

ARTICLE

Response

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ABSTRACT: The response aims at detecting additional angles in Benhabib's problematic and adding some variables to its potential resolution. I examine two such variables. One concerns the rights-bearing subject. Benhabib addresses the tension between individual universal rights and sovereign self-determination by positing a modified Kantian 'cosmopolitan federalism'. While I can support this thesis, I see a whole other reality in the making that offers additional kinds of resolutions as well as a repositioning of cosmopolitan federalism in a different field of forces. Critical here is the incipient denationalizing of citizenship which is taking place *inside* the nation state, and hence is not predicated on post-national and transnational conditions for citizenship. Such resolutions are precluded in Benhabib's text because of the closure she projects onto the nation state. The second variable I discuss addresses precisely this question of the state today – that is to say, in a context of the ascendance of an international human rights regime and of globalization. Benhabib sees the national and the global as mutually exclusive. In my own research I see a process whereby global logics get partly constituted inside the nation state and the state apparatus itself, producing, again, an incipient denationalizing of what historically was constructed as national. This opens up possibilities for cosmopolitan federalism that Benhabib overlooks given her national/global binary.

KEY WORDS: *denationalized citizenship, rights-bearing subject, subnational constitution of the global, variability of closure*

Benhabib makes two foundational contributions in this book.¹ One is to bring philosophical thinking to the question of immigration, most particularly the question of the incorporation of non-citizens in liberal democracies.² The second is her notion of democratic iterations, by which she means a complex process of public argument, deliberation and learning through which formal political change can take place – more precisely, through which national polities can commit to constitutional and international norms when mediated by the will of democratic majorities.³ While other scholars have explored various dimensions of the possibility of a new kind of cosmopolitan politics,⁴ it is Benhabib's signal distinction to have developed a notion of cosmopolitan federalism that can, I will argue, accommodate more interpretations of the current political landscape than her own.

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The two contributions arise partly out of Benhabib's understanding of political membership in liberal democracies as pivoting between claims for sovereign self-determination, on the one hand, and adherence to universal human rights principles on the other. This tension is 'the constitutive dilemma at the heart of liberal democracies'.⁵ There are, in principle, many ways of examining this tension. For Benhabib, 'transnational'⁶ migrations are one powerful lens that illuminates constraints and possibilities in this tension, an observation I strongly agree with.

Benhabib builds her argument on a number of propositions, too many to discuss in depth in such a brief comment. I found most compelling those propositions arising out of her careful and persuasive disaggregating of pertinent philosophical arguments in Kant, Arendt and Rawls.⁷ In this precise and knowledgeable dissecting she gives us critical instruments to expand the analytic terrain within which to pose the question of immigration and formal membership in liberal democracies. Once she leaves this type of scholarship, she has set the terms for her argument. It is some of these terms that I want to address here.

Benhabib's argumentation – always brilliant, perceptive and generative of multiple theoretical and political possibilities – rests on a specific type of closure. My problem is not with closure per se; it is necessary for a tight argument. It is rather with the specific type of closure on which at least some of her argument rests, a closure that precludes variables I happen to think are critical. Further, I see these variables as actually contributing to additional possible resolutions of critical elements in the tension that is foundational for her argument – the tension between sovereign self-determination and universal principles.

Thus my comments are in the spirit of detecting additional angles in Benhabib's problematic and adding some variables to its potential resolution. I will confine myself to two such variables, and will have to refer the interested reader to other pertinent texts and scholars for a fuller account. One of these variables concerns the question of the rights-bearing subject. Benhabib addresses the tension between individual universal rights and sovereign self-determination by positing a modified Kantian 'cosmopolitan federalism'. While I can appreciate and support this thesis, I see a whole other reality in the making that offers other kinds of resolutions as well as a repositioning of cosmopolitan federalism in a different field of forces. However, such resolutions are precluded when the terms of the tension are conceived of as mutually exclusive, which is how they are partly are in Benhabib's text because of the closure she projects onto the nation state. The second variable I discuss addresses precisely this question of the state today – that is to say, in a context of the ascendance of an international human rights regime and of globalization. Benhabib sees the national and the global as mutually exclusive; what bridges between the poles of this binary is at best what she refers to as the fraying of the nation state today under the impact of globalization.

I will first focus briefly on the binary of the national and the global, and then return to Benhabib's argument and show how overriding that binary actually

would conceptually advance the project she proposes, or, differently put, contribute to resolve the foundational tension she identifies in liberal democracy.

If we were to Recognize that the Global is Partly Constituted Subnationally

What happens to some of Benhabib's propositions once we insert variables that partly dilute the foundational tension on which she rests her argument? While Benhabib's drawing of the political landscape corresponds, without doubt, to the dominant one at the moment, there are realities in the making that are unsettling those alignments. This unsettling does not have to do with the end of the state. It is, rather, the outcome of far less evident processes operating in multiple ways – often microscopic, often specialized and often obscure. Further, because these processes take place deep inside national settings, they keep being coded, represented and experienced in the language of the national. But they are not: they are in fact denationalizing what has historically been constructed as national.

Benhabib's understanding of the character of the relationship between nation states and universal principles such as the human rights regime is predicated on a binary whereby the national and the global are mutually exclusive. There is a similar binary at work in the analysis when she deals with globalization and its fraying of the nation state. These two binaries provide her with analytic tools for closure and hence for establishing the constitutive tension at the heart of liberal democracies.⁸ I agree with the fact of that tension *when* such closure is part of the framing. What I want to add is a set of processes that are unsettling the two sides of that tension and thereby repositioning the meaning of the national.

I come to these subjects from a very different angle than does Benhabib, and hence come with different interpretive categories. My research of the last 15 years shows that such binary analytics keep us from adequately understanding the foundational transformation afoot today, one that is partial but consequential.⁹ While most of the attention in this regard is on the development and expansion of a self-evident global scale, the processes of denationalization referred to are also, and perhaps even more, critical. In my work I have focused especially on the partial and specialized denationalizing of what have historically been foundational components for the nation state: territory, authority and rights.

Seen through this lens, several issues addressed by Benhabib lose some of their moorings, and begin to point to novel types of problematics; these do not necessarily override her critical questions, but they do alter the analytic terrain within which to pursue the inquiry. What specifically would be the impact on her argument from losing closure – and hence the disciplined argumentation enabled by that constitutive tension – is not immediately clear, given the complexity and nuances in Benhabib's argument. Further, her 'cosmopolitan federalism' is a category that can accommodate multiple closures, not only the one of self-determining sovereign entities. It is not incompatible with the notion of multiple

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specialized reassemblings of bits of territory, authority, and rights that are neither purely national nor purely global,¹⁰ to which I will return.

One of my core hypotheses is that the foundational, albeit partial, changes we see in the current phase of globalization are partly instantiated and constituted through foundational changes inside the state apparatus.¹¹ These changes result from active *making* by state entities, not just Benhabib's 'fraying' of the nation state. The emerging apparatus of global institutions and dynamics and the power of transnational firms are a critical part of the transformation. But my thesis is that, if this transformation is indeed epochal, it has to engage the most complex and accomplished institutional architecture we have historically produced: the national state. Global-level institutions and processes are currently relatively thin and underdeveloped compared to the private and public domains of any reasonably functioning sovereign country. The engagement between the national and the global cannot be reduced to the victimhood of national states at the hands of globalization, as is so often argued. The national is still the realm where complexity, formalization and institutionalization have all reached their highest level of development, though they rarely reach the most enlightened forms we might conceive of. Territory, law, economy, security, authority and membership all have largely been constructed as national in most of the world, albeit rarely with the degree of autonomy posited in national law and international treaties. For today's globalizing dynamics to have the transformative capacities they evince entails far deeper imbrications with the national constitution of territory, authority, and rights than the prevailing analysis of globalization recognizes or allows us to recognize.

This conceptualization does not preclude Benhabib's emphasis and focus on the richness of the political community shaped through sovereign self-determination, and the proposition that it remains critical for understanding and constituting political membership. And it does coincide with Benhabib's emphasis on national rather than on post-national forms of membership. Indeed I have worked hard at recovering the importance of transformations inside the national to understand changes in citizenship today, in contrast with the prevailing concern with post-national and transnational forms of citizenship. Where I do diverge sharply from Benhabib's framing is in her assumption that the global is exogenous to the national, and hence that these are two mutually exclusive conditions. I should add immediately that I am fully aware that my position is definitely the minority position in the larger debate; it is a sort of third position, one that does not align either with those who argue that nothing has basically changed and the national state remains fully in charge, or with those who argue that globalization spells the end of the state as we have known it, and thus of the nation state.

Instantiations of the global in good part structured inside the national do not need to run through the supranational or international treaty system. Nor do they need to run through the new types of global domains that have emerged since the 1980s, such as electronic financial markets or global civil society. These trans-

formations include particular and specific components of a broad range of entities, such as the work of national legislatures and judiciaries, the worldwide operations of national firms and markets, political projects of nonstate actors, translocal processes that connect poor households across borders, diasporic networks, and changes in the relationship between citizens and the state. They reorient particular components of institutions and specific practices – both public and private – toward global logics and away from historically shaped national logics (where national logics include international operations, thus to be differentiated from current global ones). Understanding the epochal transformation we call globalization must include studying these processes of denationalization.

Thus the epochal transformation we call globalization is taking place inside the national to a far larger extent than is usually recognized. It is here that the most complex meanings of the global are being constituted, and the national is also often one of the key enablers and enactors of the emergent global scale. A good part of globalization consists of an enormous variety of micro-processes that begin to denationalize what had been constructed as national – policies, capital, political subjectivities, urban spaces, temporal frames, or any other of a variety of dynamics and domains. Sometimes these processes of denationalization allow, enable or force the construction of globally scaled dynamics and institutions; at other times, they continue to inhabit the realm of what is still largely national.

The human rights regime, of direct concern to Benhabib's argument, illustrates how a non-national regime gets filtered into a national state apparatus without overriding the formal distinctiveness of, respectively, a national state and an international regime. This specific type of process is what I conceptualize as denationalization – partial, specialized and not necessarily self-evident. Harold Koh has perhaps given us one of the sharpest formulations of this process when he examined how human rights norms get filtered through the national system, gradually become stabilized meanings, and eventually are federalized, that is to say, part of national law.¹²

Developments within the European Union make some of these processes particularly legible given the extent of cross-border institutionalization. The complex shift in the locus of the individual as a result of the ascendance of the judiciary in the Europeanization of rights, can be seen as moving matters beyond the common interpretation of tensions between the EU level and its national member states. Jacobson and Ruffer argue that the struggle between, on the one hand, the European Court and national judiciaries, and, on the other, national executives and legislatures, is a struggle between an increasingly individual-centred form of the political and the state's republican national project.¹³ This growing role of the judiciary is predicated in good part on the increasing density of the law, which promotes individual rights and prerogatives.¹⁴ The judiciary mediates and adjudicates this web of law, at national and regional levels, for both domestic and international law. In this shift toward the judiciary, the authors see

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the rise of a form of agency that is centred in individuals, not states. Further, Jacobson and Ruffer find much significance in the transfer of the coordination of immigration policy from the third pillar in the EU to the first pillar:

Legal provisions emanating from the third pillar are not part of community law; they are norms regulated by public international law. In contrast, legal instruments emanating from the first pillar become part of European Community law and are binding on each member state.

Moreover, given that ‘individuals have the legal capacity to invoke first pillar laws and bring them to bear against member states, the changes of the Amsterdam Treaty may give the judiciary, here the European Court of Justice, more control over immigration policy’.¹⁵ The now formalized commitment of the EU to human rights under the Amsterdam Treaty may enhance the European Court of Justice’s authority in such matters over member states.

I would argue that these EU realignments contain a partial overriding of the familiar binary between the national and the universal. The EU case discussed entails an endogenizing of the non-national (the universal) inside the national, without eliminating the national state. It is worth noting that it is court cases about immigrants and asylum seekers that have been critical in constituting that judicial development. This type of instance does not quite fit Benhabib’s assertion that ‘Under these conditions, territoriality has become an anachronistic delimitation of material functional and cultural identities’, nor her qualifier ‘yet even given the collapse of traditional concepts of sovereignty, monopoly over territory is exercised through immigration and citizenship policies’.¹⁶ But it does support her larger vision of a federated cosmopolitics, the possibility of novel ways of constructing membership that do not require the elimination of the nation state.

Elsewhere I have examined a series of reassemblings of specific bits of territory, authority and rights, once encased in nation states and now redeployed onto other scalings, both subnational and global. I think these assemblages, often specialized and obscure, represent new forms of territoriality – assembled out of ‘national’ and ‘global’ elements, each with distinct spatiotemporal features. (To capture such mixed assemblages I have developed the category of analytic borderlands.) It seems to me that, even as such assemblages qualify Benhabib’s assertion of territoriality as anachronistic, they also open up new possibilities for her larger project of a substantive cosmopolitan federalism in that they begin to solve the ‘growing normative incongruities between universal human rights and assertions of territorial control by nation-states’.¹⁷

An instance of such a type of territoriality is getting constituted through the development of new jurisdictional geographies.¹⁸ The last few years have seen a kind of legal action that involves multiple geographic sites across the globe and, important for my argument, can today be launched from national courts, using national enabling legislation. They do not have to go through international courts. They produce a transnational geography for national lawsuits. A good

example is the lawsuit launched by the Washington-based Center for Constitutional Rights against nine US and foreign multinational corporations for abuses of workers' rights in their offshore industrial operations.¹⁹ Thus, in addition to new types of courts and legal instruments, today we see components of the rule of law (national courts and national legal instrument) that once served to build the strength of the national state contributing to the formation of transnational jurisdictions – transnational in that they are not formal inter-state treaties or arrangements.

Although these emergent territorialities are diverse and often highly specialized and partial, they evince specific features. One of these features, pertinent to this comment, is that they are not exclusively national or global but are assemblages of elements of each. Second, in this assembling they bring together what are often different spatio-temporal orders, that is, different velocities and different scopes. Third, this can produce an eventful engagement, including contestations and the frontier zone effect – a space that makes possible engagements for which there are no clear rules, engagements not foreseen in international treaties. The resolution of these encounters is not always clear and it can become the occasion for playing out conflicts that cannot easily be engaged in other spaces. Fourth, novel types of actors can emerge in these novel assemblages, often with the option to access domains once exclusive to older established actors, notably national states. Finally, in the juxtaposition of the different temporal orders that come together in these novel territorialities, old logics can find new domains for deployment.

These specialized assemblages I identify begin to unbundle the traditional territoriality of the national but they do not necessarily render territoriality *per se*, using Benhabib's words, 'an anachronistic delimitation of material functional and cultural identities'. Further, I am inclined to see in these emergent assemblages of territory, authority and rights a terrain for political work that can override the binary and the tension on which Benhabib centres her argument, and that can in fact enable some of the resolutions she proposes, most importantly her notion of 'democratic iterations'. Such iterations 'not only change established understandings in a polity but also transform authoritative precedents'. In that sense, a people is not only 'the subject but also the author of its laws'. To some extent, then, I see these emergent assemblages as one kind of terrain for what Benhabib describes as the new politics of membership, a politics that 'is about negotiating this complex relationship between the rights of full membership, democratic voice, and territorial residence'.²⁰

In my own research I have found that using territory, authority and rights – rather than the binary of the national and the global – helps me avoid endogeneity (see n. 9) and to work with the national and the global as constructed conditions. These three variables are both transhistorical in that they are present in almost all societies, and deeply historical in that they take on specific contents, shapes and interdependencies in each historical formation.²¹ One can then examine in great detail how they become assembled into the national, or self-determined

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sovereignties, and disassembled/reassembled into global and denationalized formations.

Across time and space, territory, authority and rights have been assembled into distinct formations within which they have had variable levels of performance. Further, the types of instruments and capabilities through which each gets constituted vary, as do the sites where each is in turn embedded – private or public, law or custom, metropolitan or colonial, national or supranational, and so on. I would like to revisit many of the critical contributions Benhabib makes in this book through the lens of these three variables. I think it would be rewarding work precisely because Benhabib has elaborated some of the critical instruments for a cosmopolitan federalism.

The Rights-Bearing Subject: Who is she Today?

Benhabib examines the inadequacy of using notions of world citizenship and the end of national states as theoretical resolutions for the tension between self-determination and universal principles in liberal democracies. I fully agree with this. I also agree with her observations on post-national citizenship as an inadequate way of resolving that tension, no matter its significance as an aspiration. Where I diverge from Benhabib is in her overlooking the possibilities arising out of the type of analysis briefly presented in the preceding section. The fact of denationalization signals that world citizenship and post-national citizenship are not the only options to juxtapose to an emphasis on sovereign self-determination as critical to substantive forms of political membership.

Let me start with post-national citizenship. Benhabib reminds us that the project of post-national solidarity is ‘a moral project that transcends existing state boundaries’ and that nowhere are the tensions between the demands of post-nationalism and ‘the practices of exclusive membership more apparent than at the site of territorial borders and boundaries’.²² Put this way, I cannot disagree. My problem is with Benhabib’s understanding of closure – the closure presumed in border controls and policing.²³

This comes through, for instance, when after her review of the human rights regime she asks what should be the guiding normative principles of membership in a world of increasingly deterritorialized politics? How do we incorporate these norms in the philosophical self understanding and constitutional commitments of liberal democracies? As the case of the EU discussed earlier or the work of Harold Koh on the US show us, these norms are being incorporated, and in this process are getting territorialized. Incorporating these norms is not conditioned on deterritorialized politics. It is conditioned on specialized denationalization inside the national. In this sense, I am making an argument similar to the one in the preceding section: my problem is not with closure per se but with how Benhabib positions closure.

440 There is a second set of issues where I find Benhabib’s construction of closure

problematic. It has to do with the historical grounds, besides the moral ones emphasized by Benhabib, for claiming rights for immigrants and refugees. This is a whole subject onto itself, and this short comment is not the place to develop it.²⁴ My argument is that immigrants who are part of mass migrations have accumulated claims grounded in the fact that receiving states can be shown to have been active co-participants in the initiation of emigrations (through their economic or military activities, including the resulting 'bridges' between often very diverse countries). Today, those IMF globalization-linked programmes that have had devastating effects on traditional economies can also be seen as having de facto promoted emigration for survival. Critical to my analysis is how mass migrations are initiated, given that poverty and underemployment have long existed in many countries and only become emigration push factors under specific conditions.²⁵ While the responsibilities of receiving states have been recognized in the international refugee regime for war-linked refugees, it is much more difficult to establish these responsibilities vis-à-vis economic migrants. Recognizing such historic grounds for immigrants' claims on receiving states alters the normative question: it is not merely a matter of kindness by receiving states or their disposition towards respecting universal principles. It is also a matter of their shared responsibility for the outcome, in this case, mass emigrations out of other countries.

The significance of the denationalizing dynamics examined in the preceding section for cosmopolitan federalism is that the tension between self-determination and universal principles is less of a binary than its representation suggests. The issue is rather where we locate closure. Thus I agree with Benhabib's proposition about the need for 'democratic attachments, and that these might or not involve the nation state, but that 'democratic governance implies drawing boundaries and creating rules of membership'.²⁶ Benhabib posits that as the institution of citizenship is disaggregated (ch. 4) and state sovereignty weakened, we see the emergence of sub- and supranational spaces for democratic attachments and agency.²⁷ She argues it is important to respect the claims of diverse communities 'while strengthening their commitments to emerging norms of cosmopolitical justice'. The manner in which closure is constructed in Benhabib's argument overlooks critical processes that are taking place and override the binaries on which much of her argument rests. Clearly, the rights articulated through the subject of the citizen are of a particular type and cannot be easily generalized to other types of subjects. Yet the complexity and multiple tensions built into the formal institution of citizenship make it a powerful heuristic for examining the question of rights, especially at a time of changes in the constituting of the national, such as those discussed in the preceding section.

Building on such complexity, an organizing thesis in my research and theorization is that citizenship is an incompletely theorized contract between the state and its subjects.²⁸ Further, it is meant to be incomplete, given the historically conditioned meaning of the institution of citizenship. This incompleteness makes it

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possible for a highly formalized institution to accommodate change – more precisely, to accommodate the possibility of responding to change without sacrificing its formal status. Incompleteness also brings to the fore the work of *making*, whether it is making in response to changed conditions, to new subjectivities or to new instrumentalities. This point of incompleteness is where I locate my inquiry.

Some of today's major transformations may give citizenship yet another set of features as it continues to respond to the conditions within which it is embedded. The nationalizing of the institution that took place over the last several centuries may give way to a partial denationalizing. The critical implication for the analysis in this comment is that citizenship, even if situated in institutional settings that are 'national', is a possibly changed institution if the meaning of the national itself has changed. It is an open question – empirically, operationally, and theoretically – whether this will also produce forms of citizenship completely located outside the state, such as post-national citizenship. But the point here is that citizenship need not go post-national to undergo foundational change.²⁹ This type of distinction is precluded by Benhabib's argument as long as it is centred in nation-state closure and the mutual exclusivity of the national and the non-national. However, it is not precluded by her conception of cosmopolitan federalism. On the contrary, the latter project would in principle be enabled by this possibility.

While the distinction between the partial denationalizing and the postnationalizing of citizenship may seem, and indeed be, unnecessary for certain types of inquiry, it is an illuminating one if the effort is to tease out the changes in the institutional order within which citizenship is embedded. It puts the focus on the national rather than on the non-national settings within which some components of citizenship may eventually be, and to some extent already are, embedded. It does suit my concern with understanding the subnational constitution of critical aspects of today's foundational transformation, which we keep calling globalization. Other instances of this subnational constitution can be found in Koh's already mentioned model of transnational legal process, Rubenstein and Adler's model of effective nationality, and in my model of the global city. This brings with it the need to decode what is national in some of the institutional and territorial settings we continue to see or represent as national. It suggests that the rearticulation of the spatiotemporal relations between universality and particularity is one of today's critical dynamics.

Along these lines of inquiry, the embeddedness of citizenship in the national produces its own specific task for research and theorization. I would differentiate this task from that of identifying the ways in which citizenship – for example, in its psychological dimension and in its practices – may be evolving toward non-national locations. The relationship between these two dynamics – citizenship transformed inside the national state and citizenship located outside the national state – is itself a subject for research and theorization. And it is a distinction that in my reading can accommodate some of the key issues in Benhabib's argument, even though it unsettles her concept of closure.

Nationality itself is a variable undergoing change.³⁰ It can no longer be easily deployed as a singular condition and in this regard may well evolve into an instance of Benhabib's 'constitutive tensions in liberal democracies'.³¹ Some of the main dynamics at work today are destabilizing its singular meaning; we can see this, for example, in the granting of dual nationality and the incorporation of international human rights norms in national law referred to earlier. This is also happening in nonformalized ways, for example, granting undocumented immigrants in the United States the 'right' to mortgages so they can buy homes. At the same time, denationalizing processes can feed nationalizing dynamics in separate though at times connected domains – for example, the denationalizing of certain components of our economy and the renationalizing in some components of our immigration policy. When this happens, the tendency has been to focus on the renationalizing. Immigration has particularly invited such interpretations, obfuscating some of the distinctions developed in this comment.

Denationalizing and self-evidently global dynamics, each destabilize existing meanings and systems and do so in specific ways. This raises questions about the future of crucial frameworks through which modern societies, economies and polities (under the rule of law) have operated. Examples of such frameworks are the social contract of liberal states; social democracy as we have come to understand it; modern citizenship; and the mechanisms that render certain claims legitimate and others illegitimate in liberal democracies. The future of these and other familiar frameworks is rendered dubious by the unbundling of the basic organizational and normative architectures through which we have operated, particularly over the last century. These architectures have held together complex interdependencies between rights and obligations, power and the law, wealth and poverty, allegiance and exit. From the perspective of liberal democracies there are both negative and positive potentials associated with this destabilizing of existing arrangements.

Conclusion

Critical to my argument in this comment is the fact of foundational transformations not predicated on mutually exclusive national and global realms, with the latter typically seen as producing the unsettling. Nor is it the case that we can assume that the ongoing existence of a national state signals the continuity of the type of closure entailed by self-determination. The meaning of the national, including of full nation-based formal membership (citizenship) may well be undergoing changes sufficiently sharp as to reposition the distinction between members and non-members. Such changes inside the national signal that foundational transformation in the meaning of membership may not require post-national forms of citizenship. They may be centred in the denationalizing of what has historically been constructed as national.

This allows me to argue for a repositioning of the self-determination of

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bounded communities that Benhabib's sees as necessary for cosmopolitan federalism and as producing an almost unresolvable tension with the equally important fact of universal principles. This tension may not quite be the obstacle that it is in her argument. The fact of a partial denationalizing of citizenship opens up the terrain for another type of resolution of that constitutive tension: the possibility that this historically constitutive tension is being shifted to a less significant place today as a result of multiple, often highly specialized, micro-transformations, both formal and informal in the meaning of nation-state closure. The meanings of each self-determination and bounded communities of membership are unsettled by the processes of denationalization discussed in this comment. Benhabib's insertion of closure and mutual exclusivity between the national and the global is today theoretically and politically less foundational. To repeat, my problem is not with closure per se. My concern is with the way in which Benhabib sets closure in her argument, and the consequences this brings for what can be conceived of as resolutions of that tension. But I also argued that while the tension between sovereign self-determination and universal principles is critical to her argument about liberal democracies, it is not so for her substantive concept of cosmopolitan federalism. Herein may lie a fruitful dialogic development.

Notes

1. Seyla Benhabib (2004) *The Rights of Others. Aliens, Residents and Citizens*. Cambridge: Cambridge University Press.
2. Ibid. chs 1–3.
3. Ibid. ch. 5.
4. Ulrich Beck (2006) *Cosmopolitan Vision*. Cambridge: Polity. Kwame Anthony Appiah (2006) *Cosmopolitanism: Ethics in a World of Strangers*. New York: Norton.
5. Seyla Benhabib (2002) *Democratic Equality and Cultural Diversity: Political Identities in the Global Era*. Princeton: Princeton University Press. However it is important to note that, for Benhabib, some practices of democratic closure are more justifiable than others; further, potentially all practices of democratic closure are open to challenge, resignification and deinstitutionalization.
6. If we were to stick to the more precise definition of transnational when the term was first launched as a category for analysis, then Benhabib's use of the term here is not what she intends. In that original framing, the term allowed us to isolate cross-border processes that do not run through the formal state apparatus, and are thus to be distinguished from the far more common notion of international processes. Joseph Nye Jr. and Robert Keohane (eds) (1977) *Transnational Relations*. Cambridge, MA: Harvard University Press. The term was subsequently given an empirically richer meaning in the work of the following. Alejandro Portes, Luis E. Guarnizo and Patricia Landolt (1999) 'The Study of Transnationalism: Pitfalls and Promise of an Emergent Research Field', *Ethnic and Racial Studies* 22(2): 217–37. Saskia Sassen (1988) *The Mobility of Labor and Capital: A Study in International Investment and Labor Flow*. Cambridge: Cambridge University Press. Linda Basch, Nina Glick Schiller and Cristina Blanc-Szanton (1994) *Nations Unbound: Transnational Projects, Postcolonial Predicaments, and Deterritorialized Nation-States*. Langhorne, PA: Gordon & Breach. But the term remained centred in that distinction, one from which it derived its power as a distinct category. Given Benhabib's focus on

state sovereignty, formal political incorporation, and border controls, the term international is probably the more appropriate one, as is the term universal for that which transcends nation states. I will proceed in this text as if she was indeed referring to cross-border processes that involve the formal interstate apparatus – and thus assume the operative term is international.

7. Benhabib (n. 1), chs 3–5.
8. Using different analytic tools and substantive categories, the legal scholar Linda Bosniak has developed a problematic that is not unlike Benhabib, but focused on a different set of conditions. (2000) ‘Universal Citizenship and the Problem of Alienage’, *Northwestern University Law Review* 94(3): 963–84. (2006) *The Citizen and the Alien: Dilemmas of Contemporary Membership*. Princeton: Princeton University Press.
9. A key proposition long guiding my research is that we cannot understand the x (in this case globalization) by confining our study to the characteristics of the x itself (in this case, global processes and institutions). Such confinement is a kind of endogeneity trap, one common in the social sciences and spectacularly so in the globalization literature. The basic position in that literature is to explain globalization as growing interdependence, the formation of global institutions, and the decline of the national state; the most persuasive organizing fact in these descriptions is the power of transnational corporations (TNCs) to override borders and national governments or of the new telecommunications technologies to compress time and space. This amounts to describing globalization in terms of its distinctive features; it is not an explanation of globalization.
10. Saskia Sassen (2006) *Territory, Authority, Rights: From Medieval to Global Assemblages*, part 3. Princeton: Princeton University Press.
11. Saskia Sassen (1996) *Losing Control?: Sovereignty in an Age of Globalization*, ch. 2. New York: Columbia University Press. Sassen (n. 10), chs 4, 5 and 6.
12. Harold Hongju Koh (1997) ‘How is International Human Rights Law Enforced?’, *Indiana Law Journal* 74(4): 1397–1417.
13. David Jacobson and Galya Benarieh Ruffer (2006) ‘Courts Across Borders: The Implications of Judicial Agency for Human Rights and Democracy’, in Marco Giugni (ed.) *Dialogues on Migration Policies*, pp. 24–43, p.28. Lexington, MA: Lexington Books.
14. Ibid. pp. 29–30. For example, to mention just one of the more recalcitrant EU members, in 2000 Britain incorporated the bulk of the European Convention on Human Rights into domestic law. The British Parliament adopted the Human Rights Act of 1998 in Nov. 1998; it became effective in Britain in Oct. 2000.
15. Ibid. p.29.
16. Benhabib (n. 1), pp. 5.
17. Benhabib (n. 1), pp.6.
18. This represents but one of the three very diverse types of such novel cross-border territorialities I identify (n. 10), ch. 8. Further, another type of reassembling is evident in the sharpening alignment inside the state apparatus among the different branches of government in liberal democracies (n. 10), chs 4 and 5. Very briefly, I argue that deregulation and privatization have hollowed out the legislative branch of government and added new powers to the executive branch of government. In addition, the executive branch increasingly is aligned with global institutions – e.g. when a country becomes an IMF programme country, the IMF will only deal with the executive branch; so-called ‘fast track’ for trade negotiations means that the executive branch handles what the legislature should be handling), while legislatures become increasingly ‘domestic’.
19. Beth Stephens (2001) ‘Corporate Liability: Enforcing Human Rights through Domestic Litigation’, *Hastings International and Comparative Law Review* 24: 401–13.
20. Sassen (n.10), ch. 8. Benhabib (n.1), pp. 19, 20.

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21. Territory, authority and rights are complex institutionalizations constituted through specific processes and arising out of struggles and competing interests. They are not simply attributes. Further, they are interdependent, even as they maintain their specificity.
22. Benhabib (n. 1), pp. 17.
23. Elsewhere I have examined the formation of multiple specialized bordering capabilities that are replacing conventional border institutions (n. 10), chs 8 and 9. These bordering capabilities contain a far larger range of normative orders and utility logics than traditional national state borders. They are also far more effective than immigration border controls in achieving desired outcomes in the specific domains where they function (finance, information flows, the formulation of a regime for the international circulation of professionals contained in all free trade agreements). These novel bordering capabilities are partial and their locations vary widely.
24. The notion that immigrants have grounds for claims to membership beyond those derived from universal human rights has been a key theme in my research (Sassen (n. 6) (n. 11), ch 3; (n. 10), ch 6). For variants on this distinction see Susan B. Coutin (2000) 'Denationalization, Inclusion, and Exclusion: Negotiating the Boundaries of Belonging', *Indiana Journal of Global Legal Studies* 7(3): 585–94. Peter J. Spiro (1997) 'Dual Nationality and the Meaning of Citizenship', *Emory Law Journal* 46: 1411–87. Aihwa Ong (1996) 'Strategic Sisterhood or Sisters in Solidarity? Questions of Communitarianism and Citizenship in Asia', *Indiana Journal of Global Legal Studies* 4(1): 107–35. Elsewhere Benhabib does posit (albeit for the case of asylum seekers and hence possibly confined to human rights), the more generic notion of rights that do not depend on the 'benevolence' of the receiving state. (2006) 'Response to Bhikhu Parekh, "Finding a Proper Place for Human Rights"', in Kate E. Tunstall (ed.) *Displacement, Asylum, Migration: The 2004 Amnesty Lectures*, pp. 44–55, p. 44. Oxford: Oxford University Press.
25. Sassen (n. 6).
26. Benhabib (n. 1), pp. 174.
27. *Ibid.* ch. 4.
28. With other questions in mind, Sunstein develops the notion of an incompletely theorized contract. Cass R. Sunstein (1993) 'On Analogical Reasoning', *Harvard Law Review* 106: 741–67. My use of this notion takes liberties with Sunstein's formulation. I first used this in an examination of immigration policy, arguing it should be conceived of along these lines (n. 11), ch. 3; given the complexity and multiple tensions involved in the bundle of processes we designate as 'immigration', I argued that 'immigration throws a wrench into theories of state sovereignty' and therewith can help us see particular tensions. Here I extend this analysis to the question of citizenship.
29. For details see Sassen (n. 10), chs 6 and 8.
30. Karen Knop (2002) *Diversity and Self-Determination in International Law*. Cambridge: Cambridge University Press. Kim Rubenstein and Daniel Adler (2000) 'International Citizenship: The Future of Nationality in a Globalized World', *Indiana Journal of Global Legal Studies* 7(2): 519–48. There are two broad categories of cases when it comes to nationality: standing cases and human rights cases (see Knop). Standing cases require international arbitration because they involve a conflict between two states over the nationality of an individual. What a state does to its own national is not subject to international law, but what it does to a national of another state can be if the state to whom the individual belongs takes issue on behalf of the citizen.
31. Benhabib (n. 5).