

# Jürgen Habermas's Theory of Cosmopolitanism

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In this paper we explore the sustained and multifaceted attempt of Jürgen Habermas to reconstruct Kant's theory of cosmopolitan right for our own times. In a series of articles written in the post-1989 period, Habermas has argued that the challenge posed both by the catastrophes of the twentieth century, and by social forces of globalization, has given new impetus to the idea of cosmopolitan justice that Kant first expressed. He recognizes that today we cannot simply repeat Kant's eighteenth-century vision: that if we are to grapple with the complexities of present-day problems, it is necessary to *iron out certain inconsistencies* in Kant's thinking, *radicalize* it where its break from the old order of nation-states is incomplete, *socialize* it so as to draw out the connections between perpetual peace and social justice, and *modernize* it so as to comprehend the "differences both in global situation and conceptual framework that now separate us from him."<sup>1</sup> His basic intuition, however, is that Kant's idea of cosmopolitan right is as relevant to our times as it was to Kant's own. If it was Kant's achievement to formulate the idea of cosmopolitanism in a modern philosophical form, Habermas takes up the challenge posed by Karl-Otto Apel: to "think with Kant against Kant" in reconstructing this idea. What follows is a critical assessment of Habermas's response to this challenge. We focus here on the dilemmas he faces in grounding his normative commitment to cosmopolitan politics and in reconciling his cosmopolitanism with the national framework in which he developed his ideas of constitutional patriotism and deliberative democracy.

## Constitutional Patriotism and Cosmopolitanism

Any political theorist who advocates a form of cosmopolitan politics knows that he or she will have to face daunting questions relating to both the *desirability* and *feasibility* of their proposals: how, it will be asked, can a normative perspective recommending a cosmopolitan form of solidarity, with institutions to match, be reconciled with the existence of national communities in such a way as to achieve stability and justice? In the work of Jürgen Habermas we find more ambivalence than is immediately apparent. One response he makes is to affirm a willingness to override national sovereignty in the name of cosmopolitan justice. Here appeal is made to the *historical contingency* of the nation as the organizing principle of political communities, the death of nationalism as a normative principle of social integration, and the necessity of cosmopolitan justice occasioned by new social

and economic conditions. Against a seemingly intransigent faith in the nation-state, Habermas affirms the *rationality* of cosmopolitan solidarity as a fulfillment of the Enlightenment project. He declares his belief that, although the universalistic elements of right were once swamped by the particularistic self-assertion of one nation against another, they are nonetheless “best suited to the identity of *world citizens*, not to that of citizens of a particular state that has to maintain itself against other states.” He presents cosmopolitanism as the logical culmination of the principles of right on which enlightenment was founded.

There is another kind of response to be found in Habermas’s writings – one that is perhaps closer to the mainstream of contemporary cosmopolitanism. In this mode he argues that the tension between national and cosmopolitan right is overstated and that respect for constitutionally regulated processes of national politics can in fact be *reconciled* with respect for the authority of supra-national institutions. This outcome is possible if the rational content of a nationally constituted political community enjoys substantial overlap with the rational content of the cosmopolitan project; that is, if cosmopolitan institutions enforce the same principles of justice as those that regulate politics at a national level. Only if cosmopolitan institutions express radically different principles of justice from those that regulate politics at a national level, if for example a nation-state is based on ethnic principles and authorizes major human rights violations against a section of its own subjects, only then will the conditions for conflict be acute. Habermas’s strategy is thus to look for reconciliation between national and cosmopolitan institutions, *supplemented* by a justification of cosmopolitan violence where the possibility of reconciliation is absent.

In the first argument Habermas presents cosmopolitanism as a *successor to nationalism*. He concedes that nationalism might have had value in the past, for example, in the pursuit of anticolonial struggles or in the building of modern welfare states, but maintains that today it is normatively-speaking dead and that insofar as it remains a political force, it can only manifest itself as something *irrational*, harkening back to a golden age of cultural cohesion or looking forward to the realization of an ethnic destiny. However, slippage to the second position is apparent when Habermas reserves the term “nationalism” for a kind of regressive credo that unreflectively celebrates the history, destiny, culture, or blood of a nation, and when he himself emphatically affirms the need for national identity in the shape of constitutional patriotism. For Habermas, constitutional patriotism is not supplanted by cosmopolitanism but is deemed in principle to be reconcilable with it.

Habermas is well aware that the historical strength of nationalist sentiment is due to its capacity to act as a binding power enabling individuals to coalesce around commonly shared symbols and ideologies. He maintains that the formation of the modern nation-state was dependent on “the development of a national consciousness to provide it with the cultural substrate for a civil solidarity,”<sup>2</sup> and that under current conditions constitutional patriotism is necessary for democratic nation-states if they are to inspire a rationally based loyalty on the part of their

citizens.<sup>3</sup> His argument is that it is required from the point of view of inculcating a *sense of personal sacrifice*, that is, a willingness of citizens to do what is required of them in the name of the common good, such as the maintenance of public services through taxation or the fighting of wars, and that it signals a willingness on the part of citizens to accept democratic decisions as legitimate. For constitutional patriotism to perform this integrative function, Habermas argues, it must contain a distinctive national aspect. He writes:

The political culture of a country crystallizes around its constitution. Each national culture develops a distinctive interpretation of those constitutional principles that are equally embodied in other republican constitutions – such as popular sovereignty and human rights – in light of its own national history. A ‘constitutional patriotism’ based on these interpretations can take the place originally occupied by nationalism.<sup>4</sup>

Habermas shows no desire to abolish the national aspect of constitutional patriotism. He argues that popular attachment to the idea of a constitution cannot *exhaust* the rational content of this sentiment, for it also entails the sense of attachment citizens feel towards the *particular* ways in which abstract principles are interpreted and applied through *national* institutions. This understanding is stressed both by Habermas and by sympathetic critics such as Frank Michelman. They recommend a version of constitutional patriotism that emphasizes *distinctive national procedures for the interpretation and application* of universal values and principles. Michelman defines constitutional patriotism as “a disposition of attachment to one’s country, specifically in view of a certain spirit sustained by the country’s people and their leaders in debating and deciding disagreements of essential constitutional import.”<sup>5</sup> This definition prioritizes the particularity implicit in any interpretation of right. It is not only the universalistic principles present within the constitution but also the way in which these principles are interpreted and applied that secures the rational assent of its citizens. Habermas is equally clear on this point. He writes: “the universalism of legal principles manifests itself in a procedural consensus, which must be embedded through a kind of constitutional patriotism *in the context of a historically specific political culture*.”<sup>6</sup> In short, the interpretation and application of rights will differ from nation to nation in the light of its own history and traditions.

We see that constitutional patriotism refers *both* to a shared attachment to the universalistic principles implicit in the idea of a constitutional democracy *and* to the actualization of these principles in the form of particular national institutions. It is distinct from *cosmopolitan solidarity* inasmuch as it is a concept introduced within a national framework, while cosmopolitanism refers to a transformed self-consciousness on the part of world citizens that orientates thinking away from any association with national interest or identity. To be sure, both constitutional patriotism and cosmopolitanism are based on universal principles

of right and the possibility of conflict does not often disturb the sleep of constitutional patriots or cosmopolitans. Some follow the lead of Kwame Anthony Appiah in simply naming themselves "cosmopolitan patriots."<sup>7</sup> Georg Cavallar champions this unity when he writes: "Only constitutional patriotism is by definition all-inclusive and comprehensive, because it is based on the universal principle of right... Only constitutional patriotism does not contradict cosmopolitanism."<sup>8</sup> Yet this affirmative judgment would appear insensitive to differing interpretations of universal principles of right at the national level. After all, the very idea of constitutional patriotism presupposes that interpretations of right will differ from nation to nation according to its specific "historical experience." What if citizens are confronted with two equally rational means of interpreting constitutional principles? The dilemma would then be whether to support their "own" national forms of interpretation or accede to the higher yet more distant cosmopolitan view. This hypothetical disagreement may be resolved only through a weakening of either cosmopolitan solidarity or constitutional patriotism.

Such conflict is not hard to envisage and it takes many concrete forms in modern democratic societies.<sup>9</sup> Habermas himself illustrates the potential for conflict when he draws a contrast between the way that the US and UK on the one hand, and the continental nations of Europe on the other, justified the humanitarian intervention that took place in Kosovo, "the former resorting to maxims of traditional power politics, the latter appealing to more principled reasons for transforming classical international law into some sort of cosmopolitan order."<sup>10</sup> However, this potential for conflict may be concealed for reasons that Habermas would not himself find attractive: that is, because we are dealing here with elastic and unstable concepts between which it is difficult to render firm conceptual distinctions. In the context of a nation-state, the role of constitutional patriotism is to build upon an *already existing* ethic of solidarity among a community of strangers, yet even at this national level the content of constitutional patriotism is unclear. When Habermas speaks of reconciliation between constitutional principles and the historical experience of a nation, little is said about precisely what this means. (For instance, does it entail divergent interpretations of legal rights across nations in such a way that courts will reach different decisions over such controversial questions as affirmative action or abortion?) It is because it is hard to pin down the concept of constitutional patriotism that it is difficult to assess its compatibility with cosmopolitan sentiments.<sup>11</sup> It was originally advanced as an antidote to ethnic nationalism, designed to integrate pluralistic and multicultural communities on a rational basis, but its content is so radically underdetermined that it sometimes boils down to a faith in a set of procedures for the implementation and realization of constitutional principles. If this is all constitutional patriotism is, a shared commitment to the constitutional regulation of power, it is little wonder that it extends so easily across national boundaries.<sup>12</sup> On the other hand, if constitutional patriotism is meant to locate these principles within a national community with an existing "corporate identity,"<sup>13</sup> then its extension across national

boundaries becomes more challenging, for it must overcome the very national differences and historical experiences that constitute part of its content.<sup>14</sup> In short, our suspicion is that the reason constitutional patriotism appears so compatible with cosmopolitan solidarity is that it is so elastic a concept.

The problem for Habermas is that constitutional patriotism is either too strong or too weak to serve his purpose. In its strong form, it binds the people of a particular nation around their own distinctive interpretations of abstract constitutional principles, but at the cost of closing them off from effective participation in or identification with cosmopolitan institutions. In its weak form, it constitutes a simple adherence to formal procedures for the realization of constitutional principles and fails to establish the ethic of solidarity necessary to facilitate democratic deliberation and decisions. It is this underlying tension in the idea of constitutional patriotism that surfaces in discussing its compatibility with cosmopolitan politics. It may be that such tensions are endemic when conceptual schemes worked out within a nation-state framework are later superimposed onto an international framework. In any event, they are paralleled in Habermas's extension of the idea of democratic deliberation from the nation-state to the cosmopolitan arena.

### **Cosmopolitanism and Democratic Deliberation**

For Habermas, constitutional patriotism has a rational content because it rests on the twin pillars of human rights and democratic participation. It represents a shared attachment to political procedures that offer citizens the chance to be at the same time recipients and authors of the laws that govern them: bearers of public and private right and participants in the processes that determine the distribution of rights. In this conception of political community, based on the co-originality of rights and democracy, any democratic praxis presupposes participants as bearers of legal rights and any system of rights presupposes that they are legitimated and substantiated through democratic deliberation.<sup>15</sup> Within the nation-state framework, this normative perspective is actualized by a constitutional regulation of power and guarantee of basic rights, the creation of positive law in representative assemblies, and a healthy civil society and public sphere. Cosmopolitan institutions may also be able to protect individual rights through legally coercive measures but what is less clear is whether they can guarantee a *democratic* basis of legitimacy. There is a question-mark over the presuppositions that citizens can engage in democratic politics at a cosmopolitan level as a means of inculcating and realizing a shared sense of solidarity, or that rights *must* presuppose democracy rather than a benevolent grouping of powerful states acting in the best interests of individual rights bearers without a firm democratic mandate.

Habermas is quick to deride the idea that ties of solidarity are conceptually linked to a nation-state, but he is more cautious about the connection between democracy and the nation-state. On the one hand, he writes that "democratic

self-determination can only come about if the population of a state is transformed into a nation of citizens who take their political destiny into their own hands.”<sup>16</sup> This characterization stresses the significance of political community within the boundaries of a nation-state. On the other hand, he writes that “precisely the artificial conditions in which national consciousness arose argue against the defeatist assumption that a form of civic solidarity amongst strangers can only be generated within the confines of the nation.”<sup>17</sup> His understanding of constitutional order, that it is “a political order created by the people themselves and legitimated by their opinion and will formation,”<sup>18</sup> does not presuppose the existence of a nation and leaves the scope of democratic political community undefined, providing only that democratic procedures exist to facilitate the legitimate generation of positive law. More positively, he argues that there is a sense in which the attainment of postnational democracy is both a conceptual desideratum and real possibility.

However, the case for “cosmopolitan democracy” put forward by some of the new cosmopolitans is not one Habermas endorses.<sup>19</sup> This is not only because the existing structures of organizations like the United Nations are antithetical to democratic norms,<sup>20</sup> but more crucially because Habermas holds that their all-inclusive character excludes democracy in principle. He writes:

Any political community that wants to understand itself as a democracy must at least distinguish between members and non-members. The self-referential concept of collective self-determination demarcates a logical space for democratically united citizens who are members of a particular community. Even if such a community is grounded in the universalistic principles of a democratic constitutional state, it still forms a collective identity, in the sense that it interprets and realizes these principles in light of its own history and in the context of its own particular form of life. This ethical-political self-understanding of citizens of a particular democratic life is missing in the inclusive community of world citizens.<sup>21</sup>

According to Habermas, democratic legitimacy simply is not possible for a political body that embraces everyone and therefore provides no particular foundation for collective identity or civic solidarity. This unexpectedly Schmittian idea of political community would limit the possibility of cosmopolitan democracy to certain familiar and not necessarily desirable scenarios. We might envisage, for instance, a supranational democratic community sustained by its ability to identify itself in opposition to another supranational community along the lines of the Cold War model. Or we could envisage one huge supra-national democratic community that defines itself in opposition to a few “rogue” nations, a model not a million miles away from that now favored by western governments. Or, to be more speculative, we could envisage a form of world citizenship that defines itself in opposition to a non-human species, as is fictionalized in films like *Independence Day*. Yet Habermas sees the idea of “cosmopolitan democracy” as inappropriate in an all-inclusive, worldwide, democratic federation of states.<sup>22</sup>

Habermas is not alone in finding democracy hard to envisage at the cosmopolitan level.<sup>23</sup> Clearly, there are difficulties in regulating such a large-scale mass-democratic praxis and inculcating an accompanying ethic of cosmopolitan solidarity. There are representative problems (how to establish a cosmopolitan party system and deliberative assembly), administrative problems (how to implement democratic decisions and channel deliberative power into concrete policy initiatives), enforcement problems (how to ensure individual state actors comply with cosmopolitan legislation), and legitimacy problems (how to make people identify with cosmopolitan institutions, accept their decisions, and respect other members as free and equal citizens). The tempting route for cosmopolitans to take, therefore, is to advocate an activist cosmopolitan order responsible for the implementation and protection of basic rights. Such a framework could function as a means of protecting rights *without* requiring anything more than a formal democratic mandate (e.g., via the mutual agreement or majority rule of heads of state).

However, for cosmopolitans such as Habermas, who advocate the mutual dependence and co-originality of rights and democracy, this solution must be a second best since it conforms more to the standard liberal model of rights constraining democracy (e.g., through judicial review) rather than to one in which liberal rights go hand in glove with democratic politics. Perhaps Habermas should not feel uneasy about this prospect, inasmuch as the idea of cosmopolitan right is normally targeted at the protection of “pariah” people who have little or no possibility of participating in rational discourses or in the forms of communication necessary for reasonable will-formation. This is a form of right that fits better with what Habermas identifies with Lockean liberalism: namely, one that is “imposed on the sovereign legislator as an external barrier.”<sup>24</sup> If this is so, it brings to our attention the extent to which cosmopolitanism and democracy are in fact uneasy bedfellows.

### **Democracy and European Transnational Institutions**

In the face of the difficulties he encounters in reconciling cosmopolitanism with democracy, Habermas turns his attention to intermediate, transnational institutions and seeks to apply the idea of constitutional patriotism to one of the few genuine examples of transnational political community, the European Union. Such a move enables him to retain the idea that contemporary conditions necessitate a transcendence of national sovereignty without falling into the dangers of an abstract, utopian cosmopolitanism. In this transnational context, Habermas reframes constitutional patriotism by extending to “Europe” a sense of the shared identity that must be posited if effective and coordinated political action is to be pursued. He writes:

It is neither possible nor desirable to level out the national identities of member nations, nor melt them down into a ‘Nation of Europe’... But positively coordinated redistribution policies must be borne by a European-wide democratic will-formation,

and this cannot happen without a basis of solidarity. The form of civil solidarity that has been limited to the nation-state until now has to expand to include all citizens of the Union, so that, for example, the Swedes and the Portuguese are willing to take responsibility for one another.<sup>25</sup>

For Habermas, the transnational political community serves as a functional equivalent in the age of the “postnational constellation” to the nation-state in the age of high modernity, or to the empires and city-states of pre-modernity. The key issue for Habermas, however, is that it re-establishes the conditions of active and effective political life in a context in which modern divisions between the economic and the political are being eroded in the name of economic determination on one side and “pure community” on the other.

One of the key problems Habermas has to face up to is the now well-worked charge that transnational institutions can no more replicate the democratic legitimacy possible at the national level than can cosmopolitan institutions. Will Kymlicka put the matter baldly: “transnational organizations exhibit a major ‘democratic deficit’ and have little public legitimacy in the eyes of citizens.”<sup>26</sup> The problem, as Habermas sees it, is that in transnational political communities it is harder for individual citizens to relate to authoritative decisions. He writes: “As new organizations emerge even further removed from the political base, such as the Brussels bureaucracy, the gap between self-programming administrations and systemic networks, on the one hand, and democratic processes, on the other, grows constantly.”<sup>27</sup> This democratic deficit emerges because no effective way has yet been discovered to replicate the forms of national democratic deliberation and decision-making at the international level. The dilemma is this: if transnational institutions cannot compete with the democratic legitimacy of national decisions, then their binding power is weakened. Without a mooring in the democratic processes of will-formation in concrete political communities, they lack the legitimacy that underwrites constitutional patriotism at the national level.

One answer Habermas gives to the problem of democratic deficit in transnational bodies draws upon the theory of deliberative democracy he originally devised for national democratic bodies. According to this theory, democratic legitimacy is comprised of two moments: formal processes of democratic will-formation which take place in representative bodies, and informal processes of opinion-formation which take place outside of formal democratic institutions and within the many associations of civil society. If formal procedures are not to become detached from public life, Habermas observes that there must be scope for creative interaction between the two spheres. Civil society must be able to influence, though not coerce, the processes of will-formation and this influence must go beyond conventional means of participating in elections. One of the central motifs of Habermas’s democratic theory, and the reason he accords such a significant role to civil society, is that it ascribes an *epistemic* function to democracy: “democratic procedure no longer draws its legitimizing force only, indeed not even predominantly, from political



participation and the expression of political will, but rather from the general accessibility of a deliberative process whose structure grounds an expectation of rationally acceptable results."<sup>28</sup> The rational quality of outcomes is dependent on a deliberative process sensitive to the communicative power generated at the level of civil society, a power difficult or impossible to achieve in the sphere of will-formation.

Habermas introduces an interesting distinction here between democratic procedures whose legitimacy rests on the grounds that they are fair and open to all, and democratic procedures defended on the grounds that both deliberations and decisions have a sufficiently rational quality. This distinction helps us understand how he expects transnational bodies to achieve acceptable standards of democratic legitimacy. While they may be unable to replicate the legitimacy conferred on nation-states through representative bodies, they may at least be able to mimic the *informal* moment of democratic legitimacy. Providing examples gleaned from the European Union, Habermas writes:

The institutionalized participation of non-governmental organizations in the deliberations of international negotiating systems would strengthen the legitimacy of the procedure insofar as mid-level transnational decision-processes could then be rendered transparent for national public spheres, and thus be reconnected with decision making procedures at the grassroots level.<sup>29</sup>

If decision-making bodies are sensitive to the communicative rationality generated at the level of a transnational civil society, then at least one of the essential moments of democratic legitimacy will be met. The strength of this argument is the complex view of democratic legitimacy that it invokes. However, at the transnational level this argument downplays the role of representative bodies and suggests that democratic legitimacy is a one-track rather than two-track process. It may be true, as Habermas claims, that emphasizing the rationality of deliberative processes "loosens the conceptual ties between democratic legitimacy and the familiar forms of state organization,"<sup>30</sup> but loosening the ties is a different matter from breaking them altogether. If democratic legitimacy is based on a two-tier model of interaction of both formal and informal spheres, but cannot do without robust and inclusive representative institutions, it is precisely this component of democracy that transnational bodies find hard to achieve.<sup>31</sup> There may be a sense in which the development of European civil society *in isolation from* such representative institutions might enhance the feeling of detachment that characterizes the relationship between European citizens and European politics. For to play a role within the organizations of a transnational civil society presupposes a range of cognitive skills, from fluency in different languages to knowledge of different national traditions, that will be limited to relatively few highly educated and politically engaged citizens within each nation-state, and may appear alien beyond its own ranks. A civil society of this kind may not be able to inculcate the general belief in the legitimacy of transnational procedures that Habermas seeks.

The incentive to devolve power upwards and outwards to transnational bodies derives from the desire to protect political democracy from its erosion by both the systemic imperatives of global capitalism and irrational ethnic forces. Habermas maintains that political life can be reconstructed in the European Union by a simultaneous expansion outward of territorial boundaries so that it becomes more transnational, and a deepening inward of its sense of democratic community. In answer to the question of whether this dual movement, inward and outward, can cohere, he looks to the reconceptualization of the European Union through the lens of a new kind of democratic nation-state – neither federal nor confederal, but with a binding constitution, an elected parliament, an impartial executive, the rule of law, a bill of rights for all citizens, a vibrant civil society, separation between members and non-members, and the possibility of dedication to social justice and welfare. Nonetheless, he recognizes that the larger units of political decision-making required to control global economic forces are precisely those that will also have less democratic legitimacy by the standards of democracy that he has elaborated in the context of the nation-state. He forestalls pessimism by encouraging us to rethink how ideas of representation, national identity, civil society, and the public sphere that originate at the national level might be replicated at the transnational level. But ironically Habermas risks undermining the very values he wishes to promote, namely, those that support a democratic form of political life, by advocating a European transnational solution which by his own account cannot secure the same degree or at least the same form of democratic legitimacy as the nation-state.

### **Justifications for Cosmopolitanism: Political, Metaphysical, Postnational**

Given the difficulties Habermas rightly identifies in reconciling the ideal of cosmopolitan right with political democracy, and given his own analytical and normative commitment to the co-originality of rights and democracy, it is worth pursuing the question of precisely why he advances postnational politics (i.e., a politics located at the global or transnational level) as a solution to contemporary problems *rather than* increase the steering power of national democratic assemblies. In answer to this question, we identify at least three positions from which Habermas defends the “postnational” project against a relapse into a politics driven by the nation-state: in the first he defends it as a necessary response to changed social and political circumstances; in the second he defends it as a necessary stage in the realization of the idea of right; in the third he defends it as a necessary stage in the development of the nation-state. None of these three positions, however, turns out to be wholly convincing.

(1) Among the political arguments Habermas puts in support of the political project associated with the European Union are those that concern the construction of a lifeworld response to the systemic forces of globalization, the development

of political forms appropriate to the increasingly multicultural composition of the nation-states of Europe, and the consolidation of a European civic culture against forces of fascism and ethnic nationalism. We shall address each in turn. Habermas recognizes that, while the existence of transnational bodies like the European Union may be a *necessary* condition for responding politically to globalizing systemic pressures, it is certainly not a *sufficient* condition. After all, the normative presuppositions of many of those who share Habermas's enthusiasm for the further political integration of the European Union celebrate the fact that the EU is *functionally* driven and that it *erodes* inhibitions imposed by nation-states on the movement of capital, the flexibility of labor, and the privatization of public utilities. Conversely, the normative presuppositions of some of those who are *opposed* to the functionally-driven development towards a transnational body like the European Union are close to those of Habermas in that they too address the need to preserve a genuine political moment with a social democratic inflection in the context of globalization and see this as realizable mainly through the institutions of the nation-state. Habermas needs, therefore, a more concrete historical argument to justify his view of the European turn against these two sets of critics, since without further argument there are insufficient grounds for concluding that the European Union is the only convincing political response to the problems set by the globalization of capital.

Habermas also acknowledges that the modern idea of the nation, as is spotlighted by his own theory of constitutional patriotism, is no less *artificial* than the idea of the transnational political community. Both seek to create political unity among rights-bearing citizens who emerge from diverse cultures, languages, religions, backgrounds, or even nations. So if he is right in his sociological observation that today there is significantly greater heterogeneity of populations within European nation-states than there was during the high period of the nation-state (a claim that requires more historical scrutiny than is often allowed), it still does *not* follow that either the nation-state or nationalism are normatively-speaking moribund. For modern nationalism presupposes and encourages the solidarity of strangers based precisely on their heterogeneity and/or hybridity. Enlightened or civic nationalism has never been at odds with ethnic, religious, cultural, or linguistic diversity; rather it prioritizes its own artificial form of political integration over other forms of allegiance. There is no reason to believe that the growth of diversity in European countries, through the making and remaking of "mixed" populations, is incompatible with this national principle. On the contrary, ethnic and cultural diversity is the very cement of a nation organized according to principles of constitutional patriotism.

Finally, Habermas sees the European Union as a necessary response to the history of National Socialism and the continued threat of fascism. When he writes about nationalism as a German, he argues that Nazism has robbed nationalism in Germany of its last traces of innocence and that the German condition highlights the central fact of our times: that nationalism is no longer possible as an ethical

norm and that national identity, defined by the unity of cultural, linguistic, and historical forms of life, can no longer coincide with the organizational form of the state. Habermas looks to Europe as the bearer of those civic values that could not be sustained within a national framework. Habermas himself, however, has advocated the reconstruction of German national identity, not its dissolution. He has argued that *Germans* require a sense of joint responsibility that carries over into the next generations, that it is an "obligation incumbent upon us in Germany . . . to keep alive the memory of the sufferings of those who were murdered by *German* hands," and that it is through the liberating power of reflective remembrance that *German* identity can be rebuilt in a postnational age. In other words, there is also a peculiarly *national* content that Habermas gives to his response to fascism. This should come as no surprise since, despite its name, German National Socialism is best conceived not as an extreme form of nationalism but as a movement opposed to the parochialism of nationalist politics in the name of global ambitions, opposed to the unity of the German nation in the name of a race-thinking that posited race divisions within the German nation and race links beyond the German nation, and opposed to the institutions and structures of the German nation-state in the name of a parallel movement based on the leader principle. Such observations, as may be drawn from the work of Hannah Arendt, do not deny the tragedy of the nation-state that paved the way for totalitarianism, but they do intimate that the claim we find in Habermas's writings, that nationalism was peculiarly responsible for the catastrophes of the twentieth century, is only half true. The other half is that the revolt against the nation-state also contained its own measure of responsibility.

We find that in the three main political arguments Habermas uses to support the turn to a postnational idea there could in principle be a more national response even within the terms of Habermas's own theory of constitutional patriotism. They prove indeterminate in helping us choose between national and cosmopolitan responses.

(2) This brings us to the second set of arguments Habermas looks to – those meta-physical arguments concerning the realization of the idea of right. For Kant the necessity of embracing a cosmopolitan perspective was accounted for not primarily as a pragmatic response to social and political tendencies, but as a demand of reason itself. Kant deduced the idea of cosmopolitan right from the postulates of Practical Reason, presenting cosmopolitan justice as the work of Providence or as a Law of Nature. Practical reason appeared to demonstrate the rational necessity not only of civil society, but also of cosmopolitan right. In the *Metaphysics of Morals*, Kant argued that the duty to work towards the perpetual peace that a cosmopolitan order of states would facilitate could not be derived from experience or inclination, but must be shown to follow from the categorically binding power of reason itself.<sup>32</sup> Perhaps we could account for Habermas's support for cosmopolitan politics by detecting a similar inclination to depict it as a *rational necessity*. Such a perspective would account for his emphasis on cosmopolitan obligation and his insistence that

cosmopolitan right simply “*must be institutionalized.*”<sup>33</sup> There is a sense in which the rational necessity of cosmopolitan right is not up for discussion in spite of Habermas's faith in discourse as a means of ascertaining political morality and principles of right. His approach suggests that a democratic community cannot simply opt out of the project of realizing right on a global level, since in the final analysis the universal principles of right uncovered by the discourse analysis of modern law and morality trump all claims to national self-determination.<sup>34</sup> This stance is more than the sum of pragmatic arguments and might account for why Habermas regards it as imperative that we embrace a postnational politics.<sup>35</sup>

Ultimately, however, Habermas has to reject the suggestion that cosmopolitanism can be justified in this way. For one of the key problems Habermas sees in Kant's theory of cosmopolitanism is precisely in its conceptual framework, and more specifically in the *metaphysical* baggage that surrounds it. Rather than derive the idea of perpetual peace from *a priori* principles of right, Habermas introduces the postmetaphysical idea that if individuals are to be the authors of the laws to which they are subject, then the form and content of these laws have to be determined by intersubjective processes of deliberation. The issue here is that of admitting democratic procedures into the determination of cosmopolitan right. While Kant declared over the noise of battle that the cunning of reason was inexorably advancing toward a universal cosmopolitan end, and on this basis offered the consolation of philosophy for the violence of his age, Habermas introduces a non-deterministic form of reasoning into our understanding of historical evolution, draws attention to countervailing forces that unsettle Kant's unidirectional schema, and looks for a space between Kant's metaphysics of morals and his philosophy of history in which the political urgency of cosmopolitan solidarity may be given its due. Given this orientation, it is no surprise that Habermas moves away from Kant's transcendental deductions of cosmopolitan right. For Habermas these transcendental deductions are insufficiently connected to processes of rational deliberation between individuals and constitute impositions on freedom rather than the necessary conditions of freedom that Kant imagines them to be. One of the qualms Habermas expresses about Kant's political and moral philosophy is that it represents individual rights as necessary constraints on democratic debate and imposes them on political communities independently of their communicative validity. Habermas's own philosophy of right seeks by contrast to embed individual rights within processes of radical democratic praxis and develop the intuition that rights and democracy cannot be imagined apart from one another. Although Habermas does not always discuss cosmopolitan and transnational politics in this light, the thought that they represent the rational will of freely deliberating citizens, and not only the *a priori* deductions of the philosopher, animates his writings.

The force of this difference between Kant and Habermas is worth stressing. Kant advocates cosmopolitan politics as necessary for the project of realizing the idea of right. The thought that we could opt out of this process or deny the

rationality of cosmopolitan justice does not easily cohere with this approach. Habermas, by contrast, advocates postnational politics as a necessary and desirable project, but does not derive it from transcendental deductions. Instead he sees it as a response to the inability of the nation-state to realize the freedom of its citizens, due on the one hand to the flexibility of global capital and on the other to irrational manifestations of national sovereignty. While he holds that these tendencies in a sense *force* some kind of cosmopolitanism upon us, this is not the same as imposing it from on high. For Habermas postnationalism represents the means by which citizens can, if they so choose, reclaim the scope for agency that contemporary developments have denied. It is a shared project that citizens can join and fashion in their own image and not simply an institutional blueprint projected onto reality. In rejecting any metaphysical “fix” to the problem of justifying projects associated with the realization of the cosmopolitan idea, he challenges both the latent determinism of Kant’s philosophy of history and the latent moralism of his metaphysics of justice. By turning his back on Kantian metaphysics, Habermas rejects a powerful tool he might have used for explaining exactly why our response to new social conditions must take a postnational form. In this sense, the postmetaphysical reconstruction of Kant is a necessary but by no means painless move.

(3) The third justification Habermas uses to endorse cosmopolitanism has to do with the dynamics of the nation-state and his representation of “Europe” as the bearer of cosmopolitan values. One way of understanding what Habermas is doing when he embraces European politics is to read him as picking up a thematic of eighteenth-century Enlightenment thought, later developed by sociologists such as Emile Durkheim, according to which nationalism and cosmopolitanism are not seen as opposed entities but as closely knitted allies.<sup>36</sup> One of the manifestations of this way of thinking was the conception of a “universal nation,” that is, a nation whose particular values and interests are seen to correspond with the universal values and interests of humanity in general. It is a recurring theme in modern history. For the French Enlightenment, the universal nation was typically identified with the French republic.<sup>37</sup> For Communists after 1917, Russia became a kind of universal nation, its interests identified with those of the world revolution. For many neoliberal protagonists of the free market, America has become the universal nation of our own age.<sup>38</sup> Perhaps we can read Habermas as looking to a transnational, pan-European form of political community as the new bearer of universal values. After all, he presents Europe as a locus of solidarity that permits the redistributive policies of the social welfare nation-state to be recovered and extended across Europe. He presents Europe as a locus of human rights and of indignation over injuries to human rights committed by others.<sup>39</sup> He presents Europe as a close mesh of deliberative politics, civic value orientations, and shared conceptions of justice that provides the ground on which citizens can begin to see themselves as members of an international community. In this representation, Europe appears as a transnational civil society – one that is neither

west nor east, neither an exclusive container of private rights nor of political democracy, but the meeting place of their co-originality.

There is a sense in which Habermas presents Europe as the universal nation of our day, alone capable of conserving the democratic achievements of the nation-state – civil rights, social welfare, education and leisure – and of extending them beyond the limits of the nation. To be sure, Habermas rejects the “Carolingian” heritage of the founding fathers of Europe with its explicit appeal to a Christian West. Indeed, he rejects any concept of a European nation existing independently of or prior to the political process from which it springs. Yet he still looks to some idea of “shared European values,” a “European form of life,” a “European model of society,” a “European political culture” or “civic tradition” that the European Union could and should stand for on the world stage.<sup>40</sup> Habermas fully acknowledges that the history of Europe includes the violence of interstate wars, imperialism, and totalitarianism among its elements, but his reconstructive approach draws only what is good from the past and discards the rest. It aims to reconstruct normative principles from deeply equivocal histories without simply projecting onto the world an image of what he wishes the world to be. However, to paraphrase Hannah Arendt, such a stance risks taking “that which was good in the past” and simply calling it “our European heritage,” and discarding the bad and simply thinking of it as “a dead load which by itself time will bury in oblivion.”<sup>41</sup> If such a tendency is present in the work of Habermas, it also runs a risk that Habermas would wish to avoid: that of turning Europe into a vehicle for a new form of transnational chauvinism rather than into a vehicle for cosmopolitan ideas and solidarity. The notion that Europe is a privileged bearer of cosmopolitan values can lead to the same kind of arrogance that marked previous claims to this status by individual European nation-states. Such an outcome is one Habermas himself would manifestly not seek, for it replicates an undesirable characteristic of national politics at the transnational level.

We conclude this section, therefore, on a note of caution with the claim that none of the three strategies of justification Habermas entertains – political, meta-physical, or postnational – is able convincingly to account for the transnational and cosmopolitan moves he makes in his social and political thought.

### **Conclusion: A Paradox for Our Times**

It has proved harder for Habermas to radicalize Kant's theory of cosmopolitan right, iron out its inconsistencies, and adapt it to modern conditions than he anticipated. He set out to resolve the problem Kant faced in reconciling cosmopolitan ideas with national sovereignty on the side of cosmopolitanism, but we have found that he cannot a) escape the framework of the nation-state in which his own ideas of right and democracy were originally developed, b) recreate at the cosmopolitan or transnational levels the conditions of democratic legitimacy that he posits as essential for the exercise of political power in the context of the nation-state, or c) explain the necessity of this epochal transition from the national to the

postnational. If our argument holds water, then it should compel us to reconsider – *but not to reject* – the radical cosmopolitanism Habermas advocates. Cosmopolitanism has been acknowledged as a feature of right by philosophers throughout the ages, from Cicero through Kant and Hegel to modern-day interpreters like Rawls, Habermas, and Derrida. In different ways, they have all recognized that the problems posed by interstate relationships and the position of stateless persons point towards legal and political responses that transcend the boundaries of nation-states. Furthermore, cosmopolitanism is a part of social reality. This is indicated by the emergence of institutions like the EU, of activity by international actors and of international criminal courts. This reality – and the rationality that it contains – cannot be ignored in favor of an unthinking reaffirmation of the nation-state. The paradox of thinking through the implications of cosmopolitanism while still inhabiting a theoretical and political world fashioned by and for the nation-state is a real one. It will not be avoided through rejection of the cosmopolitan.

For us, the journey Habermas has taken and is continuing to take indicates both the indispensability of cosmopolitan ideas and the warning that a movement from a one-sided nationalism to an equally one-sided cosmopolitanism offers no ready-made solution to the problems of our age. If cosmopolitanism is conceived as a fixed institutional idea providing a universal remedy for the ills of nationalism and globalization, this conception not only overburdens new international institutions but also downplays the significance of inculcating cosmopolitan perspectives within existing lifeworlds.<sup>42</sup> If cosmopolitanism is conceived as a lawful power to which all rational citizens must bow, it replicates the defects of blind national loyalty. If cosmopolitanism is conceived as a stage of social or political life coming *after* nationalism, it neglects the fact that it has coexisted with the modern nation-state ever since it was born.

Cosmopolitan right is a particular form of right. It exists for a reason and there is no turning back from it. Yet it contains the contradictions of freedom and constraint, universality and particularity, which belong to all forms of right from private property to the modern state. This idea, that all forms of right including the cosmopolitan replicate tensions of freedom and constraint, is, we believe, found in Hegel's conception of right more than in that of Kant or Habermas.<sup>43</sup> It suggests that understanding the tensions we have identified – such as those between patriotism, democracy, and cosmopolitanism – is a pivotal part of understanding precisely what cosmopolitanism is. These tensions should be foregrounded rather than downplayed or ignored in favor of a premature theoretical reconciliation.

#### NOTES

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1. Karl-Otto Apel, "Kant's Toward Perpetual Peace as historical prognosis from the point of view of moral duty," in James Bohman and Matthias Lutz-Bachmann, eds., *Perpetual Peace: Essays on Kant's Cosmopolitan Ideal* (Cambridge, MA: MIT Press 1997), 87. Jürgen Habermas, "Kant's Idea of Perpetual Peace, with the Benefit of Two Hundred Years Hindsight," *ibid.*, 113–53; and in Jürgen Habermas, *The Inclusion of the Other: Studies in Political Theory* (Cambridge, MA: MIT Press, 1998), 165–202.

2. Jürgen Habermas, *The Postnational Constellation: Political Essays* (Cambridge: Polity, 2001), 64.

3. Given the absence of ethnic identity or any other shared way of life, most political theorists still assume that some variety of collective sentiment is an essential ingredient of social stability and justice. John Rawls, for example, has attempted to formulate a "sense of justice" in terms of the "capacity" citizens have to recognize and act according to constitutional principles (*A Theory of Justice* (Oxford: Oxford University Press, 1972), 567). Whether or not it is grounded in a single conception of the good or through an "overlapping consensus" between different reasonable conceptions of the good, the role of the "sense of justice" is to provide a rational foundation for attachment to common institutions. Similarly, liberal political theorists have recently devoted much time to describing the forms of civic nationalism that might serve as a replacement for ethnic nationalism. In the words of Brian Barry, "we cannot expect the outcomes of democratic politics to be just in a society that contains large numbers of people who feel no sense of empathy with their fellow citizens and do not have any identification with their lot" (*Culture and Equality* (Cambridge: Polity, 2001), 79). The form of civic nationalism Barry advocates may involve "the acquisition of some cultural traits," such as a national language, and leaves open the possibility of retaining a "distinctive identity."

4. Habermas, *The Inclusion of the Other*, 118

5. Frank Michelman, "Morality, Identity, and 'Constitutional Patriotism,'" *Ratio Juris* 14, no. 3 (September 2001): 265.

6. Habermas, *The Inclusion of the Other*, 226 (our emphasis).

7. Kwame Anthony Appiah, "Cosmopolitan Patriots" in Joshua Cohen, ed., *For Love of Country: Debating the Limits of Patriotism* (Boston: Beacon, 1996), 21–29. Longer versions of this paper are in Pheng Cheah and Bruce Robbins, eds., *Cosmopolitics: Thinking and Feeling Beyond the Nation* (Minneapolis: University of Minnesota Press, 1998), 91–114, and *Critical Inquiry* (Spring 1997): 617–39.

8. Georg Cavallar, *Kant and the Theory and Practice of International Right* (Cardiff: University of Wales Press, 1999), 143.

9. Patriotism, as we experience it, is sufficiently robust to produce conflicts between national and cosmopolitan politics. Consider the patriotic sentiment that occasionally grips large multicultural nations like France or the United States. Such a patriotism does not base itself upon any ethnic identity, and it conforms to Michelman's model of an attachment to particular constitutional procedures and arrangements. Nonetheless such a sentiment may outweigh whatever allegiance French or US citizens might feel towards an actual or hypothetical world citizenry, as witnessed by the frequent inability of world opinion to impact upon the actions of their governments. The fact that the "constitutional patriotism" that pervades both countries often immunises them from adopting a "cosmopolitan standpoint" should make us cautious of adopting a theoretical perspective that sees no tension between the two.

10. Jürgen Habermas, "Why Europe Needs a Constitution," *New Left Review* 11 (Sept./Oct. 2001): 5–26.

11. Habermas balances the constitutional and national aspects thus: "The political integration of citizens ensures loyalty to the common political culture. The latter is rooted in an interpretation of constitutional principles from the perspective of the nation's historical experience. . . . These [constitutional principles] form the fixed point of reference for any constitutional patriotism that situates the system of rights within the historical context of a legal community." *Inclusion of the Other*, 225.

12. The suggestion is not that any form of identity based upon constitutional principles must be empty or insufficiently robust, as communarians or republicans claim, but that Habermas has not drawn the concept of constitutional patriotism sharply enough to assess such claims.

13. Michelman, "Morality, Identity, and 'Constitutional Patriotism'," 269.
14. As Thomas Mertens points out, without shared understandings and a particular forum within which constitutional powers can be fashioned, there is properly speaking no such thing as a political community or culture at all ("Cosmopolitanism and Citizenship: Kant Against Habermas," *European Journal of Philosophy* 4, no. 3 (1996): 340). The thrust of his approach is to shore up liberal principles through their reconciliation with the shared sense of attachment that only national communities provide.
15. Habermas writes: "The internal relation between democracy and the rule of law consists of this: on the one hand, citizens can make appropriate use of their public autonomy only if, on the basis of their equally protected private autonomy, they are sufficiently independent; on the other hand, they can realize equality in the enjoyment of their private autonomy only if they make appropriate use of their political autonomy as citizens." Habermas, *The Postnational Constellation*, 118; also see Habermas, *Between Facts and Norms* (Cambridge: Polity, 1996), ch. 3.
16. Habermas, *The Postnational Constellation*, 64.
17. Ibid., 102.
18. Ibid., 65.
19. Daniele Archibugi, "Cosmopolitical Democracy," *New Left Review* 4 (July/Aug. 2000): 137–50; Habermas, *The Postnational Constellation*, 106.
20. See Danilo Zolo, "A Cosmopolitan Philosophy of International Law? A Realist Approach," *Ratio Juris* 12, no. 4 (Dec. 1999): 429–44.
21. Habermas, *The Postnational Constellation*, 107.
22. It is questionable whether the idea of democracy *has* to presuppose members and non-members for its realization. Habermas seems to present an argument about the likely *empirical conditions* needed to obtain democratic politics as if he were presenting a conceptual argument about the *necessary conditions* for any democratic politics. Given what we know about actual democratic practices, we might infer that the desirability of stability, social solidarity, and an electorate of manageable size suggest that a world democracy is a non-starter. This would suggest that though a cosmopolitan politics is not conceptually impossible, it may be practically impossible to implement.
23. Geoffrey Hawthorn, "A World Run through Windows," *New Left Review* 5 (Sept./Oct. 2000): 101–10; Tim Brennan, "Rooted Cosmopolitanism," *New Left Review* 7 (Jan./Feb. 2001): 75–84.
24. Habermas, *The Postnational Constellation*, 116.
25. Ibid., 99.
26. Will Kymlicka, *Contemporary Political Philosophy: An Introduction, Second Edition* (Oxford: Oxford University Press, 2002), 312.
27. Habermas, *The Inclusion of the Other*, 151.
28. Habermas, *The Postnational Constellation*, 110.
29. Ibid., 111.
30. Ibid.
31. Theorists of "cosmopolitan democracy" normally take the opposite tack to that of Habermas. Archibugi argues that what distinguishes cosmopolitan democracy from other projects for world government is "its attempt to create institutions that enable the voice of individuals to be heard in global affairs irrespective of their resonance at home." His solution is a "parallel series of democratic institutions," including an assembly of representatives whom the people will elect through international parties ("Cosmopolitical Democracy," 144). With Ulrich Beck, he finds it astonishing that political parties should still be confined to the national level. In this account little attention is paid to the systemic role of political parties as organizations of power composed of professional politicians competing for power. If Habermas downplays the role of political parties in his transnational Europe, Archibugi overplays it in his cosmopolitan democracy.
32. For a detailed exposition, see Robert Fine, *Political Investigations: Hegel, Marx, Arendt* (London, Routledge, 2001), ch. 8.
33. Habermas, *The Inclusion of the Other*, 179.
34. Witness Habermas's hostility towards any so-called right of national self-determination, which he rejects unless a national minority or a colonized people is being denied their rights by a hostile power or government. Ibid., 140–43.

35. The implications of this argument for Habermas's faith in *actual deliberation* as a necessary condition for the legitimacy of right cannot be explored fully here. The extent to which Habermas's thought in general presupposes transcendental or metaphysical claims remains an open question. His theory of communicative action retains a transcendental flavor in its insistence that we can only account for the very possibility of discourse and communication by positing certain norms which facilitate these practices. His reconciliation of rights and democracy itself retains the appearance of an *a priori* principle, which is dependent upon the very idea of a community of legal persons and does not depend upon any empirical verification (Fine, *Political Investigations*, ch.1). It is on the political level that any latent metaphysics are most problematic because of the stress on actual deliberation as a necessary condition of political legitimacy. If no such deliberation is necessary to ascertain the content of right, if it is derived from a conception of the person as free and equal, capable of rational communication, and belonging to a legal community, then there is a sense in which Habermas repeats the formal deductions of Kant with an intersubjective gloss.

36. In *Professional Ethics and Civic Morals*, Durkheim writes: "If each State had as its chief aim, not to expand, or to lengthen its borders, but to set its own house in order and to make the widest appeal to its members for a moral life on an ever higher level, then all discrepancy between national and human morals would be excluded. If the State had no other purpose than making men of its citizens, in the widest sense of the term, the civic duties would be only a particular form of the general obligations of humanity. It is this course that evolution takes, as we have already seen. The more societies concentrate their energies inwards, on the interior life, the more they will be diverted from the disputes that bring a clash between cosmopolitanism – or world patriotism, and patriotism; as they grow in size and get greater complexity, so will they concentrate more and more on themselves. . . . societies can have their pride, not in being the greatest or the wealthiest, but in being the most just, the best organized and in possessing the best moral constitution" (tr. Cornelia Brookfield (London & New York: Routledge, 1992), 74–75). In passages such as these, Durkheim seems to believe in the confluence of cosmopolitan and patriotic tendencies, as long as the local identity carried on by the state emphasises the worth of human values. The better nation is the one that gets closer to a moral conception of human beings.

37. See Julia Kristeva, *Nations Without Nationalism*, tr. Leon S. Roudiez (New York: Columbia University Press, 1993).

38. For a more detailed discussion of this concept, see Robert Fine, "Taking the 'ism' out of cosmopolitanism," *European Journal of Social Theory* 6, no. 4 (2003): 449–68.

39. Habermas writes: "In Continental Europe proponents of intervention [in Kosovo] took pains to shore up rather weak arguments from international law by pointing out that the action was intended to promote what they saw as the transition from a soft international law toward a fully implemented human rights regime, whereas both US and British advocates remained in their tradition of liberal nationalism." "Letter to America," *The Nation*, 16 December 2002.

40. In his essay on "Why Europe needs a constitution," Habermas writes that the project of a European political union "requires the legitimation of *shared values* . . . an interest in and affective attachment to a *particular ethos* . . . the attraction of a *particular way of life* . . . During the third quarter of the past century . . . the citizens of Western Europe were fortunate enough to develop a distinctive *form of life* . . . Today, against perceived threats from globalization, they are prepared to defend the core of a welfare state that is the backbone of a *society still oriented towards social, political and cultural inclusion* . . . 'Europe is much more than a market. It stands for a *model of society* that has grown historically . . .'" (8–10; all emphases ours).

41. Hannah Arendt, *Origins of Totalitarianism* (New York: Harcourt Brace, 1976), Preface, ix.

42. For Kant, a central criterion of cosmopolitan right is that foreigners are afforded a right of "universal hospitality." The cosmopolitan legacy he left inspires a sense of universal responsibility for the "foreigner" manifested at local, national and transnational levels and in legal, political and cultural forms. It is a radical way of understanding and acting in the world, not an institutional blueprint for putting things right.

43. For more along these lines, see Fine, "Kant's Theory of Cosmopolitanism and Hegel's Critique," *Philosophy and Social Criticism* 29, no. 6 (2003): 609–30.

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