

CELDF is pleased to share updated monthly excerpts from the book “*How Wealth Rules the World: Saving Our Communities and Freedoms from the Dictatorship of Property*,” by long-time staff member Ben G. Price. Here is Part Seven

## **HOW WEALTH RULES PART SEVEN**

### **THE NEW THREE-FIFTHS CLAUSE**

**Ben G. Price**

*“Civil government, so far as it is instituted for the security of property, is in reality instituted for the defence of the rich against the poor, or of those who have some property against those who have none at all.” – Adam Smith<sup>1</sup>*

#### **Two Hundred Years of Chartered Injustice: Evidently You *Can* Make this Stuff Up**

Historians have called the American Civil War the “second American revolution,” the “bourgeois revolution” and the “corporate revolution.” By whatever rubric, its end marks a watershed moment in the ascending fortunes of wealth toward the pinnacle of power. Huge tracts of federal land were transferred from public ownership into the private possession of corporate investors, thanks to the war debt owed by the federal government to the railroads, arms and textile manufacturers, coal barons, and especially the banks. Political pay-backs also transformed the federal judiciary and the U.S. Senate. They were suddenly bursting with corporate lawyers after the war. Under that new proprietorship, the Supreme Court exercised astonishing boldness when it unexpectedly “discovered” corporations in the Constitution – where they are never mentioned.

The 1886 *Santa Clara County v. Union Pacific Railroad Corporation* ruling declared, without precedent or argument, that corporations are to be treated as “persons” and afforded protection of the law equal to any human being. That opened the door for more than a century of legal victories for the propertied class that culminated with the infamous *Citizens United* and *Hobby Lobby*<sup>2</sup> decisions.

Once the door was open, the robed men and women of the Court, with nothing but the force of their opinions, amended the Constitution and transformed the nation from a nominal republic into a *de facto* plutocracy.

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<sup>1</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Book V, Chapter I: On the Expenses of the Sovereign or Commonwealth Part II: On the Expense of Justice, (1776)

<sup>2</sup> *Burwell v. Hobby Lobby Stores, Inc.*, (2014), in which, by a 5-4 vote, the U.S. Supreme Court decided that closely held “private” corporate property possesses the right to have religious beliefs and to use those beliefs, articulated by legal representatives, to claim immunity from public regulation of business practices that would conflict with the property’s faith in a deity.

In 1866 Congress approved the Fourteenth Amendment and sent it to the states for ratification. In 1868, three quarters of the states did just that. Then in 1886 the Supreme Court amended the amendment, using the *Santa Clara County* case as cover to declare that where the Fourteenth Amendment says, “nor shall any State deprive any **person** of life, liberty, or property, without due process of law; nor deny to any **person** within its jurisdiction the equal protection of the laws,” the word “person” applies to chartered corporations too. That meant that beginning on May 10, 1886 and forever after it would be unconstitutional for any state to deny corporate property the same legal protections given to people.

Let’s unpack that a bit. Recall that sixty-seven years earlier the Supreme Court decided in the *Dartmouth* case that a charter of incorporation would no longer be a grant of certain commercial privileges from the whole of the people to a few members of society desiring to establish a business corporation. After February 2, 1819, every charter became a legal contract between the people of the state and the people receiving the charter. The *Dartmouth* decision declared that after the charter was publicly issued it immediately became a matter of *private law*, and it would be unconstitutional under the *Contract Clause* for a state to “impair the obligation” of the contract.

When in 1886 the Court declared that corporations are “persons” deserving the protection of the Fourteenth Amendment’s “equal protection” clause, the “contracts” between the people and the incorporators of every corporation in every state were altered. The Court’s *Santa Clara* decision contractually obligated the people of the states issuing corporate charters to conditions they had never agreed to.

Without discussion the court declared that contracts in the form of corporate charters would now bind the people issuing the charter to recognize their corporate creations as persons with unalienable rights. The states were simultaneously preempted by the *Contract Clause* from “impairing” court-mandated terms of the contractual charter and from making laws that deny corporations the same legal protections as citizens. The people who were involuntarily bound by those “contracts” were never consulted about the change.

After the fact, the people were excluded from governing their corporate creations because contracts are within the province of *private law*.

Chief Justice Morrison R. Waite presided over the *Santa Clara* case. The dispute was over taxes and whether Santa Clara County California could tax the Union Pacific Railroad at a higher rate than the County taxed people. The Court said it would violate the corporation’s right to equal protection of the law. It would, in fact, be unconstitutional discrimination and a violation of the corporation’s civil rights. Our history demonstrates that the Court has been reluctant to exhibit anywhere near this level of homage to the rights of flesh and blood “persons.”

There is some irony in the fact that Judge Waite had also presided over a case in 1874 in which Virginia Happersett of Missouri argued that as a citizen of the United States she had an equal right to vote, protected by the new Fourteenth Amendment. That’s the same amendment used twelve years later to rationalize ersatz “personhood” for corporations. Judge Waite replied to Ms. Happersett that “*Our province is to decide what the law is, not to declare what it should be,*” and dismissed her claim.

In 1896 the Court further amended the Fourteenth Amendment when it decided that although it had been ratified to guarantee equal protection of the law to freed slaves, states could constitutionally segregate African Americans from “white” Americans. With the *Plessy v. Ferguson* decision, racial discrimination became constitutional on May 18, 1896, ten years after the Court made it unconstitutional to discriminate against corporate property. Not until May 17,

1954, was this irrational and bigoted decision overturned in *Brown v. Board of Education of Topeka*. By contrast, during the intervening fifty-eight years, corporations enjoyed the protection of the constitution. They continue to do so.

Since 1886 it has been unconstitutional for the states that charter corporations to discriminate against them. Meanwhile, the struggles of flesh and blood “persons” for racial and gender equality, for democratic rights, for protection against corporate assaults continue, with institutional opposition from government. The privileges of the propertied class are shielded from governance by the people through preemption, the privacy of contracts, ceiling regulations, federal hegemony over interstate commerce, and the privatization of government by dissembling judicial decisions backed up by the coercive power of *public law*. That’s the law the people supposedly govern with.

### **Corporations Are Not the Problem: The Diversion of “Personhood”**

Corporate “personhood” has gotten a lot of attention since the Supreme Court’s *Citizens United* ruling. The 2010 case built on decisions made by politically appointed judges over nearly two centuries. It expanded the ways corporate property can convey enhanced political clout and immunity from public censure to its owners.

Let’s be clear. Corporations don’t spend money on elections. The truth is that specific people use corporate property as conduits through which they spend large quantities of money to control the outcome of elections. They are privileged with power over and above the rest of us because they are not held to account for their actions. They are above the law; thanks to the *privileged property* they possess and the shield of corporate immunity from liability.

Only a fanciful suspension of reality could allow the Supreme Court to conclude that the first amendment is applied equally when corporate managers are allowed to control political discourse by purchasing it in the name of the corporate “person” they own. Talk of “corporate personhood” diverts us from noticing that it is wealthy human beings, not property itself, who received from the Court the privilege to decide who will govern.

The Federalists did their worst to violate the ideals of the Revolution when they vested the right of representation within the chattel property of slaves via the *Three-Fifths Clause*. When the Thirteenth Amendment overturned not only slavery but the *Three-Fifths Clause* along with it, the imperious Supreme Court was quick to replace the propertied elite’s lost political advantages. The antebellum constitution that had lodged extra congressional and electoral college representation for plantation plutocrats in their chattel property was put back on track when the Court vested political rights in corporate property.

Where the enslaved human once played the role of *privileged property*, the corporation now fills the bill. Vesting rights in property effectively removes the constitutional right to a republican form of government<sup>3</sup> from the majority and creates political advantages for a favored wealthy few.

Today, because the Supreme Court vested rights intended for everyone in corporate property and granted the propertied class the power to fund campaigns through their corporations, all elective positions of power are available for purchase by the wealthy investor class. It’s a better deal for the one percent than the plantation owners got.

According to James F. Epperson, “in the 1950’s, only 2% of American families owned corporation stocks equal in value to the 1860 value of a single slave. Thus, slave ownership was

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<sup>3</sup> Article 4, Section 4, Clause 1 of the U.S. Constitution.

*much more widespread in the South than corporate investment was in 1950's America.*"<sup>4</sup> Today, stock in corporations is more broadly distributed than in the 1950's, but control of corporations and how they spend money ("speak") to influence election outcomes is not. According to Rob Wile of Money Magazine, *"The top 10% of American households, as defined by total wealth, now own 84% of all stocks in 2016, according to a recent paper by NYU economist Edward N. Wolff."*<sup>5</sup>

Prior to 1865, the slave was not responsible for depriving white men in the north of their right to equal representation in the federal government. The men who crafted the Constitution's *Three-Fifths Clause* were responsible, and the political imbalance they created resulted in the Civil War

Twenty-one years after the end of that national fratricide, corporate lawyers presiding on the Supreme Court engaged in mutation through interpretation of the Fourteenth Amendment and filled the void left by revocation of the *Three-Fifth's Clause*. Those ideologically-driven men are responsible for the resulting violation of public political rights that now exceed the damage done to democratic aspirations by the *Three-Fifths Clause*. And every political appointee to the Court who has added to the rights vested in corporate property over the ensuing years is responsible for the deep societal stress now in evidence and brought on by the cumulative injustice of privatizing general rights.

Whether or not the Federalists foresaw the potential for turning charters of incorporation into instruments for empowering the propertied class and disempowering the rabble, it is certain that their revolutionary nemesis, Thomas Paine, understood the tyrannical nature of chartered privileges. He and revolutionaries like Sam Adams knew first-hand how the commercial aristocracy had used charters as weapons of oppression prior to the Revolution. The revolutionary Sons of Liberty distributed numerous broadsides against the corrupting influence of the great corporations of the era. The true revolutionaries, not the Federalists, understood that exclusive privileges and monopolies were ruinous to general rights.

Paine had no illusions about the purpose of corporate charters. He explained in simple terms that they are legal tools that create advantages for a privileged few at the expense of everyone else. Paine was ridiculed mercilessly in the British press for writing that human rights are an inherent birthright superior to inheritable aristocratic privileges. He didn't rise to the bait of brutal political cartoons caricaturing him as "Mad Tom." Instead, he went straight to the root of the problem, writing, *"I answer not to falsehood or abuse, but proceed to the defects of the English Government. I begin with charters and corporations."*

Then he dove in, saying *"It is a perversion of terms to say that a charter gives rights. It operates by a contrary effect- that of taking rights away. Rights are inherently in all the inhabitants; but charters, by annulling those rights, in the majority, leave the right, by exclusion, in the hands of a few. . . Those whose rights are guaranteed, by not being taken away, exercise no other rights than as members of the community they are entitled to without a charter. . . therefore, all charters . . . are instruments of injustice."*<sup>6</sup>

The U.S. Constitution, seen as a charter, operates in the same way through its *Commerce Clause* and *Contract Clause*, and through every word of judicial dicta that transformed public

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<sup>4</sup>James F. Epperson, Causes of the Civil War, Selected Statistics on Slavery in the United States, <http://www.civilwarcauses.org/stat.htm> (2017)

<sup>5</sup> Rob Wile, *The Richest 10% of Americans Now Own 84% of All Stocks*, Money Magazine, December 19, 2017

<sup>6</sup> Thomas Paine on Corporations and Charters in *"The Rights of Man"* (Common Sense, Rights of Man, and Other Essential Writings of Thomas Paine, Pp.330-331)

rights into privatized rights under the *private law* of corporate charters and contracts. The Supreme Court has perpetuated and enhanced those privatized rights from one generation to the next. The propertied class, not corporations, deprives the rest of us of our right to a representative form of government through the powers stored in their *privileged property*. Property itself does not bear the burden of responsibility.

After witnessing the passage of the first four presidential administrations, Thomas Jefferson seemed to sense the disastrous detour away from the ideals of the Revolution that America had taken. In 1816, the year the *Dartmouth* controversy went to court, he wrote that, “*England exhibits . . . an example of the truth of the maxim that. . . ruin will fall heaviest, as it ought to fall, on that hereditary aristocracy which has for generations been preparing the catastrophe. I hope we shall take warning from the example and crush in its birth the aristocracy of our monied corporations which dare already to challenge our government to a trial of strength, and to bid defiance to the laws of their country.*”<sup>7</sup>

Jefferson saw the equivalence between the British hereditary aristocracy and the “*aristocracy of our monied corporations.*” He predicted it would all end badly for the people, and that the coming catastrophe would be a direct result of allowing a privileged minority to act beyond the governing authority of the community at-large.

A year later, even the author of the Constitution’s first-draft, James Madison, was having second thoughts. He wrote that “. . . *there is an evil which ought to be guarded against in the indefinite accumulation of property from the capacity of holding it in perpetuity by corporations. The power of all corporations ought to be limited in this respect. The growing wealth acquired by them never fails to be a source of abuses.*”<sup>8</sup>

That was over two hundred years ago. Since then, the power of corporations has burgeoned.

### **The Contract on America: The Constitution as Forced Arbitration**

The federal Court has illegitimately contractually obligated the people of every state to involuntarily honor the rights it vested in corporate property. I won’t recount the many high court decisions that have without precedent handed most of the Bill of Rights to the propertied class by vesting them in the fictitious personhood of corporate property. For a timeline of those disastrous decisions, see CELDF’S “*Model Legal Brief for the Elimination of Corporate “Rights,”*”<sup>9</sup> Adam Winkler’s “*We the Corporations: How American Businesses Won Their Civil Rights,*” (2018) and Thom Hartmann’s “*Unequal Protection: How Corporations Became “People” - And How You Can Fight Back,*” (2002).

The enhanced immunities from public law that the Supreme Court judges transmitted to the propertied class through their corporate property include:

- Legal protection of wealth equal to the unalienable rights of people
- Procedural and substantive due process of law for wealth involved in legal disputes
- Immunity of wealth from public governance
- Amplification of the right of free speech for the wealthy above the volume of public discourse when they use corporate property as the conduit for their opinions

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<sup>7</sup> Thomas Jefferson to George Logan, 12 November 1816

<sup>8</sup> James Madison, Detached Memorandum on the 1<sup>st</sup> Amendment, ca. 1817W. & M. Q., 3d ser., 3:554--60 1946

<sup>9</sup> <https://celdf.org/wp-content/uploads/2015/08/Model-Brief.pdf>

- Money redefined as “speech,” freeing up the propertied class to purchase elections and legislation
- Freedom for the corporate class to assert religious dogma as a political weapon
- Freedom from warrantless search and seizure including unscheduled OSHA, EPA and other inspections to guarantee compliance with public regulations
- Freedom from double jeopardy regardless of judicial error or post acquittal discovery of guilt
- Freedom from government “takings of property,” including permits and licenses, hypothetical “future profits,” and access to “resources,” regardless of harms caused to people and the environment
- Liberty of privacy, including the right not to disclose ingredients of foods, components of toxic industrial materials, production of papers and correspondences that would reveal incriminating evidence of malfeasance, law-breaking and perjury
- Freedom to face an accuser in a court of law and deduct legal expenses as a cost of doing business

It is an understatement to say that the modern business corporation is the preeminent form of *privileged property*.

The question arises, did those judges honestly interpret the Constitution when they determined that corporate property is a person deserving the same rights as people? Or were they dishonest in their rulings and simply granting privileges to the rich indirectly by bestowing immunity from public governance on their *privileged property*?

The 1886 *Santa Clara* case that created a precedent for corporations being treated as legal “persons” opened with Chief Justice Morrison R. Waite declaring, prior to oral argument, that *“The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of the laws, applies to these corporations. We are all of the opinion that it does.”*

A persuasive argument has been made that the Southern Pacific Railroad’s legal representative in the case, Roscoe Conkling, who at the time was the last living member of the drafting committee for the Fourteenth Amendment, deceived the Court into believing that the intent of the committee was to include corporations under the meaning of the word “person” in the amendment.<sup>10</sup> The details of the controversy are beyond the scope of this book. But the Court clearly departed from reliance on precedent in coming to its unsupported conclusion.

Years later, (1938), Supreme Court Justice Hugo Black wrote *“in 1886, this Court in the case of Santa Clara County v. Southern Pacific Railroad, decided for the first time that the word ‘person’ in the amendment did in some instances include corporations. [...] The history of the amendment proves that the people were told that its purpose was to protect weak and helpless human beings and were not told that it was intended to remove corporations in any fashion from*

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<sup>10</sup> For further reading on the subject I suggest Howard Jay Graham’s “Everyman’s Constitution: Historical Essays on the Fourteenth Amendment, the ‘Conspiracy Theory,’ and American Constitutionalism,” (1938)

*the control of state governments. [...] The language of the amendment itself does not support the theory that it was passed for the benefit of corporations.”*

Supreme Court judges are obligated to execute the program laid out in the U.S. Constitution and in the “case law” of prior court decisions. When it came time to invent a place for corporate property in the Bill of Rights, the Court ignored the lack of precedent and went to the spirit of the Constitution, where they found deference to rights vested in property supplanting rights in people as a matter of course. Following *Santa Clara*, the Court regularly pointed to it as precedent even though Justice Waite’s declaration that corporations are persons was no part of the ruling in the case. We live with the fallout every day.

### **Rights Vested in Property Privatize Civil Rights**

As soon as an employee parks the car in the lot outside and enters through the door to the workplace, she leaves her civil rights in the glove compartment. Settling into her cubicle, she notices an e-mail from the personnel department. She is informed that the online search she did during her lunch break the previous day is a violation of company policy and an unauthorized use of corporate property for personal business. A note of reprimand will be entered in her file. Her right of privacy has not been violated because the corporation that employs her is not, according to case law, a state actor and is not capable of violating her rights, even though it was created by a state-issued charter and licensed to do business by the state.

Across town at another state-chartered organization, a warehouse worker is pulled aside and instructed to report to the office for a random drug test. His employment is on the line if he refuses. His Fourth Amendment right against warrantless search has not been violated, according to court precedent. The corporation is not considered a state actor by the judiciary.

Across the continent in a factory that molds plastic into bumpers for the auto industry, a worker on the line nods to a co-worker and says, “maybe we need a union.” Minutes later she is standing in front of the vice president’s desk being told that there will be no talk of unions on the job.

According to the courts, her First Amendment right of free speech has not been violated for the same reason the rights of the other employees were not. Only the state, and not private actors can violate rights because private actors are, in the case of corporations, wealthy people in possession of private business corporations. They own *privileged property*. They are immune from responsibility for violating rights. The law says they are not capable of infringing on the rights of employees.

Then, a week later she is required to attend a special meeting where management presents its arguments against workers unionizing. It is a mandatory meeting. And no, her First Amendment right of free association has not been violated. Even the National Labor Relations Board (NLRB), the regulatory agency that mediates disputes between employees and employers, informs her a few days later that she has no case for a civil rights violation. The corporation has a First Amendment right to lobby employees on the job to oppose collective bargaining. Workers have no right, while on corporate property, to campaign for unionization.

Another right the employees don’t have on the job is the right to participate in corporate business decisions. The people who will make the products and produce the added value to raw materials have no say in what will be produced, or whether the raw materials will be extracted

with environmental, community and worker safety in mind. They will not be consulted about hazardous materials that will become part of the product or be used in its manufacture.

Once chartered, the corporation becomes a sovereign entity independent of the state that made it. The chartering state and the sovereign people of that state have no say in the corporation's internal governance. This is how *private law* subordinates the unalienable rights of people and *public law* has no authority to check the abuses of private power. Those abuses are legalized by ownership of *privileged property*. The human beings pulling the strings behind the corporate curtain are protected from liability by the rights of property.

It is difficult to understand the acquiescence of so many of us to all of this.

### **Property's War Against You and Me: The Constitution Deputizes the Corporation**

James B. Weaver was twice elected to the U.S. House of Representatives and twice a candidate for the presidency. In 1892 he wrote that "*The creation of corporations for pecuniary profit . . . bears strong resemblance to the practice among Nations of granting letters of marquee, except that there is never any preceding offense to justify it.*"<sup>11</sup>

Powered by weaponized legal rights vested in property, the trend is leading us away from public governance of society and toward private dominion over everything. Schools, hospitals, highways, and prisons are all being privatized. Public land is auctioned off for exploitation with no benefit to the public. Water supplies are taken over by for-profit enterprises. Mercenary armed forces are paid with public moneys. In the crosshairs for annihilation since they were first established are Social Security, Medicare, and other New Deal / Great Society programs.

The U.S. Constitution allows Congress to "*declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.*"<sup>12</sup> At the same time, it forbids the states from granting letters of marque.<sup>13</sup> Owing to the federal court's insertion of Bill of Rights protections into state-issued "contracts," the charters of private corporations have taken the place of those letters of marque, which once were issued to *privateers* in time of war, authorizing them to attack enemies of the empire.

But are the American people enemies of the empire? Perhaps because the Federalists' plan of government was framed in hostility to commoners, this is the inexorable outcome at a time when the empire's global reach is contracting. When exploitation of foreign resources is slowed, an inward turn and the cannibalization of domestic resources, both human and natural, become inevitable. Exempted from obedience to local laws, corporate privateers now treat municipalities like resource colonies. Property's empire bloats temporarily as it devours its own.

Like the charter of the British Empire's East India Company against which American Revolutionaries rebelled, Court-ordered constitutional privileges for chartered incorporations of property have empowered privateering minorities shielded by corporate immunity to raid and acquire resources for themselves and helped grow property's empire. Today's privateers raid foreign and domestic communities with impunity to gather their resources in an undeclared war of continued conquest against foreign and domestic communities.

Still, we are wrong to blame corporations. They are the weapons, not the perpetrators. The true menace, and what must be exposed to a so-far credulous population is the privileged minority that sees humanity and life itself as resources for their enrichment.

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<sup>11</sup> James B. Weaver, *A Call to Action*, 1892, p. 266

<sup>12</sup> U.S. Constitution, Article I, Section 8

<sup>13</sup> U.S. Constitution, Article I, Section 10, subsection 1.

### **Pushing Back: The People Say “Not So Fast”**

In 2002, after discussing the way corporate lawyers stop municipalities from blocking factory farms and urban sludge dumping by threatening the local government with lawsuits for violating the corporations’ civil rights, Mic Robertson, a local official in Licking Township, Clarion County, Pennsylvania, asked CELDF to write a law that would deny that corporations are persons with the same rights as people. And we did. And it became township law.

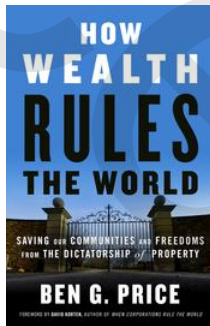
Mic’s simple question laid the groundwork for CELDF to include limitations and outright nullifications of corporate rights in every local law we’ve drafted since then. Here’s an excerpt from a second CELDF ordinance adopted by Licking Township in 2010: *“Rights of Licking: Township residents secured by this Ordinance and by other local, state, or federal law, shall not be subordinated to the claimed rights, which are in-fact privileges, of state-chartered corporations. Accordingly, public and private corporations that violate the prohibitions of this Ordinance shall not enjoy privileges or powers under the law that make community majorities subordinate to them or have the effect of nullifying this Ordinance. Nor shall corporations possess the authority to enforce State or federal preemptive laws against the people of Licking Township that would have the effect of nullifying this Ordinance. Within Licking Township, corporations shall not be “persons” under the United States or Pennsylvania Constitutions, or under the laws of the United States, Pennsylvania, Licking Township, or any other law, and so shall not have the rights of persons under those constitutions and laws.”*

It wasn’t naiveté and it wasn’t hubris. We didn’t pretend to have overturned the Supreme Court’s rulings over the past century. What we began to do in 2002 and continue to do today is educate and inspire people to act on the premise that their unalienable rights are the highest law and the justification for government, as the Declaration of Independence makes clear. We knew that before we could challenge and defeat the Federalists’ counter-revolution, we would have to end their occupation of the American mind. That meant doing things *everybody knows* we couldn’t do.

## NEXT MONTH

### HOW WEALTH RULES PART EIGHT

## THE PRETENSE OF REPRESENTATION



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