theory* (Princeton: Princeton Univ. Press, 1979), chap. 12.

14 See W. Russell Neuman, *The Paradox of Mass Politics: Knowledge and Opinion in the American Electorate* (Cambridge, MA: Harvard Univ. Press, 1986).