

TRANSNATIONAL DEMOCRACY, LEGITIMACY AND THE EUROPEAN UNION

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Abstract

Nowadays the ongoing global crisis has triggered an issue how to set up a theoretical framework of global governance. The integration to a supranational level of governance has been a contemporary process of democratization in recent decades. To analyze the institutionalization of global governance means to recognize a normative idea of democracy. The theory of international relations demonstrates that there are four normative models of democracy at the supranational level of governance. In my opinion, a crucial difference of the institutionalization is a concept of legitimacy of global democratic regime. Because of a divided understanding of legitimacy at the transnational level of governance is difficult to find a consensus in which way should be a transnational democracy framed. A dual legitimacy in a supranational organization like the European Union also triggers a specific democratic deficit. My point of view corresponds with the division of transnational orders in normative way and its correspondence to legitimacy. Clarifying the duality of legitimacy can help us not only to solve all globalizing problems but of course to decide in which way we want to make the supranational organizations work.

Key words: models of a transnational democracy, dual legitimacy, European Union.

1. Introduction

Democracy is a predominant political system in the modern world. The democratic political order has already crossed the borders of a national state. Also the ongoing process of globalization has shaped a global world order to a democratic legal framework. The theoretical debate about a global world order requires a simultaneous understanding of the legitimacy as a basis for such an intervention. Why it is so important to talk about legitimacy of supranational order? According to Sartori (1987), each democratic political system relies on a principle of legitimacy. If a system loses its legitimacy, a democracy will be in a crisis. Without any support of the public view on the political order, the crisis of democracy may trigger a spill-over effect on the whole system of society, also leads to the violent form of

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organization. A new world order, which has been developing since the end of the Cold War, requires more and more transparent governance. The international organizations are either seen as a guarantee of global stability or as a natural way how to integrate nations to one global village. The two dimensions how ensure a global security and a global economy should be based on the consensus of all nations in question. In this perspective, political scientists should try to develop appropriate supranational political order, based on the essential ideas of democracy. The discussion about the global governance is not new. The development of the idea of the global governance can be understood as a tool for recognition of different types of democracy. Finding the legitimacy of supranational organizations should be in the scope of a clarifying and a classification of functions their normative systems. In order to understand the problem of legitimacy of supranational organizations, one shall apply the structuralist approach (Habermas 1996). The structuralist tradition understands global governance as a deepening process of modernization, internationalization, globalization and regionalization etc. The structural preconditions of the stability and efficiency of the democratic order have been studied intensively for the last decades (e.g. Lipset, 1988, Rustow, 1970, Moore, 1966, Huntington, 1968/1991, Inglehart, 1997, Dalton, 2000). Therefore the globalization and modernization have changed the view on the democracy at the supranational level.

Nowadays a multilevel governance in the world order needs to reflect the movements of a structuralist determination. New models of global governance, which are the consequences of the third transformation of democracy (Dahl, 1989, Held, 2006), will legalize the world order. Because of the different ways how democracy is constituted, we have already recognized several modalities of global governance. In preference of these models of global governance, there are two basic recognitions of legitimacy of global order. Firstly there is a liberal approach which relies on the understanding of a legal/positive/procedural legitimacy (Scharpf, 1999, Bodansky, 1999, Nanz, 2006). The global order is substantially based on the input legitimacy of the rule of law and also the output legitimacy of a common interest and consent. On the other hand, there is a substantive/normative legitimacy which is based on the output legitimacy of the desirable outcomes by a demos (Scharpf, 1999, Schimmelpfenning, 1996). This type of legitimacy supports the democratic ideas such as equality, justice and the efficiency of the order in the favour of the common good. The European Union as a regional and transnational political system has emphasized an example of the divided recognition of legitimacy. We can argue that the European Union is a relevant example, on which we can demonstrate movements of a democratic transformation, and also recognize a multidimensional model of legitimacy in its unique type of government.

2. Transnational democracy as a crisis of democracy?

A comparison of social theories, discussing the postmodern processes of globalization, invokes question how the system of governance can be renewed. The normative theories of modern democracy are confused about this issue, as well as the discussion about legitimacy of

this kind of systems is not clear. Theories of modern societies share a point of view that states are avoiding the anarchy by means of legitimacy. Weberian (1958) thoughts on legitimacy, which analyse the categorization of authority, impose a need for political power divided into few categories. The most notable category is legal-rational authority, established by election. A liberal theory of democracy, which deals with the representation of citizens, has emerged during the last decades and especially after the collapse of Soviet union in 1989. Francis Fukuyama (1992) argued that the liberal democracy was the winner among the ideologies. This misconceived triumphalism has spread the fascination about the discourse of modern democracy beyond the traditional nations. The idea of democracy above the national level has evoked the need to advocate a more democratic supranational order. Tony McGrew called this moment as a „transnational turn“ (McGrew, 2003, p. 500) where possible models of transnational democracy can be discussed. One can argue that the theories of supranational democracy are the third transformation of normative democracy as Robert Dahl assumed (1989). If we recognize the specific transnational systems, we will see the similarity with an additional appearance of global international actors. In this respect, we can answer the question on a multidimensionality of legitimacy at multinational level.

3. Four models of transnational democracy

Anthony McGrew (2003) recognizes four models of transnational democracy – liberal internationalism, radical democratic pluralism, cosmopolitan democracy and deliberative democracy (McGrew 2003, p. 500). Typologies of transnational democracy help us not only to define the possibility of global governance but also to provide a mapping of a complexity of global integration. Copying the historical evolution of democracy and modernization theories, a liberal internationalism is based on the rule of law and economic neo-liberalism. Global economic actors in this case are integrated into the international economic interdependence among nations. Additionally, this concept supports the ideas of transparent, responsive and accountable international governance (Falk in McGrew 2003, p.501). On the other hand, the liberal internationalism limits a transparency, the concept of classical pluralism, as a principle of equal electoral politics. Also the rule of law and also representativeness are based on a consensus of interested actors. The collective decisions are legitimated only through a negotiation of elites, nominated by the national representatives. This decision-making process is called the top-down method of creating the democracy. Question is if we can in this way talk about this kind of democracy of shared competences at supranational level? Global governance has adapted a technocratic view of transnational democracy (Falk in McGrew 2003, p.501). The lack of pluralism and free access to the mechanism of transnational democracy advocates that the transparency and accountability of the decision-making are still insufficient. It is obvious that the liberal internationalism can not ensure more effective representation of people in the world but it could even create the inequality of participation in the global political processes. On the other hand, the theory of radical pluralism tries to overcome the problem of an unequal access. The reforms of liberal

internationalism cooperates with the ideas of the forms of direct democracy and self-governance, alongside with the creation of global governance on the local level (Hutchings 1999, p.166). Direct democracy in small communities would empower the globalizing political power and representatives. The radical pluralism has adopted the methodology of bottom-up democratization by postmodernism, Marxist and civic republican democratic theories (Hutchings 1999, p. 167). This type of democratic legitimacy, which is territorially grounded, is concerned with a subsidiarity principle. Consequently, in the theories of integration, the subsidiarity means that the multi-level governance avoids the centralized structure of authority (Moravcsik, 1993/1995, Milward, 2000). Besides McGrew could not imagine the principle of global governance with the rejecting the sovereignty of global order and the rule of law. He argues that the rule of law and sovereignty make the democracy possible, even on the transnational level (McGrew 2003, p.502). The third type of transnational democracy is a cosmopolitan democracy discussed by David Held (1995), Anthony McGrew (1999) or Daniele Archibugi (2004). Cosmopolitan democracy reacts to a hierarchy of political authority at multi-level governance by designing a political order of democratic associations, cities and nations as well as of regions and global networks (Held 1995, p.234). The rule of law is constructed on the principle of a “double democratization” and constituted on a heterarchical arrangement of confederalism (McGrew 2003, p.503). So the cosmopolitan theory tries to exceed the concept of pluralism of heterogeneous societies or the concept of global civic society by globally divided authority. The subordination of regional, national and local sovereignties to a legal framework is resolved by the authorities on the diverse levels (Held 1995, p.234). The division of multinational majorities still lacks the principle of legitimacy. The creation of many global authorities and their cooperation does not address the question of the full legitimation despite cosmopolitanism, as a tradition of a liberal view of integration, takes a prism of universalism for granted. Adopting the concept of global society by moral idealism and public philosophy generates the tendency to establish a new model of imperialism. The loss of identity of cultures and societies in the world would be a challenge for the long lasting conflicts on the ethnics, cultural and national bases. The last model of transnational democracy, which has developed in political and international discourse, is a paradigm of deliberative democracy. The deliberative (or discursive) democracy overlaps essentially both the cosmopolitan and radical pluralistic theories. Rather than constructing the new model of global governance the deliberative democracy stands on the basis of the process of deliberation. The sustainability of the global order, according to the rule of law, can be democratized by the international public sphere of deliberation. As John Dryzek argues, the realization of transnational democracy depends on the essence of democratic legitimacy is not founded in the election or representation but rather in deliberation (Dryzek in McGrew 2003, p.504). From the Habermasian perspective, deliberative democracy imposes several conditions to address the common good on the national/international level. The theory is based on the public sphere where the decision-making process is creating by the participation of informed and rational actors (Held 2006, p.232). Additionally the paradigm of demos is overcome by the global public sphere of active elites and is understood in matters in which they are interested. The opportunities to

participate in deliberation are indeed vulnerable and the access to process incorporates a fundamental problem. The decision is made by the interested elites but in a missing common place and language of deliberation. The next part is dedicated to issues and typologies of legitimacy of the paradigm of transnational democracy.

4. Legitimacy in the global world order as a multidimensional concept

A normative evolution of democracy and the typologies of transnational democracy clarify a legitimacy in the global order. In my opinion this discourse addresses the core problems and challenges that should be solved before theorizing the possibility of global governance. In one side we have an ongoing globalization and structural post-materialism but on the opposite side we should cope with the problem how to legalized the processes and react institutionally to these challenges. Furthermore a legitimacy is a contemporary concept of democracy which is still accurate to be solved. The development of democracy in the national and supranational level puts up the main thesis of legitimacy. In my point of view the first option how to look at the legitimacy of global order is to spill-over the three types of functions of nation-states – political, economic and socio-cultural. Concept of common good and good will depend on the effectiveness and efficiency of government. This type is conceptualized as a substantive legitimacy (Scharpf 1999). On the other hand there is a procedural/legal legitimacy which insist on the authority legitimized by the rule of law and collective identity (Nanz 2006, p.65). On the basis of the evolution of democracy and the recognition of transnational democracies I assume that we are the witness of the achievement of both types of legitimacy in the global world order. So I shall explain the transnational democratization as a process of a dual legitimacy.

First assumption of arguing the legitimacy at transnational level, Robert Dahl (1999) puts a question if international organizations can be democratic. His criticism is strict because according to him they can not be (Dahl, 1999, p.19). The historical institutionalism of democracy which he constructed at the late of eighties proposed the third transformation of democracy to the transnational level. But in his later point of view he demonstrated that we are not overcoming the national level of democracy. According to him the democracy is not the only form of governance but it is a complex and multidimensional concept. Further, democracy is understood as a popular control over policies through elections and also democracy is a system of fundamental rights to ensure freedoms, liberties and opportunities (Dahl, 1999, p. 20). So we have an ideal criteria and normative thoughts that recognize a democracy. Moreover the democracy is actually a process of delegation of powers and sovereignty to political authority. This delegation is in Dahl view exclusive because citizens vote their interest personified in political elites. To sum up these preconditions, Dahl estimates that at the international level the democracy as we understand, is not possible and can not be imagined. My point of view is to overcome his prism by showing that the institutional narration is not enough. Theorizing about legitimacy beyond national boundaries

still matter when we consider the postmodernism with structural and globalizing changes in the world. So what should be noticed when we are talking about legitimacy of transnational governance? Legitimacy means that people legalize their relationship with the state by delegation of their powers to political elites. A legalization of the authority ensures the effectiveness and efficiency of governance (Easton, 1965). In this way the government and administrative bureaucracy have to maintain and act according to the common good and good will. In my opinion this process of legitimacy even protects the society and system from coercion, tyranny and violence which can lead to revolutions and transition to other non-democratic regimes. Furthermore Patrizia Nanz (2006) proposed the six objects of legitimacy and mechanism of legitimization. The main objects of legitimacy are: political decision, political actors, public institutions, political order/regime, regime principles (democratic or non-democratic) and political community - demos (Nanz 2006, p. 62). The mutual relationships among these objects determine the discourse and problems of legitimacy. In this recognition there are several mechanisms of legitimacy such as a delegation of powers, democratic rules, output democratic process, responsiveness, transparency, accountability, consensus, consent in deliberation and constitutionalism. The sources of legitimacy should not be considered in democratic view but either in legal and functional framework (Nanz, 2006, p.65).

In order to dual legitimacy the first assumption is that the democratic legitimacy is based on the substantive form. This means that normative ideas of democracy are reflected by citizens and by the outputs of their actions how is legitimacy established. The political authority is then justified only in the sense of the expectations of outcomes. Clearly the government passes the bills and decide on behalf of the common good of society. Lena Schneller (2010) recognizes this type of legitimacy as a legitimacy with three measures – pluralist accountability, stakeholder participation and transparency (Schneller 2010, p.7). Her division actually demonstrates that the view on this type of legitimacy is connected with the theories of radical pluralism and deliberative democracy at supranational level. Pluralist horizontal accountability deals with an operation of control of decision makers on multinational organizations. According to Keohane and Nye the accountability mechanism can operate in multiple manners, and “accountability is not ensured through elections alone” but is a “multidimensional phenomenon” (Keohane and Nye in Schneller 2010, p. 8). Clarifying their thoughts about the multilevel governance, which was proposed by Moravcsik (2004), should be transparent and the whole system should empower the system of policy making. The division of three levels of decision-making strengthens each other parallelly. Keohane also argues that the public sphere, in which public can deliberate, enhances the transnational legitimacy. On behalf of it, the international non-government organizations and media may support the creation of public sphere through „professional norms and transnational networks“ (Nye 2001). Remarkable example is the deliberative concept of transnational democracy which encourages this kind of process of deliberation, criticism and discussion (Keohane and Nye 2001, p. 285). Stakeholder participation is directly derived from the deliberative view. “Habermasian” tradition has called for the effective participation of the

interested actors and for every democracy it is a key concept. The political parties, interest groups and social movements play an important role in deliberate conceptions to improve the common discourse and engage citizens in political education (Moravcsik 2004, p. 342). The third transparency measure of procedural legitimacy demands for a transparency. The transparency means that the political decision-making is understandable for citizens and the control of the government is arranged by the fair, free and equal elections. Further the democratic system should be transparent if citizens are fully informed about politics and representatives decisions. In my opinion in the sense of democratic/output/substantive legitimacy we assume that the main precondition for it is a normative meaning of democracy. Firstly, this considers that the democracy should be spread to the every nation-state as a normative requirement. Consequently if we appeal to the normative democracy we should not avoid the concept of demos. Demos is the paradigm which is a substantive and fundamental condition for democracy. It means not only a political culture of democracy but also the structural adoption of democratic norms in society. For Robert Dahl this concept is crucial because the international organization can not be democratized by the heterogeneity of the global citizenship (Dahl 1999, p. 20). Democracy may not exist without demos - a society which has been adopting the normative ideas for decades. And how it is possible to establish one global village and one global civic society if we take for granted the Dahl third transformation of democracy? James Bohman (2007) offers the answer by conceptualizing democracy not on demos principle but on the principle of *demos* (Bohman, 2007). This transformation demonstrates a realistic fundamental transition from a singular to a plural subject, from *demos* to *demos*. Democracy must not only change its institutional form, it must also rethink its political subject (Bohman, 2007, p.21). In my view the radical pluralism, which includes the pluralism of actors and deliberative democracy, are the proper theories which can explain the *demos* in detail. In order to overcoming the spacial gap between resolution of demos problem and participation.

The second comprehension of transnational legitimacy copies the tradition of Weberian legal-rational authority. This functional legitimacy insists on the rule of law and input legitimacy (Scharpf 1999), which can be achieved only by the existence of a collective identity. Legal legitimacy of transnational organizations generates the hierarchical division of power. Such as a case of World Trade Organization or the European Union, the mutual delegation the state powers to the international organizations and subside their sovereignty asserts the more effective and efficiency model of global governance. Which kind of global actors can insist on this model? The negative integration of European Union is driving by economic and financial sustainability so the legal and input legitimacy have been reacting to the increasing globalized economy for many years. The economic globalization with liberal internationalism is in this case certainly a top-down project. To achieve the supranational constitutionalism, which should enhance an efficiency of global economy, is necessary to adjust the legitimacy of public support. The view consists on the sense of global community because of the phenomenon of an increasing responsiveness at the international level. Cosmopolitan democracy (Held 1995) could empower this theory by addressing the scheme of a confederation. Hierarchical global system based on the legal conception of legitimacy, could

have a capacity of rule to pull those to whom it is addressed towards a consensual compliance (Franck in Schneller 2010, p.5). In order to transnational legitimacy, Franck named the four indicators that inherent this norm – determinancy, symbolic validation, coherence and adherence. Referring to determinancy, Franck assumes that the transparent rule is better it will communicate its content to those who are addressed by it and the more it will exhibit legitimacy and pull towards compliance. A second condition is its symbolic validation. According to Franck a rule is symbolically validated „when it has attributes, often in the form of cues, which signal its significant part in the overall system of social order“ (Franck in Schneller 2010, p.5). My viewpoint, that inhibited international rule and authority can be more acceptable and legitimate. The conservative point to this theory is nowadays, according to me, very dangerous to insist on. In order to changing socio-economic structure in general, inter/national governance needs to react comprehensively to these challenges. The next indicator is a coherence. The coherence means that a rule needs to be applicable equally to everybody and that likes are treated alike otherwise it can not be perceived as legitimate (Schneller, 2010, p.5). In this notion there is no space for the conservative and sustainable institutions. Finally the legitimate rule needs to be adherent. Adherence depends on the hierarchical decision-making which is established in a constitution. For example this principle of subsidiarity of laws is adopted by the supranational organization as European Union that correlates with the national constitutionalism.

To sum up the concept of transnational legitimacy, recognized by its multidimensionality, stands on the principle of a dualism. The dualism encompasses the models of transnational democracy and various meanings of legitimacy. Democratic legitimacy from my view has both methodologies: normative and empirical. Without normative categorization may not be the positivist and conversely. The dual legitimacy, which I analyzed, reflects the gradualist and transformational approach of democracy. My point of view is that this duality is a divided but a unique process. Moreover the specification is that the political science is still arranging the perfect democratic regime on the national level and the ongoing process of globalization transforms the theory to the supranational level. Finally I assume that we need to take for granted this transformation and cope with it not by the best theory but better.

5. European Union: a case study of dealing with „the legitimacy trap“

Referring to the transnational democracy my last part of article will try to achieve an application of models of transnational democracy and legitimacy. The importance of my choice depends on the numerous studies of European integration. In the last decades the political theory has faced a normative turn in the conceptualizing of integration (Bellamy 2000). In this case the discourse was aimed not simply to the process of economic integration but it has turned to the normative oriented studies. Nowadays European Union is not only an object of the theory of international relations but also a democratic, sociological and political methods. Economic integration flow naturally to the political unification and to the European Union as a space to share common ideas, norms, values and visions. The questions which arose had circulated around whether is the European Union an international organization or

a specific political unity. Legal-rational authority means the arrangement of the European Union as a regional organisation with its own rules and values. On the other hand a communitarian and cosmopolitan terms have changed the view on this organization and a shared collective identity in Europe has created the normative sense of this type of polity. A major challenge is to solve the legitimacy of the European Union. According to Richard Bellamy (2000), a fundamental issue is the relationship between the constitutional order and society as a whole, also between the authorisation (the nature and forms of the constituent power) and legitimacy in both social (acceptance and consent) and normative sense (underlying values, recognition of interests, opinions and identities) (Bellamy and Castiglione, 2000, p.3). On these bases, the European Union has been facing the specific three types of deficit for years. The first deficit is a democratic deficit which focuses on the democratic accountability and representation. It means that there is a lack in the process of the control and influence from citizens to the bureaucratic system. Second is a federal deficit that arises from a problem of the distribution of sovereignty. The ambiguous relationship among the central European institutions and national parliaments needs to be qualified even after the Lisbon Treaty. And the third deficit is a constitutional deficit which addresses the lack of normative and popular legitimacy of European political institutions (Bellamy and Castiglione, 2000, p.5). To the accordance to my thesis of dual legitimacy of transnational order I will introduce the three strategies of constitutionalisation of the European Union.

First perspective of a European legitimacy is a positivist approach of instrumentalism. The European Union is seen as a problem-solving entity of the economic integration (Eriksen and Fossum, 2004, p.439). Nations are internationalized by a legal-rational globalization. The legacy of the European Union depends on its effectiveness, efficiency and sustainability of its institutions. Moravcsik (2004) conceptualized the theory of liberal intergovernmentalism which can be appropriate to this type of legitimacy. Furthermore the European Union is viewed as a platform for the cooperation of states from which derives the concept of legitimacy. A negative integration is actually the economic regionalization at supranational level and the mechanism is based on the liberal internationalism or cosmopolitanism (the principle of confederalism). The decision-making is on the behalf of the consensus of the main institutions – The Council of the European Union, The European Commission, The European Parliament and The European Court of Justice. The effectiveness of these institutions beyond the national level does not demand a creation of the European public sphere, European society, European demos or the civic society. The European institutionalisation can also work separately in favour of the European public will. Moreover we can not distinguish what the effectiveness at the transnational level of governance really means. On the other hand the effectiveness of this viewpoint does not mean that one day the economic crisis will spill-over to the political crisis. In my opinion we have been facing the political crisis also in recent years. The input and legal-rational legitimacy is not the only choice how to make the transnational democracy work. The legitimization of democratic political power needs to be also a bottom-up process.

The second comprehension of European legitimacy is achieved by a value-based communitarism (Eriksen and Fossum, 2004, p.441). It is an exactly the same what Bellamy (2000) means as a normative and social sense of integration. The concept requires the existence of the European identity arranged by common public sphere, history, values. The communitarians (Habermas 1998) argue that every democratic system can work in the framework of shared strong moral norms. Regarding the European Union to be legitimate, a common identity is needed for securing a trust. It is required to enable actors to cooperate and to let their differences be settled by neutral procedures. „Every political order presupposes some kind of cultural substrate to foster allegiance and respect for laws. Even if the European Union is something less than a state, it requires identity due to its ability to make collective decisions, that is, in order for the subjects of collective decision-making, to comply with common norms. A value-based strategy may also contribute to consolidate the Member States at the present level of institution building.“ (Eriksen and Fossum 2004, p.442) This process of bottom up creation of identity could be seen as a natural Europeanization. Further the cosmopolitan democracy of the transnational arrangement of European Union can be conceived as a constitutional patriotism (Habermas in Eriksen and Fossum, 2004, p. 446). Also Hix (1999) advocated that the European Union is going toward the gradual constitutionalism. After the Lisbon Treaty which cancelled the pillar division of Maastricht Treaty (1992) we can assume that by a strengthening the role of the European Parliament, national parliaments and by a simplifying of a decision-making process, the European Union is going to be more transparent (confederation) democracy than ever.

Showing the main perspectives of legitimacy in the European Union I consider the thesis that the European Union has not had the one specific strategy of legitimacy yet. Unless the European Union deals with the divided approaches of integration and democratic process, in my point of view, there will be always the tendencies to democratic deficits. Moreover the existence of European public sphere is still missing. Also a valuation of dual legitimacy advocates the reality of divided comprehension of the future of the European Community.

6. Conclusion

The finding the appropriate model of transnational democracy is formed from the point of view of political science and international relations and has been the never ending process. My paper discussed the achievement of contemporary theories of transnational democracy. I identified the transformation of democratic theory in the accordance to the postmodern challenges such as globalization and transformation of society. My argument demonstrates that the assumption of the legitimacy on the supranational level copies mostly the models of trans/national democracy. Moreover the legitimacy and the viewpoint on this paradigm depends on the structural connotations. The appropriate example is the integration process of European Union. In the normative and positivistic way there is still the distinction of the dual legitimacy. The first arrangement consists of the legal-rational/input legitimacy, which is understood from the liberal internationalism and cosmopolitan democracy. Additionally it

addresses the possibility of global governance to provide the rule of law, representation, accountability etc. On the other hand there is the democratic/output legitimacy which cooperates with the terms like a global civic society, demos/demoi, global justice etc. The case of the European Union helped me to demonstrate that the dual legitimacy coexists parallel in the various models of transnational democracy. Moreover the main reason is that the global socio-structural changes which have been already unsolved by the global order have long-term impact to the everyday lives of citizens.

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