

CORPORAL PUNISHMENT, EDUCATION AND THE LAW

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Education and the Law are increasingly interacting. One example is that more teaching about rules and penalties seems to be taking place. In this respect, Queensland is clearly taking a lead: for instance, on passing by the river on the way to Brisbane city from the airport, the attention of the visiting foreigner is drawn to a billboard which prominently advises, "Penalty for bigamy - two mothers-in-law".

Two other examples of universal legal concerns in education may be taken from the Canadian prairies, where not long ago a consultant lawyer warned a school board that the growing practice of mainstreaming is in need of legal examination. In one of the board's schools, he recounted, a teacher was interrupted by a school official who, knocking on the door, said, "This is Johnny: watch him, he turns blue," and promptly disappeared, leaving the hapless Johnny who was, however, still happily pink. The disconcerted teacher had no idea how blue was blue, nor indeed, if threshold blueness were reached what should be done or what her legal responsibilities were. On another occasion in an adjacent school district, a boy, given to misbehaviour, obstructed the bus queue on a high-school excursion. The teacher in charge, finding that both a caution and a rebuke had no effect, pushed him towards the door, whereupon the youth tripped against the bus and broke a tooth. The parents successfully sued the teacher for damages, but a higher court overruled this judgement, on the grounds that the teacher was acting properly both professionally and in loco parentis, and that he had not applied unreasonable force.

Within this context of the interaction of the Law and Education, the specific task here is to examine the meaning and effect of corporal punishment in relation to some major principles of justice, in relation to some established principles of child development, and in relation to some cogent sets of aims of education and means by which these aims might be realised.

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The Shorter Oxford English Dictionary (1975, p.1709) advises that punishment means "the act of punishing, or the fact of being punished; also that which is inflicted as a penalty; a penalty imposed to ensure the application and enforcement of the law". This dictionary quotes John Locke's observation: "We must, wherever we suppose a Law, suppose also some Reward or Punishment annexed to that Rule". The progenitor set of volumes, The Oxford English Dictionary (1933, p.1008), defines corporal punishment as "Punishment inflicted on the body, originally including death, mutilation, branding, bodily confinement, irons, the pillory etc (as opposed to a fine or punishment in estate or rank) ... in the 19th century, usually confined to floggings or similar infliction of bodily pain" Previously, then, corporal punishment apparently included the application of any pain-infliction instrument often more effectively applied to parts of the body richly supplied with nerve endings. Relics of some of these instruments and processes are to be seen in dungeons and literature dating from mediaeval times, and in some parts of the world still in use.

Those who subscribe to an evolutionary theory of cultural development believe that there is a general trend for cultures to become more humane, and that some cultures are more advanced or evolved in this respect than others. Such people might argue that the Anglo-Australian culture has advanced to some extent, inasmuch as it has tended to abandon capital and other corporal punishment. For example, corporal punishment in the British and colonial armies and abolished in 1868. An alternative hypothesis is that there is no evolution to better states, that humane policies and practices ebb and flow in any culture; even that the Australian tradition of government and justice was no better and no worse before the changes beginning with the Magna Carta or after.

Punishment can be categorised according to the way it comes about. Retributive punishment implies the payback, payment due, vengeance, an eye for an eye. It is an element of some ancient religions and customs, and is seen in feuds and emotionally charged behaviour in confrontations. It is reflected in Bentham's (and Gilbert's) making the punishment fit the crime. Importantly, though, retributive punishment does not necessarily imply progression to consequential punishment and self discipline.

Deterrent punishment implies the suppression of deviant behaviour in an observer as a result of seeing a model punished for engaging in the same behaviour, as

identified in the social-learning theory of Bandura (1962). But, as the consequences of deterrent laws generally show, there is a corollary to the effectiveness of deterrent punishment. Bandura showed in his experiments on aggression that, although subjects who observed models being punished for being aggressive were indeed deterred and became less aggressive, once they were offered incentives they resumed repeating the model's behaviour. That is to say, offering subjects rewards completely eliminated the benefits of the deterrent. On a little reflection, this effect is apparent in just about every human behaviour that has ever been punished, from robbery and illegal gambling to international espionage.

Reparative punishment is administered when an offender is required to make good damage done to a person or property in the course of a misdemeanour. Dr Vandenberg of the University of Queensland has reported earlier this year on the nature and applicability of reparative punishment in schools in an article in Discourse, a journal edited by Dr D'Urso, also of this university. Vandenberg argues that the use of reparative punishment is usually more effective and less destructive than corporal punishment (which is either retributive or a deterrent). In order to secure reparative justice, he says we need to answer four questions:

Which moral equilibrium is disturbed by the offence?

What damage, if any, needs repair?

How can it be repaired effectively, ethically and educationally?

What penalty, if any, is needed?

On the question of penalty, Vandenberg observes that a penalty is a logical presupposition of a prohibitive law which it is intended should be enforced. But he questions whether retributive justice, which includes corporal punishment, is defensible in schools because it can impinge on human dignity. The promotion and enhancement of human dignity, Vandenberg believes, is the principal purpose of institutions like schools.

Ultimately, the normally developing young person comes to realise, with the help of parents and teachers if he is lucky, that punishment often occurs naturally, as a result of some action or behaviour of the child. For example, if he is not careful with hot water, he gets scalded; if he causes unnecessary discomfort to others, he is likely to suffer discomfort himself. Our society is not as careful as some societies, for example most Jewish communities, to see that these lessons of consequential

punishment are learnt well. Not all parents and teachers are helpful. We know from our own clinical and other data that children's greatest risk of maltreatment, or child abuse as it is now called, lies not with stranger danger, but with their own families. So it is not surprising that some children do not grow up with a normal appreciation of the nature and role of punishment in their moral development.

Some helpful principles in this regard are provided by theorists in moral development such as Piaget (1932), Kohlberg (1967), and Goldman and Goldman (1988). Piaget's essential finding was that not only do children have less knowledge than adults, but also their thinking is of a different quality. The thinking of children under about 6 or 7 years of age is illogical by adult standards. In particular, young children have great difficulty in putting themselves in other people's positions: they are egocentric; not in a selfish or moral way, but because they lack the mental structures necessary to assume a viewpoint other than their own. These limitations to children's thinking are born in mind by both parents and professionals who competently deal with children. Piaget does not go unchallenged, but his work is telling.

Contemporary authors are realising that the development of children's thinking is very much related to their moral reasoning and their ideas about punishment. For most authors, moral reasoning has to do with the way children view the regulation of personal and social behaviour. Only now is there emerging a full realisation that the correction of children's aberrant behaviour depends very much on their ability to develop logical thinking and to apply it to social situations.

A number of circumstances influence children's patterns of behaviour. These include the children's perceptions of morality and the chances of getting caught. Piaget showed that children pass through two main stages of moral judgement. The first stage, known as objective morality, implies that virtuous conduct depends on obedience to authority. Rules are considered immutable, and punishment is believed to be inevitable, a notion known as immanent justice. The second stage, known as subjective morality, is influenced by democratic principles. The notion of morality in this stage develops from peer relationships. Rules are agreed upon, are relative rather than absolute, and are subject to agreed changes. Transgressions of rules are defined in terms of what is fair, or just, or to be expected. Importantly, too, the intentions of the offender are taken into account. The two stages of moral development overlap, so that a child may apply objective morality to one situation and subjective morality to another situation; but

increasingly as children grow older they tend to rely on subjective morality.

Piaget's procedure for studying and determining types of moral judgement was to tell to individual children a pair of similar stories, and to ask each child to make a judgement about the moral behaviour of the characters in the stories. For example, one story is about a child who was working in the kitchen and on bumping into a door broke six cups. A second story was about a child who broke one cup trying to get at the contents of a forbidden jar of sweets. The question was then asked, which was the naughtier child? Young children usually judge the child who did the more damage to be naughtier and to be deserving of more punishment than the other child. Piaget had determined, however, that this kind of judgement was not made for the want of the child's being able to distinguish between accident and intent. He found that children as young as three or four years of age could make this distinction. But they were unlikely to apply this knowledge when they made moral judgements, but rather considered the consequences of an action to be the most important criterion in determining moral behaviour and whether punishment is deserved. This perception of young children is probably cultural, for young children observe the reaction of their parents to the breaking of some object often to be one of annoyance and even anger. More recent research supports this notion, that young children are basing their early moral judgements on the tendency of many parents to punish consequences rather than to consider intentions.

Kohlberg followed on from Piaget's work, and produced a more elaborate stage theory of the development of moral judgement, based on a large number of observations of children who were asked to respond to moral dilemmas, comparable as a child version to some of the problems posed by Geoffrey Robinson in his Hypotheticals. Kohlberg claimed he had identified three major levels, calling them premoral, conventional and principled. Not all people proceed right through to the higher levels: some stall on the way. Kohlberg (1963) illustrates the stages by analysing reactions to a problem; in this case Heinz's dilemma. This penniless man has to decide whether he will steal a medicinal drug which is the only means by which his wife can be saved from death. At the premoral level children (and occasionally adults) decide moral questions on the basis of personal fear and the avoidance of punishment. Later in this level they are motivated by wanting to satisfy their own needs, and become sensitive to the consequences of their actions. In the first stage of the conventional-morality level, people set out to please and help others so that they will gain their approval. They tend to decide moral questions on the

basis of how they believe parents or others will judge them or want them to behave. Later conventional-stage people will come to base their actions or beliefs on established authorities: they will say, because a rule is a rule; or because the Bible says so; or because he is Prime Minister. They see this attitude as necessary for a stable society. Many adults do not proceed beyond this stage. People entering the principled level recognise that rules are always a little arbitrary, and are made in response to needs which change over time. They see the need for Law Reform Commissions; and accept personal responsibility. They believe that the ends do not always justify the means. The final part of the principled level, stage 6, represents people who have fully internalised principles believed to be universally valid, and are not necessarily committed to obeying laws. It is suggested that the only soldier who refused to obey his orders at the massacre at My Lai had reached this stage. It was further determined by the judges at the Nuremberg Trials that the defendants accused of participating in the holocaust ought to have reached this stage, an assumption that recently seems to have reversed in the North trial in the United States. People at Stage 6 would argue that laws which destroy human dignity should be broken. In the Heinz dilemma, if the man stole the drug, he would admit to breaking the law but argue that he had to in order to live with his own conscience. Many respected educators believe that it is part of the responsibility of schools to guide as many children as possible towards stage 6.

Another theoretical point that helps professionals understand the role of punishment, in both the development of children and the regulation of society, deals with the question of where various people consider the location of control to be over their behaviours and destiny. Thirty-five years ago, Rotter (1966) identified locus of control as the degree to which one feels in control of events on one hand, or at the mercy of external forces on the other hand. A child who fails an exam can blame internal influences, such as insufficient study or not trying hard enough; or external forces, such as poor teaching, a difficult test or bad luck. A child who does well on a test similarly can attribute the result to studying well and trying hard (an internal locus of control), or to easy test or good luck (an external locus of control). The idea of locus of control has been given a theoretical basis in attribution theory, which suggests that a person attributes his performance or destiny either to dispositional or internal influences, or to situational or external influences. Children who show more internal locus of control generally perform better than children with an external locus of control; but there is a general move towards an internal locus of control as children grow older. Children from lower-income families are inclined

to be more external than children from higher-income families. It is probably not surprising that lower-income children feel that way, because the feeling may be based in fact. Presumably, however, there is an advantage in feeling that one has at least substantial control over what happens in his life. In fact, a more internal locus of control can be encouraged by more individual instruction at school, and by the use of enrichment school programmes like Follow-Through, according to research in the United States (Shore, Milgram & Malasky, 1971).

What can theories like these indicate about the nature and usefulness of punishment, particularly corporal punishment, as a means of regulating behaviour? First, they indicate the desirability of establishing the probable level of a child's cognitive and moral development, in order to decide whether he has wittingly or intentionally transgressed, and what the child's perception of the offence is likely to be. Next, if the transgression is not trivial, a responsible adult might consider explaining at an appropriate level of understanding that the transgression is unacceptable, or whether, especially if the offence has been repeated, punishment is indicated. If punishment is decided upon, one might consider which of two fundamental kinds of punishment would most likely change the behaviour, and encourage the child to assume more responsibility for his behaviour, consistent with his level of development. One kind of punishment (which psychologists, with characteristic imagination, have called Punishment One) requires the administration of something unpleasant, and includes corporal punishment, while Punishment Two implies the removal of something that is desired, and includes the suspension of privileges. Some American research has shown that, if punishment is severe enough, it can reduce unwanted behaviour (Matson & DiLorenzo, 1984), at least temporarily, and often more effectively than some other methods like relying on the principle of extinction or on moralising lectures.

But is severe punishment constructive? Parents or teachers would be justified in punishing a child for dangerous behaviour like running on to the street, putting nails in power outlets, violating school rules, smoking cigarettes, bullying weaker pupils or destroying property. But the punisher needs to be careful, in case he induces negative properties in the perception of a child, who may subsequently say, "I hate my teacher," or "I hate my parents," or later, "The Law is an ass". Another problem may result in terms of the principle of generalisation, as the distaste for the punishment may be extended to what is being taught at the time of the punishment, or even to the school itself. Yet again, avoidance may result: a child might try to avoid the punishment not by terminating the

punished behaviour, but by resorting to cheating, lying playing truant, sneaking or hiding; and this response might be carried over into some areas of adult behaviour. A former colleague reported being beaten by her mother for smoking in the back yard. Her response was not to give up smoking, but to smoke more discretely behind the shed further down the garden; and she continued to abstain from smoking in the presence of her mother into adulthood. The mother is now in her 80's, and in frail health, and my friend says she has not the heart to tell her that it was not the beating that persuaded her to give up smoking, but the publication of evidence about the consequences of smoking some years later. The aged mother will die thinking that the beating was successful in modifying her daughter's behaviour.

In short, then, punishment is a weapon that may backfire: like the mediaeval cannon, it can be as risky for the operator as the victim. When a parent, teacher or legal system decides after due consideration that punishment, especially corporal punishment, is to be carried out, then it is most effective when it is administered immediately after the unwanted behaviour, when it is inescapable, when it is as intense as necessary, when there is an alternative response available to the child, and when it is administered equally to all individuals in the group who transgress (Gage & Berliner, 1988).

What other problems are there in the use of corporal punishment? They may be described as physical and psychological. Physical consequences are damage, sometimes permanent, to bodily structures and functions. Though permanent damage is not common, the fact that it happens at all is serious. Even if an adult does not misjudge the severity of a beating in relation to the physique of the culprit, damage may occur. It is more likely when the punisher is in an emotional state. An international group of medical authorities, including Prof. Oates of the University of Sydney, have noted in a joint statement (Education, 1989) that corporal punishment has become more rare in recent decades, though it persists in some countries, including South Africa, and parts of Canada, the United States and Australia, where the legality of teachers' hitting children is defended by a minority of teachers and some citizens. The medical group state that a whole range of orthopedic complications can result when a child's hand is struck with a stick or strap, since the hand of the child is susceptible to injury because of the proximity to the surface of ligaments, tendons, nerves and large blood vessels. The terminal phalangeal joint may suffer permanent deformity, possibly leading to premature osteoarthritic changes. The

risk of infections' being induced internally is also present, and may impair the function of the hand.

What might be called psychological problems differentially affect various kinds of children. The children upon whom corporal punishment is used more frequently are likely to be those who are often beaten at home. When corporal punishment is used at school as well, such children may assume that, in the world at large, it is normal to impose one's will on other people by resorting to physical violence, especially when one is angry. Often, these children do not have well developed verbal skills: they have not learnt to be angry with words, over which they have poor control; so they readily revert to physical attack to give vent to their feelings. This can become a pattern of behaviour which could land them, as adults, before the courts. Another and related special group of children is described formally at "children at risk". They live in families described as dysfunctional, because the relationships and behaviour among members of these families are often maladaptive. More often than not, the children's parents were raised in similar families. The parents may suffer from psychological problems, be often out of work, be taking illicit drugs, or may lack the ability, understanding or reliability to care for their children adequately. Some may practice child abuse of various kinds, including violence and sexual abuse. Children raised in this environment may suffer physical and psychological trauma, and, especially if teachers at school also practice corporal punishment, have little reason to believe that, albeit under a cloak of apparent periodic tranquility, the world beyond the family environment is much the same as within it. As government resources become more strained in a climate of a conservative revival and an attendant attack upon the concept of welfare, facilities for assisting such children and families become depleted. Less qualified staff are sought by care-giving agencies because they are cheaper; and those staff who are able tend to seek employment in less stressful situations. For example, in New South Wales, some early-childhood teachers are being replaced by Certificants in Child Care (the TAFE 'Triple Cs').

In the perception of some people, there is developmental value in corporal punishment, especially for boys, who are expected to take their medicine with good grace, as a training for managing misfortunes in their future lives. This is the tradition of the English public school, which has served as a model for many private and some state schools in Australia and New Zealand. In the post-doctoral study of corporal punishment at Christchurch Boys' High School, which is a traditionally and academically orientated state school, an American

psychologist academic, Mercurio (1972) found that caning boys was an established ritual which was more common in the lower forms. From the time the school was established in 1881 as a preparatory school for the Canterbury College of the University of New Zealand, incidents of caning together with the attendant circumstances have been recorded in a Punishment Book. On the whole, the boys accepted the punishment, often preferring it to the tedium of other punishments like writing out quotations 200 times, because it was over and done with in a few seconds. They even respected masters who wielded a judicious cane. But the boys were mainly from upper-income origins, and the school has a strong academic orientation. Few pupils would hail from families with economic and emotional instability. On the whole, the boys appeared to accept the punishment, most of them "in a manly fashion", and even respected masters who dispensed it judiciously. For some boys, it was a means of gaining attention. Many parents appeared to associate corporal punishment with character building; but Mercurio judged that, "rather than inculcating qualities of self discipline, critical judgement and initiative of thought" as it was supposed it, caning "appears to create attitudes of over-dependency, hostility, aggressiveness and unquestioning, unreflective submissiveness" (p.158). After they left Christchurch Boys' High, however, many old boys wrote in laudatory terms of the tradition. Nevertheless, Mercurio judged that, even at Christchurch Boy's High, caning would die, as society changed its values and attitudes. He wrote this book, however, at the time when it would have been hard to predict that Dahrendorf's notion of cultural convergence might come to pass. The philosopher Dahrendorf, one recalls, had remarked the failure to Marxism in terms of its original goals, and its translation into a principle of the modernisation of backward societies, and had predicted a convergence of seemingly ideologically different societies committed to materialism and to such attendant trappings as Coca Cola, Levi jeans, Kentucky Fried, corporatisation, deregulation and a respecting attitude to corporal punishment in schools (though he did not enumerate this precise list).

How does the use of corporal punishment reflect one's educational philosophy? In terms of traditional philosophical positions, there is no clear-cut alignment with pro-corporal-punishment and anti-corporal-punishment punishers. Both camps are represented among traditional philosophical positions such as idealism, realism, pragmatism and linguistic analysis. There is probably a clearer alignment to be found between points of view on corporal punishment and the philosophical taxonomy of B.O. Smith (1951), who identified four principal positions in terms of the impact upon education of some sets of attitudes of social philosophy. Smith, an American

philosopher, referred to these positions as essentialism, perennialism, progressivism and reconstructionism. Essentialists tend to be conservative and traditionalist. They believe that there is a great wealth of wisdom and knowledge vested in human history, and that it is the main task of schools to pass this on to each generation. There are only about a thousand hours in a school year to teach children, and this time should be spent in maximum effect. Only essential subjects should be taught - enumerated as English, History, Mathematics, Science, and a foreign language. There is no such room for such diversions as sports, leatherwork or peace studies; time should be devoted to the Hundred Great Books, so that human treasures are guarded in perpetuity. Hard instruction, rigid discipline probably including corporal punishment, and constant application are the only methods to ensure this goal is attained. Interestingly, essentialists are to be found towards both limits of the political spectrum. Perennialists have a similar approach to the purposes of education, but their beliefs are based on religious or other metaphysical premises. Their teaching methodologies, too, would be similar. Progressivists are quite a different kettle of fish. Their philosophy is akin to the humanists', and follows the tradition of John Dewey in the United States and A.S. Neill of Summerhill in England. They consider it an impertinence and a travesty of a teacher's function to require a child to fit some predetermined mold. Each child has a unique potential that should not be stunted or destroyed by authoritarian adults. Progressivists have a strong commitment to democracy at all levels of education and the society with which it is continuous. They would not have a bar of corporal punishment, which would be an affront to the very human dignity that is fundamental to education. Finally, reconstructionists believe that it is a primary duty of educationalists to sensitize children to social injustices and social responsibilities. Children should be shown that there is much undeserved misery in the world, and those with plenty are not conspicuously inclined generally to alleviate it. City streets abound with waifs and the rejected mentally disturbed. In a climate of materialism, in which many ploys are used to curtail services to the less fortunate, education should play a leading role in awakening the social conscience of nations. Reconstructionists would be rather reluctant to use corporal punishment.

Essentialists and perennialists have been the dominant influences in many parts of the educational world, from Russia to some fundamentalist Islamic countries to parts of the United States and Canada. They have been especially prominent in English public schools, and in the derivative tradition of comparable schools in former British colonies, in particular South Africa,

Canada, Australia and New Zealand. In Australia, this tradition continues in many private or independent schools, and in a few state selective schools, as in New Zealand, except that the tradition is to be found in more high schools. New Zealand high schools have been more independent, each having been set up under its own Act of Parliament with its own Board of Governors, which, though the Principal, hires the staff. British traditions are much more comfortably accepted in New Zealand than Australia, probably for historical reasons. Australia is often regarded as the big, brash and rather classless brother which has become a repository for the world's peasants; whose elite, as a recent Hungarian immigrant put it, have tended to hide themselves away ever since the early colonial "exclusives" found themselves so thin on the ground, leaving the populous and its media of communication to their own noisy devices; and whose level of sophistication is generally represented from the prime minister down (or up) in snarled jokes about beer and a rejected cultural heritage whenever television cameras are rolling.

Nevertheless, in both countries, attitudes to corporal punishment are changing, despite the current hiccough in New South Wales, where a solution to the alienation of some sections of young people from society at large is sought in a return to a kind of optional corporal punishment if it is sanctioned by the school committee. There is a wider realisation that, usually, the children who receive corporal punishment at school are the ones who are often beaten at home, and are inclined to be in need of some other therapy to show them that there are alternatives in modifying behaviour to resorting to physical attack, however controlled or ritualistic the attack may be.

What can we conclude about corporal punishment? First, it is a relic of a time in our cultural history when human development was not understood as it is today, when rationality in managing behaviour was not always consistent, and when at an institutional level there was frequent resort to violence to attempt to solve problems. Indeed one may ask, what has changed? There is still an enormous ignorance about human behaviour. But it is clear that corporal punishment is not a trivial matter. It is an act of unwanted physical discomfort perpetrated by one individual upon another, however legal that may be between responsible adult and child. When the matter is clearly thought out by parent, teacher and lawmaker, and when informed consideration is given to underlying principles such as we have discussed, as well as, importantly, the nature of the transgressor, then an occasional resort to corporal punishment may be defensible, legally sanctioned and even helpful. But the occasions upon which resort to

corporal punishment would be taken are likely to become fewer as a given society progressively removes itself from accepting violence as either appropriate retributive punishment or as frivolous entertainment. In short, there are usually more effective and less risky ways of modifying the behaviour of children than employing retributive corporal punishment; but on rather rare occasions it might be tried after careful consideration of the physical and psychological risks. The most constructive purposes of any guidance or correction of children's behaviour are to help children to move towards recognising and assuming responsibility for their own behaviour, to develop an internal locus of control and intrinsic motivation, and ultimately to achieve mature social behaviour.

It goes without saying that corporal punishment is mainly, though not exclusively, a male issue: it is no accident, for example, that Mercurio chose a boys' school in New Zealand at which to spend his Fulbright year. Most violence is perpetrated by males. They outnumber females some ten to one, as it is well known, in terms of violent crimes committed and goal inmates. While well-meaning but sociologically fashionable enquirers still attribute this situation to the greater probability that little boys have had toy guns to play with instead of dolls, it is pretty obvious that males engage in more physical and violent competition not only among human populations, but also among other primate species, and also in other genres of mammals, in which socialisation conspiracies are somewhat less likely.

Finally, the decision to include corporal punishment as a legal option for teachers is too important a matter to be left to politicians out on vote-catching sprees. As Horace Mann wrote 150 years ago, "Possibly on no other subject pertaining to education is there so marked a diversity or rather hostility of opinion as on this; nor on any other, such perseverance, not to say, obstinacy, in adhering to opinions formed" (Mercurio, 1975, p.vii). Despite the emergence of many new and serious issues in education, it is much the same today.

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