ARTICLE

Keeping complexity alive: restorative and responsive approaches to culture change

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Abstract

The human services are fraught with history of failure related to grasping oversimplified, across-the-board solutions that are expected to work in all situations for all groups of people. This article reviews some of the long-standing and current challenges for governance of programmes in maintaining cultures that safeguard restorative and responsive standards, principles and values, thereby amplifying and enhancing their centrality to relational engagement within families, groups, communities and organisations. Despite their potential for helping groups of people grapple with the complex dynamics that impact their lives, restorative justice approaches are seen as no less vulnerable to being whittled down to technical routines through practitioner and sponsor colonisation than other practices. This article explores some of the ways culture can work to erode and support the achievement of restorative standards, and why restorative justice and regulation that is responsive to the ongoing experiences of affected persons offers unique paths forward for achieving justice. Included in this exploration are the ways that moral panic and top-down, command-and-control management narrow relational approaches to tackling complex problems and protect interests that reproduce social and economic inequality.

Keywords: Restorative justice, responsive regulation, relational governance, complexity.

1. Introduction

Despite the rhetoric about participatory management, teamwork, collaboration and engagement, and their value in tackling complex problems, actual practices within organisations are too often experienced by people who work in them, and by the service recipients, as not giving them much say at all. This undermines the capacity of people to influence policy, practice and decision-making and to play active roles in finding solutions that best fit their capacities for self-regulation,

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learning and in being good citizens who take ownership as stewards of ethical quality oversight of their own and their organisation’s services. The key message is that culture needs to be understood as, among other things, complex relational–emotional space which can be embodied only through approaches that embrace listening, dialogue and attending to context through trial, error and the use of multiple approaches and strategies. The more complex the problems, the more investment in problem analysis and responsivity is crucial (Cottam, 2012; Muir & Parker, 2014).

Restorative justice processes aim to build understanding of complex situations and to do this without abandoning the security provided by legal and other formal regulatory mechanisms of oversight. Informed with regulatory theory (Drahos, 2017), and evidence from research on the social determinants of health, the use of restorative approaches can be a driver of positive change in culture in which the state’s role is recentred as a competent, ethical partner alongside other non-state and informal actors.

Where should we focus our attention to stay alert to reductionism, in other words, the erosion of inclusive analysis? Drahos (2017) points to the importance of engaging with complexity by calling attention to the need to regulate capitalism’s processes of destruction. He categorises these as three large-scale processes of change confronting regulatory networks and institutions everywhere: eco-process collapse, techno-process collapse and financial process collapse. Failure to adequately grapple with the ‘creep’ of pressure towards reductionism, the complexity of social problems surfaces in and complicates engagement with health, education, social welfare and justice services typically resulting in racialized discrimination (Katznelson, 2006). Many can be traced to the destructive relationship between market functioning and the convergence of commercial goals with the goals of the state that perpetuate inequalities in pay, confound access to services and interfere with the exercise of basic rights, like voting, and endorse discrimination (Cooke & Muir, 2012). The maintenance of domination by any ideology or method of oppression ranging from bullying to extreme forms of physical, economic and emotional abuse is an injustice that restorative justice always has in its sights. Challenges to injustice in culture need to include the ways that economic modelling is used to undermine community capacity and relational welfare through ‘tick-box’ commodification of inputs and outputs (Marglin, 2010). This renders the value of relational work, including the time it takes to develop trust and to incubate cultures of thoughtful problem analysis, invisible.

Restorative justice practitioners and researchers, like others who embrace the aims of empowerment and participatory decision-making, advance the notion that host organisational cultures must embrace and reflect the same principles expected of them. That is, they must embrace in their ongoing work the use of recursive feedback processes that build capacity across groups to communicate what is happening and to connect with diverse social movements that boost what is being learned out into wider relational contexts. This is seen to help generate knowledge relevant to building models of governance that support citizenship, and family and community engagement beyond the state’s narrow interests and limited expectation of involvement. The more complex the problem being tack-
led, the more extensive must be the connections and coordination between actors, especially those who have a life-long investment in the particular relationships in question. Take, for example, the well-known escalation in complexity for a medical problem when several sub-specialities become involved with a patient. The patient’s very survival let alone recovery depends on the coordination of analysis of the problem and sharing of information as the number of specialists, possible mistakes and confounding potential for non-compliance increases. The state, or in this case the medical-regulatory network, has a vital role to play, along with other non-state actors such as insurance companies, patient advocacy groups, licensing and accreditation boards to name a few, but cannot alone fund or provide quality oversight to the providers while regulating themselves.

A university might be fine with using restorative justice to augment its command-and-control disciplinary policies and practices with students but decline to engage in reflective problem solving that might shed light on how problems like sexual assault continue in the face of the organisation’s firm public rejection of the behaviours. It is one thing to expel or otherwise sanction members of a fraternity or sports team for harassment, bullying or racist expressions, but such responses too often bury the relational complexity, hiding it from examination. The responses provide ‘rituals of comfort’ (Braithwaite, 2008: 155) communicating that something is happening, perhaps putting on a show of forceful intent, but fades as more dominant interests and organisational culture flow back into the void left from not developing a fuller appreciation of the relational complexity giving rise to the problems (Braithwaite, Braithwaite & Burford, forthcoming). Moving a priest who has sexually abused a child to another parish, expelling a student for racialised taunts or suspending a student from school for bullying share in common the belief that reactivity to the problem will go away if the bad apple is taken from the crate or cosmetic laws or policies are put in place to provide a stopgap (Morrison, 2013; Zimbardo, 2007).

Approaches to regulatory innovation are not new. They have been taken up over time in the names of open organisation, collaborative governance, relational governance and many other expressions and approaches aimed at organisational change and reform and developing healthier cities and towns (Ansell & Gash, 2008; Donahue, 2004; Ferguson, Paulin, & Bergeron, 2005; Keohane, Macedo & Moravcsik, 2009; Nyden, 1985; Zaheer & Venkatraman, 1995). They share the view that top-down, command-and-control governance approaches can fail to enable human capacity by overemphasising technical solutions to problems that are complex, relational and ever adapting in the face of efforts to solve them. At worst, the shutting down of complexity is a cover-up for ethical and perhaps even legal lapses or ongoing bad behaviour.

2. Drivers of interest in restorative responsive governance

Sennett (2012) argues that it is the failure to enable complexity that undermines the kind of cooperation needed to engage deeply and to challenge efforts that would rush to settlements and solutions. He argues that rich, full communication
and authentic involvement with stakeholders must be the cornerstone of collaboration and cooperation in partnerships. He is concerned that many technological innovations and distancing communications strip people of the ability to deeply engage and understand the nuance of verbal and non-verbal communication and connotation and thereby reduce cooperation to transactional, dialectical and linear binary understandings rather than yield relational or dialogical wisdom and capabilities. He argues that such emotional and cognitive skills and dispositions are better learned and honed in this way than through participation in most formal organisational settings where complexity is seen as a threat to good order and organisation rather than as the path to learning and development.

Overinvestment in the state as the central actor in regulation has contributed to falling levels of trust in the state, especially in the face of corporate crime, and to the reverse, distrust of the citizenry that fuels constructions of people in need as undeserving of respect. Disengagement with democratic processes and an increase in harms associated with increased inequality are both understood to be at high and rising levels. Michael Sandel (2017) poignantly addresses this crisis of democracy, arguing that society has, beyond people's awareness, transitioned from a market economy to a market society. He calls for a more substantive public engagement with the big ethical issues that plague politics and for more pluralistic engagement among those whose opinions differ from one another. Sennett (2011) points to quality-of-life issues that we have come to associate with social determinants of health saying that life in cities is good when its inhabitants embrace and channel diversity, including class and ethnicity, while quality of life suffers when people have experiences limited to dealing with people similar to themselves. The same can be said of organisations when people hire others who think the way they do and exclude voices, viewpoints and challenges to processes that tend towards orthodoxy. But how can organisations, groups, families, communities enforce and support a central ethos and standard so they are not overrun with problems they cannot do anything about on their own? This article agrees that democracy and capitalism live better together when capitalism is itself regulated in its deleterious impacts on the well-being of human flourishing including the environment and democratic participation. Uncertainty and challenge are a good thing when they can be channelled through good citizenship into stronger social and economic capacity including capacity for recovery, entrepreneurship and supporting families to thrive.

Zia et al. (2014) argue that uncertainty is inherent in social–ecological systems and defy ‘optimal’ management through top-down command governance designs. From their research utilising complexity theory, governance is understood as regulatory interventions that enable movement towards what they call ‘phase spaces’ or emergent pathways that emerge responsively over time from the ‘bottom-up’.

Regulatory tripartism is an antidote to the limitations posed by top-down or two-party transactional regulatory relationships (Ayres & Braithwaite, 1991). It is based on the view that when regulation is the sole domain of one actor, that actor is vulnerable to capture and even corruption or to being the neighbourhood bully whose power is unchecked. In the case of the state regulating business, regulatory
capacity is too often easily overwhelmed by money. States simply cannot raise enough taxes to stay the course in guarding the integrity of the mission in complex situations without multiple regulators working together. For example, despite the important gains made in regulating tobacco (Tobacco Control Legal Consortium, 2009), big tobacco has hardly been brought to its knees. The US Centers for Disease Control and Prevention reports that in 2016, tobacco companies spent $9.5 billion marketing cigarettes and smokeless tobacco in the USA while continuing to exploit and expand international markets (Centers for Disease Control and Prevention, 2016). Like the double-edged sword of pharmaceuticals, the massive wealth that comes from the market creates the problems that in turn are the focus of the human services in the form of addictions.

Without a third party – an arm’s length person or body – or, as should be the case with highly complex problems, multiple parties, in the regulatory configuration, regulation, or governance, can be captured by regulators who operate too close and without accountability of their own oversight. Both the appearance of and actual capture or corruption of regulation by special interests or doing nothing constructive in the face of a problem are the source of much loss of confidence in governance and corrodes active engagement in citizenship (Black, 2014; Braithwaite, 2002, 2004; Drahos, 2017).

This is a central elegant conceptualisation of restorative justice. Seeing the potential in restorative justice processes as instruments of responsive regulation opens the space to measure the extent to which they can serve to help understand and mitigate capitalism’s processes of destruction, including oppression and domination, through the oversight and engagement with processes of security and accountability. This responsive regulatory context allows restorative processes to serve as vehicles for inquiry, analysis and oversight of complex situations and problem-solving processes. It is not enough to simply offer processes that are fair, just and egalitarian. Justice must circle back to a contextual understanding of underlying causes.

3. Rule of law and social determinants of health

The World Health Organization defines the social determinants of health as ‘the conditions in which people are born, grow, live, work and age’. They are social and/or demographic characteristics of individuals, groups, communities and societies that influence health and well-being at the individual and population levels (WHO, 2016). Research underscores the importance of social factors associated with health-related outcomes, as well as the pathways that may explain their effects and the obstacles to their engagement (Braverman, Egerter & Mockenhaupt, 2010; Braverman & Gottlieb, 2014). Overarching factors include income inequality, especially between the most and least affluent segments of society, social connectedness which underscores the benefits in terms of expectations for longevity of life, better health and civic engagement of relational ‘belonging’ to extended relations of kin or kith, voluntary or other peer associations and com-
munities, and to personal agency or collective efficacy that underwrites a sense of personal control and hope.

In their study of 96 countries, comprising 91% of the global population, Pinzon-Rondon, Attaran, Botero, and Ruiz-Sternberg (2015) found that the higher a country’s level of adherence to the rule of law, the better the health of the population. Dingake (2017) argues that the rule of law should be understood as a foundational determinant of health that underwrites governance of health systems by ensuring government transparency and accountability and promotes civil society participation. An enabling legal environment works to regulate the production, marketing and sales of unhealthy products and resists ‘spurious legal challenges’ fuelled by global economy through national and international courts. Access to justice, he argues, through the court system, through alternative dispute resolution mechanisms or even through the traditional justice systems is crucial to the development and maintenance of good health systems, and good justice systems for dealing with injustice.

In this way, investment in widely available restorative justice and responsive regulatory mechanisms serves as a catalyst for mobilising cross-disciplinary and cross-institutional cooperation to better understand the interplay between relational justice and the social determinants of health. Archibald (2013), Llewellyn and Llewellyn (2015), Llewellyn and Downie (2011) have explored the ways that relational theory, law, health policy and ethics sit together and form the basis for relational expressions of justice that emanate from relational contexts, aspirations and challenges.

Fully restorative, universally accessible restorative justice processes are seen as a path forward to contribute to increased sense of participation, trust in state authorities and vice versa and expose knowledge about models of governance that bubble up from citizen participation as opposed to ones that are imposed through legal formalism in ways that exclude voice and choice and suppress the expression of emotions as part of fact-finding and assessment. Most important among these principles is the investment of time to mine important veins of complexity that ultimately relate to the social determinants of behaviour and get at the ‘cause of the causes’ (Braverman & Gottlieb, 2014), in other words, to work with the relational complexity and other sources of information necessary for people to engage in trusting dialogue and problem solving.

4. Personal, organisational and ethical considerations of complexity

Research into organisational culture and moral panic should be of relevance to relational inquiry approaches and is used here to illustrate the potential value of cross-disciplinary and multi-theoretic approaches to study.

Although it would be years before culture became the lingua franca of organisational study, and its possibilities and limitations began to emerge (Meek, 1988), Isabel Menzies’ classic study (1960) of hospital systems was one of the first to shed light on the ways and reasons that social systems formalise roles, rules and structure relations. Using a psychoanalytic framework, she drew attention to the
way nurses contributed to the establishment of rigid, hierarchical and fixed roles as a defence against the anxieties of caring for people in life and death situations. Through ritual task performance each nurse was taught to work by following a rigid task list. By shifting their personal experiences of anxiety onto the system as a whole, nurses were thought to cope with anxiety but at the cost of individual growth and the development of what she called more mature forms of coping. The nurses adapted to a culture that did not embrace the painful impact of the nature of the work into support for their personnel at a cost to themselves and their patients. Her work paved the way for researchers in the human services to examine complexity more carefully and to begin linking to other research on the interaction between sociotechnical systems and the democratisation of teamwork processes (Emery & Trist, 1965; Trist & Bamforth, 1951). This research opened the door to the study of teaming and teamwork processes in a wide range of human services including to the study of organisational culture (Eby, Sinoway & Parisi, 2000; Fulcher, 1981). But sustained culture change in human service organisations has been a long road made more challenging by the failure to embrace relational perspectives within.

Culture is like gravity. Its sudden absence would be noticed instantly. Its presence can be counted on for its dependability in most contexts and like gravity is very much taken for granted in its relation to behaviour. Unlike gravity, culture remains somewhat amorphous to measurement outside the context in which we observe the resulting behaviour. And we know that behaviours learned and supported in one environment do not necessarily travel to other environments. We use the word culture to aggregate. When the women of the Dalhousie Dentistry class of 2015 looked around at all the examples of behaviours, traditions and institutional arrangements that demeaned and objectified women it soon became obvious to them that the very culture supported and protected their male co-students (Llewellyn, Macissac & MacKay, 2015). Behaviours that are not sustained and rewarded in a particular context or relational configuration fade or go far underground. The supports in the school were ‘in their faces’. The idea that unity can be established in a group or community by fixing or creating it assumes that culture unambiguously brings people together. In reality, culture represents a tremendously complex set of understandings that can both bring people together and pull them apart – or do both at the same time.

Despite culture remaining an amorphous concept to measure, it is still taken very much for granted. The relationship between culture and behaviour should always be in a regulator’s sights (Machado, 2016). Poor conduct, he argues, is at the root of most if not all financial crises and scandals. Conduct and customer, or client, protection should be a concern of those interested in standards for ethics and integrity. The need for ethics to be at the heart of any profession or discipline carries regulatory responsibilities (Coglianse, 2015; Dee & Braithwaite, 2016). The big challenge Machado (2016) points out is that culture, especially ethics and integrity, sits beneath the surface in a ‘profusion of shared assumptions which are communicated and reinforced through a series of subtle signals, many of them undocumented’ (p. 1). Like Sennett (2012), Machado would undoubtedly agree that relational-regulatory approaches offer the only door to full under-
standing of the complexity involved. The need to embrace relational complexity is well-illustrated in Valerie Braithwaite’s (2009) important work that examines the ways that individuals engage (or do not engage) with institutions. She developed the concept of motivational postures to explore and more fully understand what regulators can look for and how they can interpret the signals coming from actors reacting to regulatory interventions. Motivational postures are a composite of values and beliefs about authority that are held by individuals and used by them to position themselves relationally with regulatory authorities. Her findings reveal that institutional practices can generate defiance and provoke reactivity and thereby undermine a person’s capacities and willingness to cooperate in settings as varied as family, school, work, child protection and governance (Braithwaite, 2013; Braithwaite, Murphy, Reinhart, 2007). Her work has profound implications for how we develop cultures that build relationally from trust and shared social values and support addressing conflict and injustice as part of the ongoing relational work that all groups need to be able to do.

A second line of inquiry comes from the study of the ways that public fear and anxiety are used to close down trust building and openness. Research on moral panics (Cohen, 1972) and claims-making (Best, 1987) shows fear is used to legitimise reactions based on little or no information instead of digging deeper into the complexity of matters. Moral panic refers generally to the spread of fear among people that some evil threatens the well-being of a group or society as a whole. Claims-making proceeds from the use of broad definitions and assertions about a problem while at the same time giving up horrific examples and grandiose estimates of the problem that constructs images of culpable villains and innocent victims and holding them at a distance that makes empathy and connections difficult (Morris & Burford, 2009, 2017). Laying the groundwork for future research and inquiry that has vastly enriched understanding of the complex regulatory interactions of journalism, media technology, finance with institutions of public and economic policy including criminal justice (c.f. Drahos & Krygier, 2017; Richardson & Fullerton, 2016), Canadian researchers Leyton, O’Grady and Overton (1992) exposed important dynamics of the manipulation of public anxiety. Comparing perceptions of violent behaviour as expressed through public opinion, they tracked statistics and examined past events to shed light on the complex relationships between the media and special interest groups in shaping public opinion. They found that in the complex context of social and economic conditions, actual versus perceived rates of violence were conflated while popular protest and claims-making in the negotiation for resources prevailed. An incident of violence, they observed, despite declining rates of actual violence, could trigger claims-making for new resources by a wide range of social agencies. Well-meaning agencies were seen to fuel the social construction of ‘waves’ of crime. Importantly, the shelters, forensic hospital workers, social workers and some others who claimed they needed more staff and other resources to combat the crime wave did need resources. The point is they jumped on board the opportunity to get resources because that was the culture of negotiation that was available even though the cost was to stir up public fear and anxiety. Despite knowing this, Richardson and Fullerton write, few agencies, academic publications and policy
makers actually engage in direct, sustained and ethically informed analysis, meaning that many new regulations, even laws, continue to come into life more by dint of ratcheted-up political and relational persuasion, than with complete information, or that information is rejected as ‘false’ without holding those claims to regulatory conversations or dialogue. Too often new laws and policies are set in motion on a wave of populist criticism, backlash, moral panic or outright fear that some other option will be dangerous or politically unwise. Moreover, they are often brought in on the strength of political advocacy bolstered by a preferred alternative rather than a transparent, inclusive accounting of public options. Despite promises to carefully review and regulate the impacts of a new regulation commitments are often so far reaching that little can be done.

5. Restorative and responsive investments in just relations

We have pretty good evidence now that some of the instruments of regulation being used extensively are working for many of the wrong reasons. Zero tolerance policies and practices that prioritise the infliction of pain and humiliation and deliberately provoke fear are causing harms and these harms are disproportionally inflicted on the most vulnerable groups. Some programmes that caused more harm than good, through undercutting relational complexity, positioned themselves under the brands of Scared Straight, boot camps, Tough Love, Zero Tolerance (Lilienfeld, 2005; Lilienfeld, Lynn, Ruscio & Beyerstein, 2010; Petrosino, Turpin-Petrosino & Buehler, 2002; Skiba, Arredondo & Rausch, 2014; Skiba & Rausch, 2006). The criminal justice responses to domestic violence through unresponsive, rigidly applied use of mandatory arrest, no-drop policies and no-contact orders are seen as examples of unresponsive, under-theorised and fixed applications in complex situations that have left little room to build responsively from what has been learned. Removal of children from their parents in situations of child abuse is one of the most complex, least understood regulatory responses of governments internationally (Burns, Pësö & Skivenes, 2017a, 2017b), with mandated reporting particularly being among the most problematic of the legislatively dedicated responses (Braithwaite, 2015; Melton, 2005). Like criminal justice policy and practice that was exported from the USA (Goodmark, 2015), the international impact of such transactional and deterministic policy filtered into global networks of influence.

One alternative that embraces both restorative and regulatory conceptualisations is found in the use of regulatory theory that builds from engaging with and listening to multiple stakeholders in the design and implementation of intentional and responsive choice that can be conceptually organised in a pyramid (Braithwaite, 2017). Briefly summarised, at the bottom of the pyramid (see Figure 1) are more frequently used strategies, some of which could be conceived as restorative justice, of first choice that are less coercive, less interventionist and cheaper that assume people will step up to the plate and do the right or virtuous thing. The aim is to encourage self-regulation through raising of concern, persuasion, coaxing, nudging and the other skills of relational influence (V. Braithwaite,
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Stepping up to a more fully restorative approach means widening the circle of stakeholders to provide deeper problem analysis and opens up more avenues and possibilities for enforcement and support. As enforcement steps up so does the use of support, especially those that come from drawing in additional networked connections that increase scrutiny of the use of enforcement and draw in new sources of support and knowledge generation. The peak of the pyramid represents the full deployment of enforcement for those cases where incapacitation is necessary (Braithwaite, 2002, 2017; Hong & You, 2018). The more complex, intransigent and interconnected the problem, including when markets in what Braithwaite (2005) calls virtue or vice are fuelling the problem from both ends, the more networked must be the threads in civil society, state and global action. The opiate crisis is an example driven by legal and illegal interests backed by resources to continually adapt to efforts to tackle the problem. Yet the very constellations of governance, social movements and partnerships are, as Braithwaite (2016) points out, in constant need of renewal and refreshment lest they be captured or corrupted by narrow interests as has been the case with the blunt use of incarceration in the USA.

Using a pyramid designed for particular problems, or to guide strategies of relational governance, not only can help coordinate and focus the efforts of those involved, but also serves as a conceptual map as to what will be done first, what will be done next and what resources are needed to proceed. This is seen as a way of further widening relational enforcement and support capacities and networks including social movements that are necessary for longer-range reintegration and recovery efforts (Best, Irving & Albertson, 2017). But it is also seen as a way to

Figure 1 Pyramid of networked escalation

![Pyramid of networked escalation](From http://johnbraithwaite.com/responsive-regulation/)
continually engage in deeper, more nuanced understanding of the complexity needed to be responsive to the relationships involved. The use of the pyramid to enlist understanding and cooperation highlights the principles of tripartism that privilege relational engagement, planning and accountability over transactional and exclusively top-down approaches described earlier.

6. Conclusion

Restorative justice scholars, practitioners and advocates are urged to challenge the impediments to engaging with complexity within our own institutional and professional arrangements. There is within the restorative justice movement the same pressures to grasp technical fixes and linear cause and effect assertions that have political and emotional impact and run with them. Restorative justice is not immune to cultural, technical fossilisation. There is a sense in the restorative justice movement that restorative justice fell out of the sky, emerged wholly formed from indigenous practices, or is entirely a response to the excesses in the use of state power, or will work across-the-board to hammer every social problem into submission. Restorative justice, like indigenous cultures, needs room to grow, change and develop and to stay alert to pressures that bend towards orthodoxy and reductionism. We might do well to better distinguish between indigenous approaches to justice and those that have grown out of Western applications of conflict resolution (Blagg, 2017) while at the same time allowing growth and hybridisation to flourish (Braithwaite, Burford & Braithwaite, forthcoming).

Fully restorative approaches to governance, like fully restorative approaches to practice, are best co-developed or at least co-selected by stakeholders, that is, they draw from many sources of knowledge, including experience and emotion; that they embrace knowledge and experience both from ‘home-grown’ adaptations and from the experiences of others and emerge through dialogue and invention. Restorative justice is both relational and regulatory, that is, it embraces principles that work at the coalface of practice in human services settings including health, education, justice and social services, but at the same time are consistent with governance models that would reflect in the host organisations the values of good citizenship and high ethical standards. They are seen to underwrite democracy and collaboration while stimulating innovation without overrunning the ongoing importance of sensible regulation (Ford, 2018; Grandori, 2006), the protection of rights to due process and defence from the tyrannies of excessive intrusion.

References


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