

article

Reproductive Ethics and the Family

James Lindemann Nelson
Department of Philosophy, University of Tennessee, Knoxville

Abstract

The phrase 'reproductive ethics', as used by bioethicists, typically refers to concerns over morally appropriate employment of assisted reproductive technologies and, perhaps somewhat less commonly, to issues arising from technologies that block conception or end pregnancies. I here recommend to the attention of the field a more commodious use of 'reproductive ethics', one that takes seriously how humans are brought into the world as moral and social beings, and not simply as biological individuals. As a focus for this expanded agenda, I examine prevalent disagreements over the patterns and sources of the responsibilities and prerogatives that help define family structures, both as these are reflected in assisted reproductive practices involving the purchase of gametes, and in U.S. legal controversies about whether parents, or family courts, should determine who has the right to a relationship with children.

Within the precincts of bioethics, the phrase 'reproductive ethics' typically denotes the systematic exploration of concerns about the appropriate uses of assisted reproductive technologies (ARTs) to achieve pregnancies and live births. The phrase is also commonly employed in connection with disputes about the use of technologies that block conception or birth. Occasionally it is used as a rubric under which bioethicists discuss questions about whether there should be constraints on who ought to reproduce, or who ought to be reproduced.

There's nothing at all inappropriate about such uses, but confining 'reproductive ethics' to just these issues strikes me as overly restrictive, perhaps even a bit blinkered. Consider what else 'reproductive ethics' might mean: disciplined reflection about what structures of moral and social understanding we hand on to our children, and to future generations generally, careful attention to what we reproduce and convey into the future socially, as well as biologically. This is clearly a central part of the task of human reproduction, but, although some bioethicists have written eloquently on matters touching it, the reproduction of persons as social and moral beings has not deeply engaged the attention of this field — in part I expect, because this aspect of human reproduction doesn't conspicuously employ new medical gadgetry or involvement by health care professionals.

I think this lack of attention is unfortunate. A great deal rides on the more social aspects of reproduction, much of which would seem to be naturally interesting to ethicists. An important part of what we reproduce in this fashion is, of course, ethics itself, both in terms of certain forms of understanding and justification, and in terms of concrete practices. We also reproduce other ideas that supply individual and social life with fundamental dimensions of its structure. These include, for example, certain notions of culture, ethnicity, nationality, class, gender, and, even more broadly, what might be called, borrowing a phrase of Cheshire Calhoun's, "ideologies of the moral life" (1988, p.452). Such ideologies form the horizon of our imaginations, suggest that we might look in certain directions for problems, solutions, and justifications, and incline us to accept certain intuitions, analogies, and metaphors, without themselves pretending to be sound arguments for, or even good reasons to accept, any of these ideas.

The reproduction of the systems of meanings that hold together so much of life is clearly important enough that anyone's thoughtful attention to the process and its problems should be welcome. But there are quite particular reasons for nominating 'social reproduction' as a topic of bioethical concern: although reproduction in this sense may not require medical involvement, it hardly follows that new medical technologies and the forms of social practice in which they become imbedded, and whose form they influence, have no impact on what kinds of social and moral understandings get handed along from generation to generation.

Remarks in this same spirit might be made concerning the second substantive term in my title, 'family'. Families are, of

course, crucially involved in reproductive ethics in its 'traditional' senses, as well as in the sense I'm trying to make more conspicuous. 'Reproductive ethics' in its customary uses concerns itself precisely with those medically mediated processes that are employed in the forming, shaping, limiting, or avoiding of families. Yet little of the ethical analysis of new reproductive technologies produced by bioethicists draws much on normative understandings of what families are or should be. In the use of reproductive ethics I'm proposing here, families are equally salient: what goes on in families is key to what structures, ideologies and beliefs help form new persons. There is, moreover, an intriguing reflexive character to the role of families in this enterprise: the ways which living in families help install in children a conception of the world surely include imparting certain images of 'the family' itself, including ideas about what variants on that theme are praiseworthy, allowable, dubious, or forbidden.

Further, although families have had multiple forms across time and culture, possible varieties seem more than ever available here and now, sometimes as a response to occurrences no one intends, but sometimes as a result of more or less purposeful behaviour. If untimely death is not so often an influence on the structure of families as it once was, other, more volitionally-flavoured factors seem more prevalent and powerful: divorce, remarriage, reconfiguring sibling relations as families 'blend', partnering without benefit of clergy, the greater public emergence of 'queer' families, the move of middle-class women into the public work force, as well as the use of ARTs. One often hears predictions (perhaps 'warnings' would be a better word) to the effect that our growing knowledge of the human genome will soon allow us to shape our own biological destinies, liberating us from the need to defer to evolution's slow shifts (Kitcher, 1997). If this opportunity to take the basic biological form of the human future more squarely into our own hands is something that warrants attention, surely the contemporary move toward becoming more directive about the character of the families people may choose to construct ought to strike us as worth attention as well.

I here hope to incite a broader bioethical interest in reproductive ethics by focusing on families and certain features of the permutations they undergo. I will be particularly interested in how we make sense of the responsibilities and prerogatives of parents, and I want to trace our notion of these responsibilities and prerogatives as they seem to operate in social practices

surrounding the use of ARTs that include gamete vending (or gamete donation, as it is more commonly and more disingenuously called) as well as in a legal debate about familial boundaries currently on the docket of the U.S. Supreme Court.

What strikes me as an especially interesting feature of the use of reproductive technologies that employ vended gametes is a tension caused by contrasting notions of the significance of biological connections that run through it: on the one hand, it is difficult to imagine the kind of resources being poured into assisted reproduction techniques using vended gametes (particularly ova) if biological connectedness weren't a deeply important feature of families, at least for many people. At the same time, the typically unproblematic alienation of the vendor from the child—unproblematic at least from the perspective of buyer and seller—projects a picture of the significance of biological connection that strictly follows the path of Time's Arrow, running unidirectionally from the past into the future: genetic ties may matter a great deal to parents, but not, apparently, to children.

Why the social and moral importance of biological ties should move only in that direction seems to have excited little interest from practitioners, consumers, or bioethicists. What's worse, this picture seems distorted: there's plenty of reason to think that, for at least some people, their biological connections with their progenitors are quite as important as their biological ties with their descendants. Some bioethicists and policy analysts have acknowledged that biological links can be important to younger generations—but only insofar as one's genetic heritage is seen as relevant to one's medical prospects. There's been a failure of imagination and attention here; ongoing controversies over 'closed' adoption, featuring adoptees diligently searching for biological parents and challenging the laws that block their access, should make clear that for some people some form of social, not simply biomedical, uptake of their connections to biological parents is deeply important.

Current practice, then, sunders children from social recognition of their biological connections to a parent, in order to provide adults with socially recognized biological connections to the children they raise. Insofar as there seems even a hint of justification for such proceedings, it seems caught up with the notion that biological connections are just what you make of them, no more and no less. I will call this idea, with a nod to Goethe, the *elective affinities* view of the significance of biological ties.

From the elective affinities perspective, it just so happens that such connections matter a great deal to several well-off adults. who happen to be subfertile, and who are in a position to make their desires effective. Whether any children emerging from gamete vending might feel similarly intense desires for relationships with people to whom they are genetically connected can't reliably be predicted—some do, some don't and in any event, they are evidently in no position before the fact to push for an acknowledgment of what their feelings in the matter may turn out to be. Hence, the people who provide the gametes can take their money and go on their way, quite absolved from any responsibilities to resulting children. For on the elective view, there is nothing morally significant in biological connections themselves; they can be enormously emotionally important to some people, but this should be understood in what philosophers sometimes call a 'projectionist' way. The ties are important only insofar as someone invests significance in them. The inference seems to be that, in the absence of anyone making a fuss about biological ties, there's no moral reason for us to arrange assisted reproductive practices such that those ties are likely to receive social recognition.

I think the notion of familial relationships that seems implied by current practices involving gamete vending has been but poorly thought through, full of dubious premises and shaky inferences (like the one just exhibited). A hint of a justification won't do here; the use of ARTs involving vended gametes has helped to embed a view about parental responsibility and prerogative, and consequently, the character of families, that is substantive, controversial, and without much in the way of explicit motivation, or even discussion. However, explicit attention is being paid to such questions in a matter being considered by the U.S. Supreme Court during this session, a case known as Troxel v. Granville.

Families: Consensus and Contestation

On January 4th of 2000, the *New York Times* reported that the Supreme Court has agreed to review a ruling of the Washington State Supreme Court that overturned a so-called 'grandparents' rights' law in that state (Greenhouse, 2000). All 50 U.S. states have such laws, which permit grandparents, and in some cases other people, to seek court-ordered visitation with children under various circumstances, even over the objection of the children's parents. The Washington State law is one of the most robust examples of this legislative trend; it

permits *anyone*, quite independently of any 'defined relationship' to a child, to petition for visiting rights—and therefore, in effect, for an ongoing role within a family—and to succeed if the family court concludes that visitation would be in the child's best interests.

The Washington Supreme Court concluded that the state law violated a parent's "constitutionally protected right to rear his or her children without state interference" (Custody of Smith, 137 Wn.2d1, 969 P.2d 21 (1998), cited in Greenhouse, 2000). Absent indication that visitation by some person or persons was necessary to prevent harm to the child, the court regards parents' rights as "fundamental", and holds that they should not be overridden. According to the *Times* story, the court added that "parents should be the ones to choose whether to expose their children to certain people or ideas" (Greenhouse, 2000).

The U.S. Supreme Court is reviewing an appeal of this decision by a husband and wife hoping to be allowed to spend time with their dead son's children. The Justices have been inundated with amicus briefs from dozens of organizations, spanning a vast ideological range. For example, the American Society for Law and Justice, a conservative Christian group, advises the Court that the claims of the "traditional family, consisting of married parents and their children" must be upheld, as such families are society's building blocks (Greenhouse, 2000). The Lambda Legal Defense and Education Fund, which advocates for gay interests, is concerned that neither side's position in Troxel is sufficiently sensitive to the needs of children being reared in nontraditional families, where the people parenting the children have neither biological nor legal ties to the child. According to Lambda, what should interest the Courts is the "quality and security of the relationship between individual children and adults, rather than blood ties or labels" (Greenhouse, 2000). The American Association of Retired Persons has also weighed in, reminding the Court in its brief that the "nuclear family" is less and less the standard in the U.S.; 1.4 million kids in the U.S. are now being raised by grandparents (Greenhouse, 2000). Legal Services of Southeastern Michigan, which focuses on the legal needs of poor people, warns that the integrity of low income families is threatened by a law that "opens the door for subjective value judgments concerning the court's view of family" since, if the "best interest of the child" standard is used, "poorer, less educated parents will always look worse in relation to older, seemingly more established and settled grandparents" (Greenhouse, 2000).

There's a great deal of interest to the topic of reproductive ethics, at least in my usage, to be teased out of this case, but I will here cut only a narrow swath. No party to this dispute contends that the whole matter is not worth the Court's attention; families are conceded on all hands to be deeply important social structures. I would not be surprised if many of the parties would accept the account the feminist philosopher Sara Ruddick gave in her book Maternal Thinking of the kind of tasks-protection, nurturing and training-that are essential to the work of mothering (which she argues must be done by fathers as well), at least to a certain level of abstraction (1989, p.23) But part of what is very much at issue are the means to the ends at which those tasks aim. Must the family have a particular structure in order to achieve those ends successfully? More to the present point, is there something about biological proximity that carries with it a presumption that investing authority in the closest biological adult relatives of children is key to successful completion of the central tasks of family life?

Of course, it misrepresents matters to say that the differences here are all about the best ways of getting to agreed-upon ends. The American Center for Law and Justice, for instance, is fairly transparent about this: they slide pretty quickly from the plausible, if somewhat vague point that families are "building blocks" for society, to the highly contestable claim that it is only a particular notion of the family—the kind they label, rather tendentiously, "traditional"—that can be a block to build with. The agenda seems to be to enlist governmental help to keep those blocks shaped in a certain way, in order to form, not society as such, nor even a fair and flourishing society as such, but a society of just the particular kind they hope to see reproduced.

But one can be wary of appeals to uncontroversial forms of value possessed by families to support very particular visions of both the structure of the family and of the future, without at the same time thinking that no feature of families has even a presumptive kind of significance to it. If the idea that families, to do their jobs correctly, have to have a certain 'traditional' structure is poorly motivated, and quite possibly flat-out wrong, it is still possible that certain features of human relatedness long associated with families do have a special importance in achieving familial ends. When the Lambda Legal Defense and Education Fund suggests, for instance, that "blood ties" between children and adults are not appropriate features for the judicial attention, it is going a fair way beyond

saying that the Court should not turn blood ties into 'super facts', considerations powerful enough to decide any relevant dispute. Lambda seem to be saying, rather, that such considerations are simply impertinent to the issue at hand, that what connections there may be between biological relationships and familial relationships are wholly contingent, hallowed only by sentimental association, and without available moral motivation. But this too is not argued for, and may be mistaken.

While the Supreme Court is skilled at deciding issues narrowly, and has been particularly chary of making broad decisions in family law areas, it does seem as though the points contested in Troxel go close to heart of what at least one large nation will allow families to be—how they will be constituted, who will determine their boundaries, how biological proximity of natural relationships will be played off against psychological propensity to elect social relationships. It will be hard to resolve this case without saying something about what families are.

Some of the cards are pretty clearly on the table: to what extent are families elective affinities, who shall get to do the electing, and to what extent are the patterns of responsibility and prerogative that contribute to family structure constrained by biological proximities? Some cards are held closer to the vest, but are surely in play: how will the Court's ruling in this case affect adoptive families, or families that used gamete vending or contract gestational surrogacy? Will biological parents who have relinquished responsibilities for their children be able to assert a right to a relationship on a showing that such relationships would benefit those children? And some cards seemed tucked away up someone's sleeves, if they're in the deck at all: should children be able to petition in family court for visitation rights, or other kinds of relationship, to those people who are in part responsible for those children's being in the world at all? If considerations of their best interests are sufficient to set aside parent's contrary preferences, why are not they sufficient to set aside the contrary preferences of others?1

Vending Gametes

These kinds of questions are all enmeshed in the effort to sort out the various contributions of elective affinities and biological relationships in families, and if the Court needs to answer them, so too do bioethicists. We can make a start by considering B

what looks like a simpler question. Why do people buy gametes-or, if you prefer, arrange to get stranger's gametes free, compensating her or him only for time and trouble (while paying various 'middle people' handsomely)? It would seem hard to avoid the conclusion that they do so because they wish, as the saying goes, to "have children of their own"-that is, to begin or extend a family consisting of people at least some of whom are biologically related to each other-and getting hold of other people's ova or sperm (or both) is required for this job in their particular situation. The biological part is patently key for such people, despite the myriad nonbiological ways of forming and extending families through marriage and marriage-like undertakings, through formal adoption and fostering, through informal processes that enfold friends into families, and, if the Washington law is allowed to stand, simply if a court agrees that one's continuing involvement in a child's life is in her best interest.

Adopting or fostering children is, of course, not open to everyone who would like to form or extend a family, and some of those to whom it is or might be open are reluctant to take what strike them as the extra risks involved in entering into such relationships with children whose social (and genetic) backgrounds, dispositions and so forth are dauntingly unfamiliar. But people surely buy gametes, not because adoption is difficult or dangerous—so, after all, is the use of many ARTs, particularly for women—but in part at least in order to have biological connections with their offspring.

This motivation is sometimes criticized by people who are concerned that biological connections are overstressed in families. The brief Lambda entered in Troxel seems to be a criticism of this kind. Read rather robustly, the complaint here might be that investing significance in the biological turns brute facts into fetishes: what's needed in families is reliable affection, careful training and other forms of nurturance, and perhaps special forms of recognition. The idea that blood ties are required for such tasks, or even specially qualify those who have them for the job, is as objectionable as an idea with a similar biological cast to it: that such tasks should be assigned primarily to women, rather than to men.

Another, less uncompromising version of the complaint could allow that biological connectedness and proximity could have some importance to some people that is not wholly objectionable, but insist nonetheless that giving biology a special place in the characterization of family occludes the significance of other, more important forms of human relatedness, and inclines us to make bad judgements when such forms come into conflict. Even from this more accommodating perspective, there's something objectionable about ARTs because they reflect an unbalanced view of the relative importance of different aspects of familial connections and functions.

For my part, I am inclined to think that the matter of the significance of biological connection is more complicated than either the robust or the more conciliatory criticism supposes. I am inclined to think so in part precisely because of the vast lengths to which people are willing to go to obtain such connections—or even to obtain some degree of these connections—with the young with whom they wish to make a family. Motivations are, I allow, varied and mixed: some people may be willing to submit to the regimens of assisted reproduction because of pressures exerted by a spouse, or because they want the experience of being pregnant, or part of a pregnant couple—the significance of the biological part of reproduction is surely not always or solely a matter of genetic links to children. But many people do want genetic relationships with their children.

This desire might be wholly non-rational, a simple if powerful "taste" that some people have and some do not. Its occurrence might be explicable on sociobiological grounds. But if there is no more to be said in favour of pursuing biological ties with children than that some people have a taste for them, the taste should probably be discouraged, rather than facilitated, even if some kind of causal explanation for the inclination is available. ARTs are hardly innocuous. They are expensive, at a time when even basic health care is ill distributed. They expose people to risk, the magnitude of which is not fully known, raising question about the consistency of the use of ARTs by a medicine professedly guided by a primum non nocere ethic. They underscore pronatalist values in a crowded world, and are employed primarily in countries where people are typically over-consumers. There are living children who need homes.

But the desire to be closely biologically connected with other persons with whom one is otherwise intimate might not be wholly without supporting reasons, and in fact, I think it isn't. Human beings are not simply bundles of ideas and impressions, *pace* Hume (Hume, 1911); we are embodied creatures. We are animals, in fact, albeit meaning-making animals. A

good bit of the meaning-making we do revolves around our animality. It shouldn't seem surprising then, that our search for the good of intimacy with others, our efforts to have impacts on the world that will outlast our lifetime, and our strivings to understand who we are, and why we are as we are, all have biological dimensions to them. Families, as it happens, are an important site where people look to find intimacy, impact, and self-understanding. They are a place where the biological aspects of these efforts to structure what our lives mean, and to understand ourselves and our actions, can come to the fore.

This does not mean, of course, that the force or form of our particular engagement with our reproductive biology is either a cultural universal or above critique. But it opens the possibility that a chief problem with assisted reproductive practices may be that the significance of biological connectedness is actually *understressed* in two distinguishable though related senses: practically, in that we allow forms of ART practices that favour the interests of only one set of parties to the enterprise—the involved adults—and theoretically in that we can give no fully adequate account of the stability required of parental relationships on this basis.

Problems with Elective Affinities

The practical difficulty I have already touched on: there is something very odd about recognizing the immense significance of close biological ties running from an older generation to a younger, but effectively disallowing that such ties might be equally important to the younger generation. But, as I have also hinted, there might seem to be an effective reply here: if biological ties are only important if they strike a person that way, then it's far from clear that anyone has a duty to satisfy any such inclinations as might exist. If one can get vended gametes only in a context of social understandings that are taken to sever biological parenthood from any of the responsibilities associated with parenting's social roles, then such understandings are necessary conditions of the existence of any objecting child. For ART offspring to object to them is in effect to object to being alive at all. If such children do not think about their lives as too dreadful to bear because they lack access to biological parents (or, to put the matter as neutrally as possible, to a source of gametic material), then those children have not been wronged.²

Note, however, that this comforting conclusion requires something like the elective affinity view. If, on the contrary, there were reason to believe that those connections reliably track considerations that are significant quite apart from how things strike various people—if, that is, there were reason to regard them as morally important independently of inclination—matters could look quite otherwise.

One way of assessing a moral proposal is to trace out its implications and see how they cohere with a range of settled moral commitments. One of the features of family life that seems widely valued is its stability; paraphrasing Robert Frost, we might say that family is the place that, when you have to go there, they have to take you in (Frost, 1915). This, of course, is no more strictly true for "family" than for "home", Frost's own topic. Still, the steady reliability of most close familial connections does appear to be a source of their special value, and this is particularly key for growing children. But if the significance of the close biological relationships that are an important part of many families is simply and solely elective, on what grounds could we criticize someone for allowing that significance to fade? Parents do sometimes disinherit or otherwise 'disown' their children even nowadays, although there seems something anachronistic about this notion-actual disowning, in any event, is rare, and it is unclear what kind of legal or moral force it has. One occasionally hears reports of children initiating what are in effect divorce proceedings against their parents. But again, such proceedings are rare, triggered by very nasty situations, and at least somewhat reminiscent of what divorce between married people once meant: some publically cognizable harm that represents a serious breach of a relationship that was understood to be (in part) identity-constitutive. We don't see things this way about marriage now: it is, in no small part, what you make it. People sometimes divorce not due to irreparable breeches of the marriage bond, nor due to irreconcilable differences; sometimes, the breeches and differences just don't strike the people involved as worth the trouble to try to mend. People divorce, as well, for what are sometimes referred to as 'lifestyle' issues, or simply because the experiences are not sufficiently intense or otherwise valuable, or because the cost-benefit ratio is unfavourable.

Liberalization of divorce is likely much to the good. Traditional hard-to-exit marriages have been damaging to many people, no doubt especially to women, so emphasizing the volitional character of marriage makes sense. Marriage may be a contract that entitles people to cherish certain expectations of one another, but contracts typically do not involve holding contracting parties to what lawyers call 'specific performance'; the police won't make me paint your

fence, even if I contracted to do so (although I may end up owing you a good bit of money.) Still, even if stressing the elective character of marriage has in general been a positive development, it has not been costless: people inside marital relationships that are extremely well functioning cannot think of those relationships in quite the same way their similarly lucky parents did. And if the meaning of the biological ties that emerge in families are to be understood in an elective fashion as well, how can we not expect that affiliational ties between parents and children will become understood as hostage to the actual desires of the people involved in the relationship?

It might be replied that, if a person agrees to have a child, in whatever fashion, that agreement should be understood as including some kind of commitment to stability; surely, this is how we do understand adoption. Otherwise one would create needs and vulnerabilities without accepting responsibility to do what's reasonable to avoid harm to those the person has rendered vulnerable. So the agreement is not without constraints; one can't simply terminate unilaterally for no good reason.

But if giving rise to needs puts moral constraints on the free exercise of our choices, we ought to note that such needs do not arise solely from the *agreement* to rear children. For biological parents, it emerges from the very process of bringing children into a world in which both biology and cultures make the young potentially vulnerable to certain harms that parents are particularly well suited, even uniquely suited, to forestall. So if we find the idea that parental-child relationships ought to be subject to 'no-fault divorce' objectionable, we have reason to look to the kinds of vulnerabilities that get formed in families as a normative constraint on the kinds of relationships that can be created—including a constraint on relationships that are terminable by one party at whim.

What this line of thought reveals, then, is that seeing parenthood as a purely elective matter is in tension not merely with concerns we may have about the stability of parent-child relationships, but with moral understandings we share about the relationship between putting something valuable at risk and responsibilities for taking due care that the risks do not materialize.

This might look like a rather conservative conclusion, privileging biology over free choice, and setting traditional family structures in stone. In fact, however, it is the kinds of families that are currently emerging from ARTs that are overly traditional. Rather than recognizing that children nowadays actually can have more than two parents, and hence may need

various kinds of relationship with them, new technologies multiply relationships of responsibility that old forms of social practice do not seem to be able to accommodate. If instead of trying to pour new wine into old skins in this way, we opened ourselves up to experimentation with family structure, disciplined by a recognition that people need to be ready to answer for the responsibilities they create, it might not be necessary for us to turn to the courts to adjudicate who's in and who's out of families.

Acknowledgements

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Notes

1. On June 5, 2000, as this article was going to press, the U.S. Supreme Court decided Troxel v. Granville by a 6 to 3 margin, upholding the Washington State Supreme Court's invalidation of Washington's statue allowing any person to petition for visitation rights to any children on "best interests" grounds alone. In Justice Sandra Day O'Connor's opinion (joined in by Chief Justice William Rehnquist, and Justices Ruth Ginsberg and Stephen Breyer) the Washington nonparental visitation statute was referred to as "breathtakingly broad", violating the fundamental liberty interests of parents of uncontested fitness to enjoy a presumption in favour of their views about what is appropriate for their children. Justice O'Connor noted that the Court based its decision on the "sweeping breadth" of the Washington law, and did not define "the precise scope of the parental due process right in the visitation context", (Opinion of O'Connor, J., Supreme Court of the United States, Jenifer Troxel, et vir, Petitioners, v. Tommie Granville, No. 99-138, available at http://supct.law.cornell.edu/supct/html/99-138.ZO.html).

2. This concern is inspired, of course, by Derek Parfit's work (1984). See *Reasons and Persons* (Oxford: Oxford University Press,).

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