WHAT THEN IS THE AMERICAN?

Mark Tushnet*

"What then is the American, this new man?," wrote Hector St. John Crevecoeur in 1782.[1] The American, according to Crevecoeur, was "a new race of man," a mixture of the peoples who had settled in its territory. A person "becomes an American by being received in the broad lap of our great *Alma Mater*."[2] This new man "acts upon new principles."[3] For Crevecoeur, the most important new principle was equality of station, arising in part from the material abundance of the land but in part from the principles on which the new world was organized: "From nothing to start into being; from a servant to the rank of a master; from being the slave of some despotic prince, to become a free man, invested with lands, to which every municipal blessing is annexed!"[4] As Crevecoeur saw it, the homogenizing influence of material abundance and principles of equality would eliminate the conflicts Europeans experienced arising from national allegiances and religious diversity: "[T]he Americans become as to religion, what they are as to country, allied to all. In them the name of Englishman, Frenchman, and European is lost, and in like manner, the strict modes of Christianity as practised [sic] in Europe are lost also."[5]

The homogenizing power of the land and equality did not, however, mean that the new men were "only Americans in general," for they were also "either Pennsylvanians, Virginians, or provincials under some other name. Whoever traverses the continent must easily observe those strong differences, which will grow more evident in time."[6] Note, however, that to Crevecoeur there *was* an undifferentiated national character supplemented by the provincial characters.

When Crevecoeur wrote, of course, the only document stating the principles on which the nation was founded was the Declaration of Independence, with its strongly universalist presupposition that "all men are created equal."[7] Did the Constitution's adoption change the nation's founding principles by eliminating American citizenship's universalist character?[8] The

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* Carmack Waterhouse Professor of Constitutional Law, Georgetown University Law Center. I would like to thank Donald Kommers, Rebecca Tushnet, and Vicki Jackson for their comments on a draft of this Comment.

1. J. HECTOR ST. JOHN CREVECOEUR, LETTERS FROM AN AMERICAN FARMER 54 (1904).
2. *Id.* at 55.
3. *Id.* at 56.
4. *Id.* at 79.
5. *Id.* at 62.
6. *Id.* at 61. I return to Crevecoeur's views on differences among the new land's provinces later.
7. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).
8. For a brief discussion of the limits of this universalism, see *infra* text accompanying note 14.

Constitution may have added a particularist element to American citizenship by making the institutions of state government an essential component of the national government. Yet, as has often been said, the Preamble speaks of "the people of the United States," not, as the Articles of Confederation had, of the states or even of the people of each state. State citizenship, then, appears to supplement the undifferentiated citizenship of the United States that is at the Constitution's heart.

Political scientist Gary Jacobsohn has helpfully retrieved an obscure note written by Abraham Lincoln, in which Lincoln described "[t]he Union and the Constitution" as "the picture of silver," the "frame[]," around the "apple of gold," the principles of the Declaration: "The picture was made for the apple—not the apple for the picture."[9] For Lincoln, the Declaration's universalist principles were a guide to the Constitution's interpretation when interpretive issues were fairly open, and a guide as well to orienting our political conduct to eliminate as soon as possible those practices—most notably slavery for Lincoln—inconsistent with the Declaration's principles. One might read the Fourteenth Amendment's first sentence as stating the proper priority: "All persons born or naturalized in the United States...are citizens of the United States and of the State wherein they reside." Note: Citizens of the United States first, citizens of their states second. This, then, is the primary source of my disagreement with Professor Nagel. What he sees as a radical nationalism, I see as a principled universalism.

What, however, is the significance of all this? As Professor Nagel argues, no one seriously thinks that the dissenters in the *Term Limits*[10] case propose a return to the era of the Confederation. What is at stake is something about our self-understanding, not something about our constitutional law, at least directly. In invoking Crevecoeur and Lincoln, I have implicitly suggested as well that different self-understandings are important, and that the understanding of how the American people are constituted offered by the *Term Limits* dissent is both inconsistent with the views of historically significant interpreters—and in the case of Lincoln, shapers—of our nationhood, and perhaps more important, unattractive to the extent that it is inconsistent with the Declaration's universalist principles.

It also seems not merely *ad hominem* to note that Justice Scalia, who joined the *Term Limits* dissent, and Justice Thomas, who wrote it, soon thereafter appeared to understand what was at stake. Using language that resonates with Crevecoeur's, Justice Scalia wrote in *Adarand Constructors, Inc. v. Pena*,[11] "In the eyes of government, we are just one race here. It is American."[12] For Justice Thomas, affirmative action programs resting on paternalist assumptions were "at war with the principle of inherent equality that underlies and infuses our Constitution," a principle for which his support was the Declaration of Independence.[13] We are, it seems, sometimes one race, American, and sometimes several, Arizonan, Arkansan, Pennsylvanian;

9. GARY JACOBSOHN, APPLE OF GOLD: CONSTITUTIONALISM IN ISRAEL AND THE UNITED STATES 3 (1993) (quoting Abraham Lincoln) (emphasis omitted).
10. U.S. Term Limits, Inc. v. Thornton, 115 S. Ct. 1842 (1995).
11. 115 S. Ct. 2097 (1995).
12. *Id.* at 2119 (Scalia, J., concurring in part and concurring in the judgment).
13. *Id.* (Thomas, J., concurring in part and concurring in the judgment).

sometimes inherently equal, sometimes not so equal depending on where we reside.

Now again one can respond sensibly enough that different legal issues elicit different responses. That we are one race for purposes of determining whether affirmative action programs are constitutional need not imply that we are one race for purposes of determining whether state-imposed term limits are constitutional.[14] And yet, I think, here rhetoric may matter. The force of the argument against affirmative action programs comes from its appeal to universalist principles. Proponents of affirmative action programs can fairly wonder about the foundation of the attack on such programs when we acknowledge diversity and pluralism, even the diversity and pluralism of our federalism.[15]

I want to discuss here two challenges to my claim that our Constitution rests on universalist principles, and that we should indeed understand ourselves as having an undifferentiated American citizenship. Let me call these the *citizenship* challenge and the *federalism* challenge.

The citizenship challenge is straight-forward, and Professor Nagel offers it. We cannot be committed to universalist principles of equality, the challenge goes, because we are dealing with *American* citizenship, which is by definition confined to those who can properly be called the people of the United States. Here the response is in the nature of confession and avoidance. Consider first what it takes for someone not born in the United States to become a citizen of the United States. After a period of lawful residence as an alien, the applicant for citizenship must demonstrate rudimentary knowledge of English and, notably for my purposes, some knowledge of U.S. history and government. To oversimplify only a bit, all that is required for naturalization is adherence to the principles that make us a nation.

Surely, my challenger could respond, that paints far too rosy a picture of U.S. naturalization policy. What of the historical exclusions from citizenship, even of lawfully resident aliens born in China and Japan? And what of the conditions for naturalization that have little or nothing to do with adherence to the principles that constitute us as a nation? And, finally, what of the embarrassment that any person born within the nation's territory is automatically a citizen, without ever having to demonstrate adherence to those principles?

Here I revert to Lincoln and the issue of slavery. Lincoln understood the Constitution as a frame of silver around an apple of gold. Though valuable, silver was not as valuable as gold. When possible, the frame should be changed to enhance the picture's appearance. Slavery was an evil inconsistent with the Declaration's principles, which was acknowledged by the Constitution to the extent that it was, because of the political necessities of the moment in 1787–89.

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14. Particularly because we can change our state-based citizenship by changing our residence, although it should be noted that the very ease of such a change suggests that state-based citizenship is unlikely to be tied closely to strong value preferences.

15. On the narrow doctrinal level, acknowledging diversity and pluralism with respect to federalism ought to cast some doubt on the principle of "congruence" between standards for assessing state-based and national affirmative action programs that Justice O'Connor articulated in *Adarand*. 115 S. Ct. at 2111.

Lincoln sought to lead the nation to eliminate slavery through its political processes, so as to vindicate the Declaration's principles.[16]

So too with the various embarrassments in our nation's naturalization system. They are, in this view, indeed incompatible with the nation's founding principles, and should be set on a course to elimination as soon as is politically expedient. According to the universalist view of American citizenship, the elimination of national origin exclusions from citizenship vindicated our nation's self-understanding. And, it should be noted, our nation's sometimes half-hearted but persistent commitment to expanding the sphere of universal human rights in the international arena may be understood as an expression of our national self-understanding.

These are political actions. Lincoln sought to preserve the Constitution's principles through constitutional means if possible, although he was willing to use other means if absolutely necessary.[17] Its implications for judicial action are more limited than Professor Nagel suggests. It counsels against judicial rhetoric that undermines our commitment to the Declaration's universalist principles, but otherwise does not command—or commend—any particular judicial action. So, I conclude, the citizenship challenge can be met on its own terms.

The federalism challenge insists that the importance of states in our constitutional system demonstrates that we cannot understand ourselves as a nation committed to universalist principles. Federalism has its attractions as a principle of government almost entirely because it provides an almost unassailable base for value-pluralism, as Professors Feeley and Rubin have cogently argued.[18] Their point is often misunderstood. Most defenses of federalism refer to its value in promoting participation in policy-making and its utility in generating reform proposals that might spread to other states and perhaps to the nation as a whole, as in the discussions of the term limits movement by Professors Nagel and Baker. But, Feeley and Rubin argue, those values can be promoted without entrenching a division of authority between state and nation. Those values show that federalism is a sensible policy that a welfare-maximizing central government might frequently adopt. Constitutional federalism, in contrast, makes sense only to the extent that we value protecting a diversity of values within the nation: federalism protects diversity as such, not because diversity produces valuable lessons or anything else.

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16. This analysis indicates why Professor Nagel's examples of federalism's valuable role in supporting resistance to the Alien and Sedition Acts, and to the rendition of fugitive slaves, and Professor Baker's invocation of the process by which the Seventeenth and Nineteenth Amendments were adopted, are misplaced. In Professor Nagel's examples, resistance served to vindicate the Declaration's universalist principles, as did expansion of popular government in Professor Baker's. Those principles, on Lincoln's view, ought to guide all our political action, in the states or on the national level. *Cf.* Abraham Lincoln, The Gettysburg Address (1863), delivered at the Dedication of the Gettysburg National Cemetery ("government of the people, by the people, for the people").

17. As he put it in his message to Congress regarding the suspension of the writ of habeas corpus, "Are all the laws but one to go unexecuted, and the Government itself go to pieces, lest that one be violated?" *Quoted in* JAMES G. RANDALL, CONSTITUTIONAL PROBLEMS UNDER LINCOLN 122 (1951). For Lincoln, this was a fall-back position, for he believed that the Constitution allowed the President to suspend the writ.

18. Edward L. Rubin & Malcolm Feeley, *Federalism: Some Notes on a National Neurosis*, 41 UCLA L. REV. 903 (1994).

Here my response to the challenge is a direct rejection of its premises. Crevecoeur was wrong. As time has passed, the differences among "Americans in general" have weakened rather than "grow[n] more evident."[19] As a thought experiment, consider what image springs to your mind when you are asked to picture "a Pennsylvanian" today.

Of course I do not want to deny that there are differences among people in the United States, nor to deny that those differences have some modest connection with their location. But those differences, and that connection, have almost nothing to do with federalism, for two reasons. On the first I offer only my untutored cultural speculation. Perhaps Professor Nagel, if asked, would describe himself as in some important sense a Coloradan, and Justice O'Connor would describe herself as an Arizonan.[20] But my hunch—somewhat overstated for rhetorical purposes—is that people who offer state-based identifications like that really mean "not-New York or California." That is, the apparent state-based identification is primarily a rejection of an alternative identity, itself identified, perhaps only in imagination, with some other states.[21] To that extent it may be an assertion of a desired alternative universalist culture.[22] If John Locke wondered what government would emerge if all the world were America, so, I believe, the state-based identifications ultimately hope that all the United States would be Colorado.[23]

Professor Nagel points out that the term limits movement itself is state-based, suggesting the vitality of federalism as a source of diverse perspectives on political organization. I think this view sees the movement too narrowly. The movement is after all national in scope. A truly state-based term limits movement would defend term limits on value-pluralist grounds. One ought to hear arguments like the following: "Term limits are just right for those of us who live in Arkansas, but if you people in Pennsylvania want your representatives to hang around forever, that is fine with us too." The term limits movement does not offer such arguments. It proposes an alternative system that the nation as a whole ought to adopt, and is state-based for rather clear structural reasons.[24]

My second reason for rejecting the federalism challenge is that whatever location-based cultural pluralism there is in the United States has very little to do with states.[25] I suppose there still is a "Western" identity and a "Southern"

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19. CREVECOEUR, *supra* note 1, at 61.

20. Would Justice Thomas describe himself as a Virginian?

21. The size and internal diversity of New York and California make them particularly inapt as sources of an imagined negative identity. Is New York Manhattan, Albany, or Buffalo?

22. Vicki Jackson has suggested to me that Coloradans may think it just fine that New York exists as a major financial center, and think it equally fine that they do not have to live there. Do they think it fine as well that the people who do live in New York are, as Coloradans may see things, neurotic, driven, and the like? Or, as my hunch has it, do they not believe that the nation could secure the benefits of New York as a financial center even if people in New York were just like people in Colorado?

23. Or, as at the end of the film "Raising Arizona," Utah.

24. The movement attacks the privileges of incumbents in national office, who can hardly be expected to muster much enthusiasm for it, either by adopting national legislation or by proposing a constitutional amendment.

25. When I make this argument, someone inevitably mentions Texas as a state with a clearly identifiable and distinctive set of values. Although I am skeptical—consider the immigrants from Vietnam who fish in the Gulf of Mexico—I doubt that conceding the point impairs my argument substantially.

one, though I wonder whether there is a "Midwestern" identity any more, and I also wonder whether value-pluralism within the regions may not be as deep as value-pluralism among them. But those quibbles aside, my essential point is that the sort of state-based federalism we have in the United States is almost entirely unresponsive to regional pluralism—except, oddly enough, to the extent that representatives of the regions can get together in the national assembly and promote a unified program.[26]

Indeed, why should we expect lines drawn on the basis of treaty, conquest, and chance to correspond to contemporary value-pluralism? Perhaps a state-based federalism might be defended as the best we can do, given our political history and Constitution, to promote the actual region-based value-pluralism we have. Alternatively, however, we might reflect on the possibility that Crevecoeur's mistake rested on an incomplete appreciation of the homogenizing power of the nation's universalist commitments. Crevecoeur erroneously thought that a person's identity as a Pennsylvanian would become more important over time; it actually became at most a residual identity, what is left over after we exhaust our self-understanding as Americans. So too, I suspect, with regional identities: They are what has not yet been eaten away by the force of the universalist principles to which we as a nation remain committed.

Once again a critic could fairly raise the federalism objection. What is left of federalism in a nation whose basic principles are universalist? First, and perhaps most obvious, value-pluralism can still have its due in domains not covered by the nation's universalist principles. People in one state may value economic activities that threaten some forms of wildlife not protected by national law, and may allow those activities to continue even as the same activities are prohibited in another state whose people value the wildlife more.

Professor Nagel suggests that for contemporary liberals nothing falls outside the domain of universalist principles. Liberals believe, he suggests, that universalist principles offer a comprehensive ordering of values that specifies precisely which economic activities must be regulated to precisely what extent so as to advance universalist principles of health, safety, and natural preservation. Perhaps he is right as a descriptive matter, although my sense of the state of play among liberals is that they are more tolerant of value-pluralism across a broader range of issues than Professor Nagel believes. Certainly, however, contemporary liberal theory is not committed to the kind of comprehensive domain that Professor Nagel describes. John Rawls, for one, could not be more explicit about limiting the domain of the principles of political liberalism he has articulated.[27]

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26. States in a region could develop cooperative arrangements, but to the extent that those arrangements were formalized, they might have to get Congress' consent under the Compacts Clause, U.S. CONST. art. I, § 10. This is not to deny the existence of important informal arrangements, or formal ones not subject to Compacts Clause approval. *See, e.g.*, Northeast Bancorp, Inc. v. Board of Governors, 472 U.S. 159 (1985). Precisely because these arrangements fall outside the Constitution's coverage, however, they have no bearing on the question of the extent to which the Constitution protects a region-based federalism.

27. Nor does it seem to me accurate to suggest that all liberals believe that judicial supervision of universalist principles is a necessary correlative of such principles. Cass Sunstein, to choose a prominent example, expressly rejects judicial supervision with respect to some of the liberal principles he advances. *See* CASS SUNSTEIN, THE PARTIAL CONSTITUTION

But, the federalist critic might object, tolerating value-pluralism is rather different from being committed to it. The Endangered Species Act shows that contemporary liberals are willing to displace local rankings of values with national ones. In such circumstances, again, what is left of federalism?

If federalism is understood to rest essentially on the proposition that value-pluralism is desirable, perhaps not much. As we have seen, states can serve as laboratories of social experimentation, and a unified government committed to universalist principles might nonetheless allow a great deal of local experimentation to help it determine the best way to implement those principles. Further, the costs of redesigning our current system might be great enough to outweigh the benefits of redrawing boundaries to reflect contemporary value-pluralism.

It is at least a theoretical possibility that state boundaries might *generate*, rather than reflect, value-pluralism, as people vote with their feet to find locations populated by people with whom they share values. In this way allegiance to the states in which we have chosen to reside may shape national policy as well. I call this a theoretical possibility, however, because the dynamics of population relocation seem to have promoted homogenization rather than sorting people by values.[28]

Finally, and perhaps most important, we should contrast the criteria of success for federalism understood as a system for administering power and for federalism understood as a system of embedded value-pluralism. A value-pluralist federal system succeeds when it preserves, and perhaps enhances, value-pluralism. An administrative federal system succeeds when it continues as an on-going enterprise rather than either flying apart into its separate components or consolidating into an entirely unified government.

The Court in *United States v. Lopez* appeared to believe that federalism could succeed only if the Constitution established permanent substantive allocations of authority between the states and the nation.[29] There may, however, be another path to success, perhaps easier for administrative federal systems than for value-pluralist ones but available to both. According to the German Constitutional Court, Germany's federalism incorporates the principle of *Bundestreue*, which Donald Kommers translates as federal comity.[30] As Kommers puts it, in Germany both the state and the national governments have "a constitutional duty to keep 'faith' (*Treue*) with the other and to respect the

148–49 (1993) (expressing skepticism about judicial creation of rights to subsistence or protection of environment).

28. The reason, I suspect, is that defenders of federalism underestimated the homogenizing power of economic abundance and material wealth, to which they were also committed.

29. 115 S. Ct. 1624 (1995). This is clearest in the emphasis in both majority and concurring opinions on the necessity to preserve a sphere of state autonomy with respect to family law, and the assimilation in both opinions of education and the family. Education and the family are indeed similar to the extent that we see them as places in which values are shaped. State autonomy in these areas then becomes important for preserving value-pluralism.

30. DONALD KOMMERS, THE CONSTITUTIONAL JURISPRUDENCE OF THE FEDERAL REPUBLIC OF GERMANY 79 (1989). A full discussion of the German Constitutonal Court's treatment of *Bundestreue* as of 1981 is PHILIP M. BLAIR, FEDERALISM AND JUDICIAL REVIEW IN WEST GERMANY 146–206 (1981).

rightful prerogatives of the other."[31] As one German judge put it, "the principle intervenes in those cases in which the interests of the [nation] and the [states] are at variance in such a way that damage would be caused to the one side (and thereby indirectly to the whole) if the other side were to undertake its measures...exclusively in accordance with its own interests."[32]

In the United States a similar principle underlies *Gregory v. Ashcroft*'s requirement of a clear statement of Congress' intention to displace state decisions in areas fundamental to state sovereignty,[33] and various other doctrines. Perhaps more interesting, a principle akin to *Bundestreue* pervades much congressional and executive decision-making, when Congress and the President defer to state authority as a matter of policy and political morality rather than constitutional command.[34] Such a principle might provide yet another defense of the majority's approach to federalism questions in *Garcia v. San Antonio Metropolitan Transit Authority*.[35]

In German constitutional law, *Bundestreue* is a reciprocal obligation, running from the states to the nation too. Analogues in U.S. constitutional law are harder to identify. As among the states, dormant Commerce Clause doctrine certainly resonates with the idea of *Bundestreue*. As Justice Cardozo put it in *Baldwin v. G.A.F. Seelig*, the Constitution "was framed upon the theory that the peoples of the several states must sink or swim together, and that in the long run prosperity and salvation are in union and not division."[36] As between the states and the nation, however, doctrinal analogues in U.S. constitutional law are hard to find. Preemption doctrine, often seen as the imposition of a national norm from above, might be understood as an effort to insist that state governments take national interests into account. But preemption law seems to be more purely legal than *Bundestreue*, which operates to impose duties in the fuzzy border between law and political morality. When we are dealing with the states' duties to the nation, the words *faith* or *loyalty* capture what is involved better than the word *comity* does.[37] States demonstrate faith in the federal system when they willingly accept national action, even if some in the states disagree with the substance of the national action and even if some disagree even with the assertion of national authority over the area in which the nation has acted. Remarkably to a scholar of U.S. constitutional law, the German Constitutional Court invoked *Bundestreue* to find impermissible state-level

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31. *Id.* Kommers points out that in Germany, a more homogeneous nation than the United States, federalism serves to ensure "state-qua-state participation in the national policy-making process so that no Hitler-like figure could ever again democratically get control of the nation." Letter from Donald Kommers to Mark Tushnet (May 24, 1996) (on file with author).

32. Quoted in BLAIR, *supra* note 29, at 190.

33. 501 U.S. 452, 464 (1991).

34. Taken as a whole, Blair's discussion indicates that at least as of 1981 there was substantial controversy over the degree to which *Bundestreue* is a judicially enforceable legal principle rather than a principle of political morality to guide legislators. As with federalism in the United States, there is no doubt that *Bundestreue* is a judicially enforceable principle to some extent but there is also doubt about how far the enforceable principle extends. BLAIR, *supra* note 29.

35. 469 U.S. 528 (1985). Congress in providing for waivers of national rules regarding the provision of public assistance and the President in granting such waivers defer to state authority in this way, for example.

36. 294 U.S. 511, 523 (1935).

37. Francis Van Nuffel, a student in a seminar on comparative constitutional law during the Spring semester of 1996, brought this point to my attention.

advisory referenda on whether the German army should be given atomic weapons.[38] The Court stressed that the referenda, conducted on the local level, were actually "a concerted nation-wide attempt to achieve the political effect" that a national decision would have.[39] The resonances with the term limits movement and with Justice Stevens' majority opinion in *Term Limits* are reasonably clear.

How does *Bundestreue*, running in both directions, arise? Neither states nor the nation are entities that can actually have faith or loyalty. Those are characteristics of individuals. Loyalty to both the state and the nation arises, as Justice Kennedy put it, because the framers "split the atom of sovereignty."[40] Each citizen can be equally loyal to both a single state and to the nation as a whole. Federalism cannot succeed if either loyalty is undermined. There must be an undifferentiated citizenship of the United States, and such a citizenship may not be either primary *or* secondary with respect to state citizenship. Professor Nagel is quite right in arguing that the direct consequences of state-adopted term limits for national legislators would probably have been small. Still, one might have real concern about Justice Thomas' opinion because it rejects both of those prerequisites to success with a rhetoric that contributes to the erosion of the U.S. equivalent of *Bundestreue*.

To this point I have described how the United States is constituted by our commitment to the Declaration's universalist principles, have indicated how the tensions between that commitment and a value-pluralist federalism might be alleviated, and have suggested that the disagreement in *Term Limits* involved competing descriptions of our self-understanding as a nation. I would like to conclude these comments by making explicit my defense of those descriptions. In part the defense is embedded in the enterprise of identifying how the people of the United States constitute ourselves. Simply put, it is valuable to correctly understand who we are.

The descriptive claim is that the people of the United States are constituted by our commitment to the Declaration's universalist principles; the embedded normative claim is that we should not be other than what we are.[41] This is not to say, as Professor Nagel appears to suggest in his criticism of radical nationalism's suspicion of politics, that the content of our commitment—the specification of our nation's universalist principles—is incontestable, or even that contests over that content must be resolved in the courts rather than through politics. Oddly, Professor Nagel has aligned Justice Thomas with those post-modernists who deny the existence of universalist principles, and celebrate an ineradicable value-pluralism that divides rather than unifies the people of the United States.

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38. The Atomic Weapons Referendum Case, described in BLAIR, *supra* note 29, at 172–76.

39. *Id.* at 173.

40. U.S. Term Limits v. Thornton, 115 S. Ct. 1842, 1872 (1995) (Kennedy, J., concurring).

41. One implication of this argument is that our diverse identities, of the sort associated with contemporary identity politics, are secondary to our identity as the people of the United States. It seems worth noting, therefore, that the dissenters in *Term Limits* articulate a conception of American self-understanding more consistent with contemporary identity politics than the conception articulated by the majority.

An independent normative claim, of course, is that the Declaration's principles are transcendentally correct.[42] I side with Lincoln on both of those claims.

42. This position rejects federalism with respect to the Declaration's principles, which is why, I take it, Lincoln led the United States—not "the North"—in the Civil War.