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Insight into Prophetic *Ijtihād*:An Analysis of Muhammad's Legal Thinking

Mif Rohim Noyo Sarkun
Center of Studies on Hasyim Asy'ari Thoughts, Universitas Hasyim Asy'ari
Jalan Irian Jaya No. 55, Tebuireng, 61471, Jawa Timur, Indonesia
Tel: +62 (321) 861 719; Email: mifsyarkun@gmail.com

Abstract

After the passing away of the Prophet Muhammad, there were different perspectives regarding *ijtihād* (independent reasoning) and how it relates to the role of Muhammad as a *Rasul* (*Messenger*) and a *Nabi* (*Prophet*) among the Muslims. The Muslims were divided into two contending groups: one believing that Muhammad never carried out the *ijtihad*, the fact that he was *ma*'*sum*, while the other asserting that the he might actually have carried it out. This last was in reference to a number of verses in the *Qur'ān* that are considered *mutashābih*. This article attempts at analysing the legal thinking of the Prophet of Islam by providing an insight into Muhammad's *ijtihād* with direct reference to *Manhaj al-Fikr al-Tawasuthīyyah* and *Manhaj al-Fikr al-Ishlahīyyah*. Our knowledge of the methods propounded in these two *kitab*s may help us in reconciling the two differing Muslim perspectives regarding the role of the Prophet Muhammad in *ijtihad,* prior to the post-prophetic consolidation of Islamic law.

Keywords: *Ijtihād*, Prophet Muhammad, Islamic law, Qur'ān and Sunnāh.

Introduction

To the Muslims, the *Qur'ān* is the Divine Holy Scripture sent down to Mohammad as the greatest miracle in human history. The miraculous nature of the *Qur'ān* – its language, law and wisdom – would have been difficult for us humans to comprehend without God's messenger. The language used in the *Qur'ān* is very profound and meaningful. Despite its poetic structure, the *Qur'ān* also contains legally definitive verses, the *muhkam*, and verses that are *mutashābih*, those that appear obscure and requiring additional interpretation. When social problems emerged, those that were not covered by the *muhkam*, God gave an order to Muhammad to draw meanings, law and wisdom from the *Qur'ān* by using his own powers of understanding, as well as *ijtihād* (independent reasoning) (al-Ghazali, 1998).

Many Muslim scholars hold the thought that Muhammad had never made a mistake in his speech or attitude. This assumption is definitely contrary to the reality of his life. In fact, there were mistakes made in prophetic *ijtihād*, either the *ijtihad* used to discover the *Qur'ān*, or the *ijtihad used* to define the law. However, the mistakes made would be directly corrected by God. Muhammad carried out the *ijtihād* using deductive reasoning to interpret the *Qur'ān*, and inductive methods to resolve social problems (Baqillani, 1991).

In the *Qur'ān*, Muhammad is called *Rasul* (apostle)*, Nabī* (prophet), *bashār* (man) or *ins*ān (human), and also '*ibād* (servant/slave) (Sarakhsi, 1997). When Muhammad was assigned to be *Rasulullah* (God's messenger*),* his psychic faculties were more dominant than his senses. The process of revelation between the *khaliq* (creator) and the *makhluq* (created) occurred spiritually. It also happened with the other divine messengers before Muhammad where revelation occurred in a dream state. Typical of such revelation to Muhammad was *Sūrat al-Kausar* (Q.S. 108). The revelation was on the obligation to pray five times a day allegedly received during the Night Journey, the *Isra'* and *Mi'rāj*. The experiential truth of the

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revelation categorized as *haq al-yaqīn* (*truth of certainty*) and *'aīn al-yaqīn* (*eye of certainty*) provided Muhammad with his infallibility (*isma'*) (Bukhari, 1980).

Muhammad conveyed God's *risālah* (message) in the form of the *Qur'ān*. To the Muslims, the *Qur'ān* is *kalam Ilahi* (Divine Speech). It is free of *ma'siah* (transgression) and mistakes. Regardless, Muhammad was given an order to reveal the truth as God's messenger without departing from his normal human behaviour. To this last effect, the *Qur'ān* states:

"Say, "I am only a man like you, to whom has been revealed that your God is one God…" (Qur'ān, 18: 110; Qur'ān, 41: 6)

"Nor does he speak from [his own] inclination. It is not but a revelation revealed." (Qur'ān, 53: 3-4)

"…Say, [O Muhammad], "It is not for me to change it on my own accord. I only follow what is revealed to me..." (Qur'ān, 10: 15)

There were two distinct perspectives regarding the above verses. Firstly, they indicate that all the knowledge revealed by Muhammad was revelation. In other words, Muhammad did not carry out the *ijtihād* as he was *ma'sum*. Secondly, the term يحو refers to the *Qur'ān* received by the Prophet. This shows that Muhammad had carried out the *ijtihād*. According to Sarakhsi, there are two kinds of revelation: the *zahīr* (expressed) and *batin* (hidden) (Sarakhsi, 1997). *Zahīr* is defined by the revelatory process of Gabriel delivering revelation to Muhammad. This is clearly stated in the *Qur'ān*:

"Say, [O Muhammad], "The Holy Spirit has brought it down from your Lord..." (Qur'ān, 16: 102)

"[That] indeed, the Qur'ān is a word [conveyed by] a noble messenger." (Qur'ān, 81: 19)

Batin on the other hand, refers to the edict from God to derive a law, despite the *Qur'ān,* using reasoning. There is no dispute concerning this revelation. The *batin* revelations are later termed as the *ḥadīth,* referring to the revelation from God and the utterance from the Apostle (Shalabi, 1986). The Qur'an says:

"…so you may judge between the people by that which God has shown you..."(Qur'ān, 4: 105)

Muhammad was a normal human being. Humankind is termed as *insān*. '*Insan*' is mentioned 65 times in the *Qur'ān*. *Insān* may be understood positively, as in the appointment to become a *Caliph*, or negatively, as the portrayal of the unstable negative behaviour of human beings (Bukhari, 1997). In the first context, it shows the psychic qualities or spiritual potential of human beings, which differentiate them from animals. For instance, human beings can think, analyse and discover the *Qur'ān* (as the theoretical science) and the universe (as the technological product). God has completed the creation of the universe and provided the *Qur'ān* as guidance to human-beings, who are God's representatives to govern the universe (Hazm, 1998). **When it comes to describing** the negative elements, *insān* is mentioned as being abrupt and stubborn, usually categorized as *bashār* (another term for human being). The *Qur'ān* mentions *bashār* as many as 27 times using the associated terms of *mithlukum* (like you) and *mithluna* (similar to us) [both phrases referring to Muhammad as normal human beings similar to all of us]. And when the term, '*ibād* (دابع) (plural for '*abd* (دبع)), is used, it means God's servants – indicating the God-serving posture of *insān*.

Muslims believe that the Prophet's mission to deliver the *Qur'ān* as the fundamental guidance for human life has been completed. Muhammad taught *manhaj al-ijtihād* (method of reasoning) to define the law from the *Qur'ān* and *manhaj al-'ilm* (method of acquiring knowledge). Thus a human in the role of the *Caliph* (vicegerent or representative) could either serve God in the context of *bashāriyyah* (humanhood)

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or that of '*ibādiyyah* (servanthood). In governing the universe, a caliph is regarded as *bashāriyyah* when he behaves as a human being. Consequently, his thoughts will lead to negative consequences. On the contrary, if his '*abd* attitude ('*ibādiyyah*) is more dominant than *bashāriyyah*, his thoughts will have a positive effect on the universe ('*ibād al-rahmān*). In Muhammad's role as God's divine messenger and a prophet, his *bashāriyyah* existed only as an instrument to deliver the spiritual message. His spirituality triumphed over his emotions. Muhammad's entire life was spiritually controlled; this is called *mi'rāj* in-between the creature and the *Khaliq*.

The Prophetic *Ijtihād*

Muslims differ amongst themselves when it comes to *prophetic ijtihād* by Muhammad concerning the shari'ah, particularly those legal matters not governed by the theory of *Naskh* (lit. abrogation). These differences occurred among the scholars of *uṣūl al-fiqh*. To some, *ijtihād* was carried out by the Prophet Muhammad during his prophetic career. The scholars who agreed with this opinion are the *jumhur al-ūlama*' (the majority of 'ulama' – the ūlama' of *uṣūl al-fiqh*), such as Ibnu Hajib and all scholars of the Hanafi and Hanbali schools of thought (Ghazali, 1997). Many Shafi'i scholars like Fakhr al-Razi, Baidawi and al-Asnawi believed that Imam al-Shafi'i agreed with the mu'tazili opinion – one associated with his followers like al-Qadi Abd al-Jabbar and Abu al-Hasan al-Basri – that Muhammad did perform the *ijtihād*. On the other hand, the second opinion believes that Muhammad never carried out the *ijtihād*. An extreme example of this last position was attributed to Ibn Hazm. According to Ibn Hazm (1998), "Whoever says that *ijtihād* had been carried out by the Prophet, they are grossly misled according to the *Qur'ān*".

So to recapitulate, two perspectives represent the views concerning Muhammad's prophetic *ijtihād*: one stating that the Prophet did not carry out the *ijtihād* the fact that everything he uttered was revelation as he was considered *ma'sum*, and the other saying that Muhammad did carry out the *ijtihād*, which in turn led to different perspectives on the Prophet's *ijtihād* involving matters relating to all aspects of social manners or the *shari'*a*h*.

As a result, Al-Qarafi suggested *ijmā'* to reconcile the differing positions regarding the prophetic *ijtihād* to resolve matters relating to *hukm* (law), conflicts among companions, war strategy and social problems. To that effect, we have Malik, al-Shafi'i, Ahmad ibn Hanbal, and majority of the *ahl al-ḥadīth* suggesting that *ijtihād* was indeed carried out by the Prophet Muhammad in response to emerging new problems and questions without having to wait for revelation (al-'Asqalani, 1959). As for the Hanafis, *ijtihād* was carried out by the Prophet only after revelation. A third opinion, that of Imam al-Ghazali's, considers waiting for the revelation as '*ibādah* (religious obligation). Al-Shatibi (2002) noted that the *ijtihād* conducted by Muhammad was related to *fiqh* and *ahkam* (legal) determination, but not concerned with the laws of *'aqidah* (faith/belief).

Most of the early scholars of Islam when asserting that Muhammad had carried out the *ijtihād* did so by considering Sūrat al-Hashr verse 2, Sūrat al-Nis*ā*' verses 83 and 105, Sūrat Al 'Imr*ā*n verse 159, Sūrat al-Anf*ā*l verses 67-68 and Sūrat al-Taubat verse 43. In Sūrat al-Hashr for instance, the common term, *ulul al-absār*, implies that Muhammad possessed the spiritual intellect to carry out the *ijtihād* (al-Razi, 1998). Also, the phrase "أراك الله" in Sūrat al-Nisā' verse 105, it is interpreted to mean the inspiration for and the fundamental thought of *qiyās*.

Muhammad's *Ijtihād*

Muhammad's *ijtihād* (legal reasoning) is defined as his attempt to express and define the laws of God. But his *ijtihād* is often associated with the concept of *naskh* (lit. *abrogation*) (Umari, 1985). This is because his personal opinion

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might be subjected to divine intervention – either upheld or overridden depending on the legal circumstances. In other words, despite his role as either a *mujtahid* (one who legally reasoned) or a *mufassir* (one who interpreted) in conveying the laws or delivering divine messages, God directly corrected him whenever there was a mistake in his reasoning or interpretation. Muhammad would then pass on the resulting knowledge to his Companions.

Technically, Muhammad is observed to have used two kinds of *ijtihād* methodologies: one, the *qiyās* (*analogical reasoning*) and the other, the *istihsān* (*juristic discretion*). Let us briefly take a look at examples of the two.

Ijtihād with Qiyās

The *qiyās* deductively place the *Qur'ān* as the source of *istinbath al-ahkam* (derivation of legal provisions). It can be defined as a discovery process in order to achieve the conclusions that rely on analogy (Bukhari, 1997). There are *ḥadīth*s that directly relate to *qiyās*. Examples are:

Qiyās of Hājj with Debt

Prophet Muhammad used the *ijtihād* with *qiyās* when a woman named *al-Jariyyah al-Khatamīyyah* came to him and asked about her mother who had never done the *hājj* during her lifetime. The woman said, "Oh Messenger of God, my mother has *intended* to perform the *hājj*, but she has since passed away. If I do the *hājj* on her behalf, will it benefit her? The Prophet told her: 'Yes, perform the *hājj* for her. What if your mother had a debt? Wouldn't you pay back her debt? Fulfill your right to Allah. Verily, one's obligation to Allah is primarily to fulfill' (Bukhari, 1997).

A father refusing to acknowledge his son due to dissimilar skin color.

The story of a man coming to the Messenger of Allah complaining about his son's black skin is mentioned in the *ḥadīth*:

The Messenger of God says to a man from Bani Fazarah who has denied his black-skinned son: 'Do you have camels?' The man answered, 'yes'. He asked: 'What are their colors?' The man answered, 'red'. The Prophet asked: 'Do camels have various colors?' The man said, 'yes'. The Messenger asked, 'From where?' He answered: 'Descended from their ancestors.' The Messenger then said, 'So it has happened to your descendant.' (Naysaburi, 1988).

Ijtihād with Istihsān

Ijtihād with *istihsān* appears due to the irrelevance of *qiyās* and the inability to resolve social matters (Naysaburi, 1988). Muhammad received guidance from God or carried out the *ijtihād* to determine the better of two choices. For example, in the case of captives of war, the Prophet defined the position through inductive methodology, shifting between *ilhāq* (reference) and *zahīr* (clear), which was "to release the war captives", and *ilhāq khafi* (obscure), which was to "exterminate all hostages". In the Battle of Badr, the Prophet chose to release the hostages of war hoping that they will benefit them by teaching the Muslims, in addition to the ransom supporting the battle. Muhammad's choice was actually prompted by God in the Qur'ān, 8: 67.

Early Post-Prophetic Development of *Ijtihād*

After the passing away of Muhammad, the rapid spread of Islam changed the Muslim way of thought. Followers of Islam multiplied and the Islamic ideology spread throughout the world. Along the way they often encountered challenges and new problems. Companions of the Prophet like Ibn Mas'ud, 'Ali b. Abi Talib and 'Umar b. Khattab continued with the prophetic tradition of logical reasoning. They were not afraid to carry out the *ijtihād*, a tradition they observed from the Prophet. In deciding the law therefore, they referred to both the *Qur'ān* and the *ḥadīth*. If there was

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no definitive provision of the law in the both *Qur'ān* and the *ḥadīth*, they turned to *ijtihād* (Dawlabi, 1960). Typical examples of post-prophetic *ijtihād* as noted from the *Sahabah* (Companions of the Prophet) are as follow:

The Allocation of War-Seized Treasures (The Spoils of War)

Caliph 'Umar b. Khattab did not allow the allocation and distribution of the war-seized lands in Egypt, Syria and Iraq. This decision was deemed controversial which consequently led a conflict among the Prophet's Companions. Subsequently, a comprehensive discussion was held to resolve the conflict. 'Umar's decision was supported by 'Ali b. Abi Talib, 'Uthman b. 'Affan, Talhah ibn Zubayr and Mu'adh b. Jabal. Meanwhile, the other Companions suggested that the war-seized treasures should be allocated according to the principles of distribution of the *ghanimah hārbīyyah* (spoils of war) the way Muhammad had appropriated, which was clearly stipulated in the Qur'an as follows:

"And know that anything you obtain of war booty – then indeed, for Allah is one fifth of it and for the Messenger and for [his] near relatives and the orphans, the needy, and the [stranded] traveller…" (Qur'ān, 8: 41)

Umar b. Khattab contested that with another verse:

"And what Allah restored to His Messenger from the people of the towns - it is for Allah and for the Messenger and for [his] near relatives and orphans and the [stranded] traveler - so that it will not be a perpetual distribution among the rich from among you…" (Qur'ān, 59: 7)

Umar b. Khattab gave his response to the matter by looking at the existence of two verses which extrinsically contained contradiction. However, when the verses were deeply analyzed, there was no contradiction existing. 'Umar b. Khattab employed verse of *fay'* and finally, all companions accepted the respective thought (Sajastani, 1998).

The Distribution of Inheritance

With regard to two grandparents:

A man came to Caliph Abu Bakar to report a dispute about inheritance between a group of relatives consisting of grandparents (mother's mother and father's mother). The matter under dispute was whether the grandfather could represent the position of the father if the father had already passed away, and prevent the other relatives from inheriting. As this matter was not clearly stated in the *Qur'ān* and the *ḥadīth*, the Prophet's Companions resolved it through *ijtihād*. Caliph Abu Bakr suggested that the inheritor should be the *ūmm li ūmm* (mother's mother) but not *ūmm li abb* (father's mother), and the siblings could not inherit. Meanwhile, Caliph 'Umar b. Khattab stated the sibling's rights to inherit has been explained in the *Qur'ān*. A friend from al-Ansar, 'Abd al-Rahman b. Sahal suggested that the both *ūmm li ab* and *ūmm li ūmm* be given the same portion, because it looked fairer that way. This is reflected in the following *ḥadīth* (Hanafi, 2000):

"A man came to the Prophet and said, 'Verily the son of my son has passed away, what is my inheritance?' The Prophet says, 'For you is one sixth'."

In relation to a woman who passed away leaving inheritors i.e., a husband, mother, mother's relative and siblings:

According to the *fara'id* (laws of inheritance), the husband would get half, the mother, one sixth, mother's relatives get one third, and the siblings get nothing.

"…if their number is big so they do get one third..." (Qur'ān, 4: 12).

When the siblings reported this matter to Caliph 'Umar b. Khattab because the allocation seemed unfair, a different perspective appeared among

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the Companions. Caliph ‘Umar b. Khattab together with ‘Uthman b. ‘Affan, Zayd b. Thabit, and Ibn Mas’ud suggested that the role of siblings is equal with that of the mother’s relatives. Meanwhile, ‘Ali b. Abi Thalib, Ibn ‘Abbas and Abu Musa al-Ash‘ari asserted that the mother’s relatives should obtain the remaining one third as mentioned in Sūrat al-Nisā’ (Umari, 1985). Caliph ‘Umar b. Khattab and his group made a decision based on the following *al-ḥadīth*:

“Give your remaining inheritance to the deserving ones who are the closest among the descendants”

Going strictly by the text in the *Qur’ān*, male siblings should get nothing. On the other hand, it is noted in the *ḥadīth* that male siblings do get something from the inheritance.

The above discussion demonstrates the methodology used by the Prophet’s Companions to resolve any matter that is not mentioned in the *Qur’ān* and the *ḥadīth*. *Ijtihād* was carried out in various ways according to the Prophet’s methodology, such as using the theory of *qiyās*, the theory of *istihsān* and the theory of *maṣlahah al-mursalah*. Nevertheless, *ijtihād* was not always theoretically and systematically carried out.

The consensus and disagreements are sometimes held when there are different perspectives among the Companions in upholding the law – when there are no set laws like the one governing inheritance rights in the matter of grandparents that are not mentioned in the *Qur’ān* and the ḥadīth. The Companions agreed on certain points of the law. The agreement reached by the Companions is termed the *ijmā‘*, a source of law after the *Qur’ān* and the *ḥadīth* (Umari, 1985).

Analysis of Prophet Muhammad’s Thought

The *manhaj al-fikr* (method of reasoning) of Muhammad may be explained through two theories: the deductive theory, based on *qiyas*, and the inductive theory, which places *istihsān* as the fundamental methodology. While implementing the method of *istihsān*, the Prophet Muhammad resolved every problem relating to violations using wisdom rather than meting out punishments simply on the grounds that the laws are absolutely right according to *shari*ā’ and justice. During the Battles of Badr and Uhud, Muhammad was instructed by God to make decisions based on *hikmah al-tasr*ī*yyah*, that is, choosing the best rule among the existing rules, rather than using a normative and conventional methodology.

It is worth noting that in order to explore the use of wisdom in resolving problems of the law, Prophet Muhammad’s thought paradigm can be used as an essential means to define the law for the better. The *manhaj al-fikr* of Prophet Muhammad through *qiyās* and *istihsān* may be considered as *manhaj al-tawasutiyyah* (moderate), *manhaj al-fikri al-tasamuhiy* (tolerant), *manhaj al-fikri al-islahiy* (reformative), *manhaj al-fikri al-tatowwuriy* (dynamic), and *manhaj al-fikri al-manhajiy* (methodical).

In recapitulation, following the pathway of Muhammad’s thought, two kinds of thought may be discerned: the *qiyas*, known to have been developed by Imam al-Shafi‘i, and the *istihsān*, by Imam Abu Hanafi. Imam al-Shafi‘i established *qiyās* as the only *manhaj al-istinbat* (method of legal decision making) while denying the others. This had an impact on the development of Islamic law. On the other hand, Imam Abu Hanifah’s methods were simpler – whenever *qiyas* is felt as contradictory to the objectives of the *Shari‘ah*, Imam Abu Hanifah would abandon the *qiyās* and use the *istihsān* instead (Bardisi, 1987).

It may be observed that the conflicting methodological stances as seen above are actually a continuation of the different thought processes of the rationalists (*ahl al-ra’y*),

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inspired by Ibn Mas'ud, and the traditionists (*ahl al-ḥadīth*), based on Ibn 'Abbas's method. Abu Hanifah, as the successor of the rationalists, developed the theory of liberal *istihsān*, a theory that departed from *qiyās* and one that is based on justice and truth. Meanwhile, al-Shafi'i appeared to have constructed the theory of *uṣūl al-fiqh* that is systematic and academic. In fact, he conflicted *istihsān* through his "forbidden and abolishment" statement. The conflict then led to the rise of the fanatics and subsequent efforts to find justification for their *madhhab*s. As a result, the *al-ahnāf* ideology emerged through the inductive theory developed by Abu Hanifah, and the *mutakallimīn* ideology with its deductive theory by Shafi'i.

The laws stipulated by *istihsān* and the *qiyās* may be different in terms of thought, but the stipulation of both theories could be synergized if only al-Shafi'i left his mind of *qiyās*, and use instead the theories of *bayān, takhsis and istithnā'*. As a matter of fact, the theory used by Imam Abu Hanifah is actually the same as the theory used by Imam al-Shafi'i (Zahrah, 2000).

The legal terminologies of *istihsān*, *qiyās* and *al-maṣlahah al-mursalah* (known to be similar to *istihsan*) are known to have similarities and also differences with each other. The similarity is the *ijtihād* processes in carrying out *istinbat al-ahkam* and *istidlal al-ahkam*. The difference is merely the theories themselves. In terms of methodology, *qiyās* applies to the mind as a bridge, to derive the law by comparing it with the other laws.

Conclusion

The *manhaj al ijtihād* has been known as one of Prophet Muhammad's legacies in spite of the *Qur'ān* and the *Sunnāh.* In conducting the *ijtihād* on the *Qur'ān,* the Prophet used *qiyās* methodology through *istinbat al-ahkam* (legal determination from the *Qur'ān*) and *istihsān* methodology through *istidlal al-ahkam* (defining a theorem from the *Qur'ān*). These two *ijtihād* methodologies of the Prophet Muhammad have been used by all Muslim scholars to determine the law.

After the death of Prophet Muhammad, two different schools of thought arose, splitting Muslims into two groups. The first group comprised of Ibnu Abbas, Talhah, Aisyah, Abdullah Ibn Umar and other companions. This group perceived Islam through a textual approach. The second group regarded Islam through a contextual approach. This group comprised of Ibnu Mas'ud, 'Umar bin al-Khattab, Ali bin Abi Talib and others companions.

Muhammad conducted *ijtihād* in order to resolve social problems with no definitive law stated in the *Qur'ān.* The *manhaj al-fikr* of Muhammad's *ijtihād* through *qiyās* and *istihsān* are *manhaj al-Tawasutiyyah* (moderate), *manhaj al-fikri al-Tasamuhīyy* (tolerance), *manhaj al-fikri al-Ishlahīyy* (reformative), *manhaj al-fikri al-Tatowwurīyy* (dynamic), and *manhaj al-fikri al-Manhajīyy* (methodologic). It is noticeable that these thought paradigms of the Prophet, could be adopted as the essential rule to define the law to deal with the global spread of Islam.

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