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THE LOGIC PARADIGM OF BUCHANAN'S CONSTITUTIONAL ECONOMICS

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Abstract

Buchanan believes that the modern government operates between the Leviathan model and the democracy model, and the role of the Democratic restriction mechanism trusted by the public is increasingly weak. Therefore, a new form of political technology and democracy is required to control the spread of bureaucracy. Hence, Buchanan proposed to put “constitutionalism” before “democracy” and combine “rule restriction” with “non-rule restriction” to realize his constitutional proposition. Buchanan’s constitutional economics is composed of methodological individualism, contractualism and the principle of consensus. This paradigm has standardized and renovated the existing theories of law and politics.

Keywords

Anarchy, efficient system, democratic decision-making process, political exchange, constitutional economics, methodological individualism, contractualism, consensus

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I. Introduction

There are countless roads to get out of the Hobbes jungle, but what is the best choice? Are people doomed to endure “filth, barbarity and poverty” in anarchy or “filth, barbarity and slavery” under the rule of Leviathan? After abandoning the anarchy, the unrestrained leviathan is not an expected efficient system. In order to strive for a favorable situation, it is necessary to minimize the power of leviathan by some means of constraint, that is, to establish a rule to prevent possible disaster damages. In Buchanan's view, the significance of the rule lies in that it can extract a balanced result or result pattern for a community of social people with established capabilities and goals, which is the most common expression of constitutional theory. Moreover, Buchanan's constitutional view is a theoretical construction based on the theory of public choice and the paradigm of constitutional economics. This theoretical construction has two characteristics: first, it discusses the choice of institutional rules at the most general level; second, the discussion or theoretical construction of this system is empirical. Therefore, Buchanan intends to break a religious concept of state or dreamlike democratic system, and realize implicitly rationalization of a political structure that has never been considered to have a strict theoretical basis. Its purpose is to provide some theoretical certainty for the individualist democracy,² so that the democratic decision-making process can obtain a more solid theoretical basis.

² James M. Buchanan & Gordon Tarlock, *Calculation of Consent: The Logical Basis of Constitutional Democracy* 328 (Guangjin Chen trans., China Social Sciences Press 2000).

II. The context of Buchanan's constitutional theory

Buchanan believes that the modern government is actually operating between the leviathan model and the democratic model. In his view, the modern country still hasn't eliminated the leviathan trend, and the government still has a very obvious power over individuals.³ Compared with market transaction and politics, the competition between individuals is almost completely impersonal in operation. Market mechanism restricts individual decision-making behavior and makes all decisions become marginal decisions. Therefore, the wish of an individual to gain more trading benefits by changing his trading behaviors, such as raising or lowering the prices of goods will not always be achieved. Because as far as the whole market is concerned, his trading partner has a variety of ready-made alternatives, no individual can dominate the market alone. However, as a kind of political exchange, there is no alternative. It is not easy for individual participants to withdraw from this ultimate social contract and turn to an alternative seller of public goods if they want to make a new agreement. Compared with the market, politics seems more like a transaction between two isolated individuals. Everyone knows that there is no alternative buyer and seller, nor room for bargaining. The governments enjoy most resources, they are in an internal monopoly position in terms of products and services. Not only that, like other social institutions, the government institutions under the modern democratic system are made up of different individuals with personal motives and interests, and these individuals who constitute the governments will inevitably incorporate their personal interests into the governments and government decision-making. It can be assumed that the power of the government may be exercised for the personal interests within a certain range, and the power of the state often becomes a powerful means for a few people to obtain interests, which will make the government's inherent "*public interest*" characteristics degenerate into

³ Buchanan's definition of modern national characteristics is based on his criticism of three types of government models. He rejects the model of autocratic rule of charity. In this model, the government is considered to take social interests as its own interests, and take the maximum welfare of the whole people as its own policy goal. At the same time, it can maintain an absolute authority, not bound by any form. In Buchanan's view, this model has the absurdity of reality.

partiality, parochialism and dishonesty. In fact, the abuse or misuse of coercive power is a very persistent danger.⁴

On the other hand, the problem is that under the conditions of modern parliamentary democracy, most people have implicitly accepted – the popular presupposition in the 20th century – that the electoral process itself in a democratic system is enough to ensure that government behavior is within acceptable limits. In fact, as mentioned before, the decision-makers in democratic government may show a certain tendency of self-interest, thus, the government power becomes a means for a few people to seek personal interests. These problems also exist for the democratic mechanism that restricts the state power, and the individuals in the democratic mechanism are likely to participate in politics for personal interests, hence the democratic restriction function cannot be effectively played. As for democracy itself, in view of people's one-sided understanding of the majority's decision-making rule, modern democracy in a sense acquiesces in the majority's enforcement of the minority. Buchanan is concerned that democracy in this situation may be transformed into a leviathan that we cannot avoid. Buchanan foresees that the modern democratic system is experiencing double failures: on the one hand, it cannot effectively restrict the power of the state government. on the other hand, the modern democratic system makes the "majority decision-making rule" absolute, and the reasonable demand of the minority is ignored by the democratic decision-making system, which has gradually lost its democratic attribute of democratic election and democratic decision-making.⁵

Buchanan was sure that collective choice based on the majority rule commonly used in modern democratic countries does not really stand for democratic decision-making, which originated from Kenneth Arrow's "*impossibility theorem*". According to Arrow's view, there is no social choice function which satisfies the following four basic axioms at the same time: 1. The unlimited system of personal preference; 2. The

⁴ Jeffrey Brennan & James M. Buchanan, *The Power to Tax* 101 (Keli Feng, et al. trans., China Social Sciences Press 2004).

⁵ Buchanan believes that in terms of the current system of electoral competition under the rule of majority and the process of majority, the majority views on the restriction of political power by electoral rules may be too optimistic.

weak Pareto principle; 3. The independence of uncorrelated goals, that is, the social preference order of a pair of social goals is not affected by the change of other goals' preference order; 4. The non-autocracy of social preference. Through the analysis of the theoretical model, Arrow has come to the conclusion that according to the majority decision-making principle, a single and reasonable social preference order cannot be obtained from a number of reasonable individual preference orders, and there is no social choice mechanism that can convert the individual preference order of N alternatives into the social preference order, and accurately express all kinds of individual preferences of all members of the society. Democratic voting does not produce a social choice, and the existence of the lack of consensus and mutual vote has made the democratic decision-making system violate the non-imposed standard.⁶ Buchanan clearly realized that in the face of modern scale public sectors and bureaucracies, the power of democratic restriction mechanism is becoming increasingly weak, and the Democratic restriction mode is becoming more and more naive and ridiculous.⁷ Therefore, he advocated the invention of a new political technology and a new way of expressing democracy to control the spread and growth of the bureaucratic privileged class, and the most important thing and the main motivation in the normative sense is to prevent the exploitation of people by people through political procedures.

III. Propositions of Buchanan's constitutional theory

In Buchanan's view, the people who study political process have not realized all kinds of ineffectiveness levels and deep reasons, although the modern state system and democratic system have exposed various

⁶ Kenneth J. Arrow, *Social Choice and Personal Value* 56 (Zhiwu Chen, et al. trans., Sichuan People's Publishing House 1987).

⁷ Buchanan also stressed that people should pay attention to two issues in democratic elections: first, there are likely to be ignorant constitutional decision makers among voters, whose actual political power may be limited to a narrow range, and they have to delegate their discretion to others. Second, unlike bureaucrats, there must be information asymmetry among the voters, which not only provides opportunities for misleading the voters, but also makes it possible for the bureaucrats to abuse their powers.

problems. On the contrary, they always fantasize that they are committed to completing the reform through the innovation of personal motivation and the moral restriction of personal interests and the emphasis on the concept of public interest, etc. The innovation of morality rather than the reform of structure is always the important reason why the problem has not been solved. Therefore, Buchanan stressed that the first thing to be established is a constitutional mentality. He was convinced that without an individualistic position and some initial common basis for dialogue, any discussion on design would be useless. Constitutionalism mentality must first break a metaphysical presupposition that political authority is composed of a group of moral Supermen, so as not to replace independent rational thinking with illusory or arbitrary coercion. Secondly, it is necessary to inject a little realism into individual behavior in politics. The logic of constitutionalism is contained in the following implicit foresight: any power granted to the government may be exercised in some scope and in some occasions, different from the desired purpose stipulated by citizens in the veil of ignorance. The rulers who act as agents have no more moral guarantee than ordinary citizens, individuals have the same motivation in public choice and private choice. Those who make government decisions have the possibility of their moral behavior (altruistic behavior). However, a more reasonable constitutional thinking really needs to exclude such moral behavior as the premise of normative analysis. Those who believe that government should be analyzed on the basis of the assumption of benevolent agents deny the legitimacy of any constraints on the government, including the elected government. In this case, there is no logical basis for constitutionalism. Based on the above considerations, Buchanan's attitude is very clear.

*“If we evaluate the following two situations: one is an unrestricted democratic process in the conceptual sense, the other is a form of governance that explicitly limits the scope of politics, and even if we choose in this form of political governance, even if there is no democracy, we will still prefer the second situation.”*⁸

⁸ Jeffrey Brennan & James M. Buchanan, *The Power to Tax* 38 (Keli Feng, et al. trans., China Social Sciences Press 2004).

The specific content of Buchanan's constitutional theory includes two aspects: rule restriction and non-rule restriction. The constitutional conception of rule restriction is only about understanding the meaning of the preposition constitutionalism of democracy, which Buchanan defined as a series of rules reached in advance, and subsequent actions are carried out within the scope of these rules.⁹ His constitutional thought is a rule system based on metarule, and the rich relationship between rules expresses its unique theoretical characteristics. In order to express his constitutional view clearly, Buchanan quoted a supplementary concept – justice, what is different is that in Buchanan's view, rules are the basis of justice, rules are logically prior to justice, and the value of justice lies in the observance of rules. As for the judgment of whether the rules are fair or not, it can only be made according to the more abstract rules (i.e. metarule) which are applicable to the judgment between different rules. The formation of political action and law is based on certain rules (or metarules).¹⁰ The binding force of rules depends on its compliance with metarules. If the rule is formed under the agreed metarule, then the rule does not need to be agreed and can also be binding. "Consensus" is a core category, because the agreement imposed cannot make the rules legitimate, and it cannot support the moral obligation to abide by the rules. It should not be considered that justice can provide an independent norm, on the contrary, only consensus can play such a basic normative function, which is the most profound logical relationship in Buchanan's constitutional theory.

Buchanan disagreed with the assumption that too much attention should be paid to the voting rules and arrangements, and that the electoral process alone would be enough to restrain the government of its own accord. Therefore, in addition to the proposition of rule restriction, he also covered the non-election means with the constitutional perspective. Buchanan said in his book *the Power to Tax* that financial constraints could actually replace election constraints. He saw that the right to resist tax has a typical constitutional orientation. The form of fiscal

⁹ Jeffrey Brennan & James M. Buchanan, *Constitutional Economics* 1 (Keli Feng, et al. trans., China Social Sciences Press 2004).

¹⁰ The main idea is: as long as the screening process conforms to the accepted meta rules, then the rules selected from them are just.

and taxation system is not to cut taxes and expenditures at one time, but to establish a clear constitutional constraint, which is applicable to the indefinite future. The purpose of externalization is to limit the size of the government, to keep it below the standard level of the electoral process, and to control the power of the government within a moderate range.

“Whether the government is a continuous Leviathan, a Leviathan with probability, or a majority democracy dominated by middle voters, the most ingenious and reliable way to subvert the existing foundation of society is to corrupt its currency.”¹¹

Similar to the constitutional significance of the right to resist taxation, property right also guarantees the individual's status of free contracting in some aspects. In property as a guarantor of liberty, Buchanan is cautious when talking about market economy or the characteristics of social structure in essence — division of labor and exchange will make individuals rely on others, thus increasing the risk and uncertainty in personal life. Individuals are endowed with the absolute value of the freedom to withdraw from the market relations; the withdrawal is possible because of the existence of private rights. Private rights enable individuals to withdraw from the interdependent network formed by exchange market, and move towards the precious state of self-sufficiency.¹² Buchanan stressed that the right way to avoid exploitation and market harm is not to replace people's property rights completely with collective or state ownership, but rather to keep the possibility of withdrawing from market dependence by making people enjoy property rights, so as to avoid the impact of blind market forces. In this sense, the property of an individual or several individuals is suitable as a guarantee of freedom, that is, completely independent of the political or collective decision-making process.¹³

¹¹ John Maynard Keynes, *The Economic Consequences of Peace* 236 (Hackett Blaise and Howe 1920).

¹² James M. Buchanan, *Property And Freedom* 37 (Xu Han trans., China Social Sciences Press 2002).

¹³ *Ibid.* 59.

IV. Analysis of Buchanan's constitutional theory paradigm

The paradigm of Buchanan's constitutional theory consists of three elements: methodological individualism, contractualism and the principle of consensus.¹⁴ These three elements show the theoretical characteristics. Through targeted research, we can understand the deep meaning of Buchanan's constitutional theory, and adopt this simplified method to make its constitutional thought more clearly and accurately expressed.¹⁵

A. Methodology Individualism

The methodology individualism adopted by Buchanan expresses the idea that only the individual is the unique and final entity of choice and behavior. Any understanding of the social interaction process must be based on the analysis of the behavior of process participants. A collective or society will never have a real sense of choice behavior. In other words, to understand society as only a collection of countless individuals, it has no value, goal or behavior independent of individuals itself. This model expresses Buchanan's attitude towards system design. The most important significance of Buchanan's methodology individualism lies in giving people the ultimate sovereignty status on various issues concerning social organizations. Individuals are given such a qualification that they have the right to choose the organizational, institutional structure of which they are willing to live, and the individual is the sovereign in the final sense, which is proved to be the basis of the legitimacy of a free social order.¹⁶ The advantage of the veil of ignorance

¹⁴ Buchanan's speech at the Nobel Prize for economics in December 1986 said: Wicksell deserves the title of the most important pioneer of modern public choice theory, because in his 1896 paper, we found all three components of Public Choice Theory: methodology individualism, economic man, and politics as a transaction.

¹⁵ Buchanan's theory of contractualism has both empirical and normative significance. From the perspective of integrating market behavior and political behavior with a trading relationship model, it is empirical. At the same time, the contractualism is regarded by him as the most helpful system design to express personal value and to provide a dialogue context for rule selection, so it also has normative significance.

¹⁶ *Ibid.* 96.

and the method of Constitutionalism Analysis is that it allows us to find a logical basis for this kind of norm from personal choice rather than from hypothetical external ethical standards.¹⁷ Buchanan rejects the existence of a rule system that lies outside people's cognition, and its purpose is to construct an equal democratic participation procedure with priority status. In this way, people create group rules through discussion, analysis, lobbying, mutual consultation and other processes. In essence, free individuals agree to restrain themselves in order to obtain freedom. And "consent" makes the democratic participation process consistent with the subjectivity of participants rather than separate.

Buchanan's individualism theory consists of two levels: one is in the analytical sense, the individual is the only analytical unit. The other is in the philosophical or normative sense, the individual is the only philosophical existence and the only source of value evaluation. On the first level, Buchanan believes that the construction of constitutional system depends on those individuals who act or make decisions in the process of group selection. Those typical individuals may be egoists, altruists, or any combination of egoism and altruism. And these people are independent individuals with independent goals. They have different purposes for collective action. In fact, if the individual interests are assumed to be the same, then the subject will be eliminated, and there will be no organized activities. The different individuals have unique implications for the theory of political decision-making. On the second level, Buchanan understands the state as a means and place for individual citizens to make collective decisions to achieve their personal goals. In his view, the human individual is the primary philosophical entity, the state itself is not the purpose rather a tool.¹⁸ In terms of the relationship between the two, if there is no provision of the second level, the first level is relatively meaningless for the analysis of the constitutional structure derived from personal preferences. The interests that the individual chooses and promotes are exactly what the individualistic

¹⁷ Jeffrey Brennan, James M. Buchanan, *The Power to Tax* 228 (Keli Feng, et al. trans., China Social Sciences Press 2004).

¹⁸ James M. Buchanan, The Pure Theory of Government Finance: A Suggested Approach, 57 *Journal of Political Economy* 496 (1949).

value promotes. If in the second level, the non-individual value is the final standard, then most of the constitutional economic analysis will lose its significance. It is impossible to derive the logic of the rules unless the interests expressed by the individual are used.

B. Contractualism

Buchanan explains the thinking of choosing contract theory, It is expressed as follows:

*“Some theorists refuse to regard the theory of state contract as an explanation of the origin or foundation of political society – this refusal is appropriate in itself, but they often ignore the elements of the traditional contract theory that do provide us with a ‘bridge’ between individual choice calculation and group decision-making.”*¹⁹

In the systematic argumentation of constitutional theory, Buchanan accepted Hobbesian’s contractual doctrine, and supplemented it with Adam Smith’s “economic man” hypothesis. In the book limits of freedom, Buchanan admitted that it is necessary to find a starting point for the process of social evolution for the convenience of research. What can serve as this starting point is the jungle society discussed by Hobbes. Like all contract theorists, Buchanan explains the reasons for the formation of state and law in his own way-as a rational animal, people always have a calculation in their relationship with others. After many games, he will find that cooperative games are more beneficial to himself and can produce stable results .When enough people realize this, they will reach an agreement, sign a contract together, establish a country and follow common rules. According to his point of view, the contractual paradigm of political science is trading paradigm. As long as the source of value is located in individuals and there is no difference between people, then all political affairs can be regarded as a complex trading or contractual system involving multiple people.

Buchanan’s contractual analysis model has two meanings, one is the meaning of figurative evaluation, the other is the meaning of empirical

¹⁹ James M. Buchanan, A Contractarian Paradigm for Applying Economic Theory, 2 *American Economic Review* 229 (1975).

confirmation. If it is not combined with his specific contractual content, it will be difficult to understand. The problem is: does any historical experience show that individuals have completed the constitution in the way of contract? Buchanan made an explanation different from that of Rawls. Rawls believed that the formation of rules must be the consensus obtained under the condition of excluding the influence of all background conditions. When the original contractors decided what principles were the basis of regulating the basic structure of society, they had no idea of their special identity, social status, intelligence, physical strength, income, wealth psychological tendency, not even their own unique value dreams, the only basis for the contractor to choose was general common knowledge. Therefore, it is impossible for anyone to make use of the advantages of material, intelligence or information to gain benefits for himself through specific social organizational arrangements.²⁰ Buchanan claims that when individual participants make decisions for the final result, i.e. social choice, they cannot understand the result, which leads to the inevitable ignorance of individuals involved in group selection. This special uncertainty in political choice and the limitation of individual rationality in the process of choice increase, not decrease, the possibility of reaching an agreement. The influence of specific rules on everyone's situation contains a kind of real uncertainty. In the face of this kind of uncertainty, under the guidance of the calculation of self-interest, individuals will focus on the choices that can eliminate or minimize the potential disastrous results. For example, in the context of constitutional choice, individuals give their own uncertain influence due to different choices. The more vague this uncertainty is, the more likely individuals are to promote fair agreements. Critics will think that Rawls's "veil of ignorance" is an ideal normative construction, while Buchanan's "veil of uncertainty" does not fall into a similar situation, because it does not require individuals who enter the constitutional dialogue process to change their moral ways. Obviously, Buchanan is inclined to a theory of procedural justice, rather than any principle proposed by Rawls. In his view, only the individual is the only and ultimate entity of choice and behavior, and any understanding of social

²⁰ Rawls, *On Justice* 136 (Huaihong He, et al. trans., China Social Sciences Press 1988).

interaction process must be based on the analysis of process participants' behavior. And contractualism is to ensure the identity of individual as the Sovereign of social governance rules all the time. Buchanan refuses the exist of the rule system structure which beyond people's cognitive scope. At the same time, contractualism denies any transcendental truth judgments, which's purpose is to construct an equal democratic participatory procedure with priority status.

C. Principle of Consensus

Early contract theorists assumed that the formation of the original contract was the consensus of opinions, because the nature of any contractual arrangement was voluntary participation, and no rational person would voluntarily agree to cause himself expected net loss or net injury. Knut Wicksell first realized the importance of the consensus rule as an ideal benchmark rule, because it is important to ensure that all government actions reflect a real improvement in the situation of all. Political game is a positive sum game, and all positive sum games must have some solutions covering all participants. But if the interests of more than two individuals are in conflict, it is impossible for all to agree. If the behavior is not completely restrained, some interests will surely prevail over others. Considering that the cost of reaching consensus may be very high, rational individuals will make trade-offs, abandon some narrow current efficiency of the principle of consensus to obtain the operability of the political process, and actually allow these activities to be organized according to some decision-making rules that are not unanimous enough, which is generally the reason for adopting majority decision-making rules. But in fact, the transition from the principle of consensus to the rule of majority decision has greatly weakened the binding force of pure election behavior.

Many people who accept the democratic model will recognize the validity of the limited contractual structure, and the majority rule may be accepted as a necessary condition of democratic politics, or directly equate "democracy" with "simple majority rule". However, majority rules do not guarantee the performance of the rules themselves, because once the majority coalition holds power, it is likely for them to take

the actions against democracy, the tyranny of the majority is as real as other forms of tyranny. In fact, it may be more dangerous, because it draws energy from such an ideal fantasy — participation is everything.²¹ This kind of fixed concept determines that there is no criticism or improvement on the majority rules, which implicitly allows the majority to exploit the minority. In recognition of this danger, most people tend to rethink the principle of consensus even if they do not actually choose. The principle of consensus has some special attributes, by adopting this rule, an individual can ensure that he or she is not harmed by the external, private or collective actions of other individuals. If the cost of decision-making can be reduced to a negligible proportion, then rational individuals will always support this consensus requirement before the final political decision is made.

Orthodox theorists tend to arbitrarily abandon the principle of consensus as a possible alternative to the majority rule or the minority rule, the critical view holds that the principle of consensus is not feasible at all. But Buchanan judged that the so-called “infeasibility” may be the operational level of decision-making rather than the characteristics of its constitutional level. Distinguishing these two different levels can eliminate many of the confusion in the modern interpretation of the theory of state contract. His point of view is very clear, Constitutionalism is a long-term rule choice, with forward-looking and durable characteristics etc. As far as constitutional choice is concerned, unlike any individual’s special decision or decision, it is quite rational based on a long-term view of collective behavior which contains many different time series and many different allocation of economic resources. Choosing the only best rule is quite different from deciding how to allocate resources optimally in a specific time zone. In the context of constitutional choice, individuals do not know where they will be in the decision sequence of the expected collective behavior chain. Because of the unrecognizable self-interest and the unexpected vision, the decision-makers are in the partial ignorance and can instead reach an agreement on all aspects of the rules. The rules of decision-making are divided into different levels, the more basic human rights

²¹ James M. Buchanan, *Property and Freedom* 64 (Xu Han trans., China Social Sciences Press 2002).

and property rights are involved, the greater proportion of majority consent is needed until consensus is reached. The more fundamental human rights and property rights are involved, the greater the need for a greater proportion of majority consent until unanimous agreement is reached. The highest level is the constitutional level, the main task of this level is to choose rules. Obviously, it can also determine the lower level decision-making rules, so these levels of non-consensus rules have the legitimacy basis of consensus rules. Buchanan believes that democratic politics can implement the majority rule, not necessarily the “all pass” of Wicksell’s style, but this majority decision-making rule should or must be extended from some kind of contractual logic of consensus.²² And any choice made by the majority should be applied equally to all members of the society, without discrimination against the minority.

V. Conclusion

The most creative of Buchanan’s constitutional theory system is his public choice theory and constitutional economics paradigm. His constitutional economics paradigm tries to eliminate all illusionism, so as to make the theoretical basis of constitutionalism stable and credible. After the necessary transformation and restatement of the veil of ignorance and the principle of consensus, Buchanan expressed the ideas of Rawls and Kant with an acceptable limit. The whole thread of his thought is as follows: to walk out of Hobbes’ jungle, to achieve Kant’s universalism by relying on the partial veil of ignorance and through the principle of consensus which is similar to Habermas’s. This kind of universalism is not derived from the idea of good in essence, but from the logic of consent that is justice. In summary, the significance of constitutional economics is not the discourse provided by the paradigm itself, but the theoretical depth opened up by it.

²² Buchanan believes that the following three conditions must be met for vicksell’s “consensus rule”: 1. Consent must be unanimous, and if the cost is too high, the majority principle will be considered, such as the voting principle of two-thirds majority (but this proportion should be increased as far as possible); 2. Consent is reached among a group of rational individuals with self-interest; 3. Consent must be based on a voluntary balance of individual interests, and the utility of these individuals is not comparable.

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