

AN ANATOMY OF CORRUPTION*

BY DAVID SCHMIDTZ

I. CONCENTRATED POWER: THE CURE THAT *Is* THE DISEASE

Which social arrangements have a history of fostering progress and prosperity? One quick answer, falsely attributed to Adam Smith, holds that we are guided as if by an invisible hand to do what builds the wealth of nations. A more sober answer, closer to what Smith said and believed, is that *if* the right framework of rules—plus decent officiating—steers us away from buying and selling monopoly privilege and steers us toward being valuable to the people around us, we indeed will be part of the engine that drives human progress and the wealth of nations.

However, to have a rule of law framework within which markets can grow a healthy nation, officials must exercise oversight. Officials not only enforce rules, but must also interpret, amend, and so on. Smith saw this, and perceived a further, chronically tragic reality: namely, this power to oversee markets is what crony capitalists are buying and selling.¹

Smith's observation changes everything. Imagine concentrated power in the hands of the worst ruler in living memory. Now, assume what you know to be true: namely, concentrated power actually does fall into the hands of people like that. As a preliminary, then, when formulating theories about what is politically ideal, we can ask two questions. We can ask, "Ideally, how much power would be wielded by people like *that*?" Or we can ask, "Ideally, how much power would be wielded by ideal rulers?" Which of these genuinely is a question about the human condition? Can political philosophy answer the one that *needs* answering?

Why isn't it trying?

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¹ Richard Miller, "Is Capitalism Corrupt?" present volume, 31–53.

II. CHARACTERIZING CORRUPTION

Organizations employ officials to speak and make decisions on their behalf. One paradigm of corruption consists of officials treating their fiduciary authority as a service to buy and sell for personal gain.² Consider that officials are tasked with making it easier to transact with organizations that they represent. But when corrupt officials regard their authority as a service that they are at liberty to sell for personal gain, they treat themselves as licensed to make it harder.

Corruption essentially involves, let's say, a principal-agent problem, namely, being entrusted with discretionary power for the purpose of carrying out a particular fiduciary responsibility, then using that measure of discretion in service of a personal agenda. What else can we say? As a matter of observation, people who speak of corruption are presupposing that the agenda is *rotten*.³ The damnability of it is baked in. Corruption essentially is an abuse of power, not merely a use. A further observation: when the fiduciary responsibility that an agent fails to meet is itself corrupt or otherwise evil, we are less sure whether to call the agent corrupt.⁴ Further, corruption being an evil does not entail that its consequences are evil on balance in any given case, or that we necessarily want to put a stop to it.⁵ An opportunistic prison guard who, *to make money*, takes bribes to help innocent political prisoners escape thereby handles an evil responsibility in a paradigmatically corrupt way, and in the process makes an evil situation better than it would have been.⁶

The paradigmatically rotten motive is seeking payment where one freely accepted fiduciary duties that preclude seeking payment. Yet, paradigms are not definitions, and greed is but one species in the genus of corrupting motives. Thus, for example, there are rules against nepotism. Seeking to appoint your brother to be Attorney General can cross the line without being an obvious example of greed.^{7,8}

² Mark Philp, "The Corruption of Politics," present volume, 73–93; Mark Knights, "Explaining Away Corruption in Pre-Modern Britain," present volume, 94–117.

³ Knights, "Explaining Away Corruption in Pre-Modern Britain."

⁴ Suppose a guard at a concentration camp passively resists a corrupt judiciary by looking the other way when a convict he believes to be innocent tries to escape. The guard has no right to presume to judge the convict's case, yet having presumed to judge, he does so as conscientiously as he can (and let us suppose you agree with his judgment). Would you call him corrupt? Reasonable people disagree about this. We don't need to pretend to settle the disagreement by definitional fiat.

⁵ Michael C. Munger, "On the Contingent Vice of Corruption," present volume, 158–81.

⁶ Mario Villarreal, "Corruption, Character, and Institutions," present volume, 264–87; Adrian Blau, "Cognitive Corruption and Deliberative Democracy," present volume, 198–220.

⁷ There is no rule against hiring the best candidate for the job, but what if your brother is the best candidate? A nepotism rule might limit corruption by forbidding that which is not corrupt (hiring the best candidate). Thus, nepotism rules limit corruption without defining it. No code can define corruption. What is in a person's head matters. If no one doubts that Bobby Kennedy is the best candidate, that makes a difference to whether appointing him is corrupt, but not to whether appointing him is covered by the nepotism rule.

⁸ Emanuela Ceva, "Political Corruption as a Relational Injustice," present volume, 118–37; Maria Paola Ferretti, "A Taxonomy of Institutional Corruption," present volume, 242–63.

On the other side, petty tyrants sometimes say, “rules are rules; what can you do?” when in fact their job is to *get things done*, which includes discretionary power and responsibility to grant exceptions as required by circumstances not anticipated by those who made the rules. Pretending to lack discretionary power is a way of exercising discretionary power, which at some point becomes an abuse.

Sometimes the rotten motivation is hostile. Imagine county officials going the extra mile to make it gratuitously difficult for minorities to register to vote. Petty tyrants, officiously withholding what isn’t theirs to withhold, are not corrupt in exactly the same way as those who sell what isn’t theirs to sell. But still it is an abuse of power from rotten motive.

Sometimes a vacuum of reason can be more corrupting than spurious reason; some officials are dead to the honor of being good at their jobs. They show up in appearance only, aiming only to collect a paycheck or kill time. They do not even aim to get the job done so much as to comply with job requirements and to avoid being named in a lawsuit. They may bear no ill will, but they are of no use.

Another form of corruption, likewise not involving greed, is manifest when junior colleagues evaluate every decision (to go to lunch, serve on committee, write a book, help a student, or represent themselves as committed to scholarship) as a means to the end of getting tenure. Professors thus obsessed tend to fall apart when they get tenure. They aim to comply with requirements for tenure. That is more problematic than you might think at first glance, because *deserving* tenure requires a driving motivation *that can survive getting it*.⁹

In sum, while using public office for private gain is the paradigm of corruption, it is not a definition.¹⁰ Humans naturally reason about paradigms, but as philosophers we are trained to reason about definitions. That training sometimes is a mistake. Be that as it may, when we aim to illuminate what can go wrong with the moral fiber of people in positions of responsibility, there is something to lose and little to gain by trying to define corruption more narrowly. Corruption can be a child of greed, to be sure, but also of other vices.¹¹

⁹ Elijah Millgram, “Hypophilosophy,” present volume, 138–57.

¹⁰ See F. H. Buckley, “The Enforcement of Virtue,” present volume, 182–97.

¹¹ See Daniel M. Weinstock, “Corruption in Adversarial Systems: The Case of Democracy,” present volume 221–41, on the art and the vice of compromise. We should be careful to separate moral compromise, which is bad, from political compromise, which arguably is noble. For example, it is inspiring rather than disheartening to think that Ronald Reagan and Tip O’Neill could have a couple of drinks, look each other in the eye, and say, “OK, now what? I’m listening.” That kind of compromise is as good as democratic governance can get.

Corruption compromises self-awareness

A closely related risk of corruption goes with our need to find *kindred* spirits—people with whom we can reach a concurrence of sentiment.¹² Because this desire runs so deep, it corrupts in the following way. We tend not to notice how we adjust our attitudes to fit those of the people around us. Adjusting subconsciously makes us more vulnerable to social pressure. If we *notice* ourselves “going along to get along” then we can resist, or at least be cynical. But if we do not even notice ourselves adjusting as needed so as to be agreeable company, our ability to master this threat to our autonomy is compromised. It is human nature that we will do almost anything to avoid being outcasts. Thus, when colleagues insinuate that they are willing and able to bully us, it is only human to voice no resistance. We then grasp at reasons to agree, however flimsy, so as to make the depth of our capitulation less humiliating.¹³ Social pressures warp minds.¹⁴ To let oneself be corrupted by such pressure is to let oneself become a self that one cannot afford to examine too closely—a self unworthy of esteem. They are shallow, and cannot afford to be anything other than shallow.

A corrupt person *needs* to be less self-aware and less reflective, for accurate self-perception becomes unaffordable (but again, my point is not that the connection is necessary but that the tendency is robust). When one looks inward, there is, in a way, not enough there to be worth being aware of. At a community level, if being uncorrupt is a virtuous mean between extremes of vice, then passively silent cowardice at one extreme can be more lethal to a community than active greed at the other. At a personal level, cowardice under pressure is as corrupting as raw greed, and even more deeply shattering.

III. AGENCY IS AN ACHIEVEMENT

Internal transparency is a prerequisite of agency, and corruption compromises transparency. I once heard an interview on National Public Radio. The guest was developing tools for screening job candidates. One of the guest’s survey questions was, “If I had an opportunity to steal \$20,000 from my company with no chance of being caught, I would steal the money. True or false?” NPR’s interviewer said (paraphrasing from memory), “Isn’t that question a waste of time? Every applicant says ‘false’, so why bother?” The guest replied that, on the contrary, about 20 percent of applicants say they would steal the money. NPR’s astounded interviewer

¹² James R. Otteson, *Adam Smith’s Marketplace of Life* (New York: Cambridge University Press, 2002), 207.

¹³ See Jonathan Haidt, *The Righteous Mind* (New York: Pantheon House, 2012).

¹⁴ To Smith, wanting to be validated by others can drive our maturation through a certain stage, but we must outgrow that drive. To care too much about validation is to be controlled by the hoped-for source of validation.

asked how a job applicant could be so crazy as to answer like that. The guest answered (paraphrasing from memory), "All I know is that 20 percent say they would steal the money. My speculation, for what it is worth, is that applicants realize the survey is testing their honesty, then guess that the way to prove they are *relatively* honest is by admitting what to them seems obvious: like everyone else, they would steal the money."

I hear that as an implicit theory of corruption's ultimate price. As corrupt behavior warps perception, you reach a point where you are so far from being honest that you no longer have a clue what honesty is like. When you can't remember what honesty would be like, you can't remember how to fake it either. You are falling apart.

Internal transparency, and the possibility of self-awareness that goes with it, is an achievement, not simply a decision.¹⁵

Compromised group agency

This undermining of agency can be understood as a danger to organizations and individuals alike. Suppose your job involves balancing your unit's budget, and one of your balancing tools involves collecting fees from other units within the organization. You may wake up some day to find that your job, as an administrator in your unit, is to cannibalize other units. You need not be a monster to find yourself in such a position. It may happen as a consequence of your bosses restructuring your responsibilities. They need not be at fault either. They may be under orders to impose fiscal accountability and discipline, as part of an effort to *combat* corruption.

When Plato wrote about justice in the polis as a "writ large" model of justice in the individual soul, he was treating the paradigm of injustice as an individual soul divided against itself. Plato's discussion may be archaic in some ways. And yet, the word "corrupt" does, after all, carry with it connotations of being rotten, in a state of decomposition. This rendering seems natural from a virtue-theoretic perspective. What makes a tyrant unjust is what makes a tyrant corrupt: the tyrant's soul is decomposing, falling apart, losing its unifying purposiveness.

We need not entirely trust Plato's analogy. However, consider how it illuminates the corruption of organizations. When an official accepts bribes under the table, the agency for which the official works becomes less transparent to itself. The agency is a soul out of touch with itself. Its left hand does not know what its right hand is doing. The right hand does not even *want* the left hand to know. Such loss of self-awareness is compromised agency.

Weakness of will compromises the potential to be an agent with a unified purpose. Some organizations are usefully seen as agents, but as a *corporate* agent comes to lack both the appearance and the reality of being on

¹⁵ Blau, "Cognitive Corruption and Deliberative Democracy."

a mission, it stops resembling an agent. Notice: where we have no reason to call *x* an *agent*, we have no reason (aside from linguistic habit) to call *x* an *organization* either. What *x* is, literally, is a dysfunctional mess.

Finally, a further source of corruption, beyond greed, is sheer uncertainty: there are times when officials exercising discretionary power cannot simply follow the rules, because they have no uncontroversial interpretation of the letter or the spirit of the law. Suppose you are a compliance officer administering a grant, and the grantee asks you to look the other way while the grantee uses the money for a purpose other than the purpose for which the grant was given. Suppose the grantee is asking permission for a manifestly smarter purpose than the purpose for which the grant was given. Fill in the details to make the case as compelling as you like. The risk of emerging from that situation as more or less corrupt is real whichever way you decide—lazy and irresponsible if you go one way, a pompous bureaucrat if you go the other. Having fiduciary responsibility plus discretionary power, and remaining uncorrupted over time, is not easy.

IV. NO MAN IS AN ISLAND

Adam Smith wondered how stable a liberal community could be in the face of a tendency for its political infrastructure to decay into crony capitalism: mercantilists lobby for subsidies for exporters, protectionists lobby for tariffs or other trade barriers to choke off competition from importers, and monopolists pay kings for a license to be free from competition altogether. Partnerships between big business and big government culminate in big subsidies. These ways of compromising freedom are sold to voters as protecting the middle class, but their true purpose generally is to transfer wealth and power from ordinary citizens to well-connected elites. As a result, an ordinary citizen's pivotal relationships are not with free and equal trading partners but with bureaucrats: people whose grip on our community is so tight that we cannot walk away from such terms of engagement as they unilaterally propose. Thus, we reinvent feudalism. We are at the mercy of lords. Corruption makes us less free, not only less wealthy.¹⁶

As Ryan Hanley sees it, Adam Smith's "fascination with and gratitude for the harnessing of the powers of the strong for the relief of the weak is

¹⁶ Richard Miller, "Is Capitalism Corrupt?"; Daniel Weinstock, "Corruption in Adversarial Systems: The Case of Democracy"; Munger, "On the Contingent Vice of Corruption." So we want to term limit our representatives and thereby make sure they have no chance to develop any expertise of their own, leaving us in a situation where the only people who have even a clue about how to reform the system are the same industry executives who have spent their careers undermining the official intent of such reforms. We trust them with unrivaled power to regulate those who would enter the market and compete with them. Incredibly, *that* is our response to the fact that we don't trust them to regulate themselves.

the fundamental fact uniting Smith's seemingly separate defenses of both commercial society and his specific vision of virtue." Commercial societies "promote not only universal opulence but also a universal freedom of which the weak are the principal beneficiaries."¹⁷ The crucial bottom line: freedom in commercial society involves *depending* on many, yet being at the *mercy* of none.

Beyond men of system

As Smith understood, the market for monopoly power—kings selling monopoly licenses to raise funding for mercenaries to fight their wars—has a singularly unhappy logic. Namely, kings adopt policies systematically favoring merchants who have lost their economic edge, because inferior competitors are the ones who have the most to gain from barriers to competition. The ease of transferring goods from one citizen to another¹⁸ is thus a foundation of both the promise and the downfall of capitalism. Easy transfer makes piracy possible, and the political process enables crony capitalists to enlist kings to bureaucratize piracy and make it seem normal.

Exacerbating crony capitalism's perils is the ubiquitous threat posed by "men of system." As Samuel Fleischacker says, "the limitations Smith describes on what anyone can know about their society should give pause to those who are confident that governments can carry out even the task of protecting freedom successfully. Taken together with his skepticism about the judiciousness, decency, and impartiality of those who go into politics, this is what gives punch to the libertarian reading of Smith."¹⁹ One of Smith's insights is that a "man of system"

seems to imagine that he can arrange the different members of a great society with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might chuse to impress upon it.²⁰

¹⁷ Ryan Patrick Hanley, *Adam Smith and the Character of Virtue* (New York: Cambridge University Press, 2009), 19.

¹⁸ Noted by David Hume, *Treatise of Human Nature*, 3.2.2.16.

¹⁹ Samuel Fleischacker, *On Adam Smith's Wealth of Nations* (Princeton, NJ: Princeton University Press, 2004), 235. See also Fleischacker (p. 233) on the delusions of the sovereign and the folly of the statesman who fancies himself fit to exercise the power to impose a central plan. See also Adam Smith, *Wealth of Nations*, IV.ii.10 and IV.ix.51.

²⁰ Adam Smith, *Theory of Moral Sentiments*, VI.ii.42

A man of system moves pawns in pursuit of his goals. In a real society, however, “pawns” respond as if they had minds of their own, which, after all, they do. Irritated by the pawns’ contrarian response, men of system adjust, now seeking more to dominate than to help pawns. These bureaucrats are corrupted by their own petulance, without ever dreaming of selling public power for private gain.

Again, however, as Smith understood, we face a conundrum. If our community is to achieve a rule of law, there has to be officiating.²¹ To the extent that referees succeed in taking nonconsensual and fraudulent transfers off the table, players learn to pursue their interests in ways they conceive as mutually advantageous—positive for everyone *involved* in a trade, and at least not a negative for anyone *affected* by it.

As with sports, if the game inspires, it will be by virtue of what comes from letting the players play, but when officials push their agenda aggressively, other players are relegated to the sidelines waiting to see how it all plays out. What should we infer from the premise that officials, when given power, use it to pursue their own agenda, not ours? I infer this: we should be skeptical of conceptions of justice that make it seem like we should invest enormous power in the sort of people who most *covet* enormous power.

There is no use lamenting that valuable commodities are bought and sold, and that power is a valuable commodity.²² What is disconcerting is that power’s corrosiveness is proportionate to scale. More power commands a higher price, notwithstanding cosmetic tweaks to campaign finance laws. There is no mystery why candidates would spend ever more on campaigns. It is not because regulators are becoming more lax. It is because the prize keeps getting bigger.²³

When we create political power worth billions, the bidding for such power tends to be won by billionaires. The bigger the prize, the richer and more unscrupulous one needs to be to compete for it. It stands to reason that the process by which people gain political appointment would systematically tend, and *increasingly* tend, to select the wrong person for the job. The truism that power corrupts implies that randomly selected officers would be corruptible. Yet, the truism is misleadingly optimistic. The more realistic worry is worse. Namely, the process of selecting officers is not random. We *select* for corruption. It is not a randomly selected fox but the most ravenous fox that tends to get the job of overseeing the henhouse.²⁴

²¹ John Hasnas, “The Corruption of the Rule of Law,” present volume, 12–30.

²² Munger, “On the Contingent Vice of Corruption.”

²³ Some say transparency is the solution. Perhaps, but we might also see transparency as a hard-won achievement, not a policy instrument—a consequence of beating corruption rather than a weapon with which we fight it.

²⁴ I wish this were less true in democracies, but if anything, the most ravenous fox is also the most charismatic, and most adept at convincing voters (for whom politics has become “info-tainment”) that they have nothing to lose by giving a charismatic leader more power. If the fox can make voters see politics as a team sport, and can convince voters that the fox is the home team, then voters will cheer for the fox no matter what.

V. TOWARD REMEDY: CONFLICT AND JUSTICE

We all have been taught to think that when we do abstract theory, “justice is the first virtue of institutions,”²⁵ from which we infer that our first task is to articulate principles of justice.²⁶ Benjamin Barber says of Rawls’s writing that “when political terms do occasionally appear, they appear in startlingly naïve and abstract ways.”²⁷ Robert Paul Wolff’s criticism is equally sharp. He sees in Rawls “no conception of the generation, deployment, limitations, or problems of political power” and notes that

it would require very considerable political power to enforce the sorts of wage rates, tax policies, transfer payments, and job regulation called for by the difference principle. The men and women who apply the principle, make the calculations, and issue the redistribution orders will be the most powerful persons in the society, be they econometricians, elected representatives, or philosopher-kings. How are they to acquire this power? How will they protect and enlarge it once they have it? Whose interests will they serve?²⁸

It is indeed startling to see the work of the twentieth century’s most influential political philosopher described as “startlingly naïve.”²⁹ And yet, upon reflection, it is amazing that contemporary philosophical literature has so little to say about the idea that power corrupts.

²⁵ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971/1999), 3.

²⁶ Bernard Williams sees the same thing, and laments it. See *In the Beginning Was the Deed* (Princeton, NJ: Princeton University Press, 2005).

²⁷ Benjamin Barber, *The Conquest of Politics* (Princeton, NJ: Princeton University Press, 1989), 310.

²⁸ Robert Paul Wolff, *Understanding Rawls: A Reconstruction and a Critique* (Princeton, NJ: Princeton University Press, 1977), 202.

²⁹ It would naïve indeed to suppose for example that, for the sake of fairness, university resources should be distributed among departments in whatever manner is to the greatest advantage of the least advantaged department. However, what Rawls says is: the principle applies only to the basic structure. Jacob Barrett suggests, in conversation, that Rawls’s early distinction between summary rules and rules of practice might have remained relevant to his later thinking. So, baseball has utility (let’s say) but would have no utility qua baseball if umpires took themselves to have a right to make case by case utilitarian calculations regarding how many more strikes a given batter should be allowed. Similarly, society’s basic structure is unfair unless it passes muster with the Difference Principle. This it cannot do unless it comprises rules of practice that do not reduce to case-based applications of the Difference Principle. If this is Rawls’s view, then his view has none of the naïveté that Barber and Wolff find in the Difference Principle. The Difference Principle informs only one practice: the practice of *judging the fairness* of society’s basic structure. We could stipulate this, or argue that the Principle more broadly applied would fail self-inspection. For example, would it be to the greatest advantage of the least advantaged to treat rules of university budgeting as mere summary rules that answer case by case to the Difference Principle? (Should our distribution of grades be to the greatest advantage of the least advantaged student?) The Difference Principle itself should warn us that ignoring empirical aspects of such questions is precisely what we have no right to do when evaluating society’s basic structure and when evaluating the Difference Principle’s proper scope.

In practice, officials who make our basic structures work begin with resolving and avoiding conflict, not with justice. Theorists treat justice as more foundational than conflict-resolving rules of practice; practitioners need to do the opposite. The kind of questions that judges actually need to answer are questions like, “When is flying over someone’s ranch at a height of 10,000 feet a form of trespass, and when is it a way of peacefully minding your own business?” Many key questions of justice are more downstream than they appear; they literally have no answers until judges sort out what will help current and potential litigants in particular circumstances to stay out of court and get on with their lives. After judges settle a dispute, citizens go forward with legitimate mutual expectations about what to count as their due. Judges get it right when they actually settle it—when they establish expectations that everyone can live with and thereby minimize the need for future intervention by corruptible public officials. Judges cannot settle for expressing their own convictions about fairness or otherwise pursuing their own agenda. They have to settle disputes.

Contra Rawls, the first virtue of social institutions is to establish a rule of law that holds a community together not by virtue of imposing a vision of justice but by virtue of enabling people to know what to expect from each other, to invent ever-better ways of being of service to each other, and to not feel threatened by the awareness of being among people who will never have a common destination.

Consider how this orientation toward conflict resolution moves a society in the direction of being less vulnerable to corruption. It rules out creating the power to ram through a thick conception of justice, which implies that when it comes to society’s basic structure, no *thick* conception of justice is a *true* conception. A theory about justice that sets aside whether alleged requirements of justice can be satisfied without inviting wholesale corruption needs to be rejected, not merely tinkered with downstream by officials responsible for implementation.

If we settle for conflict resolution, that is, for having our day in court, and for having a forum for airing grievances as they arise, we remain vulnerable to corruption, but there is less scope for corruptible discretion. Judges have a license not to pursue a *vision* so much as to find out what litigants can live with. Judges are constrained by a need to converge on a result that leaves litigants—not theorists but real people whose futures genuinely hang in the balance—feeling like they had a say, and were given terms of peace that leave them free to carry on as equal citizens with lives of their own to live.

The least corrupt system in the long run minimizes reliance on powerful officials, thereby minimizing the concentration of what corrupts—that is, power—in corruptible officials. Thus, one key question for a legal system is: Does the rule of law embodied in this system minimize the need for ongoing tinkering?³⁰ The power to tinker will be a supremely valuable

³⁰ Again, see Hasnas, “The Corruption of the Rule of Law.”

commodity, and sooner or later those who possess that power will be corrupt. The least corruptible forms of power are the most dispersed forms, and above all the power to vote with one's feet.

I have no work experience as a mediator, arbitrator, or judge, but after playing football in high school, I coached and served as a referee. Our task as referees was to interpret and apply the rules. With responsibility came power. With power came a measure of discretion. Our calls could determine a game's outcome. Yet, it was not our place to prefer a particular outcome. Favoring a team would have been corrupt. Neither had we any right to prefer games ending in a tie. That would have been just as incompatible with the unobtrusive impartiality that is essential to successful refereeing. We had a duty not to aim for any outcome, not even an equal one. It was not our place to win, not even on behalf of our personal convictions regarding justice itself. Our aim was to let the players play, and let their futures be of their own making.

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