

Book Reviews

Lies the Government Told You: Myth, Power, and Deception in American History, by Judge Andrew P. Napolitano, hardcover, 349pp, \$24.99, ISBN 978-1-59555-266-2, Nashville, Tenn., Thomas Nelson, 2010.

Judge Andrew P. Napolitano's latest book is organized into 17 "lies," or chapters, that detail the erosion of our rights by many government actions from the beginning of our nation to the present.

Napolitano draws on his background and knowledge of court cases throughout American history to discuss the different areas of government overreach, making this book a catalogue of important rulings that have impacted our freedoms. His purpose is to "expose the use of myth to seize power and the power of deception to delude the public," as government has gradually exerted more control over the people.

Each chapter is headlined by a quotation that is subsequently proven to be a lie, as the judge piles up evidence showing the falsity of the claim. Beginning with "All Men Are Created Equal" and a discussion of slavery, Napolitano continues with a chapter detailing government infringement upon the rights he sees as belonging to us through Natural Law. He details government interference in areas such as private property rights, contracts, and employment hours.

Judicial activism is the topic of chapter three, where Napolitano sees the judicial role as one that should preserve the Constitution and protect individual freedoms. He concedes that at times "the [Supreme] Court should have acted in a more activist way," for example, to protect the rights of African-Americans, Japanese-Americans, and property owners. Other topics include free speech, gun rights, the "War on Drugs," and torture.

In "Every Vote Counts," Napolitano examines voting, elections, and the 15th and 17th Amendments. This section helped me

understand the 17th, ratified in 1913 and stating that United States Senators would be elected by the people, rather than by state legislatures. Senators were originally chosen by each state's legislature, and Senators were meant to represent the states in a balance of power between the states and Washington, D.C., in the Federalist plan of government. "This Amendment is a mortal blow to the concept of federalism, as it prevents state legislatures from having any influence in the federal government," says Napolitano. He considers the 17th Amendment unconstitutional because "it strikes at the core values of the Constitution."

The chapter on the Federal Reserve describes some of the history of currency in the United States. The Continental, fiat money issued by the Continental Congress during the Revolutionary War, became worthless because it was not backed by gold or silver. Napolitano points out how the dollar, which is no longer backed by gold or silver, has also decreased in value. It has lost 93 percent of its value since 1913, when the Federal Reserve was created. Napolitano notes that the story of federal banks began with the Bank of the United States in 1791. The Second Bank of the United States was approved by President James Madison, using the Necessary and Proper clause of the Constitution as justification.

President Andrew Jackson, who closed this bank in the 1830s, was "the last president in American history to pay off the federal government's debt." Napolitano discusses how the Panic of 1907 led to a desire for banks to be federally regulated, and the Federal Reserve Act of 1913 "essentially called for Congress to hand over its *constitutionally* granted power to issue and regulate money to a group of private bankers." The Federal Reserve is not controlled by the government, it holds closed meetings, and it is not subject to audit. Napolitano expresses concern that there is movement toward giving more

power to the Federal Reserve in an effort to keep the economy stable.

"It's Only a Temporary Government Program" concentrates on the income tax, rent control, and Social Security. The latter program is called a "Ponzi scheme" and a "pyramid scheme." Noting that Social Security is out of money, the judge says, "There is no easy or fair way out of Social Security, because ending it today means stealing the money of those who paid yesterday."

The Federal Emergency Management Agency (FEMA) and the Food and Drug Administration (FDA) are discussed in "I'm from the Government and I'm Here to Help," detailing FEMA's poor handling of the Hurricane Katrina disaster. Napolitano would like to see disasters managed at the local or state level. As for the FDA, he remarks how drugs are often recalled after initially being approved, meaning we cannot rely on government to protect us from harmful side effects of drugs.

I found the chapter, "Your Boys Are Not Going to Be Sent into Any Foreign Wars" to be fascinating. It describes how the government has involved our country in many wars. Napolitano states, "It is commonplace in America for our leaders to lie in order to enter or initiate armed conflicts." It is quite a different take on history!

Lies the Government Told You is eye-opening. The support of smaller federal government and a bigger role for the states, along with a great concern for the rights of individuals, is apparent throughout the book. He makes the court cases understandable to the ordinary citizen, and sheds light on events in American history.

As a home-schooling mother, I consider this book to be good supplemental reading for high school history, or as a reference for questions about law and government.

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The Constitution in Exile, by Judge Andrew P. Napolitano, hardcover, 290 pages, \$25.99, ISBN 1-5955-5030-5, Nashville, Tennessee, Nelson Current, 2006.

In the Introduction, Judge Andrew Napolitano discusses natural rights, Natural Law, and Positivism. He holds that natural rights are not derived from government, but rather, from God.

These basic freedoms (freedom of press, speech, religion, association, travel, etc.) cannot be withheld unless one is convicted of violating Natural Law by “procedural due process.” Natural Law respects natural rights, which can only be withdrawn following a jury conviction, regardless of whether or not one shares the majority or minority viewpoint.

Positivism, on the other hand, is the opposite of Natural Law, and holds that laws are “grounded in the pursuit of goodness.” Thus, the majority gets to define “goodness,” and the minority is subject to losing natural rights.

According to the Judge, a Positivist believes government’s goal is to provide the greatest benefit to the greatest number of people. Throughout, the book, he argues that the federal government was firmly rooted in Natural Law by the U. S. Constitution, but the passage of time has allowed Positivists to ignore this precious document and replace it with Positivist (collectivist) theory.

Napolitano reviews the early history of this country and the fierce battles between the Federalists and the anti-Federalists. At the center of this struggle were Thomas Jefferson (an ardent anti-Federalist) and the man who ascended to Chief Justice of the U.S. Supreme Court the day before Jefferson took the Presidential oath. That man was John Marshall, a passionate Federalist, and also Jefferson’s first cousin. Adherence to the U.S. Constitution must not be an inherited trait!

Although Chief Justice Marshall chiseled away at the Constitution’s boundaries of the Federal Government, by 1992 this government even engaged in the business of regulating our toilets!

The Energy Policy and Conservation Act of 1992 establishes a maximum toilet flush volume of 1.6 gallons. Studies have demonstrated that such legislation actually

wastes water by requiring multiple flushes, causing clogged toilets, and contributing to other problems. Now we know why toilets don’t flush! My home was built in 1980, prior to the advent of government-regulated toilets. Sadly, one of the original reservoirs had a crack in it, and I was restricted to replacing it with the 1.6 gallon flusher. It doesn’t work well, and frequently requires more than one flush, thus subverting the very purpose of its existence—water conservation.

A far greater concern than a poorly flushing toilet, however, is the reality that Congress has criminalized my freedom to choose the toilet capacity that best suits my needs. I find nothing in the U.S. Constitution that grants Congress this authority. Is this not criminal on the part of Congress?

The book’s chapter “Dishonest Abe” recounts Lincoln’s ruthless assault on the U.S. Constitution. Clement Laird Vallandigham was elected to U.S. Congress in 1858 from my home town of Dayton, Ohio. He happened to be an outspoken critic of the War Against the South, as well as the imposition of an income tax. He was arrested in May, 1863 for violating Lincoln’s law, and was tried and convicted by a military tribunal. His conviction was not upheld by any federal court, but rather, by Lincoln himself.

Napolitano recounts the Louisiana legislature in 1869 granting a slaughterhouse monopoly to a group of 17 individuals in New Orleans, disenfranchising all the other butchers. How many Constitutional provisions did this legislation fracture? Not surprisingly, this matter found its way to the Supreme Court, where, very surprisingly, it was upheld! Certainly Positivism had taken hold, but by the 1930s the executive and legislative branches generated even greater assaults on the Constitution.

By invoking the Commerce Clause, the Roosevelt Administration did as it pleased. The Agricultural Adjustment Administration, the National Labor Relations Board, and the Social Security Act, represent just a few of this era’s constitutional violations. Most alarming, though, was Roosevelt’s brazen attempt to mold his own Supreme Court by simply expanding its number!

This book would not be complete without a detailed account of the post 9/11

unconstitutional measures. According to the Judge, “The PATRIOT Act even makes it a crime for that person to go into court and tell a federal judge what the government did to him or her.”

In the case of six young Arab Americans (the Lackawanna Six), government lawyers threatened during plea negotiations to declare these citizens “enemy combatants” if they should dare to refuse to plead guilty, refuse to cooperate with their own prosecution, and insist on their due process rights. This is unprecedented in U.S. history—for a defendant to be told that his insistence on due process would lead to punishment without a trial.

If this book were published today, how would the Judge view the current Oval Office occupant and current Congress with respect to the U.S. Constitution? Would it be any less harsh? More harsh?

Between 1937 and 1995, not a single federal law was declared unconstitutional by the U.S. Supreme Court. The Commerce Clause offered wide berth for the Positivists to legislate for the “good” of the majority. The title of this book (first coined by U.S. Court of Appeals Judge Douglas Ginsburg—*The Constitution in Exile*), evokes images of the Supreme Law of the Land languishing in desolation and obscurity. The title suggests at least the possibility of the Constitution’s return from exile. Failure to rescue the U.S. Constitution from exilic incatenation will usher in the chaos and lawlessness of Positivism.

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The Checklist Manifesto—How To Get Things Right, by Atul Gawande, M.D., hardback, 224 pp, \$24.50, ISBN-13: 978-0805091748, Metropolitan Books, 2009.

Behold the future of medicine: checklists.

According to Atul Gawande, M.D., the key to preventing mistakes and failures in our complex world is the simple checklist.

Early in the book Dr. Gawande establishes his credibility as a physician. Not only is he on the faculty of a prestigious medical school, he is also on the front lines of patient care, dealing with the toughest cases imaginable.

He recounts the development of checklists in aviation. In 1935, the Boeing Corporation rolled out the precursor of the B-17 Flying Fortress. On its first demonstration flight for the Army, it climbed to 300 feet, stalled, then crashed in a fiery explosion. An investigation revealed that the pilot had forgotten to release a locking mechanism for the elevator and rudder controls.

A group of test pilots got together and considered what to do. What they decided not to do was almost as interesting as what they actually did. They did not require... longer training.... Instead they came up with an ingeniously simple approach: they created the pilots' checklist.

He goes on to say that most professions have become "too much airplane for one person to fly." He equates the vital signs with a sort of checklist. Missing even one vital sign can be dangerous. Three may be normal, but the fourth reveals a "fever, or low blood pressure, or a galloping heart rate, and skipping it cost a person her life."

In this day of high-tech medical care it is good to be reminded of the importance of simple bedside assessment. Dr. Gawande gives an example of how the use of a central line checklist reduced the central line infection rate in Michigan ICUs by 66 percent. The checklist required the use of large sterile drapes and chlorhexidine. Studies showed a savings of \$175 million in costs, and an estimated 1,500 deaths were prevented.

Dr. Gawande recounts the infamous 1977 disaster on the Canary Islands when two Boeing 747s collided in the fog. The copilot was aware that they had not been cleared for takeoff, but thought he did not have the authority or the duty to question the captain. This event may be the impetus for ancillary personnel to question a doctor's orders. While some questioning may be in order, we now face a constant onslaught of phone calls, callbacks, and sticky notes on charts.

Recently, I ordered insulin to be given intramuscularly for more rapid absorption. However, the nurse was not "comfortable," as she had never given insulin I.M. before. After about 30 minutes of phone conversations with nurses and the pharmacist, I finally said: give it subcutaneously. The

book does not address whether medical care could literally grind to a halt, or physician morale be worn down.

Dr. Gawande's field trips are the most interesting sequences in the book. He learns from a structural engineer how mistakes are prevented in building construction. In the past, a single master builder was in charge, but in modern construction 16 trades must work together. At a construction site he notes that a "submittal schedule" hangs in the conference room. It turns out to be a type of checklist that ensures that project managers are communicating and solving problems at every step in the building process. Yet in medicine, we "continue to exist in a system created in the master builder era—a system in which a lone master physician with a prescription pad, an operating room, and a few people to follow his plan...executes the entirety of care for a patient." The new generation of builders "does not believe in the wisdom of the single individual, of even a experienced engineer." Rather, they believe in the "wisdom of the group, the wisdom of making sure that multiple pairs of eyes were on a problem."

Decisions made by committees have been joked about in the past, but healthcare gurus such as Dr. Gawande would put an end to that brand of humor. This chapter is a rejection of the thesis of Ayn Rand's *The Fountainhead*. The brilliant architect Howard Roark is reduced to an anachronism, probably a criminal, in Dr. Gawande's estimation.

He provides an intriguing account of how Walmart responded to Hurricane Katrina. Walmart store managers acted on their own authority to rapidly distribute food, water, baby formula, sleeping bags, and other items to residents—while FEMA still had not figured out how to requisition supplies. However, Walmart employees were not following a checklist, so the chapter does not advance his argument.

The strangest account of the benefits of the checklist is in the last pages of the book. Dr. Gawande is performing a laparoscopic removal of an adrenal tumor when he nicks the vena cava. Massive hemorrhage ensues. He then makes a "huge slashing incision" to open the chest and belly, and begins open cardiac massage. Meanwhile the resident holds pressure at the bleeding site. What saves

the day, according to Dr. Gawande, is the surgical checklist—which included the need to think about ordering blood. The nurse, not Dr. Gawande, had ordered four units.

To argue that a simple checklist, under the control of the nurse, saved the day seems implausible. To advance his case for the surgical checklist, Dr. Gawande is willing to portray himself as a bumbling surgeon who has not envisioned what could go awry, or planned for the possibility of internal bleeding (even though massive internal bleeding during laparoscopic surgery has resulted in a \$37 million lawsuit in Wisconsin). He elevates the institution and its employees, while diminishing himself and his profession.

The most significant weakness of the book is the failure to address the consequences of expanding the use of checklists. Emergency physicians in many hospitals are now using template charting systems that are essentially a checklist. The physician must strike words that do not apply and struggle to find the words that do. Many of the words and phrases are not relevant, but must be addressed. The interview with the patient is disrupted, and the physician is exasperated. Individual expression is squelched.

Dr. Gawande does recognize some of the potential problems with checklists. If they are too long or complex, they become impractical. He mentions that Cessna Aircraft Corporation has a checklist for engine failure, which states that after several quick checks—turn on the backup fuel pump, and switch to a different tank—the step that is most important is: FLY THE AIRPLANE. Some pilots have lost control of the airplane while concentrating on the checklist.

How about this for a checklist for doctors: After doing a complete history and physical: TREAT THE PATIENT. Starting in medical school we used the *Washington Manual* as a resource, and it served as our checklist. For complex cases or rare diseases, we found that simplistic textbooks were often useless. I recall the professor saying, "You can do what you need to do if you can back it up from the medical literature." With more checklists and protocols, will we still have that freedom?

Adhering to checklists may be expensive. D-dimer testing was incorporated

into guidelines with the intention of reducing the number of imaging studies. The result has been a three-fold increase in the number of CT angiograms. Seasoned physicians are often able to rule out a diagnosis without extensive testing. Institutional checklists can pressure physicians to order tests that they might otherwise deem unnecessary.

Analyzing how things can go wrong is entertaining reading. I recommend *The Checklist Manifesto*, not only for the interesting content, but because health policymakers will surely be dissecting every paragraph.

Dr. Gawande has gained considerable notoriety for his indictment of fee-for-service medicine in McAllen, Texas (recently published in *The New Yorker*). We can expect more repercussions from this book.

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Green Hell: How Environmentalists Plan to Control Your Life and What You Can Do to Stop Them, by Steve Milloy, hardback, 279 pp, \$27.95, ISBN 978-1-59698-585-8, Washington, D.C., Regnery Publishing, 2009.

"[Cars pose] a mortal threat to the security of every nation."

—Al Gore

"You need to become a carbon monk. Green is the new red—both financially and politically."

"[S]cientists are actually working on solving the 'problem' [of cow burps and farts]."

—Steve Milloy

In order to stop global warming and protect the wilderness, America is going "green." According to green dogma, the sun, the wind, and the oceans are our new sources of power. These are unlimited, are free for us all, and will allow us to end our "addiction" to oil. They will lead us to a bright and prosperous tomorrow, and will create millions of "green-collar jobs."

But none of this is true, according to Steve Milloy, who is also the author of *Junk Science Judo*. In *Green Hell*, he tells us that green is a political movement that seeks to put a happy face on an otherwise

oppressive and regressive lifestyle for all. This Orwellian greening of society means unnecessary costly regulation and huge tax burdens, with increased governmental control of your life. And eventually it will subject America to global governance.

He says the greens' real ultimate goals are zero population growth, limiting the development of physical infrastructure, and the redistribution of wealth from the eco-sinners to the eco-saints. The center of their agenda is their opposition to economic growth, even though economic growth and prosperity have proven to be the most effective and most humane way to protect the environment.

Green smiley-face terminology includes "smart growth," which is the ultimate in Soviet-style central planning; "optimum population," which is government-enforced population control; "renewable energy," which is a campaign against the use of *all* energy; "organic food," a rip-off for both consumers and the environment; "carbon footprint," a clever gimmick for instilling guilt about one's energy use; and "sustainability," which means being against all economic activity and development. As Milloy notes, this combination of misinformation and doublespeak would make George Orwell proud.

"Carbon footprint" brings "sustainability" to a personal level. To the greens you are a "carbon footprint"—a burden on the planet that must be eliminated. One's mere existence is an ecological problem, and his every action is a violation. Pardon can be had in the form of cash or a check made out to the greens in exchange for "carbon offsets."

Carbon dioxide, the greens' primary villain, is the purported cause of "global warming." It is a colorless and odorless gas that occurs naturally in the atmosphere at trace levels. Plants need it to grow.

But human-caused emissions are vanishingly small when compared to natural CO₂ emissions, and no scientific data exists that indicates that controlling human emissions will change the global climate in any detectable way. And, reducing carbon emissions the green way means replacing our least expensive forms of energy—coal, oil, natural gas, and nuclear—with much more expensive sources such as biofuels, wind, and solar power, each of which causes more CO₂ emissions than do our conventional fuels.

Nuclear power is the one source of completely CO₂-free power generation that is not subject to resource depletion or dependence on foreign suppliers. It is also the cheapest and safest source of power. But the greens have made it so expensive and litigious that no new nuclear facility has been built in the U.S. in thirty years.

Milloy identifies the greens as a surprisingly vast and multi-layered network of more than 35 private organizations. The 10 largest had revenues of more than \$1.36 billion and net assets in excess of \$7.1 billion in 2007. They include, among others: the Nature Conservancy (the world's richest green group), the Natural Resources Defense Council, the Environmental Defense Fund, the Audubon Society, the Sierra Club, the National Wildlife Federation, Friends of the Earth, the Earth Liberation Front (described as a terrorist group by the FBI), the World Wildlife Fund, Greenpeace, the Rainforest Action Network, the Union of Concerned Scientists, Physicians for Social Responsibility, the League of Conservation Voters, the American Psychological Association, the Rockefeller Foundation, the Pew Charitable Trusts, and Al Gore's Alliance for Climate Protection.

Milloy warns that when the greens are wrong about science, they tend to be wrong in a spectacular way that causes real harm. For example, their war against chlorine, which originated with Rachel Carson's 1962 book, *Silent Spring*, led to the sickening of one million people and the deaths of 10,000 in a 1991 outbreak of cholera, after Peruvian officials stopped chlorinating drinking water. But by far the greatest green tragedy of all was the EPA's ban of the insecticide DDT in 1972, following a crusade by the Audubon Society and the Environmental Defense Fund. It resulted in the preventable deaths of tens of millions of pregnant women and of children less than five years of age in Africa. The tragedy continues today, with more than one million deaths per year.

The greens have it backward. Economic growth is not a disease. The Stanford professor's formula, "people times wealth equals planetary disaster" should instead read, "people times wealth equals improved environmental protection."

The U.S., through improved technology, has been reducing its “carbon footprint” for decades without the help of the greens. Milloy says that even though they have us out-funded and out-organized, the greens’ policies are not popular. He believes that once we understand their true agenda, Americans will stop serving as their “useful idiots” and will insist on policies that will enhance our energy production, increase our wealth, and protect our environment.

Green Hell arms us with the facts so we can better expose and defeat this green socialism.

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Intellectuals and Society, by Thomas Sowell, 398 pp, \$29.95, ISBN 978-0-465-01948-9, New York, N.Y., Basic Books, 2009.

Thomas Sowell has done it again. He has written another excellent book that exposes the misguided conclusions of orthodox intellectuals.

He defines intellectuals as individuals who specialize in the production of ideas. Gifted individuals in other fields, such as physics and medicine, are not included in his definition.

Sowell concludes that the physical sciences eventually discovered their Rosetta stone, which enabled them to mitigate “the tragedy of the human condition”—that mankind must solve innumerable problems in order to survive and to prosper. Scientists of the physical sciences, including physicians, refer to their Rosetta stone as the scientific method.

Physicians are aware that they stagnated for millennia because they were wedded to mysticism. For example, Sowell points out that an Austrian doctor, Ignaz Semmelweis, collected statistics showing that mortality rates varied between women who had been examined by doctors who had washed their hands, and those who hadn’t. His colleagues initially brushed aside his findings because they were perceived to be simplistic (p 83). Fortunately for society, physicians eventually abandoned emotive non-solutions and

adopted the scientific method to guide them to the truth. Semmelweis’s methodology was vindicated. Physicians never looked back. Medical breakthroughs have since been breathtaking.

Regrettably, the social sciences, such as economics, political philosophy, law, and history, have yet to accept the guiding principle that will ensure that reason will prevail over mysticism. In short, social scientists, by and large, continue to reject empirical evidence because it is viewed as being simplistic or, more importantly, because the evidence contravenes their “anointed vision.”

“No amount of hard evidence,” writes Sowell, “has been able to burst through the sealed bubble of this elite vision.”

He draws a distinction between two classes of gifted individuals. There are those wise enough to know that they don’t know and who therefore seek to empower everyone to find solutions; they buttress their findings by evaluating and re-evaluating empirical evidence. Then there are those so conceited as to believe that their superior intellect enables them to assimilate the knowledge required to impose their “anointed vision” on society.

John Dewey is quoted as an example of that anointed mindset: “Having the knowledge we may set hopefully at work upon a course of social invention and engineering” (p 18). When Dewey and his ilk are proven wrong, they stubbornly refuse to be swayed by empirical evidence. This is exemplified by Robert Reich’s response after his facts on a particular topic were conclusively proven to be erroneous: “I claim no higher truth than my own perceptions” (p 45). Empirically trained physicians would reject such irresponsible statements from their colleagues and rightfully shun them. But such is not the case with Reich. He continues to be lionized by his intellectual peers!

Sowell is not alone in concluding that the social sciences lack rational guiding principles. Richard A. Epstein is quoted as saying, “Although science is capable of making linear advancement, the same is not true of law, where the same insights and mistakes tend to recur again and again” (p 157). Epstein limits his comment to law, but Sowell applies his insight to all of the social

sciences. The predictable result is the relative stagnation of the social sciences compared to the physical sciences. The reason for the failure is elementary. Social scientists insist on hard-wiring their “anointed vision” onto society rather than dispassionately studying empirical evidence.

Sowell provides myriad examples illustrating how intellectuals repeatedly fail to accept empirical evidence and, as a consequence, fail to endorse lasting, workable solutions to problems in law, economics, history, etc.

For example, he admonishes “experts” for failing to understand “how prices allocate resources over time, as well as allocating resources among alternative users at a given time.” The list of economic errors, accepted as dogma by intellectuals at *The New York Times* and numerous other left-leaning publications, is disturbing.

Sowell repeatedly and trenchantly points out that leftist scholars remain indifferent to the irrefutable evidence discrediting their policy prescriptions. They discard reason and substitute it with a technique that Sowell brands as “verbal virtuosity.”

In other words, intellectuals exercise verbal gymnastics to discredit empirical evidence in order to give them an undeserved aura of sagaciousness.

It may be wishful thinking, but let us hope that the intellectuals controlling the social sciences will heed Sowell’s advice and reject mysticism. If that auspicious day arrives, as it did with the hard sciences, society’s ability to mitigate the tragedy of the human condition will be greatly enhanced.

Sowell correctly diagnoses the disease that has been metastasizing into every aspect of American life. His diagnosis can be aptly summarized by his felicitous phrase “the vision of the anointed,” the title of one of his previous books.

Thomas Sowell arrives at the correct diagnosis for our current malaise. It is up to us to implement the cure by demanding the restoration of this country’s founding principles, which empowered all individuals to use their unique knowledge for finding solutions, rather than relying on the limited knowledge of the “anointed.”

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