

THE RELEVANCE OF WOMEN'S RIGHTS FOR CONTEMPORARY FEMINISM(S)

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Abstract

This article explores the importance of women's rights in the fight for women's empowerment. It contributes to the theoretical debate on whether women's rights are compatible and complementary with the general concept of human rights, or rather irreconcilable. The use of the human rights framework for upholding women's rights has been criticized for: its male norm hidden behind a false universalism obscuring or even excluding women; its disregard for the limited choice of many women, its comprisal of a hierarchy of rights in which those most relevant to women's equality often do not rank the highest, its limited vocation in positively enforcing women's equality, its tension with multiculturalism and the problems related to the enforcement of such rights. The paper will discuss these claims and will provide counterarguments to them, and subsequently conclude that the liberal concept of human rights is the best vehicle for promoting women's rights.

Keywords: women's rights, feminism, human rights

This paper aims to bring a contribution to a debate between two feminist camps. On the one hand, some feminist authors argue that the liberal concept of human rights is useful for protecting women's rights. On the other side, arguments have been brought against the liberal framework and its usefulness for feminism. This is a historical dispute between those feminists arguing in favor of "working the human rights system to women's advantage" and those who had lost faith in the liberal philosophy, criticizing it on a variety of grounds. Following a discussion of the most important arguments brought into this debate, the paper will explore the strengths and weaknesses

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 $^{^1}$ Margaret A. Schuler (ed.), Claiming Our Place: working the human rights system to women's advantage, Washington, D.C.: Institute for Women, Law and Development, 1993



of the case made by each side. The paper aims to represent a critical investigation of the arguments in favor and against the connection between human rights and women's rights. Its methodology is analytical appraisal and criticism. Concluding, the article will argue in favor of using the framework of human rights for the accomplishment of gender equality, despite its limitations. Moreover, the study will show the importance of adopting context sensitive approaches when addressing complex instances of women's rights violations.

Among the most widespread justifications dismissing the feminist vocation of the liberal concept of human rights, we encounter: the classical feminist distrust in its "false universalisms"² and its "masculinist exclusions", and the limited understanding of equality as simply formal, not substantive.4 Furthermore, a feminist target for criticism is also liberalism's reliance on negative rights, without a positive duty to achieve equality imposed on the state. The liberal concept of "choice" is also attacked by some feminists, because it disregards the background situation which frames the preference of many women. A point of discontent is also determined by the primary focus of liberalism - especially neo-liberalism - on economic efficiency at the expense of human rights. Equally controversial is the perceived "hierarchy of rights" among the privileges included in the concept of human rights. Last, but not least, the situation of cultural diversity and its relation to women's rights in the framework of liberalism is a further point of tension.

In her presentation of the relation between human rights and women's rights, Katarina Tomasevski points out to the sexist character of the classical understanding of civil and political freedoms. She focuses on the language of the conventional discourse on human rights, which also impacted the application of the concept. Her view can be summarized by the statement that "he does not include her"7. To support her argument Tomasevski brings in the example of the People's act of 1867 which gave the right to all English men to choose their representation. Women who petitioned for the understanding of "men" as human, thereby including females unless otherwise

² Maxine Molyneux and Shahra Razavi, "Introduction" in Maxine Molyneux and Shahra Razavi(eds.) Gender Justice, Development and Rights, New York: Oxford University Press, 2002 p. 7-9

³ Maxine Molyneux and Shahra Razavi, "Introduction", p. 7.

⁴ Maxine Molyneux and Shahra Razavi, "Introduction," p. 7-9.

⁵ Maxine Molyneux and Shahra Razavi, "Introduction", p. 10.

⁶ Maxine Molyneux and Shahra Razavi, "Introduction" p. 10.

⁷ Katarina Tomasevski, *Women and Human Rights*, London : Zed Books, c1993, p 8.



explicitly stated, were denied.⁸ In addition, she points out that even in the contemporary terminology of human rights aiming for a gender-neutral approach, sexism is still reflected in the content.9 At the formal level, the omnipresence of "him" in the law, leads to a symbolic exclusion of "her" rights, shadowing the "existence of women as half of humanity" 10. At the substantive level, even if "she" is officially included in the text of the law, "his" right was traditionally protected and taken as the norm. In the classical understanding of individual rights, the law sought to protect the subject against the state. This resulted into the first generation of rights known as civil and political liberties. However, women's freedom is often restricted not only by state intervention, but also by community or family. Women's rights are often breached by non-state actors, such as private entities or individuals. The "invisibility" of women's rights violations, such as in the cases of rape and other sexual offences, has led to them being tabled as "particular", or supplementary and often seen as less imperative.

However one can also argue that by formally including women as bearers of rights, a significant progress towards the formal inclusion of women's rights in the language, as well as in the content of the law, has been achieved. Otherwise, said, recent developments in international law have been marked by the advancement towards shifting the discourse from its "androcentricity", or the male-norm. 11 The engendering or gender mainstreaming of the concept of human rights has been seen as one of the most important preconditions for the effectiveness of its use for upholding women's rights. This transformative approach is defined by Teresa Rees as a process which aims at "deconstructing the underlying orientation of organizations" 12 which uphold the advantage of the privileged of the advantaged group, in this case men's rights. Engendering an institution implies "recognizing that what is taken as the norm is not necessarily gender neutral" 13. As Margaret Schuler stated "engendering human rights means articulating a gendered concept of human dignity."14 An important example of this approach is the gender mainstreaming of the International

⁸ Katarina Tomasevski, *Women and Human*, pp. 8-11.

⁹ Katarina Tomasevski, Women and Human p. 11.

¹⁰ Katarina Tomasevski, *Women and Human*, p. 11.

¹¹ Teresa Rees, Mainstreaming Equality in The European Union: Education, Training and Labor Market Policies, London, Routledge, p. 27.

¹² Teresa Rees, Mainstreaming Equality in The European Union, p. 27.

¹³ Teresa Rees, *Mainstreaming Equality in The European Union* p. 189.

¹⁴ Margaret A. Schuler, "From Basic needs to Basic Rights: Women's Claim to Human Rights" in Margaret A. Schuler(ed.) From Basic Needs to Basic Rights, Washington, D.C.: Women, Law & Development International, 1995, p. 4



Criminal Court's mandate. Mass rape during armed conflict was regulated as a distinct crime within the competence of the ICC, and defined as "a war crime and a crime against humanity" 15

Liberalism is also blamed by activists for women's rights for its shallow definition of equality. As described by Molyneux and Razavi, classical liberal writers such as John Stuart Mill and Thomas Hill Green have insisted on the necessity of imposing a positive duty upon the state to enforce the necessary conditions for equality 16. Yet, feminists take their view one step further, by criticizing even the more modern articulations of liberalism, which includes a greater focus on positive rights. One such criticism has been leveled at Rawls' theory of justice as being biased in favor of men, and disregarding inequality within the family. Therefore, the version of equality prophesied by liberalism is often seen by feminist as mere demagogy. In order for equality to become reality, supporters of women's rights often claim that negative rights, although unquestionably worthy of having are not sufficient. Such an approach is considered to be completely oblivious of the "background conditions" which prohibit women, as well as other groups from enjoying negative freedom. In most situations, women lack both the material and non-material resources to claim their rights.

Another source of feminist skepticism towards human rights results from their close association with market values. Human rights, in their classical understanding have been accused of permitting and justifying an unrestricted market, which tends to disadvantage women. According to this argument, human rights are instrumental to building a society of productive individuals, given the intensity with which property rights and regulated transactions are guarded. This is exemplified by Article 17 of the Universal Declaration for Human Rights, which states "Everybody has the rights to own property... No one shall be arbitrarily deprived of his property"17. This claim is specifically relevant in the context of the post 1970's neo-liberal agenda. This political and economic outlook centers on the market and private property and seeks for a diminishing of the involvement of the state, and of public expenditure. Within these circumstances women, although still being granted formal rights, are far more likely than men to be negatively impacted. The causes for this situation are multiple, but most of them stem from women's traditional role in un-paid and

¹⁵ Women's Caucus for Gender Justice closes as International Criminal Court opens. We! 2003; 31:4. At: www.isiswomen.org, Accessed 1.04.2009.

¹⁶ Maxine Molyneux and Shahra Razavi, Gender Justice, Development and Rights, p. 8.

¹⁷The Universal Declaration of Human Rights, Article 17< http://www.un.org/Overview/rights.html#a17 >. Accessed 1.04.2009.



underpaid work, as well as traditional gender stereotypes which tend to lower women's standing on the occupation market. Moreover, budget cuts negatively impact women due to the fact that the scarcity or the high price of childcare services limit women's access to the labor force.

In response, it can be argued that the connection between human rights and market values is not always clear-cut and can take different forms. Firstly, property rights are not seen as absolute and the level of redistribution and public expenditure varies from one state to another. For example, the Nordic states can both guarantee property and collect large budgets to use in the provision of public goods, including childcare services. Furthermore, even in situations in which redistribution and public provision of goods is not the norm, dynamic markets guaranteed by classical human rights can work to the advantage of women. Economic development can be used for improving women's social standing and thus also enabling them to claim their formal rights. As Diane Elson reflects upon the policy of the World Bank and the International Monetary Fund, "grow(th) first, redistribution later"18. Otherwise said, wealth cannot be redistributed in the absence of a well-established economic system based on free-market.

Another point of tension between the feminism and the universalist ambition of liberalism emerges when taking into account the reality of cultural diversity, both within societies and at the global level. On the one hand, some feminists support the claim that human rights are universal and can be used as a tool for worldwide liberation of women. Other feminists reject this and support cultural relativism: a claim that there are no moral differences between cultures. This group argues that universalist human rights are nothing but an imperialist tool of dominating other cultures. The latter orientation is a reaction against a brand of liberalism which ignores differences. 19 Both cultural relativism and this brand of feminism resist the idea of universal standards for women's rights. Moreover, they argue that such Western ideals of human rights have no relevance for cultures cherishing different values.

Nevertheless, all these arguments can be challenged by those feminists who do consider human rights and women's rights to be universal by claiming that most culturally specific norms are gender biased. Such customs are likely to have traditional and religious components which often place women in an inferior position as compared to men. Therefore, this camp opts for the

¹⁸ Diane Elson, "Gender Justice, Human Rights and Neo-Liberal Economic Policies" in Maxine Molyneux and Shahra Razavi (eds.) Gender Justice, Development and Rights, New York: Oxford University Press, 2002, p. 83.

¹⁹ Anne Phillips, "Multiculturalism, Universalism and the Claims of Democracy", Gender in Maxine Molyneux and Shahra Razavi (eds.) Gender Justice, Development and Rights, New York: Oxford University Press, 2002p. 116-117.



"safe stance", stating that "Western cultures, of course, still practice many forms of sex discrimination"²⁰ since "virtually all of the world's cultures have distinctly patriarchal pasts"²¹. However, according to Susan Moller Okin, Western liberal cultures "have departed far further from [it] than others"22. Therefore the spread of values such as human rights in other areas of the world would increase gender equality. Additionally, liberal feminists can also accommodate the notion of intersectionality: that the many categories in which people are placed can intersect, leading to overlapping layers of oppression. Liberal feminists can show that achieving universal aims such as freedom, equality and human rights can end inequality on any ground, including race and class.

However, despite the potential threat represented by traditional cultural values for the improvement of women's status, the feminist camp disliking the notion of human rights can reply to the previous statement by pointing out the less equalitarian face of Western liberalism and to its colonial past. As Leti Volpp has well explained, conceptually placing "feminism versus multiculturalism" is founded on "fundamental logical flaws" ²³. This outlook is reliant on an image of the minority woman as a victim, constructed by the West. Therefore, in the name of cultural relativism, some sociologists and anthropologists have claimed that the alleged Universalist Western values reflected in the notion of human rights are not necessarily always more favorable to women as compared to the model provided by other (ancient) cultures. Even in the cases when human rights ideals are equally beneficial to women's status, they are not the only path to female emancipation. Therefore, they have argued that this individualist approach rooted in the culture of Europe and North America, appearing as superior and enlightening to other nations is in fact equally or more oppressive to women than the societies they are trying to reform. It is stated that this is a disguised form of post-colonialism. In line with this argument, it has been pointed out to the existence of cultural heritages with a more equalitarian potential, attributing an equal status to men and women.

One such example is the ancient tradition and polytheistic religion of Hawaii. According to Lilikala Kame'eleihiwa's description of her heritage and of the customs of her land, from the very

²⁰ Susan Moller Okin, "Is Multiculturalism Bad for Women" in Joshua Cohen and Matthew Howard (eds.) Is Multiculturalism Bad for Women?, Princeton University Press, 1999, p16.

²¹ Susan Moller Okin, "Is Multiculturalism Bad for Women", p 16.

²² Susan Moller Okin, "Is Multiculturalism Bad for Women", p 16.

²³ Leti Volpp. "Feminism versus Multiculturalism", Columbia Law Review, Vol. 101, No. 5 (Jun., 2001), pp. 1181-1218, p.1183



beginning of its genesis, the Hawaiian peoples cherished their female Goddess and supreme creator²⁴. In their society, women are considered sacred because they give birth, therefore being assigned a decisive role in all ceremonies. According to mythology, women control "the moon, the tides, and the reefs" and hold the secret of fire. 25 Contrasting to the Western culture, women were in full control of their sexuality and "multiple sexual relationships were affectionately regarded, and the children from such liaisons claimed higher rank as a result of having two or more fathers"26. Also contrasting to the European culture in which the domestic and care work is assigned to women and politics is reserved to men, the Hawaiian custom, cooking was men's attribute. Although women had "let [men] govern the land"²⁷ it was the former from whom the power was derived, because female "sexual power and political power" were closely related, both being described by the same word "ai".28 Therefore, the argument that different cultures can take different paths to achieving equality between sexes is worth noting.

Nonetheless, there are also certain limits to the concept of cultural relativism. The main reason for rejecting this stance is that a minimal common standard of what feminists should aim for is desirable. The same way that concepts like absolute poverty can be defined as a universal standard, so should standards of gender equality. For example, one approach is Martha Nussbaum's claim that liberalism empowers women. She describes a particular kind of liberalism which focuses on granting each person the ability to enjoy his or her human rights.²⁹ Nussbaum lists a number of capabilities, which a person should have, as a minimum standard of human dignity. According to her, these capabilities which women must have should be seen as an "overlapping consensus among people"³⁰, therefore maintaining the liberal universalist ideal. These aptitudes to be enjoyed by the human kind are to be seen as an end in themselves and not as means to an end. Equally important for her visions is the principle that women need "more, not less liberal individualism"³¹

²⁴ Lilikala Kame'eleihiwa, "Na~Wa~Hine Kapu:Divine Hawaiian Women" in Patricia Grimshaw et all. (eds.) Women's Rights and Human Rights, Palgrave: New York, 2001, p. 72-74.

²⁵ Lilikala Kame'eleihiwa, "Divine Hawaiian Women," p. 73.

²⁶ Lilikala Kame'eleihiwa, "Divine Hawaiian Women", p. 74.

²⁷ Lilikala Kame'eleihiwa, "Divine Hawaiian Women", p. 73.

²⁸ Lilikala Kame'eleihiwa, "Divine Hawaiian Women", p. 73.

²⁹ Martha Nussbaum, "Women's Capabilities and Social Justice" in Maxine Molyneux and Shahra Razavi (eds.) Gender Justice, Development and Rights, New York: Oxford University Press, 2002, pp. 48-49.

³⁰ Martha Nussbaum, "Women's Capabilities and Social Justice", pp. 48-49.

³¹ Maxine Molyneux and Shahra Razavi, "Introduction", p. 9.



and that women's individual wellbeing should not hold a secondary importance to the common good of their community. Last but not least she makes a point for the necessity of having crosscultural standards of human rights, and deems certain "Western" values, such as choice, as generally desirable to be achieved in any country³². But this stands true as long as this choice represents a real alternative, and not just a formal right. In other words, it is important that meaningful alternatives are provided and that equality is interpreted in a positive way. Otherwise, the mere existence of unachievable choices gives ample ground to those criticizing the universalist framework.

Furthermore, Martha Nussbaum has also shown that there is a strong correlation between gender inequality and poverty. According to studies³³, the more underdeveloped a country is, the higher are the literacy, economic and life expectancy difference between men and women. Corruption has also been shown to correlate positively with gender inequality, as "results show that corruption is higher in countries where social institutions deprive women of their freedom to participate in social life,"34 Therefore, while culture differs from one country to another, certain characteristics of countries, such as poverty, corruption and gender (in)equality are universal. Moreover, at the end of the day, researchers and policymakers need to be able to evaluate gender (in)equality according to a generally accepted set of criteria, in order to progress in this field.

Finally, another strong feminist concern with regard to effectiveness of human rights for improving the equality between sexes lays in the mechanism of implementation and enforcement of these freedoms. The nature of the international relations and the importance attributed to sovereignty is an obstacle in the process of holding a state accountable for human rights. In fact, as Rebecca Cook shows, according to the jurisprudence literature, "international and regional human rights conventions have applied only sparingly to address violations of women's rights"35. Most countries have been selective in signing and ratifying such international agreements for the protection of women's rights. In order to becoming signatory parties some states have included

³² Martha Nussbaum"Women's Capabilities and Social Justice" pp. 49-50.

³³ Martha Nussbaum, "Women's Capabilities and Social Justice", p.46.

³⁴ Boris Branisa and Maria Ziegler "Reexamining the link between gender and corruption: The role of social institutions", Conference Paper http://www.econstor.eu/bitstream/10419/48324/1/15 branisa.pdf, accessed 19.05.2013

³⁵ Rebecca Cook "State Accountability under CEDAW", in Margaret A. Schuler (ed.), Claiming Our Place: working the human rights system to women's advantage, Washington, D.C.: Institute for Women, Law and Development, 1993p. 40.



"clauses of exemption on cultural and religious grounds" 36 which greatly limited their responsibility for defending the freedoms in question. Such countries include all Muslim countries which have signed up to the Convention for the Elimination of All forms of Discrimination Against Women (CEDAW) as well as Great Britain and New Zeeland, with less reservations that the previous.³⁷

Yet, despite a mixed history of its success in implementation, it can be argued that international law remains the most effective tool for the enforcement of women's rights, across boundaries. Bound by customary and treaty law, states' obligation to uphold human rights is ensured by international law. Furthermore, this obligation of signatory parties has been significantly increased both with the augmentation of the rights to be secured but also with the inclusion of state's preventive prerogative. Also, states are currently required to "provide effective remedy" when human rights violations have been proven, and to compensate the victims.³⁸ Within the context of economic interdependence economic sanctions can be used by the international community as a mechanism for the enforcement of human rights, as well as women's rights.

As it can easily be concluded from the previous discussion of the most important arguments brought by feminists in favor and against the use of the notion of human rights towards the aim of gender equality, there is no clear winner in this debate. Both sides have formulated strong assertions which cannot be neglected in support of their stances. At the same time, however none of the positions has been so far sufficient for the improvement of the enforcement of women's rights worldwide. Therefore, this only shows the key importance of further examining the claims put forward in this debate in order to perfect the efficiency of the applicability of liberalism for social justice. The solution to today's problems cannot follow a single path and issues should be tackled by combining the best suited strategy presented by either of the sides engaged in this debate. Since the challenges faced by feminists today are most often context-dependent it is important to keep in mind all the alternatives available for empowering women. Nevertheless, international legislation rights should not be overlooked, and an engendering of the international institutions is absolutely necessary for further accommodating women's rights under the umbrella of human rights.

However, particular limitations to this inclusion of women's rights, and the stress on their particularity and need for protection, as their distinct human rights can also have a negative

³⁶ Maxine Molyneux and Shahra Razavi, "Introduction", p. 7.

³⁷ Maxine Molyneux and Shahra Razavi, "Introduction", p. 7.

³⁸ Rebecca Cook, "State Accountability under CEDAW p. 40.

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outcome. A notable example in this sense is provided by the early history of the ILO, at the turn of the twentieth century. While the ILO Constitution of 1919 enumerates the principles of "equal pay for work of equal value", and acknowledges the equality between sexes, the underlying assumptions about gender differences are also encountered in the document. Although apparently gender-neutral, the envisioned prototype of the worker was male; while women engage in wage work were the addition. Women were listed in the category of groups to be specifically protected and concrete provisions were also included to specify the areas in which women were granted special benefits. Regulations included maternity benefits and prohibited night-shifts and strenuous work for women. Child rearing was always associated to women, and women's role as both mothers and workers was stressed, while men's role in connection to their children was overlooked. Therefore, in this case, the acknowledgement of, what was then perceived as, women's difference from men, translated into reasons for former's drawback or exclusion from employment. It was an implicit or explicit exclusion of female workers from certain areas, such as mines, and the segregation of female employees in other areas. Consequently, this led to the declining of many women's economic independence from their families, which was not the desired outcome.

Similarly, but rather on a symbolic level, recent measures taken in order to halt the sexselection abortions and female infanticide in India, may also be interpreted as further reinforcing women's inferior status. The tradition restricting women from participating in many areas of life and obliges their parents to provide a substantive dowry for her. Meanwhile, poverty remains a widespread condition in India. These are the leading factors determining many Indian parents to opt for a way out of keeping their baby girls, which usually involves the death of the latter. A UNICEF report released in December 2006 revealed that "7,000 fewer female babies are born every day"39 as a result of sex-based abortions. "In 80 percent of India's districts, a higher percentage of boys are born now than a decade ago."40 Given that the mere prohibition of all such practices leading to the death of female fetuses and babies, together with the dowry custom, was not enough, the Indian government decided to undertake positive measures in order to stop the phenomenon. Legislators have decided to financially support parents in raising their daughters, by covering her insurance, "medial help and education assistance". In return, certain conditions must also be met by parents in order to benefit from this initiative. They have to prove the birth and registration of their

³⁹ Steven Ertelt, India Government Will Pay for Girl Babies to Stop Sex-Selection Abortions, http://www.lifenews.com/int217.html>

⁴⁰ Steven Ertelt, Indiann Government Will Pay for Girl Babies to Stop Sex-Selection Abortions, http://www.lifenews.com/int217.html>, Accessed 01.04.2009



female child, her immunization record and to register for school and postpone her marriage beyond the age of 18 years. 41 While this plan may lead to a decrease in sex-based abortions, which is undoubtedly a positive outcome, it could also have secondary effects, namely the official acknowledgement that girls are less valuable or desirable than boys. Therefore, it is worth noting that tacking such complex human rights violations is context dependent and requires extensive research on the local circumstances.

The main assertion of this paper is that, within the previously mentioned debate, there are weaknesses on both sides. Nonetheless it is most useful for the achievement of gender equality to employ the existing instrument of human rights while attempting to address and limit its potential side effects. In order to best address the eventual residual negative outcomes of the liberal approach it is most useful for feminists to combine their strategies.

Several arguments can be brought in favor of the usefulness of general human rights and of the liberal doctrine in general, for ensuring gender equality. Firstly, while this concept might seem blind to differences, a closer examination will reveal that is not, because a variety of concerns such as the claims of any disadvantaged group, including women, can be embraced by the human rights framework. True equality can only be achieved by incorporating social and economic rights and minority rights through a slow integrative process. Secondly, a departure from the concept of human rights can lead to far more inequality and injustice than the misapplication of these rights can induce. The cases of communism or of the Taliban regime are obvious examples. Thirdly, the inclusion of rights which are particularly relevant to women, such as reproductive rights, into the already established framework of human rights will grant the former greater legitimacy and a stronger enforcement mechanism. Finally, the applicability of the liberal doctrine is justified if we accept that gender equality can be achieved by allowing women to enter formerly male dominated spheres rather than to carve out spheres of their own. As history has shown, "separate but equal" is not equal at all.

Furthermore, this paper has provided a clear picture of the existing debate around the topic of human rights and women's rights, or rather the use of the first in order to promote the second. The most important themes of disagreement between the two sides, presented in this paper were those referring to the classical Universalist, and masculinist character of liberalism and of human rights; the applicability of the concept of choice for women's rights; the positive and negative duties

⁴¹ Steven Ertelt, India Government Will Pay for Girl Babies to Stop Sex-Selection Abortions,



of the states in promoting gender equality as well as human rights in general; the hierarchy of human rights and its impact upon women's freedom; the relation between the economic aspect of liberalism, and neo-liberalism with feminism; and the triadic connection between liberalism multiculturalism and women's rights.

Further academic inquiries can expand on these points of dissent and enrich the arguments of the debate. Due to the limitation in time and space, this paper could not comprise all the existing perspectives in this discussion and neither did it manage to include a comprehensive example for each claim. Yet, these shortcomings could provide an opportunity for further studies.



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