

The Journal of Contemporary Legal Issues

Volume 24 | Issue 1

Article 12

1-19-2024

On Preserving a Political Community in Revolutionary Times

Scott Yenor

Follow this and additional works at: <https://digital.sandiego.edu/jcli>



Part of the [Law Commons](#)

Recommended Citation

Yenor, Scott (2024) "On Preserving a Political Community in Revolutionary Times," *The Journal of Contemporary Legal Issues*: Vol. 24: Iss. 1, Article 12.

Available at: <https://digital.sandiego.edu/jcli/vol24/iss1/12>

This Article is brought to you for free and open access by the Law School Journals at Digital USD. It has been accepted for inclusion in The Journal of Contemporary Legal Issues by an authorized editor of Digital USD. For more information, please contact digital@sandiego.edu.

On Preserving a Political Community in Revolutionary Times

SCOTT YENOR*

Among the hardest things to do in politics is to understand the current situation. Partisan loyalties cloud perspective. Political actors make overwrought charges in order to rile up their partisans. Things that seem important often are not, while small changes can lead to political revolutions. Revolutions often come without countries or political communities knowing, until it is too late.

The sexual revolution is an exception to this rule, in a manner of speaking. Sexual revolutionaries thought they were doing something revolutionary. Once their principles became America's, nothing could stop the revolution.

Conservatives flailed trying to contain the ideas of the sexual revolution. They found solace in the fact that "it can get worse!" and concentrated on protecting the goods still available in family life or political life. Never rollback, always accommodation. Divorce was normalized, but most marriages do not end in divorce. A whole lot of children are still born to intact families! Drag queens dance with the youth, but not everywhere and at least public nudity and public copulation are still crimes! It could be much worse! There are ramparts to defend! And this attitude leads to participation in politics. Conservatives seem to be there to make sure that the things that could get worse do not get worse.

But then there is the fact that things keep getting worse, that the conservatives are increasingly ineffective in putting brakes on the sexual

* © 2023 Scott Yenor. Professor of Political Science, Boise State University. Professor Yenor teaches political philosophy. Ph.D. 2000, Loyola University, Chicago; B.A. 1933, University of Wisconsin-Eau Claire.

revolution or on the Left's project generally. As one Nineteenth Century divine, unrespectable in other respects, writes, the conservative party "never conserves anything. Its history has been that it demurs to each aggression of the progressive party, and aims to save its credit by a respectable amount of growling, but always acquiesces at last in the innovation. What was the resisted novelty of yesterday is to-day one of the accepted principles of conservatism: it is now conservative only in affecting to resist the next innovation, which will to-morrow be forced upon its timidity, and will be succeeded by some third revolution, to be denounced and then adopted in its turn."¹ On family policy, conservatives get swamped in what I call the Rolling Revolution constituted by radical feminism and sexual liberation theory.² The Rolling Revolutionaries have gone from success to success. They have made an ever purer family regime, dedicated to the principles of individual autonomy. Or so it seems.

An honest assessment admits the truth of conservatives: It could get worse! Reality agrees: it has gotten worse!

What is true in family policy is true in our politics more generally, concerning both conservative ineffectiveness and how it could get worse. A revolution is afoot in our regime, and I want to use Aristotle to prove it. Political philosophy can help students of politics gain perspective and see that a revolution is afoot. Aristotle's *Politics* summarizes data from more than a hundred political communities, though most of the individual cases are lost (only his *Athenian Constitution* survives). Aristotle first describes the general nature of political revolutions. In a revolution, what once was accepted becomes unacceptable and what was once unacceptable is celebrated. Rules of justice change. On this score, revolutions are either a change in rulers or the principle of justice (e.g., a democracy becomes an oligarchy) or an intensification of a particular city's rulers or principle of justice (e.g., an oligarchy becomes more oligarchic).

What has been going on in American politics over the last century is both changes, first the change in regime from what I would call a mixed regime to an oligarchy and then the intensification of the oligarchic regime. In the beginning was a liberal democracy, governed through separated powers, defined through a limited national government, and held in check through popular elections. It was a mixed regime, containing elements of democratic and aristocratic government. People selected leaders, but leaders could use their judgment. Opportunity abounded, and the resultant inequalities were respected. In book after book, American political

1. Robert Lewis Dabney, *Women's Rights Women*, in DABNEY ON FIRE, (Zachary M. Garris ed., 2019).

2. SCOTT YENOR, *THE RECOVERY OF FAMILY LIFE: EXPOSING THE LIMITS IN MODERN IDEOLOGIES* (2020).

scientists have showed that Progressives compromised this original framework of government. Bill Voegeli's *Never Enough*³ and Charles Kesler's *I Am the Change: Barack Obama and the Crisis of Liberalism* and *Crisis of the Two Constitutions: The Rise, Decline, & Recovery of American Greatness*⁴ are just three of the legion examples.

Moreover, Progressives have continually gained ground against the original constitution, such that the battle between the two seems well-nigh over. The most striking manifestation of this revolution is the undermining of the rule of law. For Aristotle, one way to prevent revolution is to “ensure there are no transgressions of the laws” and to “treat . . . those outside of the regime as well as those in the governing body.”⁵ Significant additions have been made to our fundamental law, including most significantly the administrative state. When those inside the regime are held to a different set of laws and a different principle of justice than those outside of the regime, the fundamental principle of political stability and regime comity is violated. Lists of lawlessness include protesting outside the homes of Supreme Court justices against the law and, of course, the riots. Two standards of justice—one for the rulers and one for the ruled—is practically the definition of oligarchy, and it is (increasingly) our reality. How many such examples show that we have a “long train of abuses and usurpations”? There are obviously some counterexamples where non-oligarchic elements won victories (*Dobbs*, Kyle Rittenhouse's acquittal). No one can know for sure. There is a manifest tendency toward exclusion and use of the law as a weapon against the “out” democratic faction. The managerial oligarchy is now, mostly, in control of the commanding heights of the country and governs, without shame, in the interests of the country as a whole. Regime change advancing? Check.

Second, Aristotle gives a series of indicators that a faction is revolutionizing. Factions are stirred to revolution, Aristotle writes, “by arrogance, by fear, by preeminence, by contempt, by disproportionate growth” and also “by electioneering, by underestimation, by [neglect of] small things, and

3. WILLIAM VOEGELI, *NEVER ENOUGH: AMERICA'S LIMITLESS WELFARE STATE* (2nd ed. 2012).

4. CHARLES R. KESLER, *I AM THE CHANGE: BARACK OBAMA AND THE FUTURE OF LIBERALISM* (2013); CHARLES R. KESLER, *CRISIS OF THE TWO CONSTITUTIONS: THE RISE, DECLINE, AND RECOVERY OF AMERICAN GREATNESS* (2021).

5. ARISTOTLE, *THE POLITICS* bk. V, at 147, 148 (Carnes Lord trans., 2nd ed. 2013).

by dissimilarity.”⁶ Many boxes could be ticked here. Arrogance? Watch late-night comedians, whose comedy consists solely in lording it over the rubes in fly-over country. Their enjoyment consists of humiliating their political enemies, appealing to their class superiority. Or the smugness of regime spokeswomen who know her lies will never be called out. Fear? Millions of Americans are cowed into silence for fear of the economic and social consequences of their views. Contempt? American oligarchs relish calling the rest of the country “deplorables” or “bitter-clingers” or racists and homophobes. Their swarms seek to cancel or shame, the ultimate form of dishonoring, many who disagree. They refuse to assent to laws, the most wholesome and necessary for a free people. Disproportionate Growth? Dissimilarity in stock? American oligarchs have acquiesced in quickly transforming the political order though demographic change, which, Aristotle warns will produce discomfort and create lasting fissures. Electioneering? Standards of the media fairness no longer exist even in pretense and the 2020 election laws were flaunted, whether or not they would have made a difference in the final outcome. Your mileage may vary (and that is the difficulty of analyzing events as they unfold). But, in my judgment, a faction is revolutionizing. Check.

The revolution in family life serves this oligarchic political revolution. The sexual revolution is oligarchy in action, though it sells itself as individual liberation and the fulfillment of democracy’s promise. It’s integral to “OUR DEMOCRACY.” The “de-regulation” but really re-regulation of sexual mores has harmed the *demos* while shoring up built-in advantages for oligarchs. Almost all the mores that supported healthy family life in the country (limiting divorce, stigmatizing children out of wedlock, stigmatizing sex out of wedlock, promoting responsible sexual desire, controlling obscenity, honoring male provision, honoring fecundity and female modesty) are compromised to the detriment of the lower classes, a group that needs social mores and forms more than anyone in society. Again, book after book chronicles this development. The country is *Coming Apart* (Charles Murray)⁷ or we have *Marriage and Caste in America: Separate and Unequal Families in a Post-Marital Age* (Kay Hymowitz)⁸ or *Labor’s Love Lost: The Rise and Fall of the Working Class Family in America* (Andrew Cherlin).⁹ While upper class families continue to

6. ARISTOTLE, *supra* note 6, bk. V, at 132.

7. CHARLES MURRAY, *COMING APART: THE STATE OF WHITE AMERICA, 1960-2010* (2013).

8. KAY HYMOWITZ, *MARRIAGE AND CASTE IN AMERICA: SEPARATE AND UNEQUAL FAMILIES IN A POST-MARITAL AGE* (2007).

9. ANDREW J. CHERLIN, *LABOR’S LOVE LOST: THE RISE AND FALL OF THE WORKING-CLASS FAMILY IN AMERICA* (2014).

stigmatize having children out of wedlock and divorce (they are bad for one's career after all!),¹⁰ the lower classes are dissolute, independent and weak. They live lives of despair and die deaths of despair. "Decadence for thee, but not for me" is a great way to maintain oligarchic rule. Same with drug use. Same with college attendance. Same with the spreading of pornographic poison and gender ideology.

This revolutionizing faction operates in two directions at the same time—first consolidating its power at the top and second weakening the "democratic" elements within the political community. Defining policies like free trade, open borders, family collapse, drug legalization accomplish both these tasks. Student loan forgiveness helps the uppers. Some call this new regime "managerialism." Some call it "woke capital." Others "woke communism." Whatever its name, we live under an ever-narrowing oligarchy. The *demos* suffers while the uppers increase their advantages.

Aristotle's analysis leads me to conclude that we live in revolutionary times. Room to oppose the new oligarchy within the system is shrinking.

Many see these problems. Call me a pessimist, but there are optimists. The optimists (my standard is admittedly desperate) see this as "a crisis, but not a disaster," as Richard Reinsch framed the issue.¹¹ Electoral politics may still provide a route to civic renewal. The close 2020 election, with an unlikeable president as the standard bearer for the nation and during a crisis of sorts, need not mean that elections will never again be about securing the common good or revitalizing the country. Republicans stand to win the House of Representatives and perhaps the Senate in the 2022 election. The Supremes have issued *Dobbs* overruling *Roe* and other favorable decisions recently; therefore, a new era of conservative jurisprudence may be on its way.

Another aspect of the optimist's case concerns the implications of "defeatism." If America's regime has been or is nearly overturned, radical things follow. It is therefore pretty unthinkable. Proposals about nullification, secession, border moving, or more extreme measures make you look like a crazy person if the route of normal politics is still open. Radical speculating makes it more difficult to win in normal times. Some crisis-deniers, like Greg Weiner, admit that the "country may be headed for

10. See Scott Yenor, *The Wages of Feminism*, THE AMERICAN MIND (June 18, 2021), <https://americanmind.org/salvo/the-wages-of-feminism/> [<https://perma.cc/GVE2-Y6BE>].

11. Richard Reinsch, *A Crisis, But Not a Disaster*, THE AMERICAN MIND (Apr. 16, 2021), <https://americanmind.org/features/too-much-of-a-unity/a-crisis-but-not-a-disaster/> [<https://perma.cc/FB3B-3REZ>].

a breakup” but that the “middle class of America” would “just be puzzled” by radical proposals amidst the break-up.¹² (Just as tsarist Russians would have scratched their heads at collective farms in 1916!) Another optimist shares “the concerns of conservative defeatists” but worries that indulging an idea about “collapse of the common good, the inevitability of disunion, or the demise of conservatism” will end up “being a self-fulfilling prophecy.”¹³ If defeatists acknowledge defeat at the national level, then they will lose at the national level. If they discuss what to do in case of defeat, they sound like they have no place in the current political order. Either way, Game over.

On the other hand, denying the depth of crisis may cultivate complacency that things will turn alright. Where does naivete end and paranoia begin? Can we prepare for the worst while thinking the best? Should those on the outs seek to develop a parallel set of institutions so that we have places to work, buy and borrow or should we seek to revive the neutral decision-making of our major corporations or on the bureaucracy and courts to leverage change? What matters public opinion or territory? Should those on the outs send their best to the national government in an effort to stave off the ongoing revolution or should they hope that their best remain in the states and resist? Is the game tied? Is it the bottom of the ninth and the Right is down two runs facing a Mariano Rivera in his prime? Or has the last out been recorded?

The aim of policy on the Right is the establishment of a genuinely mixed regime. That is my rallying cry: Establish a Mixed Regime! If, as I think, America faces an ever-more tightening oligarchy, whose defining attributes are a fusion between corporate power and administration under the patina of law, it means limiting the power of this faction.

Can the oligarchy be “mixed” with democratic elements to create a new, more stable mixed regime—one that allows all parties to feel like they are members of the political community or one that fills the city with friends or at least not enemies. Many papers in this symposium are based on the assumption that a new mixture could be accomplished. A moderate conservatism. Prudence. Winning elections. Standing on principle. I hope that this is right.

I have never heard a convincing case that we can get from here to there without going somewhere else first. Such a case would have to point to

12. Greg Weiner, *Is the American Regime in Crisis?*, NATIONAL REVIEW (June 24, 2021), <https://www.nationalreview.com/magazine/2021/07/12/is-the-american-regime-in-crisis/> [<https://perma.cc/RG9H-WY6K>].

13. Benjamin L. Smith, *Against Conservative Self-Defeatism*, LAW & LIBERTY (May 11, 2021), <https://lawliberty.org/against-conservative-self-defeatism/> [<https://perma.cc/LR3F-ZXJ6>].

the democratic elements in our regime that can be revived and point toward a plausible way of getting there. The biggest assets on the democratic side are, probably, choke-points—imagine every plumber, electrician, farmer, oil field worker, truck driver, auto mechanic, pilot, small business owner started quitting work. When truckers in Canada went on strike, the oligarchy crushed them. But perhaps a more thoroughgoing strike could be efficacious in control of territory and areas of life. By what plausible route could such a strike lead to a better, more “mixed” regime? Perhaps a more forceful one that takes ground and instills fear instead of looking for handouts from the oligarchy?

However this may be, any American statesman in the short term must weaken the oligarchic elements of the regime and strengthen the democratic elements. Let me take each of these tasks in turn. Normal politics among fellow countrymen would involve oligarchs reforming themselves or being forced to reform in the face of electoral defeats. They would recognize how they were showing undue contempt for their fellow citizens or demonstrating a double standard of justice to benefit themselves and their shock troops and reform themselves or become humbled or shamed at their actions. Maybe Hunter really is a degenerate and a lawbreaker! Members of the Republican Party or Conservatives seem to hope that the oligarchs are capable of correcting themselves. Perhaps an electoral shellacking can do the trick? Or two or three of them?

What’s the back-up plan, however, if oligarchs do not reform themselves? Oligarchs are going to oligarch. For Aristotle, there are really two general directions in our circumstance. One is for a successive tightening of the oligarchy—making it ever more oligarchic until it is a tyranny.¹⁴ The other is for revolutionary action, where some oligarchs turn against their class and help “make revolution.”¹⁵ Tyrants in the very old sense—one-man, public-spirited leaders who establish conditions for free government—will form an alliance of sorts with the people against the injustices of the oligarchy (think Solon, not Julius Caesar). Aristotle is coy about what it means to “make revolution.” Through his examples and other intimations, he suggests that the *demos* can, under the leadership of a public-spirited popular leader, weaken oligarchies through expropriation, ostracism, and, at the leading edge, political violence, among other things. Demagogues

14. See ARISTOTLE, *supra* note 6, bk. V, at 141-42, 143 (Carnes Lord trans., 2nd ed. 2013).

15. *Id.* bk. 5, at 142 and elsewhere.

will likely flaunt the diktats of respectability and skirt the oligarchic law in attempts to instill fear into the oligarchs. Oligarchs have to *fear* the many if they are going to mend their ways and a justified fear comes only from suffering the loss of power when someone takes it. Fear might arise under the law, but not if the oligarchs define and control the “law.” Think, for instance, about how Solon freed slaves in Athens by relieving them of their debts or how Lincoln did much the same against Southern oligarchs. Donald Trump was, in this decisive respect, no real enemy of America’s oligarchy.

Any effort in this direction depends on reviving the strength and fortitude of the *demos*. This is something that must be the object of policy and cultural renewal regardless of whether or not we are undergoing a revolution. Generally, in politics, oligarchies are defeated through an alliance between the people and a “one.” Henry VII and VIII are models, in that they beat down the aristocracy through the War of the Roses and (arguably) the monasteries through the Reformation. Ancient leaders like the Gracchi or Julius Caesar might be models as well—all opposed the machinations of an increasingly oligarchic Rome and all ended up dead at the hands of dying oligarchy. Failed political mixers include Pyotr Stolypin, whose vision for building a mixed regime in Tsarist Russia was magnificent, but who came too late to make it happen also ended up dead.

We are in a situation seen in the classic American Western movies and books: decent enough people occupy the city, but a lawless gang of cattle rustlers are consolidating power by spreading fear among the people. Characters like John Wayne in *Liberty Valance* arise to establish or re-establish conditions for republican government and the mixed regime. Actually, we are more in the condition of a Spaghetti Western where the oligarchy runs the city, but that is a story for another day.

Socially, it will be necessary to strengthen the institutions that strengthen the *demos*. This means above all strengthening the family, the work ethic, the character and the religious faith among our *demos*. Our oligarchic regime will be of no use in helping to achieve these goals—and they will likely do much harm. Dividing and weakening the *demos* is a feature, not a bug, of our oligarchy’s policies. Now, the *demos* need leaders to make them better, not political leaders.

Aristotle does not provide a recipe for strengthening a *demos*, aside from freeing them from the oligarchs’ control. Presumably, at some point, the *demos* have simply had enough. When oligarchs “treat the multitude unjustly, any leader is then adequate to make revolution,” Aristotle writes.¹⁶ It is impossible to know what the point of no return is for a political

16. See ARISTOTLE, *supra* note 6, bk. V, at 141 (Carnes Lord trans., 2nd ed. 2013).

community. It is impossible to know when enough is enough among the *demos*. When enough traditions are violated or sacrileges committed, when sons and daughters are violated and patrimonies stolen, when confines of the home are ignored and futures become increasingly bleak, when people cannot work, when justice is flaunted and resentment is just—people will rise up. The masses may indeed have their opiates and their bread and circuses—but they have nothing to lose but their chains *at some point*.

But this is also good news. History is not over. Dealing with an oligarchy is the New American Right's task, precisely the task set in our Revolution.

