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Controversies over freedom of expression

Reflections on a discourse studies approach

Zusammenfassung: Öffentliche Kontroversen über Meinungsfreiheit sind international verbreitet. Die Kontroversen unterscheiden sich in vielerlei Hinsicht, haben aber gemeinsam, dass zunächst eine öffentliche Äußerung aufgrund ihrer Veröffentlichung kritisiert worden ist und dass diese Kritik in der Folge selbst Kritik geerntet hat. Diskursstudien bieten sich für die Untersuchung von Öffentlichkeitkontroversen an, weil darin verschiedene Wissenformen, bzw. verschiedene begriffliche Rahmen für Argumente und Bewertungen von Äußerungen, von zentraler Bedeutung sind. Gleichzeitig stellen die Kontroversen aber auch methodische Herausforderungen für Diskursstudien dar. Dieser Artikel reflektiert darüber und weist auf mögliche diskursanalytische Vorgehensweisen hin, genauer gesagt auf Analysen von diskursiver Pluralität, Dialogizität und Rekontextualisierung.

Schlüsselworte: Öffentlichkeit, Diskursanalyse, Meinungsfreiheit, Kontroversen

Abstract: Controversies over freedom of expression are a re-occurring phenomenon in public arenas in many countries. The controversies are diverse, but have in common that a specific public expression have unleashed critical reactions on its very publication, which again have triggered criticism on the critical reactions. Discourse studies is an obvious approach for studying the controversies since contrary ways of ›knowing‹ what a specific expression is and does, including contrary frameworks for arguing and evaluating, is at the heart of the controversies. However, the controversies also pose challenges for discourse studies. This article offers some reflections on these challenges and points to possible analytical directions; studies of discursive plurality, dialogicity and recontextualization.

Keywords: Discourse studies, freedom of expression, public space, recontextualization, dialogicity, controversies

1. Introduction

Controversies over freedom of expression can be observed in many public arenas. Well-known examples include the ›Rushdie affair‹, the debates on the drawings of the prophet Mohammed published by the Danish newspaper Jyllands-Posten in 2005, and the controversies related to the satirical publications of the French magazine Charlie Hebdo, culminating in the killing of editorial staff members in 2016. But examples also include controversies over holocaust denials, public approvals of terror acts, issues of ›cultural appropriation‹, accusations of ›fake news‹, publishing of op-eds in newspaper, and others.

The controversies are diverse, but have in common that a specific public expression – be it a book, drawing, film, speech, happening, op-ed, social media posting or press comment – have unleashed critical reactions to the very fact that it was published, which

again have triggered criticism on the critical reactions, and so forth. Or, the controversies are triggered by the – public – decision not to publish a certain piece, such as the New York Times' recent decision not to publish in print an online op-ed from US senator Tom Cotton in the wake of demonstrations against police violence and racism. The chains of reactions in the controversies can be long or short and so the list of involved actors, but typically a polar dynamic is at stake in which one side invokes principles of freedom of expression or free speech, whereas the other side employs notions of hate speech, racism or xenophobia. Contrary ways of ›knowing‹ what a specific expression is and does, including contrary frameworks for evaluation, are thus at the heart of these often heated and polarized controversies. Moreover, the relation between violence and speech is key in the struggles: On the one hand, freedom of expression is a fundamental human right and a condition for a well-functioning public sphere, and this right can be curbed by violence or threats of violence from states, groups, or individuals. On the other hand, freedom of expression can be exercised in ways which ends up inciting violence. This ambivalence plays out in the conflicts and gives rise to struggles over who initiated the violence and who is to blame as the real aggressor.

However, it must be added that the cases where violence is most successful in curtailing freedom of expression, including curtailing criticism of incitement to violence, cannot be addressed by discourse studies of public controversies, simply because (fear of) violence has been so effective that silence has replaced public discourse. This reflects a blind spot of discourse studies; a basic dependence on available discourse, or a ›discourse bias‹ so to speak, to which the current article is no exception. Thus, the state of freedom of expression in a given public space cannot be derived only from the public controversies of freedom of expression. North Korea is an extreme case in this respect, but intimidation and silencing repression can be found in other authoritarian regimes all over the globe, or it may come from non-governmental groups threatening to punish non-orthodox expressions which violence.

With this caveat in mind, the current article will argue for and present a discourse approach to the controversies over freedom of expression. The aim is not to arrive at legal or moral criteria for settling the conflicts in the first place, but to enrich our understanding of the controversies as dynamic exchanges rooted in discourses with epistemic, argumentative and identity implications. The article will offer some reflections on challenges for a discourse approach and point to possible research directions.

2. Contextualizing the controversies over freedom expression

The controversies over freedom of expression have arguably been furthered by several societal and technological developments: the increased opportunities of expression on the internet in general and social network sites in particular, the internationalization of public communication, and the cultural and religious diversification of (some) societies. These developments can be said to have established a »cosmopolis«, as the historian Timothy Garton Ash puts it, i.e. »the transformed context for any discussion of free speech

in our time«, which »exists in the interconnected physical and virtual worlds« (Ash 2016, p. 19). In cosmopolis, the dynamics between public expression, reaction, and reactions on reactions can unfold across national borders; people may riot and protest against publications from the other side of the globe. However, this interconnectedness of national public spheres does not imply that expressions from one sphere are automatically transmitted to another. As I will return to, it can take a lot of work to make those translations happen.

The ethnographer Fevret-Saada arrives at a similar point in her historical analysis on religious polemics, although she argues for the Rushdie affair as the game changer after a period of »armed peace« (Fevret-Saada 2016, p. 34) between religious organizations and their followers on the one hand and artists and their audiences on the other:

»From then on, the familiar conflicts of France, the United States, or the United Kingdom on the right to satire—and beyond this, on the right to freedom of expression—changed scale: they no longer had to do merely with one specific society but could potentially be deployed worldwide« (Fevret-Saada 2016, p. 39).

In a yet wider perspective, the controversies over freedom of expression can be seen as negotiations of how societies should deal with human diversity. Diversity is a part of social life in the sense that human beings are different in many different ways, such as in terms of preferences, norms, ethnicity, sexuality, age, resources and so on. These diversities come to matter in different historical and cultural contexts, not least via discourses and practices that underscore some differences and underplay others. For instance, discourses may highlight differences in colour of skin, nationality, religious observance, or ecological practice. Moreover, diversity is dealt with at many different levels of social organization such as in families, groups, organizations, communities and societies. »Dealt with« indicates that human diversity is not just enriching or fascinating, but also gives rise to conflict, struggle and negotiation. Thus, dealing with diversity is not just a smooth game, but implies struggle-some social regulation.

Human diversity is regulated in different fields of practices with varying social extension and complexity. In the present article, I want to center on one such field of practice: the public sphere. The public sphere is understood as an arena, or better: a set of connected arenas, where societal matters are raised, articulated and debated in ways that inform political decision making to some degree. The public sphere is public in a dual sense: *public matters* are discussed, and discussions are *publicly visible* (Hölscher 1978). What comes to count as matters of public concern is, however, not pre-defined as either public or private (Peters 1994), but itself a matter of public negotiation. In that sense, matters can be politicized, i.e. become objects of public attention and political struggle, or they can be de-politicized and disappear from the public agenda (Hay 2007). In principle, the public sphere is open for everyone, but in reality – as have been pointed out by many critics of early Habermasian conceptions of the public sphere (see Calhoun 1992, for a collection) – different actors have varying access to the public sphere and varying resources for voicing their interest and setting the public agenda. At the same time, however, as Habermas has replied (Habermas 1992), these biases can be thematized in the

public sphere, and efforts can be made to change them over time. Recent approaches theorize the hybrid character of the public sphere as a network of public arenas, based on different media platforms (Chadwick 2013) and dedicated to specific themes within different timescales (Bruns & Highfield 2016). This is in line with conceptions of a networked public sphere, which emphasises connections and flows between different arenas, rather than events within one public arena (Habermas 1992; Mansbridge et al. 2012). These conceptions will inform the current article and the directions suggested for discourse studies.

3. Approaches to controversies over freedom of expression

Scholarly, the controversies over freedom of expression have been addressed not least from a legal-normative perspective, centering on the question on where to draw the line between permitted and prohibited forms of expression. However, there is a growing body of research on the wider social dimension of the controversies, including contributions from disciplines such as ethnography (Fevret-Saada 2016), philosophy and history of ideas (Bejan 2017 & 2019), and sociology (Midtbøen et al. 2017; Moussen & Grillo 2014). These studies approach the controversies as socially, historically and culturally constituted.

Discourse studies represents an obvious approach for studying the controversies over freedom of expression since they are realized in language and other modal forms of semi-osis, and since an integral part is the struggle over meaning and over what constitutes legitimate knowledge. Some post-structural leaning studies have approached the controversies (Hansen 2011; Stage 2011), whereas the interest has been rather limited for more linguistically informed approaches such as Critical Discourse Analysis. On that background, there is a potential for further exploring how discourse studies can contribute to our understanding of the controversies. This article aims to contribute by some methodological directions, which are not bound to a specific empirical case, and which do not presume to constitute a complete method. Instead, they are formulated as a set of challenges and methodological reflections. The underlying assumption is that discourse studies can enrich our understanding of controversies over freedom of expression and at the same time inform normative debates over ›where to draw the line‹. The contribution, however, does not consist in aligning with one on the most vocal camps, but more indirectly in offering new ways of observing and conceptualizing the controversies.

4. Reflections on a discourse studies approach

4.1. Discursive plurality

A fundamental challenge for studying the controversies over freedom of expression lies in the fact that the controversies often play out between different sets of meaning, not just

between different opinions or points of view. That is, the conflicts are not simply about different ways of evaluating an issue, but implies different ways of understanding what the issue is fundamentally about and how one can legitimately represent and argue about it. Therefore, the notion of discourse is appropriate, understood as a wider universe of meaning within which knowledge can be produced, arguments formulated, and social identities established. Discourse in this sense has been referred to as ›Discourse‹ with a capital D in order to distinguish it from ›discourse‹ as the social production of meaning in a concrete setting (Keenoy & Oswick 2004; Gee 2005; Fairclough 2005). Following Hajer's comprehensive definition, a discourse can be defined as

»an ensemble of notions, ideas, concepts, and categorizations through which meaning is ascribed to social and physical phenomena, and that is produced in and reproduces in turn an identifiable set of practices« (Hajer 2009, p. 60).

The co-occurrence of different discourses in the controversies over freedom of expression implies that the controversies cannot sufficiently be grasped from the perspective of one of the discourses involved. In other words: to analyze from the perspective of one of the involved discourses does not add to our knowledge of the controversies, it just replicates a position in the debate. Discourse studies have often invoked the notion of ›denaturalizing‹, i.e. of revealing taken granted forms of knowledge, social relations, and identity or subject positions as socially constructed (e.g. Machin & Mayr 2012). However, when it comes to the controversies over freedom of expression, different and competing naturalizations are in evidence. This calls for an analytical approach that works at a critical distance to more than one of the involved discourses in the controversies. It is worth stressing that this does not presuppose a neutral ground or Olympic vantage point from which all positions can be objectively observed. Of course, discourse analysis is a representation from somewhere too. Nevertheless, this call assumes the possibility of stepping back from different discourses and re-representing them in a form not reducible to the representational formula of one of these discourses.

As for how this challenge can be met, I would like to point to another dimension of (some forms of) discourse studies that runs parallel to the denaturalization approach. With inspiration from diverse sources, for instance ethnomethodology (Garfinkel 1967) and the sociology of knowledge, (Berger & Luckmann 1966), among others, there is an *emic* strand in discourse studies, which aims at analyzing discourse not from categories predefined by the analyst but as categories emerging in articulations by the discourse producing participants. The emic approach requires an openness to identify the specific bundle or web of meaning, characteristic for each discourse. Epistemologically, this does not imply a vision of a direct access to meaning-making, only conveyed by the open attitude of the analyst. Discourse studies is inevitably mediated by – well, discursive – categories, and the idea of a direct access to discourse is an illusion that stands in contradiction to basic assumptions of meaning as socially and historically constituted. Yet, there are important differences between the analytical openness or restrictedness of the categories which can be drawn upon by the discourse analyst. For example, the analytical cate-

gories suggested by Foucault in the *Archeology of Knowledge* (Foucault 1969) or by Keller in the *Sociology of Knowledge Approach to Discourse* (Keller 2005) are significantly more open and suited for an emic approach than, say, the categories for analyzing appraisal or transitivity within the tradition of Systemic Functional Linguistics (Halliday 2004). A promising approach in this respect has been developed by Reisigl and Wodak (2009), who combine relatively open categories at higher level of analysis (such as strategies of nomination, evaluation, argumentation, perspectivization and mitigation/intensification) with more restricted categories at a lower level of analysis (such as notions from systemic functional linguistics, pragmatics, and rhetoric). Whereas the higher level categories guide the analysis, the lower level categories can be employed according to their relevance. Without naïve assumptions of direct immediate access to meaning making, an emic approach can thus be enabled and guided by the employment of relatively open analytical categories, possibly in combination with a wider reservoir of more specific categories which can be drawn upon when relevant.

The observation that conflicting discourses clash in the controversies over freedom of expression, does not imply that we can assume a strong knowledge about these discourses. On the contrary, there is a need for bracketing assumptions about which discourses are out there and how they are constituted. Instead, an emic and inductive analysis that painstakingly takes the different discursive elements apart and observes how they are connected, could enrich the understanding of how the individual discourses are constituted, and point to a greater variety of discourses than otherwise assumed (in this article as well). Maybe there is more to the story than a simple dichotomy between a ›free speech‹ and a ›hate speech‹ discourse, and maybe these discourses do not look quite as one would expect. In the same vein, the naming of discourses is not to be seen as self-explanatory, but only as the tip of the analytical iceberg.

In the analysis of conflicting discourses, special attention could be given to the ways in which public spaces are conceived and possibly differentiated. This would include identifying key metaphors for understanding and evaluating public communication (such as the family dinner) as well as concepts for designating particular public spaces (e.g. ›safe spaces‹). It would also include studying the modalities associated with the suggested regulations of speech and expression in the public spaces; whether legal or moral, and whether to be sanctioned or not. Moreover, there are most likely important differences to be found between the countries in which the controversies unfold, and it would be an obvious task for discourse studies to explore these.

To sum up, the emic approach is particularly useful in the study of a conflicting and contested area, such as the controversies over freedom of expression, since it prepares the ground for tuning into the conflicting discourse. I will suggest seeing the denaturalizing and the emic approach as complementary endeavors in discourse studies, or perhaps better as *counterpoints*. Whereas the emic approach gravitate the analysis towards the specificities of each discourse or articulation, the denaturalizing approach forces the analysis to remain at a critical distance to the discourses or articulations analyzed.

4.2. Dialogicity

In the controversies over freedom of expression one can observe not only different discursive constructions of an issue, i.e. different ways of understanding, categorizing and contextualizing, but also different ways of constructing these differences. The participants in the controversies do not only have a point of view; often they also express a point of view on other points of view. Thus, the controversies are rich on constructions of constructions; the struggles are also about how to construe the opponent, and how to define the dividing lines in the debates. In that sense, the controversies bear witness of a sort (lay) discourse analysis of other articulations. The presence of this lay discourse analysis emphasizes the challenge stated earlier of keeping a critical distance to the various discourses, since it offers ready-made categories and invites the analyst to adopt one of the points of view in the debate and view the rest of the views from that position.

In a wider theoretical perspective, Billig (1996) has argued that an attitude or a point of view comes to be meaningful only as directed towards other points of view. Countering cognitive psychological conceptions of attitudes, Billig develops a rhetorical view on attitudes as constituted by the controversies in which they are situated, or in which they situate themselves. Thus, points of view are by their very nature adverse; »the logoi of discourse are also anti-logoi« (Billig 1996, p. 2). According to Billig,

»[a]ttitudes are not to be understood in terms of the supposed inner psychology of the attitude-holder. They have an outer, rhetorical meaning, for to hold an attitude is to take a stance in a matter of controversy« (Billig, 1996, p. 2).

Distancing himself from both Foucault (too much emphasis on the unity and restricting effect of discourse) and Habermas (too much emphasis on consensus), Billig sides with Bakhtin in emphasizing argument and disagreement as constitutive of thinking. This understanding has become central within theories of dialogism or dialogicality (Marková 2003; Linell 2009), but it also seems to resonate with discourse theories in the tradition of Laclau and Mouffe (Laclau & Mouffe 1985; Howarth 2000). However, whereas this complex of theories offer general insights into the constitutive alterity of discourse, more specific observations can be made on the public controversies over freedom of expression.

First, the explicit presence of other points of view is salient in the controversies. Dissenting voices are not just assumed or alluded to, but are re-represented in a number of ways, for example in the form of derogatory relabeling of counter-positions such as ›freedom of speech fundamentalists‹ or ›victimization‹. Both terms use existing concepts from other positions (›freedom of speech‹ and ›victims‹ [of hate speech]), but turn them around in a way that aligns with a contrasting position (see Horsbøl 2016, for elaboration). Moreover, what constitutes the dividing lines in the debate is also a contested issue. Thus, formulations such as ›this is not a debate about X, but about Y‹, for example ›not about freedom of speech, but about freedom to insult‹, are frequent. These features are not unique for the controversies of freedom of expression, but they seem particularly salient in these controversies.

Second, regardless of Billig's skepticism towards Foucauldian notions of the unity of discourse, I would maintain that the controversies are to a considerable degree controversies between discourses, i.e. between ensembles or bundles of meaning rather than isolated points of view. This invites studies of how the re-representation of counter-positions are incorporated into in a wider network of meaning, i.e. how the ›anti-logos‹ are part of the logos of the respective discourses. Points of analytical attention could be the ways in which re-construction of oppositional arguments draws on discourse specific vocabulary, such a categorizations, understandings of causality, and articulations of problems. Or, one may attend to how opposing another point of view is integrated with subject positions and narratives central to the discourse. On that basis, systematic translations between the different discourses can be revealed, that is, systematic ways in which concepts and positions from one discourse are re-represented within another discourse. This inter-discursive dimension would add to our understanding of the dynamics of the controversies, and cast light on paradoxical dependencies between contrasting discourses.

4.3. Recontextualization

As mentioned in section 2, the controversies over freedom of expression play out in an internationalized public sphere with porous boundaries between national and regional public arenas. Expressions in one arena may thus travel and trigger critical reactions in another, and debates in one arena may be continued in another. However, this description risks overstating the smoothness of the processes by which the controversies travel from one context to another. The controversies are not just transmitted across arenas, but the ›travelling‹ must be performed by local actors using mediational means (Scollon 2001). For example, as Fevret-Saada has shown, the original publication of the infamous Muhammed drawings in the national Danish media did not trigger global reactions right away. This happened almost half a year later, due to a chain of actions of a diverse set of actors (Fevret-Saada 2016). Thus, the heated and partly violent reactions following the publication of the drawings were not due to »the press drawings and their immediate, ubiquitous presence on the Internet« (Fevret-Saada 2016, p. 42), but to the mediating and translating performances of many other actors in different practices. This example points to the need to avoid simplistic notions of discursive transmission between public arenas and instead to study how discursive material is – in practice(s) – translated into other public arenas. Such translations are to be seen as active processes of situated meaning making, whereby themes, narratives, and images are adapted and re-interpreted.

The notion of *recontextualization* (Linell 1998; Chouliaraki & Fairclough 1999) may prove analytically useful here. Recontextualizing involves »the extrication of some part or aspect from a text or discourse, or from a genre of texts or discourses, and the fitting of this part or aspect into another context« (Linell 1998, p. 145). As Linell points out, recontextualization is »never a pure transfer of a fixed meaning«, but »involves transformations of meanings and meaning potentials« (ibid.).

Recontextualization can be studied at different levels of abstraction: as the (concrete) recontextualization of a piece of discourse or semiosis from one time and place to another, or as the (systemic) transformation of discourse from one practice to another (Wodak & Fairclough 2010; Krzyżanowski 2016). In the latter case, the analysis aims at identifying »recontextualizing principles« (Fairclough 2010, p. 78), according to which discourse is transformed and domesticated (Horsbøl 2020) in organizations or fields of practices, for example in the public sphere. Parallel to the above mentioned distinction between **discourse** and **Discourse**, one may distinguish between the time-place specific recontextualization and the more abstract or systemic **Recontextualization**.

More particularly, recontextualization studies of the controversies over freedom of expression may analyze how discourses circulating globally are localized by being related to local issues and struggles. This would include studies of the ways in which specific controversies over freedom of expression all over the globe are reported and represented in other countries and public arenas. Moreover, it would include studies of how controversies originating elsewhere are made relevant by being interpreted as similar to local controversies – or made (ir)relevant by being dismissed as »not like the situation here«. This way of making something (dis)similar can take various discursive forms such as the use of hashtags, slogans, images, or explicit comparisons. The processes take place in the »traditional« journalistic media as well as in digital arenas beyond journalistic gate keeping, such as social network sites, and not least in the intertwining of these realms.

A recent example could be the Philippine court case against of the journalist Maria Ressa, who was sentenced for cyber libel as part of efforts to reveal corruption. Discourse studies may analyze how this case was reported in international media, and how the reporting was made locally or nationally relevant, for instance by comparison to Trump's accusations against the »fake news« media. Another recent example could be the previously mentioned decision of the New York Times not to publish in print (but only online) an op-ed from US senator Tom Cotton in the wake of demonstrations against police violence and racism. The controversy over the online publication was followed by the resignation of opinion editor James Bennett, and one may ask how this course of events was received in different national media; how genre distinctions between news and views were discussed, and how the decision not to publish was viewed in relation to understandings of the ethos of journalism in different countries.

The study of recontextualization in the concrete cases has two dimensions; the first concerns how events from elsewhere are given meaning in a new context, and the second concerns how these events are used to contextualize local issues in a new way, i.e. to cast a new light on existing issues and controversies. The second dimension can include repositioning of some of the main stances in the controversies, resulting from being associated with positions in the »imported« contexts. This repositioning can be quite consequential; in western European countries, for instance, it will not seem beneficial to many political actors to discover that they are repositioned on the Trumpian side of the argument.

Building on the case studies, further investigations could move on from recontextualization to **Recontextualization** and try to identify patterns that characterize the move-

ment of freedom of expression controversies from one public arena to another. Examples could be the ways in which controversies over freedom of speech restrictions in Hong Kong, or controversies over ›safe spaces‹ and ›trigger warnings‹ at US universities, are re-contextualized in other countries. This line of study could also indicate the main directions of the recontextualization flows, i.e. which public arenas mainly export, and which mainly import controversies and their articulation. However, it should be kept in mind that import implies a reorganization of meaning which may appropriate the import as much as be colonized by it.

5. The discourse studies contribution

And so what? What is the discourse studies contribution to the controversies over freedom of expression? First, discourse studies can enrich our understanding of the controversies by offering a different vocabulary for re-viewing and re-conceptualizing the controversies. Discourse studies can produce robust empirical observations that are not simply derivable from the existing positions in the controversies. Instead, they can point to otherwise overlooked connections, trajectories, dynamics and dependencies between the positions.

Second, discourse studies can contribute to interdisciplinary investigations of the controversies over freedom of expression. As mentioned, several scholarly disciplines have dealt with the controversies, and some of these could be combined with discourse studies in a productive way. An example would be Bejan's historical analysis of ideals for public sphere communication (Bejan 2017), which offers readings of Hobbes, Locke and Williams with particular attention to William's notion of ›mere civility‹. Discourse studies could be inspired by and add to these insights by analyzing empirically whether and how the ideals are drawn upon, objected to, or modified in recent controversies over freedom of expression.

Finally, insights from discourse studies of the public controversies over freedom of expression could feed into the very same controversies. Along with other scholarly studies, they can be picked up and widen the public understanding of what is at stake in the controversies, and thereby challenge or deepen existing positions, or inspire articulation of new positions.

However, it is not a realistic expectation that discourse studies could settle these controversies, neither by convincing one of the parties, or by paving the way of a diplomatic middle ground. The key players in the controversies are not waiting for discourse experts to educate them. Nevertheless, other and more modest or indirect forms of impact are possible. Concepts, examples, comparisons and so on from the analyses may travel into non-scholarly spaces, by way of the many, sometimes overlooked, interfaces between academia and society; public talks in libraries, media interviews, blogposts, project cooperation and last but not least graduates who come to work in non-academic organizations. These interfaces will of course vary culturally, as will the public position of scholars from the social sciences and humanities.

Finally, it would neither be sound nor productive to present the findings of discourse studies over freedom of expression as *the* truth of the matter. A discourse analysis will always rely on assumptions and frameworks that can be questioned. Discourse analysis is also a discourse, and as such it can be analyzed and criticized. Still, it represents a form of discourse different from the main public discourses of the controversies. And it is this difference which constitutes the key potential for having an impact on the public discourse in the long run.

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