

Limited Paternalism and the Pontius Pilate Plight

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ABSTRACT. Ebejer and Morden ("Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?", *Journal of Business Ethics* 7, 1988) propose 'limited paternalism' as a sufficient regulative condition for a professional ethic of sales. Although the principle is immediately appealing, its application can lead to a counter-productive ethical quandary I call the Pontius Pilate Plight. This quandary is the assumption that ethical agents' hands are clean in certain situations even if they have done something they condemn as immoral. Since limited paternalism can give rise to this queer conclusion in the salesperson/buyer relationship, the principle is suspect. It may be a necessary condition for ethical sales, but is not sufficient. This discussion concludes by suggesting two additional criteria which, when complemented by the limited paternalism principle, are jointly sufficient.

I

Is there a morally acceptable passage between the Charybdis of *caveat emptor* and the Scylla of full-blown paternalism in the salesperson/buyer relationship? If a salesperson intentionally conceals or misrepresents pertinent information about his product or service because he's adopted a cutthroat attitude of "let the buyer beware," he risks ethical wreckage by deceptively manipulating his client for the sake of profit. But if he refuses to sell a good or service to a particular customer, even though she wants it, because he thinks it will be harmful or at least not useful to her, he hazards foundering on the rocks of paternalistic violation of her autonomy. How, then, can we oblige the marketplace Ulysses to steer a passage which neither exploits his customers, inter-

feres with their freedom of choice, nor puts himself out of business? Is there, in short, a prescriptive criterion upon which to ground a professional sales ethic?

In a recent thoughtful article entitled "Paternalism in the Marketplace: Should a Salesman Be His Buyer's Keeper?"¹ Ebejer and Morden suggest a navigational principle they call "limited paternalism". They argue that a sufficient criterion for protecting the autonomy and rights of the customer as well as the interests of the salesperson is for the latter to provide all pertinent information about his product or service and then let the customer make her own decision about whether or not to buy on the basis of that information. This imposes a limited obligation upon the salesperson that neither violates his marketplace interests nor illegitimately interferes with the customer's autonomy:

To claim that a salesperson is professionally required to inform customers fully about a product or service, to disclose fully all relevant information without hiding crucial stipulations in small print, to ascertain that they are aware of their needs and the degree to which the product or service will satisfy them, is to impose upon the salesperson the positive duty of limited paternalism. According to this standard a salesperson is, to a limited degree, 'his buyer's keeper'. . . . Here the 'father-like' [salesperson] does not make the decision for the [customer]. The only liberty that is violated is the freedom to be ignorant: the consumer is protected from an uninformed decision that could be detrimental to him. (338)

The notion of limited paternalism in the marketplace is attractive. Its most obvious allure is its simplicity. It appeals to common sense because it seems to provide a realizable standard for protecting the customer that does not demand undue sacrifice on the part of the salesperson. But its immediate simplicity, I fear, is also somewhat deceptive. Al-

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though sufficiently regulative, perhaps, for very uncomplicated market transactions, it is inadequate for most others. When one fails to recognize the limits of its application and appeals to it as a sufficient condition for *all* ethically acceptable marketplace interactions (as Ebejer and Morden seem to do), one runs the risk of entangling oneself in an ethical quandary I somewhat tongue-twistingly call the “Pontius Pilate Plight”. This quandary in its most general form involves the queer claim that an agent’s hands are clean if he conforms to the formal prescriptions of a role-specific obligation, even when the agent does something which, although allowed by the obligation, runs counter to his personal moral convictions. In the specific context of limited paternalism, the Pontius Pilate Plight appears when a salesperson who has personal ethical reservations about selling a particular product or service assumes that his moral duty is discharged and his hands clean if he informs the customer of the reasons for those ethical reservations. If the customer nonetheless buys, no violation of the limited paternalism principle has occurred. And since limited paternalism is a sufficient regulative criterion for proper marketplace relations, conformity to it is all that matters. This line of reasoning, of course, allows a salesperson to perform with impunity an act he otherwise would be forced as a private individual to condemn as unethical or at least morally dubious — which suggests that the immediately attractive simplicity of the limited paternalism principle may in fact be a weakness rather than a strength.

In what follows, I more fully spell out the queer implications of limited paternalism. In doing so, I do not claim that either *caveat emptor* or fullblown paternalism is the better option, but only that the standard of limited paternalism, as it stands, is not a sufficient foundation for a professional sales ethic.

II

Consider the following situation, adapted from Ebejer and Morden: An auto owner takes her car to the repair shop because it’s been making too much noise and instructs the mechanic to replace the muffler and exhaust pipes. After examining the car, the mechanic discovers its excessive noise is due to a hole in the tailpipe, and not to a faulty muffler

system. He then has three options. (1) He can, following his customer’s instructions, replace the muffler and exhaust pipes at a relatively high cost to her. (2) He can refuse to do as the customer instructed, since all she really needs is a relatively inexpensive tailpipe. (3) He can talk to the customer, explain that the actually needed repair is less expensive than the one she requested (that is, “disclose fully all relevant information”), and let her make the decision herself of whether to go with the expensive muffler system or the cheaper tailpipe. If the mechanic chooses the first option, he exploits his customer’s ignorance for the sake of profit (*caveat emptor*). But if he goes with the second, he violates the owner’s right to decide for herself what she wants (paternalism). Ebejer and Morden conclude that the third option (limited paternalism):

is the best ethical choice and the standard required for professional responsibility: the mechanic has a duty to inform the owner of facts of which she might not be aware since she is not the expert. The choice should be left to the owner”. (338)

Within the context of this particular case, I agree that limited paternalism is the fairest and most reasonable of the three options. But there is a transparency to the example which, I would suggest, is somewhat contrived. Real-life situations are often (and perhaps usually) more complex, less cut and dry. Can the principle of limited paternalism satisfactorily resolve them?

For example: Jame owns a convenience store, and one of the products she sells (and sells a lot of) is tobacco. Although selling cigarettes (to non-minors) is perfectly legal, Jane personally has serious ethical reservations about doing so. She has read and reflected upon the latest Surgeon-General’s report on tobacco consumption and is intellectually convinced that cigarette smoking is a costly and dangerous habit, not only to the active smoker but, in certain instances, to so-called passive smokers as well. Moreover, she considers self-destructive behavior to be an evil. She is realistic enough to realize that people *will* smoke, regardless of the sound medical reasons for not doing so and in spite of the clear warnings on cigarette packs themselves. But she nevertheless feels she ought not encourage or contribute to the self-destructive behavior of other people — that is, that she has a moral duty to refrain from helping people

harm themselves, even when they do so knowingly. By selling cigarettes in her store, however, she is doing precisely what she as a private individual judges to be unethical. What ought Jane to do?

She has three options. (1) She can continue selling cigarettes, even though doing so violates her personal ethical standards, and uncomfortably try to excuse her actions by adopting a harsh *caveat emptor* attitude. (2) She can discontinue cigarette sales and hang a sign in the window announcing that her convenience store is henceforth smoke-free for the good of her patrons, thereby treating them in an obviously paternalistic manner. Such a recourse will diminish although not cripple her revenues, but it will also clear her conscience. (3) She can act in a limited paternalistic way by continuing to sell cigarettes if customers insist upon them, but only after she apprises all perspective tobacco buyers of the “relevant information”. In this context, relevant information will be not only a litany of the medical risks of smoking. It will also include an explanation of why Jane considers tobacco consumption an evil, in addition to why she feels it is unethical to encourage individuals to harm themselves by selling them tobacco. To keep back *any* of this information is to fail to fully protect the consumer from an “uninformed decision that could be detrimental to him”.

Now presumably Ebejer and Morden would argue that the third alternative adequately fulfills Jane’s ethical responsibility in the salesperson/buyer relationship. She has informed her customers of the relevant information concerning the commodity they want, and then has allowed them to make their own decision. Her hands, consequently, are clean, regardless of whether or not the customers choose to buy. But such a conclusion, it seems to me, is queer, because it exonerates Jane of moral culpability even when she performs an act (the selling of a harmful commodity) she thinks is unethical. Given her personal ethical standards, the only responsible option Jane has is to declare her store smoke-free. But the principle of limited paternalism allows her to perform as a salesperson what she personally deems to be a normatively illegitimate act. By appealing to limited paternalism, in other words, she can ethically do what she regards as unethical. But this, I would contend, is decidedly odd.

Consider a different situation: Peter owns a custom auto supply shop which specializes in expensive and

nonessential gadgetry for cars. A young man comes in and asks Peter to overhaul and “soup up” the engine of his automobile as well as ornament the chassis by adding a great deal of chrome and other cosmetic paraphernalia. Peter quotes the young man a price which is extremely high but, given the nature of Peter’s services, fair. The young man fills out a credit application which stipulates that, if approved, he will pay Peter \$200 per month for one year in exchange for the services and parts.

After reading the application and running a credit check, Peter decides that granting credit to the young man is a reasonable risk — particularly since he can always take possession of the car in case of default. But he also suspects that the young man will dangerously overextend his financial resources if he buys the nonessential services Peter can sell him. When the young man returns to the shop to check on his credit application, Peter asks him a few subtle but well-directed questions which confirm his suspicions. The young man is a car fanatic who sinks every available dime into his obsession. Peter soon realizes that although the young man is quite likely to meet his credit payments, he will do so only by depriving himself of much more essential commodities. Moreover, Peter personally thinks such a move is foolish, and that he as a private individual ought not encourage persons to sacrifice essentials for luxuries. To do so, in Peter’s opinion, would be unethical or at least morally dubious. What should he do?

Like Jane, Peter has three options. (1) He can say to himself: “To hell with it! This kid needs my services like a hole in the head, and if I approve his credit it’s almost certainly going to burn him financially. But I’m not in the business of looking out for fools. It’s his tail if he wants to go through with the deal. Besides, I sell quality merchandise for a fair price. I’m not cheating him”. (*caveat emptor*) (2) Peter can say to himself: “This kid doesn’t need any of this junk, but he’s too green to know it. He’s got a perfectly good car as it is, and if he buys from me he’s going to suffer for it, even though I’ll probably get my money out of the deal. Since he hasn’t got enough sense to know what’s good for him, I’ll have to protect his interests myself. I’ll reject his credit application. Besides, doing so won’t harm me. I’ve got all the business I can handle”. (paternalism) (3) Peter can say to the young man: “Listen kid, I want

you to think about this. I can give you credit, but I've got to tell you I think you're making a big mistake. You don't really need all this stuff, and if you insist on it you're going to pinch your income in a major way. Besides, I don't feel right about encouraging you to throw your money away like this. It would be irresponsible on my part. Why don't you sleep on it and let me know your final decision in a day or two? Then, if you still want my services, I'll go along with you, even though it's against my better judgment". (limited paternalism)

Now Peter's dilemma is clearly somewhat different from Jane's. Jane has personal moral reservations about selling tobacco, even if her customers want it, because she thinks it a bad commodity. Peter has no personal qualms with what he's selling, but only with selling it to a particular customer — the young man — who wants it. Although Peter recognizes that his goods and services are nonessential (and perhaps even frivolous) luxuries, he sees no ethical malfeasance in providing them to customers who can afford them without undue suffering. But the young man, in Peter's estimation, is not such a customer. Consequently, to sell to him would violate Peter's personal moral standards.

Once again, however, Ebejer and Morden's limited paternalism principle would absolve Peter of moral culpability because, within the context of the marketplace, it claims to be a sufficient regulative principle. But this means that once again the principle leads to an odd state of affairs: by appealing to it, Peter can with impunity perform an act as a salesperson that he as a private individual considers to be unethical. He can, in short, acquiesce to what he considers to be an immoral course of action without being accused of a breach of duty. And this line of reasoning is queer.

III

I've argued that both Jane and Peter paint themselves into quandarous corners if they take the principle of limited paternalism as a sufficient standard for ethically regulating their behavior as salespersons. Moreover, I've claimed their quandaries are examples of what I've called the Pontius Pilate Plight. My assumption has been that any principle (in this case limited paternalism) which can lead to such odd

outcomes is highly suspect. Let me explicitly state why I think the principle of limited paternalism, as it stands, goes awry — that is, why it can lead to the Pontius Pilate Plight.

Recall the biblical Pontius story. Jesus is convicted by the Sanhedrin of blasphemy and brought before Pilate, procurator of Judea, for sentencing. (Although blasphemy was a capital offence under Jewish law, during the Roman occupation of Judea only an imperial official could actually sentence someone to death.) After questioning Jesus, Pilate decides that he has done no wrong and does not deserve to die — that is, Pilate personally feels that it would be immoral to execute Jesus. The Sanhedrin, however, insists that Pilate do his formal duty as imperial procurator, which in this case is to pass sentence in accord with its conviction. Pilate finally acquiesces: "When Pilate saw that he could prevail nothing . . . he took water, and washed his hands before the multitude, saying, I am innocent of the blood of this just person . . ." (Matthew, 27:24)

But is it as simple as that? Is Pilate really as unproblematically "innocent" as he claims to be (I speak here strictly in ethical, not theological, terms)? Pilate has painted himself (or allowed himself to be painted) into a corner which, from an ethical perspective, is dubious because it is strikingly queer. He says on the one hand that it is immoral to condemn an innocent man but, on the other, that his doing so constitutes no breach of duty ("I am innocent"). What's happened here?

Pilate's problem is that he somehow thinks mere conformity to a formal role-specific obligation will exonerate him of personal culpability just so long as he expresses his personal reservations ("I find no fault in this man"). Role-specific or professional duties clearly add to the set of personal obligations and responsibilities an individual has, but they should never conflict with or serve as justification for overriding the latter. When they do, an individual (such as Pilate) can find himself in the queer position of fulfilling his role-specific obligations by doing something his private standards condemn and at the same time absolving himself of guilt. And this is precisely the Pontius Pilate Plight: the situation where an agent assumes his hands are clean if he conforms to the formal prescriptions of a role-specific duty, even when the agent does something which, although allowed by the duty, runs counter

to his moral convictions. Pilate's role-specific duty as a Roman governor to sentence condemned prisoners allows him to be ethical (innocent) in performing what he personally takes to be an unethical (culpable) act. But the queerness of this outcome suggests that the principle or principles definitive of his role-specific set of duties and responsibilities are highly suspect.

Similarly with the principle of limited paternalism. If it is accepted as a sufficient condition for ethical action in the marketplace — that is, as an adequate regulative criterion which defines the role-specific duties of salespersons — it can be invoked to justify courses of action which salespersons would otherwise personally condemn. The situation in which Peter and Jane find themselves, then, is analogous to Pilate's. They have invoked conformity to a role-specific duty (limited paternalism) in order to cleanse their hands of personal culpability. Just as Pilate feels personally absolved if, as a private individual, he informs the Sanhedrin that he thinks the formal sentencing of Jesus unjust, so Jane and Peter, appealing to the limited paternalism principle, can personally absolve themselves by professionally informing customers of the relevant information concerning their personal ethical reservations about selling a particular commodity or service. Consequently, the principle of limited paternalism, like the role-specific principle or principles Pilate accepts, is suspect.

Is the Pontius Pilate Plight simply a fancy label for old-fashioned hypocrisy? Perhaps, but I suspect not. The nature of the dilemma is much more subtle. Hypocrisy necessarily involves mendacity — the deliberate intention on the part of the hypocrite to deceive others about his convictions or lifestyle. But Peter and Jane, in conforming their actions to the limited paternalism principle, are necessarily open with their customers about their personal moral qualms. If there is any dishonesty at work here, it is more akin to self-deception, insofar as Peter and Jane confusedly suppose themselves innocent of moral failing if they confess their ethical reservations about a commodity to the customer. If he still freely decides to buy, notwithstanding their disclosures, Peter and Jane feel themselves absolved of culpability. Obviously, however, this is a species of ethical buck-passing. If I think it evil to sell a product or service to a customer but do so anyway, even though

I've apprised him of the reasons for my opinion, I can hardly claim clean hands by arguing that I at least was honest with him and let him freely choose for himself. Yet the principle of limited paternalism, as it stands, allows for just this response.

IV

I do not wish to claim that the limited paternalism principle is so problematic that it in no way can serve as a coordinate to guide a salesperson through the straits of *caveat emptor* and fullblown paternalism. I suspect it is one of the necessary conditions for any competent sales ethic. But I have argued, contra Ebejer and Morden, that it is inadequate as a sufficient condition — unless, of course, one is comfortable with quandaries such as the Pontius Pilate Plight. I, for one, am not.

How, then, can a salesperson steer a safe passage when dealing with customers? I would suggest the following regulative criteria, which are individually necessary and jointly (although minimally) sufficient.

Condition one. Following Ebejer and Morden, a salesperson is professionally obliged to disclose to customers all relevant information about the commodity or service under consideration which will enable the customer to make an informed decision about whether or not to buy. This duty is the role-specific one of limited paternalism. "Relevant information," as I have reformulated Ebejer and Morden's position, includes the salesperson's ethical reservations about a particular commodity or service under conditions dealt with below in Condition Three.

Condition two. But the salesperson, like anyone else, has certain ethical obligations that extend beyond role-specific or professional ones. They are what might be called private or nonprofessional responsibilities. Clearly the set of role-specific duties will not be identical to the set of non-professional responsibilities, but the two should be compatible. Role-specific duties, in short, should never preempt the private individual's sense of personal responsibility, regardless of what standard or model his personal code is founded upon. A salesperson, then, is never justified in selling a commodity or service, even if doing so does not violate his professional

responsibilities, if the commodity or service is one about which he has serious and reflective ethical qualms. Consequently, it is illegitimate to assume one's hands are clean if one informs the customer of one's personal ethical reservations about a commodity or service and then lets the customer "freely decide" whether or not to buy. The best that can be said about a salesperson who makes this move is that he has been honest with his customer. But mere honesty in this case is not enough, precisely because the salesperson has failed in his responsibilities as a private individual by willingly (albeit honestly) selling a product he personally feels is reprehensible. The salesperson who thus sacrifices his personal integrity can, I suppose, appeal to one of two "justifications". He can simply admit he doesn't give a damn about selling bad commodities. But this is *caveat emptor* at its cynical worst. Or he can try to assuage his conscience by assuring himself that the bad commodity wasn't sold duplicitously. But this, of course, lands him squarely in the Pontius Pilate Plight.

Condition three. Normatively-laden judgments and actions *überhaupt* have their own Scylla and Charybdis upon which they may founder. On the one hand, they can be unbendingly rigid, insisting on a dogmatic and lock-step fidelity to ironbound rules and principles. On the other, they may succumb to the opposite temptation of falling into the night in which all cows are black quagmire of *laissez-faire* tolerance for any course of action. Given the complexity of interpersonal relations, neither strategy is optimally desirable. The one, in its inflexible conformity to rules, runs the risk of sacrificing personal and situational factors for abstract principles. The other, given its inflexible refusal to acknowledge any objective evaluative criteria, sacrifices normative consistency for the sake of unchallengeable subjective preference.

In order to avoid these two unhappy extremes in the context of a sales ethic, a salesperson's decision about whether or not to provide commodities or services she personally suspects are harmful should be scrupulously reflective. She must realize that there are certain issues over which reasonable people can reasonably disagree. By reasonable disagreement I obviously do not mean one generated by either an honest ignorance of the available facts or a bigoted

and self-interested denial of them. Instead, I mean a disagreement in judgment which results when the pertinent data about a particular commodity or service are either ambiguous or incomplete, or when the evidence for making a positive or negative decision is too equally weighted to allow for a conclusive adjudication.

Consider, for example, the following case: Suzanne is a greengrocer, and apples are among the different fruits and vegetables she regularly sells. She is aware of the current controversy over the use of the preservative alar on different kinds of produce, especially apples. She has read and reflected on the reports which claim alar is a carcinogenic as well as those that deny the claim. She has carefully weighed the evidence for both conclusions (statistical correlations, longitudinal studies, possible self-interest on the parts of research reports from either side of the debate, and so on). After conscientiously appraising the arguments on both sides, she concludes that the jury is still out on whether or not alar-treated apples are harmful. Still, being the health conscious person she is, she decides it would be imprudent to ignore the possibility that alar is a powerful carcinogenic. Consequently, she decides to quit eating apples she knows are alar-treated. Moreover, she also decides she will not serve alar-treated apples to house guests or her children in the future. Instead, she will substitute organically grown fruit, which she realizes is more costly. She is perfectly aware, however, that such a course of action represents a personal judgment call on her part and that, given the absence of persuasive evidence one way or the other about the toxic effects of alar, it is possible for reasonable people to reasonably disagree about the issue. What ought she to do at her produce store?

One option is for her to adopt an attitude of *caveat emptor* and simply continue selling alar-treated apples to her customers. But such a course of action is irresponsible, since she recognizes there's at least the possibility that alar is harmful. That's precisely why she's quit eating produce treated with it herself (or serving them to others at her home). Or she can discontinue stocking alar-treated apples, and commence selling only organically grown ones. This decision, of course, means that she must raise the price of her apples — for her customer's own good — thereby imposing an added financial burden upon them as well as, conceivably, upon herself (since her

escalated prices may drive away a certain number of customers). But this course of action is too precipitantly paternalistic, since Suzanne herself admits that the debate over alar is inconclusive. Consequently, it seems illegitimate for Suzanne either to totally disregard her personal reservations about alar or to dogmatically canonize them to the extent of adopting fullblown ethical paternalism.

In a case like this, I would argue that Suzanne's best course of action is to adopt the strategy of limited paternalism as I have reformulated it in this discussion. Moreover, I believe she can do so without falling into the Pontius Pilate Plight. She can, for instance, post notices which summarize the inconclusive differences of opinion over alar's toxicity; she can make an effort to tell her customers that they ought to carefully reflect upon the available data before they buy her inorganically grown apples, as well as the fact that she's personally decided to forego eating them for the time being; and she can offer her customers a choice between normally priced alar-treated apples and more expensive organic ones.

Such a course of action breeds no Pontius Pilate clash between her professional obligations and her personal ethical convictions precisely because she *is not convinced* that the selling of alar-treated produce is unethical. She reflectively and in good faith has come to the conclusion that the matter is still debatable. Given this absence of fully persuasive evidence one way or another, she sees she has neither a right nor an obligation to impose her personal decision upon customers. She recognizes that a refusal on her part to sell alar-treated apples to customers who want them and who are cognizant of the alar controversy is to interfere unwarrantedly with their autonomy. She also realizes that such an action irrationally contradicts her own conclusion that, in the absence of further data, the alar debate is one which allows for rational differences of opinion and judgment calls. She, after an appraisal of the controversy, has decided to "play it safe". But she recognizes that other individuals, looking at the same body of evidence, can just as legitimately and reflectively decide to take a chance.

The point of Condition Three, then, is this. Role-specific and non-professional duties, following the second condition, should not be compartmentalized in such a way as to entangle a salesperson in the

Pontius Pilate Plight. But neither should a salesperson dogmatically canonize what are merely personal judgment calls into uncontested evaluations. This is simply to acknowledge that even though personal and professional ethical sensibilities should not be contradictory, they are not by that token identical. There is no contradiction in selling commodities or services whose value a salesperson has decided is presently indeterminate, even if she personally opts not to use them herself, so long as she apprises customers of both sets of competing evidence.

Conclusion.

I've argued that the three preceding conditions are jointly (although minimally) sufficient criteria for a professional sales ethic. Condition One, by itself, prohibits either fullblown *caveat emptor* or paternalism, but leaves open the possibility of falling into the quandarous Pontius Pilate Plight. Condition Two insures against the Pontius Pilate Plight's clash between ethically compartmentalized spheres of responsibility, but runs the risk of unjustifiably canonizing what may be purely personal judgment calls on the part of a salesperson. Condition Three addresses this possibility by drawing the distinction between (relatively) uncontested ethical appraisals and those about which reasonable people can reasonably disagree. True, it is no easy task to determine when one's normative decisions are properly impossible upon only one's self, but it is not an impossible one. Such decisions involve reflective judgment and a willingness to carefully and objectively examine all sides of the issue. This attitude, of course, is not unique to the realm of professional ethics. It is what we expect of individuals in *any* normatively-laden decision process.

In the final analysis, then, any viable sales ethic which claims to protect the interests of both buyer and seller must stress professional honesty *and* private integrity on the latter's part, as well as the reflective ability and willingness to discriminate between personal judgment calls and principled sales policy. This is a lesson the original Pontius Pilate, within the context of his own conflict between private and professional responsibilities, failed to learn. Salespersons today can profit from reflection upon his failure.²

Notes

¹ Ebejer, J. M. and M. J. Morden: 1988, 'Paternalism in the Market-place: Should a Salesman Be His Buyer's Keeper?', *Journal of Business Ethics* 7, 337–339.

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