## Eichmann in Elmwood

## Thoughts on Crimes Against Humanity

by Samuel Hux (March 2018)



Laufen, Josef Nassy, Undated

Two things found most offensive about Hannah Arendt's Eichmann in Jerusalem ever since its publication in 1963 have been (1) the substance of the subtitle itself, A Report on the Banality of Evil, and (2) her assessment of the responsibility of the Judenräte (the Jewish councils) for the success of the Holocaust or, better, her tone toward the almost inevitably compromised Jewish leaders trapped behind Nazi borders. I have always thought the objection to her notion of the banality of evil absurd. Her critics seem to

think characterizing Eichmann as banal was some odd lefthanded compliment which diminished his evil, when clearly she meant to underline the enormous difference between the size of the crimes and the size of the criminals (an inadequate word!): Eichmann and the other Nazis were not epic figures of a Satanically heroic dimension appropriate to the epic dimension of their historic actions, but petty scumbags dwarfed by their deeds. I have little to say about the Judenräte question, because I have no new historical facts to offer, and because the relevance of any Jewish "co-operation" to Eichmann's quilt or banality escapes me anyway—something gratuitous about it. But Michael Burleigh has a great deal to say: and anyone inclined to defend Arendt (whom I normally admire beyond measure) should read Chapter 16, especially the section "Choosing Deaths," of his magisterial Moral Combat: Good and Evil in World War II, an analysis so hard-headed and yet moving that it's a shame Arendt is not alive to read it.

What I would like to discuss, because it has been bothering me for too many years now is the question of "crimes against humanity" as opposed to "crimes against the Jewish people"—and further and consequently the question of the justice of an Israeli, rather than an international, trial.

I have no trouble with crimes against the Jewish people; with crimes against humanity in which I hear against Gentiles too! I have a great deal of trouble. Well, I suspect it's difficult for people to feel excluded from a Great Event, even if the event was terrifying—which is not the same as wishing one had been included by the terror. For when the event was so consequential that our expectations of human possibility and even definitions of human nature either have to revolve upon it or be ridiculously inane, then people who esteem themselves moral agents have to confront it; and when the event itself

was of such a nature that masses of people were quite literally victimized and masses more irrevocably scarred, then people will prefer to think themselves among the victims or the scarred because any other self-image, even the passive one of sympathetic but helpless bystander to the occurrences of history, is even more frightening.

That's putting the better face upon the matter. Being somewhat less generous, one might say that when Gentiles are incapable of saying that the Holocaust was principally, primarily, and in intention a *crime against the Jewish people*, and that that is horrible enough in itself and sufficient condemnation of it, and that, no matter what, worthy moral observation one has of it or what wisdom one can draw from it, it requires nothing more said of it than the above to be to be odious beyond imagination, then I suspect that those Gentiles ultimately cannot take the Holocaust with full seriousness if they think it "merely" a matter of Jewish suffering and not enhanced in its magisterial horror by having touched Gentiles as well.

I am not practicing here some kind of Jewish exclusiveness. I'm not Jewish. Nor am I indulging some fantasy of moral rectitude which empowers me to cynical skepticism about the moral pretentions of others. It's just that I suspect that we do truth a service by giving ourselves as little credit as possible; and I do not intend to treat my own feelings about the Holocaust with great tenderness.

Among the "fundamental issues" Arendt thought the Jerusalem court failed to come to grips with were "the problem of impaired justice in the court of the victors" and "a clear recognition of the new criminal who commits the crime." I don't see how the latter could be the court's responsibility

since the "clear recognition" would not have been of temporary insanity or some such in any case. To speak of the "problem of impaired justice in the court of the victors," however, strikes me as not just judicially irrelevant but almost perverse. What can that mean? "Impaired justice" may make some sense in that, as Arendt notes, some possible defense witnesses for Eichmann could hardly appear without risking an Israeli jail (although on the other hand I don't see how they could have "defended" him either). But, "in the court of the victors"? Nuremberg may have been a court of the victors . . . but Jerusalem? To see the Jews, diminished by millions, as victors may make some kind of sense as a theological notion, but as a legal or political concept it leaves me stunned. A court of the victims, I would say. And any court the scene of a trial for murder mass or single is in the deepest and most just sense a court of victims-which is one reason I would agree with Walter Berns (For Capital Punishment), that the ultimate and usually unspoken justification of capital punishment (or any punishment, I would add) is not deterrence but revenge. Vengeance is mine, saith the Lord. Well now . . . we say. And I think we are right. All of which, rather than leading us into some digression, gets us directly into the question of crime against humanity.

Commenting on the new kind, the "banal," criminal that she judges Eichmann to be, "terribly and terrifyingly normal," who "commits his crimes under circumstances that make it well-nigh impossible for him to know or feel that he is doing wrong" (sic? I don't want to open that argument again), Arendt observes the difficulty that "civilized jurisprudence" has prided itself on taking the "subjective factor" of "intent" into such consideration that we are not sure we can say that a crime has been committed when we're not sure of "intent" because of "moral insanity" or the inability or impaired ability "to distinguish right from wrong." Her observation is

fundamentally right, whether one agrees or not that this characterization fits Eichmann. "We refuse" (we subscribers to "civilized jurisprudence") "and consider as barbaric, the propositions 'that a great crime offends nature, so that the very earth cries out for vengeance; that evil violates a natural harmony which only retribution can restore; that a wronged collectivity owes a duty to the moral order to punish the criminal'" (she's quoting Yosal Rogat, The Eichmann Trial and the Rule of Law). She continues, and with approval: "And yet I think it is undeniable that it was precisely on the ground of these long-forgotten propositions that Eichmann was brought to justice to begin with, and that they were, in fact, the supreme justification for the death penalty." I agree. She continues: "Because he had been implicated and had played a central role in an enterprise whose open purpose was to eliminate forever certain 'races' from the surface of the earth, he had to be eliminated. And if it is true that 'justice must not only be done but must be seen to be done,' then the justice of what was done in Jerusalem would have emerged to be seen by all if the judges had dared to address their defendant in something like the following terms."

And here she gives her summation: "We find that no one, that is, no member of the human race, can be expected to want to share the earth with you. This is the reason, and the only reason, you must hang."

And while I don't want to share the earth with Eichmann, I notice that what he is condemned for in this summation is really crimes against humanity instead of crimes against the Jewish people, and my agreement with her argument begins to grow compromised and then to disappear. Why am I so recalcitrant?

I comprehend *crimes against humanity* although admittedly its legal definition is not exceptionally clear; I mean I understand the words. But something about it keeps fading and shifting. *Humanity* can be an abstract noun: *humaneness*. And yes there was a crime against humaneness. But *humanity* can also be a collective noun: *all people*. And here I find that, while I want to agree and while I understand people who do agree that the Holocaust was a crime against all people, I surprise myself with my own resistance to the notion. Crimes against the Jewish people? Absolutely. Against every single Jew? Absolutely. If one is not a Jew one is a Gentile; that's the rest of humanity as collective noun. So, crimes against the Gentile people too? Some of them—incidentally, by selective political happenstance. Against every single Gentile? No.

This is no attempt to deny the tragedy of those non-Jews who died at Auschwitz and other camps. It is only to recognize that they were not selected for extermination because they were Gentiles, but because they were Communists, Socialists, Gypsies, homosexuals (not fitting the acceptable Nazi profile, Ernst Röhm long dead), Poles (of the wrong kind: priests, intellectuals), people clogging *Lebensraum*, ill-defined "enemies of the Reich" (an official catch-all designation), and so on. Nor were, among the Gentiles, Christians murdered for being Christians, unless one means by "being Christian" something exceptionable—as Emil Fackenheim said, "A Jew at Auschwitz was murdered because he was a Jew; A Christian was murdered only if he was a saint: but there are few saints among either Jews or Christians." Again, none of this dismisses the horror of their deaths, but it remains the truth (although no help to them) that they did not die for being Gentiles as Jews died for being Jews and as every single Jew would have died for being a Jew could the Nazis have had their

way. The bald facts are too crudely obvious to require even as little comment as I've given them. But there is another crude fact which evidently isn't obvious enough to enough people.

That is, when the Nazis killed Socialists, let's say, there was something "reasonable" about it-if I will be allowed a grotesque irony to underline a major point. When one fights a war, whether a just one or not, it is "expected," it has become common practice, that one will "neutralize" in some fashion one's political enemies within one's reach as a partial method of insuring victory. One does not, however (at least it is not expected that one will, it is not considered reasonable), spend energy and money and technical commitment gathering and disposing of political prisoners to such a degree that that effort hinders the war effort itself. But it is now historically obvious that the commitment to the extermination of the Jews was carried on with such resolve and with the expense of so much energy and time and rearrangement of strategic priorities that it did hinder the prosecution of the war. This is to say that the commitment was pathological-removed from anything even close to being reasonable. And it is this pathology that places Jews in a particular kind of exposure.

I mean: if one can assume his enemy will act within some "rational" framework, some scheme of priorities approaching reasonable self-interest, he knows how to adjust his choices in relation to the enemy, how to move, what to do; but if his enemy's actions originate in a solipsistic privacy of pathological motives, then one is to some degree at sea. It is difficult for one to make estimates of the enemy's judgment, good or bad; one is exposed to the unpredictable pathology of an individual or his orchestration of the collective pathologies of many. The Israelis know this truth well. But it

seems not to be known by those people who think the Jews are too sensitive, paranoid, when in fact they are simply cognizant of this exposure, knowing that it is not unwise to wonder if one should expect the worst since something worse than the worst has already occurred once. It seems not to be known to those people who think that killing Jews for being Jews is like killing Gentiles for being Socialists, those people who think it wasn't Jews who were exterminated but "people." (And, parenthetically, the exposure remains dangerous, not just a discomfort, since the argument that "people," not "Jews," were the principal victims of the Holocaust, was so often made by the Soviets and their auxiliaries, and remains popular today among all those "anti-Zionists."

Crimes against the Gentile people too? Another way to consider it: I generally dismiss that mod ethical notion, profundity, that gives a curious pleasure to people who like to think they're living dangerously with their psyches—"We are all guilty." I was born a Southern white, but I am in no way quilty for chattel slavery nor even for the injustices that blacks suffered when I was a kid and powerless to do anything about those injustices. I become guilty only when I commit those injustices myself or when with some power to attempt to change things I refuse to do so. I am not quilty, as a Gentile, for the Ukrainian pogroms far from my country or the lynching of Leo Frank in my country, both before I was born. Nor am I quilty for Auschwitz far from my country nor for the stingy entrance quotas imposed by the government of my country which in effect trapped many Jews within final Nazi reach. Some Gentiles, of course, were guilty. But we-are-all-guilty is nonsense. And if we are not all quilty simply because some were—then the fact that some Gentiles were victimized does not mean that all were. Yes, yes, I know: in some sense the entire human race was and remains victimized by the Holocaust. Later,

please. But to say that all we Gentiles were victimized is to lay claim to a kind of tragic dignity that *some* paid for, and none of us, as Gentiles, would have been asked to pay for.

I realize there's something crude about my moral mathematics as I've developed it so far, so I should refine it. The fact that there was no crime against the Gentile people as there was against the Jewish people does not of itself mean there was no crime against humanity, or rather against all people. Humanity is not a mathematical entity like 100 from which you can subtract 20 and say that you no longer have 100 but only 80: you can't say that when you set the Jews aside you have only Gentiles but not humanity. And furthermore, since we are all humans, Jew and Gentile, and "if a Clod be washed away by the Sea, Europe is the lesse, as well as if a Promontorie were, as well as if a Mannor of thy friends or thine own were . . " then is not the Gentile diminished by the death of the Jew so that we have to say that all people were victimized by the Holocaust?

Well, yes, but . . . that doesn't seem to me quite fair. I don't think one can say that the Nazi insistence that the Jews are not to be amongst us was an offense against "us" unless we had been insisting that they must be amongst us! And this Gentiles collectively had never insisted upon, in so far as a seriality of groups as amorphous as "Gentiles" can be said to act collectively. To contain the amorphousness somewhat, let's think only of the "Christian" nations of the West.

When Jews were relegated in domicile and occupation to ghetto or selective areas, with exceptions for court Jews needed for the economy or political administration, they might have been living "amidst us," but not "amongst us," if you'll take my

distinction. And when Jews were allowed or encouraged to enjoy freedom of religion, "just like Catholics or Protestants," this was no particular acceptance of them since the "just like" was a subtle imposition of the standards of Catholicism and Protestantism that a religion and a people are guite and totally separate designations and entities, a notion Judaism was not very comfortable with. To put that another way, the acceptance of Judaism as a religious denomination was an insistence that Jews "stop being different" and assimilate (on "our" terms); and this kind of assimilation (very far advanced in Germany, if I read history correctly) was not an insistence that Jews live "amongst us"—although it may superficially appear to be-since the definition of "Jew" was changed by "us" to suit "us." If and when Jews did of their own will effect a transformation of their traditional identity, that's another matter altogether. But it simply cannot be said that the Christian West ever announced to the Jews, either during the twelve years of the thousand-year Reich or before (or since?), anything like the following:

"You must decide what being Jewish means, since it's your identity. But understand and rest assured that whatever you decide—that there's a Jewish 'church' or a Jewish people or some accommodation of faith and ethnicity that we can't really understand—whatever you decide, we repeat, it is important to us that you live amongst us, because the principle of lively human diversity is precious to us."

None of this is to say that the Gentile population of the West is responsible for Auschwitz (nor is it to say it isn't; it's a different subject). It is "only" to say that Gentiles as an amorphous collective "group" may protest in horror Nazi methods and abhor such fantastic letting of blood, but cannot—with historical justice—protest very consistently

against the principle behind the Holocaust, that Jews are not to live amongst us. Hence my trouble with Arendt's eloquent summation and address to the defendant. It strikes me as an address that *should* be able to be made, but really can't.

And if it can't, then how and for what should Eichmann have been tried, other than as mass murderer, which terminology I take it everyone recognizes was inadequate?

He should have been tried precisely by whom he was tried: the state of Israel (as Arendt agreed), the only body which could lay claim to both spiritual and political stewardship of the interest of the Jewish people against whom the crime had been committed, and the only Jewish body which could have conceivably held a trial. Those suggestions international court, such as Karl Jaspers and others made at the time, were presumptuous. Eichmann should have been tried by the only conceivable powerful-enough he was representative of the *victims*. Hence, we are back to a "court of the victims." And in a court of the victims he should have been tried—as I think he was, in spite of any understandable verbal gestures about "deterrence" and about "in the name of humanity," and such-on the grounds that victims must be avenged. And viewing the matter this way, one might see that, for all the apparent difference and exceptionableness and legal oddity and jurisprudential uncertainty, the trial was really fundamentally in rhythm with the deepest and most just urges of trial-and-punishment.

If someone kills my wife, lover, parent, offspring, or whatever, and the state brings that someone to trial, finds him guilty, and punishes him, then in so far as the state is speaking for me and punishing for me it is exacting a revenge

I am not empowered to exact, and all talk about deterrence is ultimately a fiction we agree to honor because we are, after all, civilized people, and civilization is among other things a configuration of necessary fictions. And in this hypothetical case (I have never had a loved one murdered), when the state announces that society cannot countenance the crime tried here, that society has the right to demand penalty, I agree—for I know that were it another's loved one who'd been murdered I as a member of society would want the murderer punished as I assume other members of society want the murderer of mine punished. But I know as well that this is for me a secondary consideration at the moment, and that what I want most is that the murderer suffer because my loved one is dead. Revenge.

And, quite frankly, if I sense that the officers of the court are acting primarily for the society, and that my dead loved one is to them a secondary consideration since he or she was finally but a member, then I will feel that although "justice is done" in action it has not, somehow, been done in spirit. "They just don't understand," I'll feel. By extrapolation: had Eichmann been tried and sentenced by an international court speaking in the name of world society primarily, and the Jewish dead as members of that world society (we've now decided, a bit late) ultimately a secondary consideration, then I think the surviving Jewish people might legitimately feel that although "justice is done" it wasn't really. And they might legitimately say, "They don't really understand." Consequently, the only real problem I have with the Jerusalem trial is that Eichmann was physically alone in the docket, his cohorts absent.

Now I would like to gather up all the ifs and qualifications I have made and go somewhere else with them. To Elmwood, so to

speak.

In spite of all I've said about the Holocaust being a crime against the Jewish people, "yes, absolutely," but about it's being a crime against humanity, "not yes, if not exactly no," I do believe of course that in some sense it was, remains, a crime against humanity; and with that phrase "in some sense" I'm not cutting some casuistic nuance. My resistance to the notion of crime against all people I hope is sufficiently clear: it is in greatest part an objection to "the Gentile people" horning in, as it were, and staking claim to anything even approaching an equality of suffering with "the Jewish people." (And I use such stilted diction—"the Gentile people," "the Jewish people"-because I mean to be speaking in significant generalities, and because I know that there are some individual Gentiles who feel the horror of the Holocaust more than some individual Jews.) But I have no resistance whatsoever, as I've suggested earlier, to crimes against humanity if one means by that against humaneness. That statement is not so inane as it looks to me as I write it down.

To say that the Holocaust was a crime against humaneness can sound as innocent and naïve as "a crime against good moral taste." I don't mean that. I could say "against the humanities," but that might sound like some discussion of the curriculum. I mean it in the older sense as in "stricken, blasted, if he be, Ahab has his humanities." Humanities: the laws (when considered, as by Plato, not as mere statutes but as our progenitors); traditions of behavior (always more refined and elevated than our actual behavior, standards to strive for); the aesthetic sense (more than the love of a cogent couplet or a fine grace in movement, the sorely tried hope that what is beautiful is moral and what moral

beautiful); philosophy (all the above given logical order); the arts (all the above given verbal, visual, rhythmic articulateness); history (the story of our failures and few successes in maintaining them). The humanities . . . our language fails us. Is "the civilized virtues" any better? It all sounds so stuffy-because we've seen enough to make us cynical. Nevertheless, it is ultimately this emphasis that gives most meaning to crime against humanity, even when one is reading humanity to mean all people: for all people usually means, quite simply and superficially, "everyone who's living," whereas if you give humanity the emphasis I've given it, the plural twist, it suggests instead "all who have lived, are living, and will live," the humanities as the civilized virtues being what makes us creatures of the past, the present, and the future. So that the Holocaust was a crime even greater: a corruption of whatever pride one can take in being human, and a corrosion of hope.

But . . . "a crime even greater" is insufficient. I think it was the greatest crime in human history—although I understand how some might disagree. Some Christian might, I imagine: might note, for instance, the Crucifixion and say that on Calvary the son of God was killed. On the other hand, I have heard it said that God died at Auschwitz—or, if one imagines Him with "privileged" status, disappeared at Theresienstadt.

Now, I confess—without claiming any equality of suffering with Jews—that I am obsessed with the Holocaust. Not wishing to over-dramatize a pain I've not paid for the way others have, I still should not undervalue, through some sense of respectful proportion, the horror I feel. Nor should I ascribe to it a human dignity and moral disinterestedness it does not have. That's by way of confessing, and in the process revealing, the silly self-flattery one is liable to indulge in trying to

grapple with something he's not suffered. That is, one fierce and natural reaction to the murder or brutalization of someone you don't know—so that vengeful anger is not your immediate response—is a kind of defensive anger, "there but for the grace of God . . . " But since I knew it wasn't the grace of God that had spared me the gas or any threat of it, that it was my not being Jewish that had spared me that, then I could feel that my horror, not motivated by either vengefulness or defensiveness, must be somehow "purer" than a Jew's, than a potential victim's, more elevated and transcendent. The lengths one will go to in service of nonsense!

But I shouldn't exaggerate this moral primping either; it was a passing insanity. More often the horror used to appear in the form of "How could such things have been done?" But that's rather distant, a stupefied question. And the asker is uncertain what "such things" really means. The killing itself? The incomprehensible number of the victims? He wonders if the number should matter so much (would twelve victims be less horrible? Yes!). He is somewhat ashamed that it does matter (does one require such thunderous monstrosity to stir one?), and realizes finally that it has to matter (for otherwise the number would be but a stirring figure of speech instead of an actual accounting of the literally dead).

Then I began to assume that the horror attached itself to the shuddering recognition (no great act of the imagination) that this Jew I respected, that Jew I merely knew, and this one that I loved, would, no question about it, have been gassed, and although weren't were intended to be—as my mother, father, sister, and offspring were not intended and would not have been. And my assumption was correct . . . but not exhaustive. For I have come to believe there is another source of the horror, such that while I obviously have trouble with the

notion of *crime against the Gentile people too* I still feel there's been, consistent with the ignorant ironies of history, some scarring of "me." I don't think however, that my attitude toward the Holocaust can be replicated into some generic view; no, I don't think so.

Those "humanities" again, observed now from a peculiar angle. I assume I am understood when I say that those "civilized virtues" are what's best in us. (I don't necessarily assume agreement, for some would say what's best in us is our unadorned and uncultivated nature, and thus would implicitly disagree with my judgment that we are, by nature, more or less what pessimists like Freud and Hobbes have said we are and that we need those long-wrought and fragile virtues to keep us human. But no matter the disagreement if the tentative understanding is there; I'm not trying to sell a view, but to explain one.)

When I observe "what's best in us" in what we casually call Western civilization, I am struck by how—in several senses, with religious, biblical references aside for the moment—"Jewish" it is. On one level I suppose I mean that it's hard for me to imagine the world of discourse and cultural assumption we inhabit without such figures as Spinoza, Freud, Einstein, even, God help me, Marx, to name only the obvious. But I observe something more demanding than that: there's something essentially "Hebraic" about "what's best in us."

Matthew Arnold in *Culture and Anarchy* drew a distinction between two fundamental impulses in Western culture, the Hellenic and the Hebraic, and defined them principally this way: "The uppermost idea with Hellenism is to see things as they really are; the uppermost idea with Hebraism is with

conduct and obedience." (May I characterize the two uppermosts this way?: the intellectual-cultural and the ethical.) But it's sufficiently clear that "Hebraism" for Arnold quickly comes to mean primitive Christianity and then Christianity. Not exactly my meaning—but no matter.

Clearly Arnold believed that that these two fundamental impulses in Western culture ("the best that has been thought and said") were, had to ne, connected, each although different implicit in the other. Now . . . it is my contention (although who the hell am I to contend with Matthew Arnold!?) that for complicated historical and theological reasons the two impulses became largely separated in Western culture—so that one could be intellectually cultivated without any concern for what's ethical, or one could be moral without any concern for intellectual-cultural values. To defend this generalization in the most reader-convincing way I would have to compose another essay altogether as long as what's already here: so, I either have to ask the reader to take on faith there is substance to this generalization, or-with more labor entailed-invite the reader's examination of my essay "The Gentile Problem" in New English Review, September 2017.

It is my contention that the insistence that the ethical and the intellectual have a necessary connection one with the other, that the ethical and the intellectual are not just quite sunderable faculties or dispositions, is essentially a "Hebraic" credo, and consequently a fundamental belief in the Jewish tradition: an objection to the isolation or divorce of one impulse from the other which would allow (let us be dramatic) that a Nazi could be "cultivated" if he collected art or listened to Lieder, the true banality of our time.

Should one protest that this insistence on integrated faculties or impulses is equally a Christian ideal, I would suggest (or more than suggest) that that is true to the degree that Christianity remains "Hebraic," for there is also a subtradition, so to speak, in Christianity, the too-literal reading of the Pauline line that faith alone is required for salvation and not moral behavior, good works.

So when I say that "what's best in us" is somehow "Jewish" I do not mean of course that the ideal of the inseparability of the ethical from the intellectual, the moral from the cultural, is anathema to other traditions; nor do I mean the ideal is not precious to individual Gentiles. I mean (1) that other traditions, no matter the occasional verbal obeisance to book-learning and being-good and such, have not made the ideal of integrated faculties such an imperative as the Jewish tradition has. And (2), consequently, when an individual, Jew or Gentile, does hold precious that ideal, he or she might know where it has been most honored. And where it almost died.

It requires nothing more to weigh the horror of the Holocaust, as I said upon beginning, than to know that it was in intention a genocidal *crime against the Jewish people*, to know that that is sufficient condemnation of it, that there is nothing gained but unearned pathos in adding "against Gentiles too." This is not to say there are not manifold lessons to be learned from the Holocaust, although it's heart-sickening beyond cure that the lessons were so costly, with the price paid *not* by the instructed.

One such lesson: the crude irony that given people in "Ulmewald" (so to speak) who would will to act even though they were incapable, through choice or psychological

impairment, of making *moral* distinctions, it's terribly logical that their victims should have been their polar opposites, those who in integrating mind and heart were the great offenders against the new order of sundered faculties.

Another: as we in "Elmwood" have never said to the Jews, firmly and unmistakably, "It is of absolute importance to us that you, while remaining true to yourselves, live amongst us," we have in effect not held very dear that ideal which represents what is, or ought to be, "best in us." And this would still be true had no madman ever said, "They must not live."

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