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Thomas Grillot

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Indian Nations, Indian Tribes:
Notes on the Colonial Career of Twin Concepts

THOMAS GRILLOT

Loin d’être un concept émancipateur, le concept de nation appliqué aux Indiens a permis de construire une relation spécifique, de type colonial, avec l’État fédéral aux États-Unis. Il est en cela très proche du concept de tribu, dont il a toujours été mal distingué. Le comprendre comme l’instrument d’une décolonisation intellectuelle et légale, comme c’est aujourd’hui souvent le cas, paraît donc peu productif. Limité dès le xviiième siècle dans leur capacité à mobiliser la philosophie du droit naturel sous-tendant l’usage politique du concept de nation dans le contexte européen, les groupes indiens ont dû se contenter d’en faire un usage restreint, correspondant à un ensemble de droits limités et définis avant tout par l’État américain. Jusqu’aux années 1930, le terme de nation appliqué aux Indiens ne sert d’ailleurs qu’à désigner un état temporaire de séparation vis-à-vis du corps politique américain, promis à la disparition par annihilation ou assimilation. Après le « New deal indien » lancé en 1934, les groupes indiens dans les réserves n’ont jamais pu prétendre recouvrer l’ensemble des attributions habituellement reconnues aux nations. Leur statut de nations continue donc de recouvrir une forme spécifique de souveraineté, entre celles des États fédérés et de l’État fédéral; une souveraineté limitée qui les place à la fois à l’intérieur et à l’extérieur de la nation américaine.

Scholars desirous of grounding Indian collective rights are prone to justify their views by emphasizing the early recognition of Indian groups as nations. The strategy is potentially powerful: ever since the seventeenth century, the concept of nation has been used by European countries to ground independence, sovereignty, and self-government in natural law. The designation of a group as a
nation carries with it prestige, especially on the international scene, and can boost a group’s self-confidence and assertiveness. The term is now often present in scholarly titles. A related strategy in defense of Indians’ special rights has been to pit this status as nations against a status as minority (Wilkins 41-62). While minorities claim civil rights and equal participation in American society, Indians should, according to this approach, focus on their specific rights, all of which stem from their original status as independent nations. This re-appropriation of the term originates in the decade-old changes in the semantic field of the concept of “tribe”. After decades of derisive use, activists both white and Indian, governmental and non-governmental, started using “tribe” positively again in the 1930s. Scholars and lawyers like Nathan Margold and Felix Cohen searched the historical record to give legal grounding to their claim that Indian, reservation-based groups, could, indeed should, be granted a measure of self-government, based on what they designated as their sovereignty (both terms were at the time regarded as rough equivalents) (Cohen). The latter concept was clearly distinct from the one usually associated with European nations. It encapsulated all the powers not formally taken over by Europeans and Euro-Americans. In the decades following the New Deal, “sovereignty” assumed meanings as different as the right to municipal government, status equal to that of US states, and quasi-(but never full) independence. As a concept, sovereignty helped redefine the relationship between the US and Indian groups as a “government to government relationship,” requiring in particular the systematic consultation of tribes in administrative decision-making processes. Far from being “post-colonial,” this relationship is distinctly colonial. In this paper, “colonial” will not refer to the period prior to the Revolution. Rather, it will signify a political relationship that started when invading European and Euro-American groups set out to appropriate the land, resources, and labor of local “Indian” populations, and eventually to rule the latter. In other parts of the world, this type of relationship has ended according to two possible scenarios: either colonizers and colonized groups

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have become indistinguishable, or colonizers left. In the US, while some of the imbalance characterizing this type of relationship has been significantly reduced in recent decades, the relationship has been enshrined rather than erased. This short paper will have reached its goal if it succeeds in demonstrating the need to look more closely at the position of the concept of nation within this century-old relationship. This implies looking at two major, but rarely emphasized phenomena: 1) From the start of the US Republic, the concept of nation was applied to Indian groups in a limitative sense, by both Indian advocates and American legislators and justices—Indian nationhood, therefore, is not a recent invention but an old colonial instrument; 2) from the 1930s onward, the concept has been reshaped to achieve two seemingly contradictory purposes: moving beyond the colonial domination binding Indian groups to the US State, while at the same time preserving a “special relationship” with the latter, an approach that, in other areas of the world, has been designated as an attempt at “decolonization without independence” (Trépied 2013).

“Indian” Colonial Nationhood

For English and American colonizers, defining Indians’ nationhood was never as pressing as establishing and ultimately extinguishing title to their lands; it was also a by-product of that policy (Harring 4-7). This double process of definition and restriction of Indian nations’ rights was most evident in treaty negotiations. In treaties, the phrase “nation of Indians” was most prominently used. While phrases like “the Seneca nation”, or “the Cherokee nation” were common throughout the eighteenth century, the qualifier “of Indians” introduced a portentous nuance: Indian groups were distinct from and inferior to European nations and in particular, after the Revolution, inferior to the US federal government and the federated States.

At the root of the gradation that placed Indian groups at an intermediary stage between independence and incorporation into larger, non-Indian polities was the political impossibility of imagining other sovereignties than that of Euro-Americans. Because no two powers could hold title to the same territory, Indians simply could not be sovereign, except in the restricted sense of managing their own affairs. The very control of Indians was taken over from the British crown by the US federal government, and defined US sovereignty from the start of the American Republic. Any attempt at establishing the connection between nation, nation of Indians, and tribe must confront the fact that the terms were used interchangeably. Clear evidence of this lies in the recurrence of the phrase “nation or tribe” starting in the 1780s (Cherokee Nation v. Georgia 1831 37). Additionally, the Founders’ use of “tribe” to designate Indians in the Constitution ensured that all subsequent use of the word “nation” would have to be understood in the light of this other term. Aside from any anthropological
consideration regarding the political structure of Indian groups, a “nation or tribe” was at the time primarily distinguished by the fact that its members were not members of the US polity—a purely circular reasoning: Indians were tribes and tribes were made up of Indians. The racial underpinnings of the reasoning were clear. True, Indian “nations” were not the entire Indian “race.” “Indians taxed” were a distinct legal category that pointed to the possibility of individual Indians’ political inclusion within the US body politic. But from the 1780s to the first decades of the twentieth century these individuals were not numerous and therefore negligible. “The Indian race” was composed of tribes or “nations of Indians”, and the interchangeability of the concepts outlasted early constitutional debates. In 1871 still, the phrase “nation or tribe” could be used in an Act of Congress; interestingly the March 3, 1871 Act which mandated that “No Indian nation or tribe, within the territory of the United States, shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty; but no obligation of any treaty lawfully made and ratified with any such Indian nation or tribe prior to March 3d, 1871, shall be hereby invalidated or impaired” (Deloria and DeMallie 1999 247-248)

The few Supreme Court rulings defining Indian “nations” in the nineteenth century were, consequently, relatively consistent. First, justices were aware of the ad hoc and complex character of the argument they were developing and made sure to define the situation of Indians as “anomalous”, “peculiar”, or exceptional. Second, they regarded Indian groups as a) endowed with rights, either natural or historic; but b) dependent on the US for their sustenance or their protection and reduced to the status of “wards” of their guardian, the American Republic; and c) distinct from truly foreign nations, although treaties should be signed with them to extinguish their title to the land. Consistency did not mean that legal authorities agreed on what this restricted status meant. For some, the groups considered stopped being nations to devolve into mere “peoples” (the ruling in United States v. Kagama, 118 U.S. 375 (1886)). For others, they became nations of a diminished stature. The ruling in Cherokee Nation v. Georgia, 30 U.S. (5 Peters) 1 (1831), for example, famously called Indians “domestic dependent nations”. For yet others, Indians remain fully independent despite receiving protection (this was, again in Cherokee, the opinion of dissenting Justice Thompson). Most, however, were quick to seize upon the use of the word “tribe” in the Constitution

4. Here I disagree with Vine Deloria, Jr. and David Wilkins who, in Tribes, Treaties, and Constitutional Tribulations (158), emphasize the contradictory and inconsistent nature of federal Indian law. My point is not that the latter was always consistent, but rather that, in their inconsistency, federal justices never went as far as imagining Indian independence as a possible way out of the colonial relationship that bound native peoples to the federal US state.
5. Both terms were used in the Cherokee and Kagama rulings.
to establish the inferior and uncertain status of Indian nations (for example, again, in *Cherokee*). Explicit in this line of reasoning was a concept of nationhood equating nations with states; emphasizing the latter’s membership in a “family of nations”; the possibility of the demotion and demise of Indian nations; and the fact that self-government remained, at least for some time, within the reach of Indians even after their destiny had been bound by treaty to that of European and Euro-American nations. Indian nationhood was not merely defined in opposition to US nationhood: the concepts of tribe (or band or community)\(^6\), guardianship and wardship, and diminished sovereignty were used together in providing lexical and intellectual resources to anticipate or confirm the political inferiorization of Indian groups. The Supreme Court decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903), which affirmed the power of Congress to unilaterally abrogate treaties with Indians, did little to simplify this complex and shifting articulation of concepts; neither did the granting of citizenship to individuals or whole groups of Indians. In *United States v. Nice*, 241 U.S. 591 (1916), the US Supreme Court decided that wardship was compatible with US citizenship. In 1924, the act that granted US citizenship to all US-born Indians reaffirmed the compatibility of US citizenship with specific Indian rights and restrictions of rights. It was then, not in the 1930s or the 1960s, but at the apex of what we consider the colonial regime pinning Indians down on reservations under the control of the Bureau of Indian Affairs, that the “special relationship” tying Indians to the federal state was first imagined as one that could be accommodated within the American political system, at least in the medium-term.

**Indian Appropriations of the Concept of Nation in the Early Republic**

Euro-American concepts of Indian nationhood would have remained of little consequence if the balance of power had not shifted durably in favor of the US, which forced Indians to acknowledge these concepts in their claims against the US. The willingness of some groups to make full use of the concept of nation as applied to them was most in evidence among the Cherokees. From the 1780s to the 1830s, federal protection made Indian territories adjacent to or even within the US into protectorates unable to freely declare war or judge white people. The Cherokee used that period to engage in a broad process of nation-building with the clear understanding that the closer they would come to being recognized as a civilized nation, the greater their chances would

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be to limit their powerful neighbor’s intervention in their territory. The fifty years separating their first treaty with the US from their removal west of the Mississippi thus saw a continuous process of centralization and formalization of political power by Cherokee towns which brought about what Max Weber called “the monopoly on legitimate violence” (Weber 77-128). In 1751 already, pressured by the South Carolinians, a national Cherokee council had started assuming responsibility for the actions of all Cherokees and its control over their external trade. In the aftermath of the American Revolution, the council moved at a brisker pace: between 1797 and 1810, blood revenge was abolished and punishment for murders turned over to the national council. At the same time, the national body politic was opened to young warriors, traditionally excluded from the decision-making process (Champagne 58, 94, 100-102; Persico 96-98). The adoption of US-style constitutions usually held up as the clearest sign of the Cherokees’ will to “civilize” was only the most visible part of this phenomenon. The Cherokees created a national police and a national debt. They forbade adultery, polygamy, and intemperance, taking their cues from the teachings of Christian missionaries and with the intention of establishing the respectability of their nation; and they more generally did what they could to control trade with whites. Prominent in these changes was a group of descendants of whites and Cherokees who imported plantation economy into Cherokee life, and with it, slavery. But they were not alone: others embraced Christianity and became literate in their own language thanks to a syllabary that later allowed for the development of a Cherokee-language press (McLoughlin 80).

This elite group of Cherokees with white ancestry had no qualms in presenting themselves as the “Cherokee Nation” in their written interactions with the US federal state. The term was used strategically, and concurrently with other phrases that defined the Cherokees’ collective identity vis-à-vis the US and US states. Emphasis on nationhood never supported blunt calls for independence; on the contrary, they were always balanced with insistence on the inferior status of Cherokees and the need for US protection. In an 1829 memorial to Congress, for example, the Cherokee petitioners started by calling themselves “free citizens of the Cherokee nation,” but immediately added that they appealed to the US “as weak and poor children […] to their guardians and patrons”. Their self-identification as a nation, endowed with “rights as a separate people”, “right to self-government”, to “municipal regulations” and treaty-based “sovereignty”, and their calling on Americans as “brothers”, were inseparable, by their own avowal “humble” self-definition as a people in need of the US, looking in particular towards the US president as a “father” that would see to it that their rights were respected. In the same document, the petitioners thus presented themselves as “free citizens” as far as the state of Georgia was concerned, but as children and younger brothers to the federal
government. In this, they closely approximated the definition of the Cherokee nation as standing in an intermediary, inferior position to the US, a definition that would be given legal standing by *Cherokee Nation v. Georgia* (1831), and *Worcester v. Georgia* (1832). This articulation of Presidential fatherhood, the Indians’ need of protection and rights to self-government, and Cherokee nationhood was consistently advocated by the Cherokee leadership when faced with both the US Congress and their Cherokee constituency (Ross 76-78, 155, 157, 190, 229, 255, 270, 290, 471, 524).

Not all Cherokees agreed with this approach. Several groups within the Cherokee Nation embraced what ethno-historians later called a “revitalization” movement that involved rejection, not embrace of Euro-American civilization (Wallace; Champagne 103). In fact, the complexity of the Cherokees’ cultural and political evolution cannot be but ill served in the short space of this article. Our point, however, is not that all Cherokees defined themselves as a nation in the same way as their most visible leaders, nor that the definition of the Cherokee nation was immutable. What matters, rather, is that the concept of “nation” was part of a colonial dialogue whereby the weaker people, threatened with colonization, had no choice but to speak the language of their oppressor if it were to be heard in the halls of Congress or the courts of justice. Forced by the State of Georgia to remove west of the Mississippi, Cherokees rebuilt their polity in the so-called Indian Territory and maintained their stance on acculturation, even claiming to be the vanguard of civilization among Indians (Denson 47). The Cherokee nation continued to evolve with the US nation. The racial implications of Indian nationhood, for example, became clearer in the 1840s: in the 1846 *United States v. Rogers* decision (Haring 60-61), the Supreme Court ruled that a white man, even when adopted by the Cherokee nation, was still within the jurisdiction of the US. Slave-owning Cherokees began to realize the crucial importance of distinguishing themselves from African Americans and racializing Indianness. The Civil War brought these matters to a head and forced a split between pro-Confederacy and pro-Union Cherokees. As slaves were freed at the end of the war, they received Cherokee citizenship but were later inscribed on a different roll from that of Cherokees and whites intermarried with Cherokees (Sturm 74-78). The survival of the Cherokee nation came at the price of a more stringent racial assimilation to white Americans, either in the form of the segregation of black Cherokees, or of the whitening of Cherokee elites. By the 1880s, US administrative rule had crept into all aspects of Cherokee life, but Cherokees managed to ward off the most important one until 1898, when the allotment of common Cherokee land in Indian Territory was imposed upon them.

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7. See “Memorial of the Cherokee Indians,” *Cherokee Phoenix and Indians Advocate*, II: 40 (Wednesday, January 20, 1830): 1 (col. 3a-5b).
The Long Tribalization of Indian Nations

By 1898, the concept of nations had been closely associated with that of tribe and with diminished territories called reservations. If the concept of nation had been strategically appropriated by the Cherokees, Indian groups colonized later had to contend with their designation as tribes—a concept that ignored differences between sub-groups (or bands) but also between the culturally and linguistically different peoples that were sometimes herded onto the same reservation. Reservation-based Indian groups (tribes) were redefined as heirs to an earlier, larger national or pan-tribal entity that was first and foremost a signatory to treaties extinguishing Indian rights and creating reservations. In the process, the use of the word “nation” became a gesture towards pre-reservation strength and unity, but also a matter of expediency on the part of white treaty negotiators. Although the latter chose to see these collective identities as residual, and bound to disappear by attrition or amalgamation with the US, they also organized negotiations with Indian councils to obtain more land, thereby emphasizing the continued relevance of categories of collective belonging such as tribe or nation. So long as Indians were not full citizens of the US, their tribal status had to be taken into account and with it their distinct political existence.

As Cherokees had done in the early 1800s, Indian peoples west of the Mississippi relied on the vocabulary of treaties to frame their grievances. For example, from the 1890s onwards, Sioux people who sought just compensation for the loss of the Black Hills sued the US government as the “Sioux Nation” (they had been so identified by the negotiators of the Fort Laramie treaty of 1868). Even before they were legally authorized to bring suit against the US, the treaty provided them with a repertory of action by identifying parties and procedures such as the ¾ majority rule, procedures that were put to use not just against the US, but in the political life of each Sioux reservation as well (Lazarus 145). Legal distinctions between “tribe” and “nation” were further problematized by interpreters of Indian languages. The Sioux, for example, connected the English term “nation” to the Lakota/Dakota word *oyate*, which designated what Americans called a people, a nation, a band or tribe, a sub-band, or even entire species (e.g. the *pte oyate*, Buffalo People). When, in 1902, John Grass, a major leader on the Standing Rock Sioux reservation, spoke in the name of “the nation” through an interpreter, he thus could mean “Standing Rock people”, his particular band, the Blackfeet (not be confused with the Blackfeet tribe, who are not Sioux), or more generally “the Sioux”. But his interpreter’s choice of the word “nation”, based on a habit born in the first interactions with American

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negotiators, fitted nicely with how Grass saw himself: not just a local, “tribal” leader, but a Lakota chief in a more general, “national” sense. Interpretive practices preserved the fluidity of Sioux collective identifications, and enhanced the speaker’s stature in the process. They also fitted the non-Indian lack of differentiation between tribe and nation.

As a legal and political concept, “nation” thus survived the division of Indian people into reservation-bound groups in the twentieth century, only to be even more closely associated with “tribe”. Both concepts were used together in legal, bilingual interactions; and both carried understanding of the collective position of Indian people as protected people, transitioning towards full American citizenship but clearly inferior in the intervening time. When participation in World Wars I and II resuscitated the idea of an alliance between Indians and non-Indians, which had been first mobilized during the Revolution, the former stood as no more than a junior partner in the relationship. Loyalty to the US was demanded from them, and it was only from within that loyalty, within patriotic celebrations for example, that Indian leaders could defend their groups as respectable contributors to the security of the nation and even, on occasion, question the hierarchy that placed them in a subordinate position. Patriotism both constrained and enabled the expression of the Indians’ collective identities. It encouraged the identification of tribal territories with the US territory itself. It promoted the idea that the only way to reinforce Indian collective standing on both the national and international scene was to appropriate Euro-American national symbols such as flags and monuments to war dead, so as to give reservation groups the legitimacy that the colonial administration of the Bureau of Indian Affairs refused them. Wars also fostered actual American nationalism, especially among veterans (Grillot 59-124).

It was therefore as “tribes” or “communities” that, from the 1930s onwards, Indian groups were recognized a new measure of sovereignty, in a sense that made them into municipalities or local governments rather than small independent states. Far from being a straightforwardly anti-colonial approach, the building of tribal administrative apparatuses, essential to claims of sovereignty, resulted from the complex interactions of states, tribes, and federal government and started in what John Collier, promoter of the Indian New Deal, regarded as British-inspired colonial “indirect rule” (Hauptman). The expansion of the federal government (in particular in social matters) together with an emphasis on local democracy redefined tribes as valid administrative and political actors in American society. Tentative at first and violently attacked during the termination era of the 1950s, their role

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as political partners was confirmed in the 1960s and 1970s, within a “special” or “trust relationship” with the federal government that purported to rid the notion of protection of its paternalistic (colonial) undertones (Fowler xv-xvi). The heightened visibility of the term “nation” as applied to Indians did not contradict the consolidation of the tribes’ ties to the US Nation-State. Red Power activists themselves, often regarded as nationalists, insisted on federal obligations towards Indians, and turned treaties into sacred constitutional documents enshrining the entire “trust relationship” that was supposed to replace wardship for Indians (Deloria 1976 5).

Such “tribe building” created new opportunities for conflating “tribe” and “nation.” In a 1973 piece celebrating the centennial of the reservation, the tribal newspaper thus spoke of “the people of the Standing Rock Sioux Tribe” as “part of the Yanktonais [sic] and Teton Sioux nation that once controlled a vast domain extending from the James River in North and South Dakota west to the Big Horn Mountains of Wyoming.” This nation was tied to a mostly lost territory, made up of tribes attached to specific reservations, and, reflecting the composite population of Standing Rock, not limited to people of Western Sioux origin (Teton or Lakota) (Loveswar 3). The reservation system forced the designation of a composite “Yanktonai and Teton nation”, but so did Sioux differences between Teton and Yanktonai (Dakota) “bands,” unrelated to the reservation system but still apparent within it. Calls for clarification of the concepts of “tribe” and “nation” made sense for lawyers and politicians (Deloria 1976 25-26; 1974 162); but their entanglement was as political as it was legal. Underlying their permeability lay transfers, connections, confusions between concepts of self-dependence, autonomy, self-government, self-determination, sovereignty, that were traded back and forth between Indian political groups, the Bureau of Indian Affairs, legislators and lawyers. In this constellation of concepts, “nation” could serve to formulate radical claims of equality (Deloria 1977), be a more resounding word for tribe, or even, as it mostly is nowadays, a polite term of address for reservation groups, just as “Native American” has come to be in relation to “Indian”10.

After the federal government endorsed Indian self-determination in 1975, Indian nations clearly became a co-construction of Indian and American elites; their administrative and legal reinforcement took place squarely within the American political system (all Indian now being citizens with only a small minority actively rejecting this status). The UN offered them some

measure of representation on the international scene, as did the solidarity
between “indigenous peoples”, which eventually led to the adoption of the
But even if the context of their use had changed, identical concepts were at
work: limited sovereignty (even its strongest advocates renounced military
independence (Deloria 1977 18)), protection given by and preferential
relation with the US, and, most importantly, legally defined entitlement
groups and territories. Significantly, current criteria for federal recognition of
Indian groups are still not based on the existence of self-proclaimed nations
endowed with natural rights, but on the ability to establish, often through
painstaking ethno-historical work, the continuous existence of corporate
collective identities. Even more significantly, the claims process that started
the internationalization of the indigenous movement has never resulted in a
process of unification of culturally or linguistically related groups. In the case
of the Sioux, the quest for reparations for the breach of several treaties (most
notably the 1868 and 1877 treaties) has, on the contrary, pitted the Western
Sioux against the Yankton, and later on, resulted in strident declarations on
behalf of certain tribal groups that denied the very existence of “a Sioux
tribe” or “Sioux nation” to turn down the money offered by the US justice
system in exchange for tribal land unjustly occupied11. Even after the era of
Red Power, the concept of nation as distinct from the concept of tribe has
remained of very limited practical use indeed.

Far from being an emancipatory concept, the concept of Indian nation,
concurrently with the concept of tribe, has been used to negotiate, not abrogate,
a colonial relationship between Indian groups and European colonizers. It is
invalid to look upon it as part of a decolonizing intellectual and legal framework.
The shape of Indian nations has since the 1700s depended on Indian people’s
unstable ability to keep some control over the “special relationship” that tied
them to the US. Because this control was severely limited from the start, they
were never called “nations” but in a decidedly restricted sense. Euro-Americans
purposefully refrained from attaching to Indian nationhood the same rights as
they attached to their own. Until the 1930s, “Indian nation” was regarded by
non-Indians as a provisional identity pending the demise of “tribalism” and the
assimilation into the American politic. The consequences were durable: even
after the New Deal gave Indian groups the right to incorporate as municipalities
or local governments, they remained a junior partner to the federal government.
As such, Indian nations were always poorly distinguished from “tribes”. It
was mostly left to tribal groups to represent the specific type of nationhood

11. See “Reply of the Oglala Sioux Tribe and The Rosebud Sioux Tribe in Support of their
Motion to Change Attorney of Record,” November 1987, 3-4, docket 74, box 895, RG 279,
National Archives, Washington, D.C.

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that had been the lot of Indian groups since the 1830s: that of a third, unstable sovereignty next to that of states and the federal government; not quite in, not quite out; always called upon to justify its existence.

WORKS CITED


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