As I write this, the constitutional environment of the United States is experiencing its greatest stresses since the American Civil War. A viral pandemic has engulfed the world and especially stricken the United States; as of this writing more than 3 million coronavirus cases have been reported in the United States, more than in any other country. Although the United States has about 4.2% of the global population, it has suffered 25% of the deaths worldwide—more than 132,000 Americans have died from the COVID-19 virus. Partly as a consequence of this viral apocalypse, US unemployment is experiencing levels approaching 20%—numbers not seen since the Great Depression, and US gross domestic product is expected to contract by 7% in a single year. The chairman of the Federal Reserve has predicted a steep recession of uncertain length and the federal debt has climbed to levels unseen outside of wartime.

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Coincidentally, a mass interracial movement has been ignited by instances of police brutality toward African Americans, made indelible by smartphone cameras that have seared into the memory of a horrified world the death throes of unarmed persons in police custody. Not so coincidentally, the White House is occupied by a president who has an attitude of inflamed contempt for US constitutional norms and an incompetence at foreign policy that has prompted concern even from America’s adversaries. Respect for the deadlocked Congress and for public officials is approaching historic lows. The public is sharply divided against itself; members of both parties at record levels would not wish to see their children marry outside the faith. The commitment to democracy itself has sharply decreased among its heirs, the generation born in the 21st century. Opinion polls taken abroad confirm that America’s global image has plummeted and the non-proliferation initiatives of the US administration toward North Korea and Iran have collapsed. In this fraught summer, it has hardly captured the headlines that temperatures in Siberia have soared to levels unseen in a hundred thousand years. To say that the world, and especially its leading power the United States, is facing a series of crises hardly needs to be said.

But, imagine, for a moment, that the United States—or for that matter all developed states—did not face a public health crisis caused by a pandemic. Or a crisis in the fragility of their financial systems. Or a democracy crisis in those states that are liberal democracies and in those countries that aspire to have democratic systems. Or a critical infrastructure vulnerability crisis. Or a climate change crisis. Or face the looming security crisis caused by the proliferation of weapons of mass destruction. Or a crisis in race relations and growing economic inequality.

What we do face, however, is a crisis of change. Or, more precisely, a crisis of managing change brought about by a historic shift in the constitutional order of the state. This shift has delegitimated the constitutional order of industrial nation-states as they strive, unsuccessfully, to cope with the various problems besetting them that, unlike previous challenges, actually thrive in a global environment dominated by industrial nation-states. As a result, the most profound change of all is coming to world order as the constitutional order of its constituent states is transformed. It is this crisis that underlies all the others because it is converting those other challenges into existential crises for governance. It is this change in the constitutional order that must be managed before these crises can be dealt with successfully.

The extraordinary failure of the United States to deal with the COVID-19 pandemic has its roots not in previous failures but in previous historic successes.
Indeed, it was these successes that enabled the United States to shape a world order in its own image. Its current epic failure will inevitably have an impact on its ability to shape the architecture and character of the 21st-century international order.

The crisis in the current constitutional order of industrial nation-states is the legacy of the greatest triumph of that order, the defeat of fascism and communism and the ascendancy of market-based, liberal democracy. A half dozen critical innovations brought about that victory. Now each of these innovations has spawned threats for which the current constitutional order (and the international order) is not designed and cannot cope.

The development of weapons of mass destruction discredited the fascist regime in Japan without ever actually having to defeat its vast land armies; further developments of these weapons technologies kept communist regimes at bay until they too could be discredited in the eyes of their own populations. US extended deterrence not only protected the populations of its allies; it also gave the United States the paramount voice in the global affairs of the anti-Soviet coalition that it organized. But now those very technologies and the means of their delivery have become so much cheaper that we are entering a period when impoverished and otherwise weak states like Pakistan and North Korea can threaten nuclear attacks and even small groups without state backing will be able to marshal biological weapons, undoing the deterrence theories that spared humankind another experience of mass destruction on the scale of Hiroshima and Nagasaki. There is universal doubt in the epidemiological community that COVID-19 originated in a bio-weapons lab in Wuhan, China, though there is little doubt that the lab has worked with deadly coronaviruses. Given the world’s experience with COVID-19—a virus whose latency makes it especially potent as a weapon, and whose close genetic relationship to familiar coronaviruses means that it might be engineered from commonly available and well-known genetic materials—it may turn out that the long-term importance of the pandemic will be manifested in new weapons in the hands of relatively unsophisticated operators. A state that cannot protect its own citizens is unlikely to persuade other states that it can protect theirs.

The development of an international system of trade, transport, financing, and labor has brought unprecedented wealth not only to its authors in the developed world but to the mass of impoverished persons in South and East Asia. Although Bernie Sanders and Jeremy Corbyn may not have gotten the news, this surge in global wealth has removed socialism as a viable alternative to market-based economies. This vast increase in wealth, however, has come at a price: markets have
grown more fragile as they have grown more interdependent, and inequality in the wealthiest states has soared, creating a reservoir of resentment among the 90% at least as keenly felt as are the anxieties of the richest 10%. The system of transport that has expanded manufacturing centers and their markets is now bearing a deadly virus by the same efficient means that carried businesspeople to foreign meetings.

A global network of electronic communications that penetrates every society provided the basis for disillusionment within totalitarian countries and kept ever-present in the minds of persons everywhere the atrocities of the Holocaust, the Maoist depredations, and the true nature of Western societies that had been portrayed as impoverished political and social plantations. If there is a silver lining to the COVID-19 cloud, it is the astonishing international cooperation in research, the sharing of data, and vaccine research and potential manufacture that has occurred. This electronic connectivity, however, has empowered global networks of terror and brought the critical sectors of all advanced economies—the sectors of energy, banking, information, commerce, health, and defense—new vulnerabilities to penetration and paralysis.

The web of international organizations—including alliances like NATO, economic backstops like the International Monetary Fund and the World Bank, political forums like the United Nations, and juridical bodies including the International Court of Justice and the International Criminal Court—linked the well-being of the United States to that of other countries and thus enabled an unprecedented period of collective growth and security. Whether we say that these postwar international institutions were once capable but have become deadlocked, or that they were never designed to deal with the transnational complexities of an interconnected world, the result is the same: the COVID-19 pandemic has exposed these institutions as useless in coping with global threats that pit states against each other. Their successes brought into being the very interdependent world that made pandemics inevitable. Yet the UN Security Council has not had one meeting on the subject of COVID-19.

Doctrines of human rights exposed totalitarian governments by changing our expectations of sovereignty but eventually disabled states from dealing with migration that was in part a consequence of Western interventions to protect human rights. What will the states of the developed world do when the next pandemic drives millions of refugees to their borders?

The individuation of political and social cultures enabled by the World Wide Web made possible the flourishing of many nations—Scotland, Lombardy,
Catalonia—that did not have their own states and many non-elite groups that had been subordinated to a dominant political and social archetype. But this individuation also empowered demands for isolationism, the wounding of the European Union through the defection of Britain, populist neonationalism in the United States and many other countries, and finally widespread and entrenched disagreement on facts and truth itself. A poll out this morning, the 24th of June, 2020, discloses that if Donald Trump loses his campaign for reelection, most Republican voters say they will believe the election was rigged, and one wonders what reported facts could possibly disabuse them of this notion. It cannot be a coincidence that the virus is currently raging to its highest infectious level by its spread to those states whose governors cast doubt on the danger of the threat itself.

The prologue to the industrial nation-state’s inept confrontation with the COVID-19 pandemic—the interface between a rapidly decaying constitutional order and the precise sort of challenge it would have profound trouble handling—has led to a further loss of legitimacy that makes civil cooperation even more difficult, which leads to an ever further loss of legitimacy. This has affected all states, but the United States has done uniquely badly.

A political scientist might not have predicted this, especially in the case of the American form of the prevailing constitutional order. One key pillar of that unusual form is the US system of federalism. At the framing of the US Constitution, different responsibilities were assigned to the national government and to the states (counties, municipalities, townships, and the like have no independent constitutional status). This ought to have meant that the United States would be better able to control the virus. As Professor Danielle Allen argued in *Foreign Affairs,*

Viruses spread through social networks. Efforts to control them that take into account existing social structures perform better than those that do not. . . . The lesson for the United States is that authority for key public health decisions should be lodged with state and local authorities. After all, they are the ones who best understand the dynamics of community spread. . . . In the context of the coronavirus, this system of federalism should be an asset, not a liability. It provides flexibility and the ability to tailor responses to the context—just what the United States needed. Rural areas with no COVID-19 cases did not require the same response as cities with thousands.  

Professor Allen thinks the federal system failed us because the president did not set the broad guidelines for states to follow and did not educate the public from
his “bully pulpit.” There is something to this; it’s hard to imagine how a president could have done a worse job. But the guidelines the president should have determined for the states were no secret, and despite his unspeakable efforts to rouse mobs to defy state-ordered sheltering, he did not organize those mobs. They are in fact a feature of federalism as it is refracted through the broken legitimacy of the current constitutional order. It is not a coincidence that the states where hostility to preventative measures was highest were states that supported Trump.

The national government can enforce very limited mandates on the states when they refuse to act in accordance with national law: President Dwight D. Eisenhower sent the 101st Airborne Division into Little Rock on just such an occasion when Arkansas authorities refused to accept court-ordered mandates to desegregate the public schools. But it is idle to think that that sort of coercion could have made millions of persons wear masks or refrain from gathering in social groups of more than six. That kind of cohesion comes from a federalism that, in the words of the Great Seal, is founded on solidarity: *E Pluribus Unum*—out of many, one—the motto of the US federal system. Federalism in a collapsing constitutional order operates in exactly the opposite direction. Its motto might be: *Ex Uno Pluribum*, out of one, many.

Just as the system of federalism ought to have been an advantage for the United States in dealing with the COVID-19 pandemic, it can be a positive structure in the transition away from the constitutional order of industrial nation-states to an order of informational market-states. The opportunity for variation, for experimentation (Louis Brandeis famously observed that states were the laboratories of democracy), and the ability to move more nimbly could give the United States an advantage in this transition. But that depends, as all political life ultimately depends in a democracy, on the awareness of its citizens as to what is at stake.

When the state goes from the reliance on regulation and legal institutions so characteristic of the nation-state to deregulating not only industries but, far more importantly, women’s reproduction; when the state moves from conscription to an all-volunteer force to raise armies, as all the most powerful NATO states have done; when the state ends policies of tuition-free higher education in favor of some combination of fees and merit-based scholarships in order to cope with the rising costs that are themselves the result of the demands of students who see themselves as customers; when the state transitions from administering direct cash transfers like the dole and workers’ compensation schemes to providing job training and teaching the skills necessary to enter a changed labor market; when state-owned enterprises are replaced by sovereign wealth funds; when regimes of market
democracy like referenda, recall votes and voter initiatives that circumvent parliamentary practices and traditional systems of representation become widespread; when these developments occur, we are seeing the stirring of a nascent constitutional order, the informational market-state.

One of the salient features of this new order is that it treats citizens as consumers—and this is true across all classes, races, and political parties. It has been said that “the only valid purpose of the State is to create the citizen,” which means—if the citizen is simply a “consumer”—adding value to the lives of those persons who are both the subject and the sovereign of the democratic state. Because the state has a monopoly on law, value can be created by constitutional innovation, like varying the states in a federal system to offer what individuals and groups want. For national groups that have historically faced legal and social barriers to equality, this might be a welcome development; paradoxically, the same might be true for other groups that wish to exclude them. This constitutional evolution is closer than we think; indeed, I fear that we are racing toward a constitutional environment in the United States that would abandon the commitment to uniform guarantees of human rights throughout the Union. It may well be that the greatest political threat to the United States today—to which the COVID-19 pandemic has given further momentum—lies in a fissioning of American constitutional rights, a chain reaction set off within the very structure of federalism that was designed to protect the state against such a collapse.

That threat looks like this. With one dramatic exception, constitutional rights in the United States are normalized across the various constituent states. This was not an achievement of our founding constitutional order, which I have characterized as that of an “imperial state nation,” and the relationship it ordained between the central government and the states. On the contrary, it is the result of the constitutional order created by Lincoln and his contemporaries, that of the industrial nation-state, and it took more than a century before the Johnson administration and the Warren Court brought the guarantees of human rights to a consistent application across all states. Today, if you are arrested for shoplifting in Detroit, you are read the same Miranda warnings a shoplifter gets in Miami; if a local district attorney tries to strike jurors on account of their race, she must obey the same rules in Birmingham that her counterpart does in Los Angeles; and so on for all the guarantees of the Bill of Rights that have been incorporated into the 14th amendment against the states. The one exception—unique in the developed world—is capital punishment, which is now a matter of local constitutional option.
Since the end of the Cold War, Americans have been sorting themselves into ever-more homogeneous communities. As a political matter, this increases the ideological polarization it in part reflects, but the key constitutional question is how this demographic sorting will play out in conjunction with US federalism. Imagine that, partly owing to demographic sorting, more issues—abortion rights, narcotics regulation, affirmative action, even sanctuaries that defy the enforcement of federal immigration laws—will become subjects for local option in the same way that capital punishment is today. Some states might mandate that a certain percentage of their legislature must be composed of women or members of particular ethnic groups, and some would doubtless defy such measures. Some states would allow prayers in the schools, others would forbid them.

This development would have the effect of reducing the uniformity of human rights guarantees among the states as a whole, resulting in a more diverse state with less diverse constituent states. It would be a replay of the historic move west that led to Frederick Jackson Turner’s and Walter Prescott Webb’s Frontier thesis, only this time the migration would be for constitutional culture rather than farmland.

If you think the courts and the Constitution would never permit such variations in how constitutional guarantees are applied, reflect on this fact: the US constitutional structure provides that the ratification of constitutional amendments and, more importantly, the calling of a constitutional convention depend upon a count of the states in which all are equal. Article V thus provides, “On the application of the Legislatures of two thirds of the several States, [the Congress] shall call a Convention for proposing Amendments, which . . . shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States.”

At present, twenty-nine state legislatures are controlled by the Republican Party; the votes of thirty-four would be required to call a constitutional convention. The difficulty for the future of the United States comes with the continued sorting of the population by which more and more persons live on the coasts and the non-coastal states are hollowed out. By far the greatest number of states will be those with lesser populations. Picture a map of the United States showing a group of states, like the Trump coalition of states that lost the popular vote in 2016 but won the electoral college, painted red.

If such trends continue, it is not hard to imagine thirty-four states with only a third of the population of the country calling a constitutional convention, proposing amendments by a majority of the states at the convention, and even ratifying
those amendments not by three-quarters of the population but by three-quarters of the states with far less than half the national population. Thus, a number far less than two-thirds of the population could call a convention, proposing amendments that far less than three-quarters of the population of the United States ratified. One might conclude that the most urgent order of business for those who want to preserve the American liberal tradition of judicial independence, uniform human rights norms, the primacy of the Constitution over state and federal laws, and federal supremacy is to prevent a new constitutional convention from coming into being.

It’s not that the United States has done especially badly at coping with the pandemic because its federal structure impedes needed reforms or inhibits a transition to a market-state. It’s rather that a federal structure is easily infected by the movement to such a new constitutional order, like a virus taking over the nucleus of a living cell. So it isn’t that federalism accounts for the poor performance of the United States’ response to the pandemic any more than that it has been an enabler for a decentralized and thus more effective response. It’s that the political divisions in American society are turning this transition away from one that preserves liberal democratic values to one that fractionates the state. That will have profound effects on the ability of the United States to shape world order.

Now let us consider a description of the impact of COVID-19 by one of our most distinguished and sophisticated political analysts, operating without the benefit of the thesis about a change in the constitutional order, indeed, whose analysis depends upon what one might call the “Westphalian Fallacy.” This is the assumption that the constitutional order of states has not changed since 1648 and is unlikely to do so now.

This analysis begins, as so many do, with three events: the 9/11 attacks, the financial crises of 2008, and the coronavirus pandemic of 2019–20. Major crises have major consequences, but no connection is drawn among these crises that might tell us the nature of the predicted consequences. Instead we are told that success or failure in confronting the pandemic cannot be a matter of regimes. “Some democracies have performed well, but others have not and the same is true for autocracies,” for that is the only way most analysts can distinguish regimes. Once the state itself has been put to one side, the factors on which success or failure depend are competent state apparatus, trust by citizens, and leadership. A dysfunctional state, a polarized society, and poor leadership are bound to lead to failure.
Looking ahead to what may be a lingering epidemic, job losses, recession, and mounting debt are bound to produce a political backlash, “but against whom is as yet unclear.” Once again, it appears inconceivable that the backlash will be against the state itself whatever its political system. In fact, the industrial nation-state is not equipped to handle completely predictable crises like 9/11, the 2008 financial breakdown, and the present pandemic, and its poor responses to these crises undermine its capabilities even further. We should be asking ourselves, “What are other predictable crises? Can we infer certain challenges will become crises by the fact that they play on the weakness of the prevailing constitutional order?”

It is suggested that the global distribution of power “will continue to shift eastward, since East Asia has done better at managing the [COVID-19] situation than Europe or the United States.” Presumably this is because these societies have a more competent state apparatus, the trust of the citizens, and better leaders, but is this true? Some East Asian states like the Philippines have been a notable failure; Iceland, a notable success. Is it possible that those states who have responded most effectively to the pandemic are those who have moved the furthest towards the new constitutional order of the informational market-state? Singapore comes to mind, as do Germany, New Zealand, and South Korea.

To see the difference in these approaches, consider the claim that in the United States, “its current highly polarized society and incompetent leader blocked the State from functioning effectively.” Without disputing this assertion, one is moved to ask why these particular characteristics have disabled the state. How did we become so polarized? Why did we choose such a manifestly divisive and media-obsessed celebrity to lead us? And if one is persuaded that these phenomena are the result of the declining legitimacy of the state, one may be moved to ask what is the basis for the legitimacy of a state—the compact with its society on which a particular constitutional order relies—and why it has declined. It’s certainly not impossible that highly polarized societies and incompetent leaders have successfully managed health crises in the past and that it’s the management of crises that has gotten so much harder. Even if this were not the case, how helpful is the advice “Don’t be so polarized!”? Don’t stoke division rather than promote unity, don’t politicize the distribution of aid, don’t cast responsibility onto governors for making key decisions while encouraging protests against them, and don’t attack international institutions rather than galvanizing them!

Such advice is unlikely to affect the actions of a neonationalist political leader whose greatest gifts have to do with manipulating the media by capturing the attention of a citizenry that thinks of itself as a collection of customers—in other
words, the sort of leader who can be successful at gaining power in an informational market-state. In the situation of the US citizenry, polarization, politicization, inflammatory rhetoric, division, and especially attacks on international institutions might be just the ticket to achieve power (if not enhancing the chances of success in managing a crisis). That perspective can help us understand what we must do better other than simply replacing the president.

Of course, scenarios can be generated from the kind of analysis I am criticizing. The question is, how helpful are these scenarios? For example, it has been posited that two outcomes of the COVID-19 debacle might be “Rising Fascism” or a “Rebirth of Liberal Democracy.” These sound like scenarios but don’t have much to do with scenario planning.

To see why, consider the analytic gaps in these two descriptions. The “Rising Fascism” future posits continuing increases in nationalism, isolationism, xenophobia, and attacks on the liberal world order. These are indeed characteristic of fascism, but they are not confined to fascism, which was a widespread movement in the first half of the 20th century as fascist, communist, and parliamentary industrial nation-states sought dominance for their form of that constitutional order. Only if one ignores the evolution of that order and the resolution of that long struggle for the sole legitimate paradigm could one see fascism as a realistic option. Thus is the Westphalian Fallacy at work. Note that this scenario assumes that international security will remain stable. If that is right, it is because the threat posed to liberal democracy comes from a neonationalism which forsakes the militarism and foreign adventures that are an integral part of fascism. Neonationalism—like neoliberalism and neoconservatism—is a reaction to the emergence of the informational market-state. Ignoring the historic shift in the constitutional order results in a sort of category mistake, such that the competing scenario (“Rebirth of Liberal Democracy”) is a different story but not an alternative possible world to the rise of fascism, and it might be tightly linked to the very events that have tempted some to think that fascism is imminent. Indeed, in the case of the Weimar Republic, the one might well prompt the other. More importantly, such scenarios throw away the identification of the fundamental drivers that are common to all possibilities in scenario planning. They therefore sacrifice those alerts that might help decision makers determine what exactly is happening.

Instead, these sorts of scenarios sketch out how a state of affairs might arise in the aftermath of the pandemic: “polls suggest that a large majority of Americans trust the advice of government medical experts in dealing with the crisis; this could increase support for government interventions to address other major social
problems.” That makes them turn on the likelihood of events, which is to say they lose completely the power of scenario planning to assist the decider.

Scenario planning is not about pinpointing the future. In some ways, it’s not even about the future. It is about the present and therefore much of its benefit lies in the doing, preparing us to appreciate the uncertainties that lie before us, guiding us to the most flexible and robust plans, and sensitizing us to possible futures as they unfold.

In 1985 the Kennedy School at Harvard sponsored a conference to discuss the future of international conflict at the turn of the 21st century. A group of academics, journalists, strategists from think tanks, and distinguished public servants speculated on the international environment to come and the risks of warfare that would accompany it. According to one participant who was present as a young graduate student and who later became an accomplished policy maker in his own right,

No one dared speculate about an end to the Cold War or the demise of a narrow, bipolar alignment in global affairs. There was, however, considerable conversation about the prospects of major military clashes . . . centered on a still divided Europe [arising from] inadvertent or intentional conflict there. . . . In short, the experience was a classic example of the limits of linear thinking.

Fifteen years later, after the card of the century’s calendar had flipped, apparently anticlimactically, on Y2K, the Bush administration also became notable for having been surprised by events. These events included not only the September 11 atrocities but also the escape of the Al Qaeda and Taliban leadership from Afghanistan, French intransigence at the United Nations toward the Iraq War, Turkey’s refusal of timely cooperation before that invasion, the coordinated murder and sabotage campaign led by Baath Party remnants and Al Qaeda elements in Iraq, and the widespread mood of truculent Iraqi impatience with the American presence there culminating in a deadly insurgency. These events were so predictable, critics say, that someone, surely, was thinking about them before they occurred, yet the White House was forced to improvise hasty responses.

The question was asked: Was the US administration blindsided by the poor work of its intelligence community, or was the problem poor coordination by the National Security Council that is supposed to integrate the work of the various intelligence, diplomatic, and defense agencies?

Actually, the answer is that none of these events were really surprises. Everything that appeared to catch the White House off guard had been anticipated in
various reports, some by the National Security Council itself. The problem wasn’t foresight but forethought: the Bush administration, like the Clinton White House before it, had yet to come up with an effective process to marshal judgment on the events it did foresee.

The COVID-19 pandemic, or something like it, was a certainty. It would come when it would come. What could not have been predicted was the utter foolhardiness of the responses of countries, including those that might have been expected to do better precisely because they had the enormous state capacity, scientific expertise, and educated populace to have fielded the state apparatus, social trust, and leadership necessary to prevail in this sort of crisis. Unless we appreciate the deep changes underway in the legitimacy of the constitutional order, we will be surprised again when a not-very-surprising catastrophe overtakes us, which it most assuredly will.

In the longer run, those crises will usher in a new constitutional order, the informational market-state. Our task, like Lincoln’s (and Washington’s), will be to ensure that a new constitutional order is created that is a “more perfect union” because it better serves the values of the Declaration of Independence in a new context of threats and opportunities.

What does all this have to do with “Future Scenarios”? Why isn’t the title of this chapter, “Constitutional Law Professor Thinks Biggest Problem for the United States and World Order Is a Constitutional Law Problem”? Because the real failure thus far in preparing for and guiding our country through this transition has been a failure of imagination. Unlike strategic planning, the creation of scenarios can prepare a society and its leaders for multiple potential futures and thus for otherwise paralyzing and destabilizing change.

In this chapter, I have offered an interpretation of the COVID-19 crisis that connects domestic politics to the global order. The pandemic that is increasing its grip as I write these pages was quite predictable; it wasn’t that we didn’t know this challenge was coming. It’s that we were politically and institutionally paralyzed because the nature of the threat fit so well the vulnerabilities of the contemporary constitutional order. In the case of the United States, one feature of that order—US federalism—greatly heightened the damage done by the pandemic and, by discrediting the United States, also did damage to the shaping of an international order that would protect and promote our values of liberal and humane governance. This needn’t have been the case. Federalism could have been a valuable asset in overcoming the pandemic because it is well adapted to the emerging constitutional
order. Instead, it may lead to a version of that order that cripples the United States as an international leader.

We may think of “applied history” as using past patterns to predict present ones, and this is sometimes true, as Graham Allison’s chapter shows. But more often, history helps us to see the differences with the past—what is really new. That is why scenario construction is so valuable a tool for decision makers. That is why recognizing the historic shift in the nature of the constitutional order is an imperative.

NOTES

11. Judson, review of *Realistic Hope*.


13. “As many Americans think Russia is America’s best friend as think France, Italy or Germany is. . . . Right now, with racial divides widening (half see a serious chance of a civil war), America feuding with most of its allies, an economy stumbling, a deficit at unprecedented levels, and a pandemic that has killed 120,000 and remains out of control in many areas . . . 80 per cent of Republicans think Trump has made America greater.” Bruce Anderson, “What Americans Don’t Know.”


15. In New State Ice Co. v. Liebmann, 285 U.S. 262, 272 (1932), Justice Louis Brandeis wrote that “it is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory and try novel social and economic experiments without risk to the rest of the country.”

16. One enraged member of the pro-life/anti-abortion movement recently wrote in reaction to the Supreme Court’s decision in *June Medical Services v. Russo*,

Why are the Supreme Court and a nearly half-century-old ruling that you consider illegitimate the be-all end-all anyway? You know already that at the state level there are decent men and women far more committed to the cause than the national Republican Party. Why not borrow a lesson from sanctuary cities or, if you support it, as one suspects an increasing number of you do, the legalization of marijuana in various states? The Nine say that abortion is legal; let them enforce it, or rather, let the president who claims to be on your side do so, and make his real feelings known one way or the other. Urge your governors and state senators and representatives to ban abortion tomorrow. Empower state police to close down facilities. Will Trump really send in the National Guard? Will the next Democratic president do so, in 2021 or 2025 or whenever the White House again comes under the control of the party whose resolve on cultural questions has not been tested thanks to the high court’s willingness to implement its agenda by fiat?


17. At present, twenty-eight states have adopted resolutions calling for a convention to discuss a balanced budget amendment. Four states that Donald Trump carried in 2016 have yet to call for a balanced budget convention (Montana, Idaho, South Carolina, Kentucky). Five states have adopted calls for a campaign finance amendment and none of these five are among the thirty-two that have either adopted a resolution calling for a convention or were carried by Trump. That means that a call that bundled campaign finance reform with a balanced budget could be only one state away from bringing a new constitutional convention into being.


20. “Given the continued stabilizing force of nuclear weapons and the common challenges facing all major players, international turbulence is less likely than domestic turbulence.” Fukuyama, “The Pandemic and Political Order.”


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