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The Phenomenology of Homicide

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Abstract

Black chronicles in the media report on daily basis about violence and various forms of violent behaviors. Violence and various forms of violent behaviors happen among peoples who are not known each other, but also happen among peoples those who are known each other. This is especially applies on friends, but also on family members. Unfortunately, the consequences may be tragic because some of these forms of violence end up with the murder. This paper considering the phenomenology of homicide from criminal and forensic aspects and wants to point out to a very responsible task that has police officers and other criminalistic/forensic professionals who try to solve serious criminal acts like this.

Keywords: *homicide, murder, criminal investigation, law*

Introduction

There is no simple and universally accepted definition of crime in the modern criminal law, a feature that probably reflects the large and diverse range of behaviours that have been criminalized by the modern state [1]. It is now widely accepted that crime is a category created by law—that is, a law that most actions are only criminal because there is a law that declares them to be so—so this must be the starting point for any definition.

Most modern definitions of crime fall into two main categories, the moral and the procedural. Moral definitions of crime are based on the claim that there is (or should be) some intrinsic quality that is shared by all acts criminalized by the state. This quality was originally sought in the acts themselves—that all crimes were in an important sense moral wrongs, or *mala in se*—and that the law merely recognized this wrongful quality. The weakness of this approach was that it could extend to certain actions which seemed morally neutral (often refered to as *mala prohibita*), such as speeding or failing to register the birth of a child, which have been made crimes by statute. Accordingly, it is argued crimes are such because criminal law recognizes public wrongs as violations of rights or duties owed to the whole community, that is, that the wrong is seen as the breach of the duty owed to the community to respect the law. This definition covers a broader range of offences, as well as recognizing the sociological fact that many acts are criminal only by virtue of being declared so by the law. The strength of this type of definition is less a description of the object of the crimination law, than as an account of the principles which should limit the proper scope of the criminal law.

Procedural definitions, by contrast, define crimes as those acts which might be prosecuted or punished under criminal procedure.

There are various ways to classify crimes, most of them with ancient roots [2]. One classifies crimes into crimes of moral turpitude and those that are not. The moral turpitude crimes consist of criminal behavior that needs no law to tell us it's criminal because it's inherently wrong or evil, like murder and rape. Crimes without moral turpitude consist of behavior that's criminal only because a statute says it is, such as parking in a no parking zone and most other traffic violations. Why classify crimes into moral turpitude and nonmoral turpitude? Some examples are: excluding or deporting aliens; disbarring attorneys; revoking doctor's licenses; and impeaching witnesses.

The most widely used scheme for classifying crimes is according to the kind and quantity of punishment. Felonies are crimes punishable by death or confinement in the state's prison for one year to life without parole; misdemeanors are punishable by fine and/or confinement in the local jail for up to one year. Notice the word "punishable"; the classification depends on the possible punishment, not the actual punishment.

Mayhem, originally a common-law crime, is the crime of intentionally dismembering or disfiguring a person [3]. The crime has an interesting origin. In England, all men were to be available to fight for the king. It was a serious crime to injure a man in such a manner as to make him unable to fight. Early punishments for mayhem were incarceration, death, and the imposition of the same injury that had been inflicted on the victim. Originally, only dismemberment that could prevent a man from fighting for the king was punished as mayhem. As such, cutting off a man's leg or arm was punishable, whereas cutting off an ear was not. Of course, causing a disfigurement was not mayhem.

Today, both disfigurement and dismemberment fall under mayhem statutes. Many jurisdictions specifically state what injuries must be sustained for a charge of mayhem.

Homicide

Homicide is often treated as the most serious offense and, for that reason, tends to get pride of place in discussions of criminal offenses [4]. This treatment is thought to reflect a commitment to the centrality of the individual person in contemporary law in general, and criminal law in particular: the individual person is the central figure in a state under the rule of law, a *Rechtsstaat*, and the right to life is the most fundamental right of the person, therefore homicide, as the violation of the right to life, is the most serious offense. Perhaps this is so. One reason why this view is rarely questioned, however, may be that the seriousness of homicide is compared to that of other offenses against the person. The question, however, is not whether homicide is the most serious offense against the person, but whether it is the most serious offense, period. Is it more serious than the most serious offense against the state? Than, say, high treason? If so, why do both the German Criminal Code and the Model Penal Code open their respective special parts with the most serious offenses against the state, not homicide? Even within the realm of offenses against the person, is homicide simply an assault with a different result element (death rather than harm short of death)? Or is homicide qualitatively different? Is it unique? Is "the murderer" qualitatively different than other offenders (including the "manslaughterer")? If so, does the murderer deserve a qualitatively different punishment to match?

The Model Penal Code was drafted by the American Law Institute, an influential law reform organization, between 1952 and 1962, under the direction of Professor Herbert Wechsler, with the assistance of a cast of collaborators, which included law professors, lawyers, and judges, as well as psychiatrists, a criminologist, and a professor of English [4]. The Model Penal Code triggered widespread reform in American criminal law, remains the most systematic statement of American criminal law, has been called "the principal text in criminal law teaching," and—as a code—is particularly well suited for comparative analysis with civil law systems.

If the accused kills someone who has been born alive, one or more of the following crimes may occur: murder, manslaughter, causing death by dangerous driving, infanticide or genocide [5]. These offences are generally called 'homicide', but that word is not a term of art in English law. People are charged with murder, not with homicide. A killing may not always constitute a crime, and one must be careful that not too much is swept up into manslaughter, especially the gross negligence form. Murder and manslaughter are distinguished by a difference in the state of mind of the accused at the time of killing. In both offences he has caused someone's death. Murder is a more serious crime than manslaughter because to be guilty of it he must have intended to kill or commit grievous bodily harm, whereas a lesser (which means 'less blameworthy') state of mind suffices for manslaughter. The difference resides in morality: the murderer is more morally culpable than a person guilty of manslaughter.

Homicide, the killing of one human being by another, is not always criminal [6]. Sir William Blackstone wrote in the eighteenth century that there were three kinds of homicide— justifiable, excusable, and felonious. He wrote that the first involved no guilt, the second involved little guilt, and the third was the worst crime that humans were capable of committing against the law of nature.

Justifiable homicide is defined in the common law as an intentional homicide committed under circumstances of necessity or duty without any evil intent and without any fault or blame on the person who commits the homicide. Justifiable homicide includes state executions, homicides by police officers in the performance of their legal duty, and self-defense when the person committing the homicide is not at fault.

Excusable homicide is the killing of a human being, either by misadventure or in selfdefense, when there is some civil fault, error, or omission on the part of the person who commits the homicide. The degree of fault, however, is not enough to constitute a crime.

Criminal (or *felonious*) homicide occurs when a person unlawfully and knowingly, recklessly, or negligently causes the death of another human being. The common law and the states have divided criminal homicide into the crimes of murder, manslaughter, and negligent homicide.

Murder

The common law defined murder as a killing with malice aforethought [7]. As was typical of many common law principles, malice aforethought was simply a comprehensive name for a number of different mental attitudes regarded as particularly heinous forms of homicide, and therefore murder. As one study of the common law put it, "When a particular state of mind came under their notice, the Judges called it malice or not according to their view of the propriety of hanging particular people."

A defendant kills with malice aforethought when the defendant: (1) forms an intent to kill; (2) forms an intent to inflict grievous bodily harm on another; (3) displays a wanton or extremely reckless disregard for the risk to human life; or (4) commits a dangerous felony during the commission of which a death results.

The common law contained no degrees of murder. All defendants who killed with malice aforethought could be convicted of murder and sentenced to death. In the United States, the movement to lessen the number of crimes warranting capital punishment led many jurisdictions to enact statutory schemes establishing a sliding scale of punishment for capital murder, first degree murder, and second degree murder. Because degrees of murder are statutory creations, no universal rule governs the distinctions between capital, first degree, and second degree murder. The most commonly utilized approaches are discussed in the following sections.

First-Degree Murder

First-degree murder is the most serious of all homicide offenses [24]. It involves any intentional murder that is willful and premeditated with malice aforethought. Premeditation requires that the defendant planned the murder before it was committed or was "lying in wait" for the victim.

While most states separate murder into first degree and second degree, some states classify murder differently. For instance, in New York, first-degree murder requires that the murder involve "special circumstances," such as the murder of a police officer. Similarly, the Model Penal Code does not classify murder by degree, but defines murder as "any killing committed purposefully and knowingly." This means that it is important to check the penal code of your state or consult a criminal defense lawyer to determine whether and how first-degree murder is defined.

Although the exact state laws defining first-degree murder vary by state, most state penal codes require that a prosecutor establish willfulness, deliberation, and premeditation in order to convict a defendant of first-degree murder. Willfulness requires that the defendant acted with the intent to kill another person. Thus, the death cannot have been accidental. However, the prosecutor does not have to show that the defendant intended to kill that particular victim. If the defendant shoots into a crowd with the intent to kill his friend, but hits and kills a bystander instead, these facts can still support a charge of first-degree murder.

Deliberation and premeditation mean that the prosecutor must show that the defendant developed the conscious intent to kill before committing the murder. This is a low threshold and does not require showing that the defendant created an extensive plan before he committed the act (although that might sometimes be the case). Rather, deliberation and premeditation require only that the defendant paused, for at least a few moments, to consider his actions, during which time a reasonable person would have had time to second guess such actions.

Second-Degree Murder

Second-degree murder is defined as an intentional killing that was not premeditated [25]. In some states, second-degree murder also encompasses "depraved

heart murder," which is a killing caused by a reckless disregard for human life. Second-degree murder is often seen as a catch-all category for intentional or reckless killings that do not fall within a state's definition of first-degree murder.

Although the act of killing may be the same in first-degree murder and second-degree murder, the mental state of the defendant at the time of the crime is different. Second-degree murder requires that the defendant acted impulsively, and without premeditation, but with an intent and understanding of his actions. This is distinguished from voluntary manslaughter, which is reserved for crimes committed in a "heat of passion" where the defendant may not have fully understood what he or she was doing. Additionally, while second-degree murder may result from impulsive actions of the defendant, voluntary manslaughter is typically reserved for impulsive killings that are provoked.

In addition to a killing that is intentional, but not premeditated, second-degree murder can also result from a defendant who acts to cause serious bodily harm. In such circumstances, although the defendant does not necessarily intend to kill, he or she acts to cause harm with the full knowledge that death might result.

Similarly, when a defendant does not intend to kill, but acts with a complete and utter reckless disregard for human life, or "depraved heart," this mental state is also sufficient for second-degree murder. One common example of "depraved heart murder" is where an individual shoots a gun into a crowd. He or she may not intend to kill, or to cause a particular person serious harm, but such actions demonstrate a total indifference to human life.

Manslaughter

Manslaughter is a killing under circumstances deemed less dangerous to society than those required for the charge of murder [8]. It is a separate crime from murder, not simply a different degree. Although some states do not make a distinction, manslaughter charges are usually divided between voluntary and involuntary offenses.

Malice aforethought is not an element of voluntary manslaughter, but a specific intent to kill is a requirement in most jurisdictions. Another dividing line between murder and voluntary manslaughter is the culpability of the victim. Generally, a murder victim is relatively innocent, but the victim of voluntary manslaughter has provoked the killing. In typical manslaughter cases, the defendant either defends self or family against the victim's threat with unreasonably deadly force or is provoked by the victim to a "heat of passion," to "extreme emotional disturbance," or by "sudden combat."

One type of involuntary manslaughter, misdemeanor manslaughter, involves the same issues that arise in felony murder. It is an unintentional death accompanying an unlawful act (though not the serious felonies included in felony murder). The Model Penal Code and some jurisdictions reject it altogether, and it is restricted in some other jurisdictions by requirements of proximate cause or criminal negligence.

Actus Reus

The *actus reus* of any crime constitutes the package of behaviour which forms the substance of a criminal prohibition [9]. At its simplest, although this will require some qualification, it consists of those elements left over when the mental element (*mens rea*) is subtracted from the definition as a whole. Thus the crime of murder may be defined as an unlawful killingwith malice aforethought. The mental element described here – that is, what the prosecution has to show was 'going on in the defendant's mind' at the time of acting is 'malice aforethought'. This is satisfied by proof of an intention to kill or cause serious injury. The *actus reus* is an unlawful killing. It should be noted that the *actus reus* and *mens rea* of murder, in common with other offences, can only be fully unpacked by identifying certain enduring features within offence definitions. As far as the *actus reus* is concerned, those features include, typically, a statement of the conduct, circumstance and result elements of the offence. Here, an 'unlawful killing' requires proof of some form of (homicidal) conduct such as a stabbing, wounding, etc. This is termed the act requirement. It requires proof of a death. It requires proof of certain circumstances constitutive of the crime in question, namely that the killing be unlawful. More broadly, it requires proof of an uninterrupted causal sequence linking the defendant's act with the death. To illustrate the potential impact of all these elements, consider the following cases.

Mens Rea

At an earlier stage in our history the notion of *mens rea* was broadly conceived as a synonym for 'guilty mind', a term loose enough to allow the conviction

for, say, manslaughter of anyone thought to be blameworthy and, therefore, deserving of punishment [9]. The modern approach conceives of *mens rea*, less expansively, as including only the state of mind expressly or impliedly referred to in the offence definition as accompanying or prompting the conduct in question. The more common words used to describe this state of mind include intention, recklessness, wilfulness, knowledge and malice. Negligence, on this approach, is not, strictly speaking, a form of *mens rea* because it describes no state of mind, rather an (unacceptable) standard of conduct. Nevertheless negligence will be treated here as part of the family of *mens rea* words since, like the rest of the family, it signifies fault, albeit in a different manner from the other members of the family. Crimes of negligence are counterposed to crimes of strict liability. Such crimes, as will be seen, may be committed without the need for the prosecution to prove *mens rea* in this slightly extended sense. Even for these crimes, however, a guilty mind of sorts must be established since the prosecution must disprove any excuse or justification for which the defendant adduces evidence.

Corpus Delicti

In addition to establishing that a human being was alive before a killing took place, the prosecution must always establish the *corpus delicti*, or body of the crime [10]. The *corpus delicti* consists of the fact that a human being is dead and that the death was caused by the criminal act or agency of another person. In most jurisdictions the *corpus delicti* rule requires independent evidence beyond a defendant's confession. Some argue that this requirement is simply a technicality that impedes the search for truth. They argue that modern constitutional protections of confessions render the rule unnecessary. Others contend that by requiring some independent evidence to link a defendant to the crime charged ensures that no one is convicted based on a mistake or a coerced or fabricated confession. This rule is firmly implanted in American law, although several states have modified the rule in the last few decades. To prove the *corpus delicti*, the prosecution must show by either direct or circumstantial evidence, independent of the accused's statements, that the victim died as a result of a criminal act. Usually, the victim's body is available for medical examination, and a physician can testify about the cause of death. If the deceased's body is not recovered and the victim's death cannot be determined to have resulted from a criminal act, a conviction cannot be lawfully obtained.

Causation

The prosecution must prove that the death was caused by the defendant's act [11]. In many cases this will be obvious: for example, where the defendant shoots or stabs someone, and the victim dies immediately of the wounds. Difficulties may arise where there is more than one cause of death. This might be the act or omission of a third party which occurs after the defendant's act, and before the death, or some characteristic of the victim which means that the victim dies of the injury when a fitter person would have survived.

Homicide in the German Penal Code

The German Penal Code (Strafgesetzbuch, StGB = GBH = grievous bodily harm) contains two homicide offences which are the terminological equivalents of the English offences of murder and voluntary manslaughter: § 211 (Mord; meaning'murder') and § 212 (Totschlag; meaning 'voluntary manslaughter' or 'voluntary homicide') [12]. German law also recognises two other voluntary homicide offences of lesser severity. These are § 213 (Minder schwerer Fall des Totschlags or 'less severe case of voluntary homicide') and § 216 (Tötung auf Verlangen or 'killing on request').

Homicide in Singaporean Penal Code

The Code uses the term 'culpable homicide' to describe killings involving a very high degree of fault [13]. There are two types of culpable homicide, namely, murder and culpable homicide not amounting to murder. The Code commences with a definition of culpable homicide (section 299) which is followed by a definition of murder (section 300). Under this structure, culpable homicide not amounting to murder is what is left of section 299 which does not overlap with murder.Where killings are accompanied by a degree of fault falling below that prescribed for culpable homicide, the Code accommodates them under a different offence (section 304A).

Criminal Investigation of Homicide

As automobiles run on gasoline, crime laboratories "run" on physical evidence [14]. Physical evidence encompasses any and all objects that can establish that a crime has or has not been committed or can link a crime and its victim or its perpetrator. But if physical evidence is to be used effectively to aid the investigator, its presence first must be recognized at the crime scene. If all the natural and commercial objects within

a reasonable distance of a crime were gathered so that the scientist could uncover significant clues from them, the deluge of material would quickly immobilize the laboratory facility. Physical evidence can achieve its optimum value in criminal investigations only when its collection is performed with a selectivity governed by the collector's thorough knowledge of the crime laboratory's techniques, capabilities, and limitations.

Criminal investigation deals with the offense as a real phenomenon, and in him they included actions which should clarify all issues related to the appearance of the offense, the offender, the victim and other circumstances [15]. Criminal investigation include microanalysis criminal offense because it directly reconstructed the actual structure of the offense. Criminal investigation is microanalysis, the reconstruction of the past - a possible criminal offense.

The investigation sequence and methods in a cold case homicide investigation will vary, depending upon a number of factors [16]. These factors include those forces that caused this specific case to be reexamined (i.e., specific information has come forward regarding this specific case) and individual methods of investigation based on each investigator's training and experience, as well as the perceived investigative plan based upon file review. As no two hot homicides are investigated exactly in the same manner, neither are cold case homicides. Each takes place within an overall similar framework, however. This framework includes people, places, and evidence.

After reading and studying the case file, the cold case investigator is familiar with the documented record that has been preserved. This includes what officers and investigators did; what witnesses and others said; what evidence was collected, analyzed, and preserved; and what was photographed. In this way, the investigator has informally and informationally reconstructed the crime scene. During the course of this investigation, it may be appropriate to further consult with qualified reconstruction experts to formally reconstruct the crime. Reconstruction will depend upon the nature of the crime, the types of events that occurred, and the questions that need to be answered.

Criminalistics, the branch of forensic science concerned with the recording, scientific examination, and interpretation of the minute details to be found in physical evidence, is directed toward the following ends [17]:

1. To identify a substance, object, or instrument.
2. To establish a connection between physical evidence, the victim, the suspect, and potential crime scenes.
3. To reconstruct how a crime was committed and what happened at the time it was being committed. To get at the details regarding the analysis of bloodstain patterns (distribution, location, size, and shape) or to determine the trajectory of a bullet and gun-to-target range, training and experience is a must.
4. To protect the innocent by developing evidence that may exonerate a suspect.
5. To provide expert testimony in court.

Occasionally, those minute details are visible to the naked eye; more often, scientific instruments must be used to make them so. In either circumstance, they must be evaluated and interpreted by the criminalist as to their investigative significance for the detective and their probative significance for the jury (or judge in a nonjury trial).

Murder investigations involve a double "who" to accompany the "why, what, where, when, and how" [18]. The first "who" that needs to be answered is the identity of the victim, the second being the identity of the perpetrator. In the vast majority of homicides, the tentative identity of the victim is readily known, from either relatives or friends at the scene or from personal identification on the victim's body. In these cases, these friends or relatives will usually make a positive identification to the coroner or medical examiner prior to the autopsy. Sometimes, however, the identity of the victim may not be known, because of either disfigurement, dismemberment, decomposition, or a lack of identifying documents, friends, or relatives. The importance of knowing who the victim is cannot be overstated. For example, a stabbing victim found on the side of a quiet country road with no personal identification on their person would leave nowhere to go to locate relatives, friends, coworkers, or the victim's residence, vehicle, etc. Sure, there may be other evidence, such as tire marks, footmarks, and blood, at the scene, but the bulk of the investigation will begin, perhaps even leading to an additional crime scene or two, once the victim has been identified.

Determining the killer-victim position at the critical moment of acquiring lethal injury or injury can have decisive importance in the qualification of the offense [19]. This task is part of important criminal and court medical activities in the murder investigation. This is particularly apparent in circumstances where a murder was committed without a witness or when an institute of necessary defense was established. Based on the number of casualty injured, their location and severity, apart from the position in question, a conclusion can be drawn about the affective status and structure of the killer's personality at the time of the murder as well as motive. The number of injuries also points to the motive (hatred, anger, bitterness and the like) of the perpetrator in relation to the victim. Also the number and types of injuries can give an answer in the field of criminal psychology regarding the perpetrator's perception of the act.

Part of the body in which the blows, stabs, hikes, and the like were directed, may be crucial, in addition to other facts, to determine the purpose of the murder. It is known which places on the human body are vital, the most vulnerable. The position and attitude of perpetrators and victims play a major role in this criterion. So, for example, a sudden attack from the back speaks in favor of the existence of murderous intent. Much of the practitioners of various professional profiles think that wounds from the back (behind) leads to surprise, ambush, trickiness and the like.

Psychiatry and Law

Some offenders experience mental health-related issues which interrupt their normal processing of thought and emotion [20]. It is the thought–emotion interaction that is believed to influence the way we behave. The way that thoughts and emotions impact on our behaviour is of interest topsychologists, but also to forensic psychologists in their understanding of the relationship between mental disorder and criminal behaviour.

In any type of psychiatric assessment, it is implicit that a key variable is the capacity of the person to act, or to be able to refrain from acting, in certain ways [21]. To exercise choice about one's behavior reflects a capacity to weigh alternative choices. Trying to reconstruct the mind of the murderer means that whoever is doing the reconstructing is almost always looking backward in time. (One exception would be if a researcher were attempting to assess a high-risk group and make predictions as to who might be subject to homicidal violence sometime in the future, or make predictions for some type of preventive assessment.) When legal questions are raised about an individual's mental state during the commission of a homicide, in the absence of guidelines, psychiatrists may take the liberty of expanding on their own ideas regarding the person's mental state. However, this historical state may or may not correlate with the person's existing or nonexisting incapacities.

A psychiatrist, analogous to other medical specialists, addresses the question of what limitations exist in the capacities of a given person and why they exist. In a broad sense, in every appraisal of an act of homicide, a moral question always lurks: whether, and to what degree, a person should and can be assessed as blameworthy. Of course, there are also clinical questions: Has a medical condition impinged on the capacity of a person? Has some adverse type of social situation been present? What has contributed to irrational cognitive processes? Have cumulative traumatic episodes been operative in the person's life in the prehomicidal period?

Legal insanity is an intensely debated element of criminal law [22]. Not just the insanity defense as such has been challenged, but also its components and related issues have given rise to numerous controversies and arguments. Lawyers, psychologists, psychiatrists, ethicists, and, increasingly, neuro scientists are participating in these debates. The multidisciplinary nature of the discussion is unsurprising because insanity lies at the intersection of psychiatry, law, neurolaw, and ethics.

The moral notion that mental disorders may excuse people for their harmful actions is reflected in different ways in legal systems. For instance, insanity may be an affirmative defense that must be raised by the defendant, the burden of proof may be on the defendant, there may be a standard that defines the criteria for insanity, and there may be degrees of criminal responsibility—but none of these need be the case in a particular jurisdiction. Furthermore, legal systems use different formal criteria for insanity, if that defense is available. Nevertheless, there are three widely used components of an insanity standard. The first is the presence of a mental disorder or defect (which is an element of all standards we considered). The second concerns the defendant's knowledge or appreciation of the wrongfulness of the criminal act.

The third regards his capacity for behavioral control. So, in general, insanity is not just about the presence of a mental disorder at the time of the crime, but also about the specific influence of the disorder as defined by the standard's criteria.

The expanded opportunities for forensic psychiatrists to be heard in judicial proceedings has resulted not just from the judicial and legislative recognition of substantive and procedural rights of individuals with mental health problems [23]. While that evolution is the essential context within which psychiatry may play a role, the necessary prerequisite for forensic psychiatrists to indeed participate is the recognition that expert witnesses should be heard in the adversary legal process. Adjudication requires the presentation of evidence to support claims and defenses, be the issues criminal or civil or administrative, and attorneys are utilitarian: they seek persuasive and admissible evidence wherever it may be found. Beyond the traditional direct and circumstantial evidence, testimonial and documentary, expert testimony has become a critical element of proof in many cases.

Conclusion

Homicide is a criminal act which one man does to another man and that criminal act has a direct consequence of death. Murder is a criminal offense against life and body and all countries of the world consider it like one of the most serious crimes no matter of shape. Each country in the world has its own legal system within which national criminal law exists. Every national criminal law contains an incrimination of homicide and prescribes punishment for this serious criminal act.The penalty depends on the expert's finding.

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