Civil Divorce Procedure & Biblical Putting Away: Are they Synonymous?

A Review of Harry Osborn's Article

By Robert Waters

A friend recently sent me Harry Osborn's lengthy article, noted above, and asked my opinion of it. I had read it shortly after it was written back in 2003, but thought it to be rather convoluted (and I still do). Nevertheless, Harry made some points that are interesting. The purpose of my review is to help remove any confusion one might have Harry's article, and to use his observations (he made some good ones) as a means of helping others to see the simple truth regarding the question, "Who may marry?"

First, I applaud Harry for his efforts to correct a wrong that is being done namely, teaching that if it is looks like your marriage is going to end you must get to the courthouse first to assure that you are doing the divorcing and also to make sure that the divorce decree states that it is for fornication. Harry is right to speak against such teaching because it is found nowhere in the scriptures. Any doctrine that promotes a race to the courthouse instead of appealing to patience, tolerance, and an earnest endeavour to work things out, is subject to question as to whether it is from *"heaven or of men"*. Unfortunately, Harry's material leaves the reader confused for various reasons.

First, he talks about the civil procedure as being separate from "putting away." This has to be confusing to those who insist that "*apoluo*" (translated "put away") is, or includes, the civil procedure. Certainly one can "put away" without there being any legal procedure or paperwork, but this is where Harry failed to affix continuity. The reader is left wondering what Harry thinks constitutes a divorce that is acceptable to God and how, in the absence of any writ of divorcement or legal declaration, one could prove he/she was no longer married to a certain person. I will have more to say about this later.

Second, Harry denies that we may use God's procedure, or God's definition of divorce, found in the Old Testament (Deut. 24:1, 2; Jer. 3:8). He says it was abolished at the cross. This has to be confusing to virtually every sincere Bible student who studies the issue at hand because **there is no other procedure or definition of divorce other than what was revealed in the Old Testament.**

Third, Harry states, **"Jesus Mandated the CAUSE, Not the Procedure."** As noted above, Harry's teaching leaves us with no established procedure

for or definition of divorce. All that is important, according to Harry, is that the "putting away" (his idea of divorce) is for fornication--there does not even need to be any proof that the fornication took place, or that there is even a divorce, whether in the eves of God or man. But I'm very confident this is not biblical because the people to whom Jesus spoke were familiar with Deuteronomy 24, which laid out a very specific procedure for a man to divorce a wife. It says, "Let him write a certificate of divorcement, put it into her hand and send her out of the house." We might note here that it is bad hermeneutics to fail to apply what Jesus said to the people to whom He addressed, while insisting that what He said applies only to people under a different law in future generations. Harry fully understands the procedure for divorce and made a comment about the need to use good hermeneutics, but then insists that the procedure is not applicable. Friends, such a conclusion cannot be reached without rejecting such rules as: 1) Consider who the author is addressing; 2) Do not draw a conclusion that results in having passages in conflict; and 3) Reject any conclusion that has consequences that cannot be accepted. That Jesus was clearly addressing Jewish men becomes apparent when simply reading the verses preceding Matthew 19:9 (the context). Harry breaks the second rule with his conclusions and teaching because he has Jesus contradicting Moses, who clearly laid out a procedure, and he has Jesus breaking his promise not to change the Law before the cross (Matt. 5:17-19). Thus, his conclusion has passages in conflict and has consequences that are not acceptable.

The Truth

If you want the truth, which can only be found by using good hermeneutics, please consider this short synopsis that explains what the Bible teaches regarding the question, "Who may marry?"

First, we know that in the beginning there was no divorce. God's ideal was for one man and one woman to be together for life. But because of injustices against women He established divorce so the Jewish woman, who had no right to divorce (and does not even to this day) could legally/scripturally marry another. If she was merely *APOLUO*ed, which is equivalent to the Old Testament word "*shalach*," translated "send" she was not divorced and therefore would be on her own, unable to be with another man, and with no means of support.

There definitely was a procedure for divorce among God's people and it is important to note that *"send her out of the house"* was only PART of that procedure. A writing of divorcement was required (commanded, Mark 10:3) and it had to be given to the woman. Now, think with me for a moment about what might happen if the man failed to obey the authorized divorce procedure. What would result if the man merely "put her away" or sent her out of the house? Well, isn't it obvious that she would NOT be divorced—not free and would commit adultery if she married another? And is this not a serous enough problem that we would expect Jesus to seek

to correct it? Considering the fact that Jesus was a teacher of the Law with intentions of correcting the false notions of the Jews who had been *"teaching for doctrine the commandments of men,"* is it reasonable to conclude that Jesus contradicted the Law that protected women and made a law that made things MORE difficult? Friends, if we apply good hermeneutics here, as I have earnestly endeavoured to do, we see that Harry's "Jesus Mandated the CAUSE. Not the Procedure" theory is not plausible. Jesus did not mandate a "cause" at all. He was not even talking about a "cause" or "reason" for divorce. Jesus condemned the evil practice of men putting away but not divorcing, which he called "adultery against *her*" (Mk 10:11). He did, however, give an exception to this "*putting*" away" being "adultery against her," and this may well be the most misused text in the entire Bible. The clause reads: "except it be for *fornication*". Was it the divorce that needed to be for fornication? No. It was putting away or sending away, which is all that is needed to end an illegal or unscriptural marriage. The fornication here would be the case of an "unlawful marriage" (New American with Apocrypha) such as that of Herod and Herodias (Matt.14:4) and the man who had his father's wife (1 Cor. 5:1). The idea that Jesus was mandating a "cause" rather than dealing with the situation of disregard for God's procedure is not plausible. There was no "cause" that would justify Jewish men who broke their covenant with their wives. Whether they had a legitimate cause or not, or no cause at all, was not questioned—the certificate was the woman's PROOF that she was free and may "be another man's wife."

Second, divorce does what God intended it to do. But when He said, "Let not man put asunder," he was taking about man ending a marriage man's way. This was what the Jewish men were doing and it was a sinful action. Harry wrote, "In the time of Jesus, the Jewish hearers were governed by the provisions of Deuteronomy 24:1-4 and the rabbinical traditions concerning the procedure for sundering a marriage." Well, of course they were, yet brother Osborn, and many teachers of our day, either insist that Jesus changed the Law (denied by most) or that what he said was not applicable to them but would become applicable to all after the cross. I engaged in a debate with J.T. Smith who took the latter position—one that he soon learned was faulty and which left him with no foundation or defence for his doctrine. Here is a link: http://www.totalhealth.bz/smith-waters-divorcecomplete.pdf. I might add here that the Jewish men had a motive for putting away but not divorcing. You see, by the time of Jesus the custom regarding dowry had changed. The woman brought something from her father to the marriage and if the husband divorced her, he would have to give the dowry back so she would have something to live on for a time. But if he just put her out of the house (which some insist is divorce), there was no divorce and therefore no requirement to give her the dowry.

The truth is what we should all want. It is not a matter of "emphasizing procedure" nor is it about "cause". It is a matter of understanding that the sin Jesus was condemning was an evil Jewish practice that is a big problem

for their women to this day. (See: http://www.totalhealth.bz/divorce-andremarriage-jewish-women-in-chains.htm). Jesus was certainly not condemning a practice authorized under the Jewish Law. It would make no sense for Him to make such a change at a time when His enemies were seeking a legitimate reason to kill Him. Besides, isn't it true that church doctrine and answers regarding marriage were later established by the apostles who wrote by inspiration? Paul wrote to Timothy about the evil of "forbidding to marry" (1 Tim. 4:1-3). Then, to the church at Corinth he answers several questions related to marriage. The gist of the chapter is clear from beginning to end. Paul decreed that every man and every woman must be allowed to have a spouse and told why it is so—"to avoid fornication" (1 Cor. 7:1, 2). Paul makes it clear that the "unmarried" (which includes the divorced) are to be allowed to marry (verses 7-8) with his direct command to "let them marry". He then contrasted those who are "bound" (married) with those who are "loosed" (divorced) and states "if thou marry, thou hast not sinned". There is only one passage in this chapter that has typically been misused to teach the opposite of what Paul taught in chapter 7, and that is verse 10-11. This text is a case where the woman "departs" or "leaves". Pulpit Commentary, on the phrase "if she **depart**" says, "The reference throughout the verse is to separation due to incompatibility of temper, etc.; not to legal divorce." She is exhorted not to marry another but to be "reconciled to her husband." Thus, she is married and the idea that "let her remain unmarried" must be an exhortation for her to remain in the condition she is in—"as she is" (Waymouth and **Montgomery** versions). For further study of this passage see http://www.totalhealth.bz/apostle-paul-celibacy.htm

Civil Procedure

I totally agree with brother Osborn regarding the **error** of brethren who insist that before one can be freed by divorce the paperwork must *say "for fornication"* and the judge must rule in your favor. As Harry stated, in Old Testament times the men wrote the certificate. But should we conclude this means a certificate is not necessary to constitute biblical divorce? Harry admitted that a certificate was part of the procedure for the Jewish men to follow in divorcing. But what he evidently failed to grasp is that God's law regarding marriage and divorce is **universal**. Thus, the procedure for divorce yet exists and is relevant to all.

God evidently provided the procedure for two reasons: 1) To end the marriage; 2) So there would be proof the marriage was severed, or "sundered," as Harry likes to say. Jesus said, "*What God has joined together let not man put asunder*." Many preachers, including Harry, are disobeying this text when they teach anything other than what God has taught regarding what constitutes a divorce. Most governments require a

procedure that includes papers to be delivered to the one being divorced, and we are required to obey the government when such does not contradict God's law (Rom. 13). The fact that the government usually does the writing, rather than the man, does not negate God's procedure that a *"writing of divorcement"* is to be provided as proof the marriage is ended.

Harry rejects the Old Testament procedure even though it was the focal point of the issue Jesus dealt with, as recorded in the very text that he uses to support his "cause" theory. But without the Old Testament procedure that God laid out for divorce, **Harry is left with no definition of divorce**. He knows this is important because he challenged his readers to provide one single part of the procedure. He even noted the text but said it was abrogated and is not applicable. Well, since Harry likes challenges, I challenge him to provide the New Testament definition of divorce. Of course, it is not to be found, but he thinks it is the "putting away" for the cause of fornication. But friends, that is not a definition. Harry defined *apoluo* (put away) well and made it clear that the word is not synonymous with the civil, or even biblical procedure. In this declaration he hits the traditional MDR doctrine, that forbids the divorced to marry, with a heavy blow, but he is left supporting a doctrine that seriously lacks continuity.

Since Harry, in his article, emphasized the use of good hermeneutics, we have to wonder how he managed to get off the track in teaching that Jesus emphasized "cause" and that procedure had nothing to do with His teaching. When we realize how important procedure was to divorce ("sundering") in Old Testament times—that even God used the procedure Himself in His own divorce (Jer. 3:8), we have to wonder how one could arrive at the conclusion that there is no biblical procedure for us to follow today for divorcing. I can only presume that Harry has concluded that before anything can be applicable to us, it must be found in the New Testament. This idea rejects the fact that **both marriage and divorce were** established long before the New Testament came into effect and were evidently intended to be universal. But Harry evidently thinks Jesus changed the Law of God that gave the woman, who was rejected by her husband, the right to marry another. But before we accept that theory we must consider a few things: 1) Jesus lived under the Law and was expected to follow it and teach it while he lived—not change it; 2) Jesus promised not to make any changes to the Law before the cross (Matt. 5:17-19); and 3) If he changed the Law what is the structure of the "new" doctrine that, according to Harry, is unique to the New Testament?

Harry says "putting away" is New Testament divorce, but that idea has some problems that need to be addressed. First, let's consider how the word "*apoluo*" is used in the New Testament to determine its meaning. On this matter, Harry nails it, so I'll just quote what he said. See below:

"When we examine the use of *apoluo* in the entire New Testament, it is clear that the word does not *imply* a specified civil procedure, much

less **require** such. It is repeatedly used of sending people away (Luke 8:38; 9:12; Acts 19:41). It is most commonly used of releasing prisoners, even **without legal action** (Acts 4:21-23). It is used of those released from seizure by a mob (Acts 17:9), of being forgiven (Luke 6:37) and of being healed (Luke 13:12). Paul was "sent" (*apoluo*) by the church at Antioch to preach the gospel and later sent by the Jerusalem elders to refute the claims of the Judiasers (Acts 13:3; 15:22-33). Did that make Paul a "put away" party? If *apoluo* requires taking civil actions according to specified procedure determined by civil law and receiving the judgment of the civil authorities, where do we find such in these texts?"

"It is obvious by examining the use of the word *apoluo* that it does not convey the concepts some have equated with it. If the advocates of this doctrine claim the word in Matthew 19 and related texts requires a special meaning of commencing a specified civil procedure and receiving the legal judgment, let it be proved from the context. Otherwise, we must conclude that the word neither implies nor demands that which some claim it **requires**. If one wants to impose that judgment on himself as a matter of conscience, he may do so. If he binds it as a test of fellowship, he has bound human law not bound by God and he has added to God's word (Mark 7:1-13; Col. 2:8; 2 John 9; Rev. 22:18-19)."

Second, it is clear that there is a difference in a mere separation and a divorce as defined by God. Separations are common. When a woman "departs" from her husband and the house to go shopping can it be said a divorce or "sundering" has taken place? Surely such action does not constitute a divorce. If merely leaving or departing is divorce then the level of confusion and chaos would be off the scale. If a woman departs from the house (leaves) after a fight and being told to "get out," is she divorced? Again, this sort of thing happens commonly. Things are said in the heat of the moment, and couples part ways, but it does not constitute divorce. Even if the man learned that his wife had committed fornication and tells her IT IS OVER, this does not "sunder" the marriage---such is NOT divorce as God defines it. Jesus teaches forgiveness—not retribution or revenge.

The apostle Paul noted that "God is not the author of confusion" (1 Cor. 14:33). Indeed, God has clearly set forth the procedure or definition of divorce, as discussed above. In His own personal example (evidently "for our learning", Rom. 15:4; Jer. 3:8), God unambiguously confirmed the procedure that was laid out by Moses for the express purpose of freeing the woman to "*be another man's wife*." This teaching destroys the idea that a mere separation, sending away, putting away, departing, or leaving results in the severance of the marriage.

For further clarification of the issues and to drive home points, I have copied excerpts from Harry's article, which are followed by my comments. Here is a link to his article you may use for verification: http://www.biblebanner.com/articles/mdr/put_HO.htm > When a marriage is sundered without the lawful cause of fornication already having occurred, neither spouse is free to marry another while the other spouse is living. >

Is this what Jesus said? May I remind you that the text Harry used in his effort to support the above comment was not even applicable to the men because they could have as many wives as they wanted or could afford. In addition, Jesus clarified that the sin the men were committing was not adultery in a new marriage but was *"adultery against her"* (Mark 10:11) -- evidently because sending her away and taking another woman to replace her was a treacherous act. Also note that Harry's situation was the case where a marriage is *"sundered."* Isn't *"sundered"* the same as *"divorce"*? Would Harry be willing to deny in debate that divorce, as defined by God, does what He intended it to do? Harry needs to tell why someone who is divorced is not free to marry? Are they "still married in God's eyes" even if they have followed God's procedure for divorce?

> Examine the text of Matthew 19 remembering that Jesus was answering a specific question asked by the Pharisees. The question was, "Is it lawful for a man to put away his wife for every **cause**?" (Matt. 19:3). Notice that the question related to the **cause** for lawful putting away, not the *procedure* for such. >

First, the Pharisees were not concerned about "cause." They were seeking to entrap Jesus in His words, and cause Him to take sides on a controversial issue that would cause Him trouble. Jesus outsmarted them, as He always did, and did not take sides. He dealt with what they **asked**—the matter of putting away. Jesus condemned them for their thinking that it was okay to divorce. They then referred to the procedure set forth by Moses. They asked, "*Why did Moses then command to give a writing of divorcement, and to put her away*?" (See also Mark 10:3.) Jesus then took the opportunity to turn the tables on them by condemning their evil practice, which threw them for a loop. They understood the condemnation, which shut them up completely. That they did not even charge Jesus with contradicting the Law in what He said is telling. They evidently did not make the charge that He contradicted the Law because He was innocent of it. If guilty they certainly would not have passed up such an opportunity.

> The Pharisees did not ask about the civil procedure associated with those sundering a marriage, nor did the disciples react to such. >

The disciples asked a question—one that has been twisted to make it appear that the divorced commit adultery if they marry. Immediately after Jesus gave the exception for men "putting away" that would result in "*adultery against her*," the disciples observed, "*If the case of the man be so with his wife, it is not good to marry.*" They were not questioning whether marriage was good. God said, "*It is not good that man should be alone.*" They were saying it would not be good to marry if the marriage was not legal and because of this, the couple would be guilty of fornication.

>Putting emphasis upon the *procedure* when the text plainly emphasizes the **cause** is a violation of hermeneutic principles. >

First, the text does not emphasize the *cause* for divorce. The *cause* relates to the *exception* for putting away, but not divorcing according to the command of God. Second, it is poor hermeneutics to do what Harry has done. He concluded, and now teaches, that Jesus' teaching was not applicable to the Jews who heard Him, who knew they had sinned against their women, and knew they were applicable to the Law that did indeed require a procedure for divorce.

> One has no basis to sunder or depart from a marriage **for the cause** of fornication if no fornication is present at the time that marriage is sundered or left. >

Indeed, neither Jesus nor Paul said they approved of divorce. But the fact is, some people get divorced against their will. Many, including Harry, assert that they are not divorced, or at least have no right to marry, unless the spouse committed adultery. But again, such a declaration is tantamount to denying that divorce does what God intended it to do. Harry even implies that *"sunder"* (divorce) is the same as "depart" or "left". This is tantamount to changing God's definition of divorce.

> If any civil procedure was specified as synonymous with the biblical term "put away," it would be the procedure of Deuteronomy 24:1-4 alluded to in Matthew 5:31-32, Matthew 19:3-9, and Mark 10:2-12. >

Divorce, which requires a procedure, both from the Book and to be legal in society, IS NOT synonymous with "put away." Some in Jesus' day evidently used this term ambiguously to apply to divorce, as do some gospel preachers today, especially in their writings. But again, the Greek word *apoluo* is equivalent to the Hebrew word *shalach*, which is only PART of the divorce process or procedure.

In speaking of the biblical procedure that Harry rejects, saying it is not applicable, he wrote:

> That procedure consisted of a man writing out a bill of divorcement, giving it to his wife, and sending her away. That procedure involved no courts or civil institutions, no judges, no filings, no legal record, no judgment or any of the civil procedures mandated by brethren now equating the civil procedure of divorce with the biblical term "put away." All of those elements are required by the procedure some brethren seek to bind, yet the Scripture speaks of none of them. > Harry is guilty of throwing the baby out with the bathwater. There is definitely a procedure involved in divorce, as clearly stated in the text to which Harry alludes. The fact that some misunderstand Jesus to be dealing with the "cause" (as does Harry), missing altogether what Jesus was really dealing with, and even insisting that civil procedure is the issue, does not change the fact that God laid out a procedure for divorce. If the man of Jesus' day "put away" (apoluo) but did not follow the procedure of getting the bill of divorce to the one to be divorced, the woman, then he became guilty of that which Jesus said was "*adultery against her*" (Mk 10:11). The binding that is truly necessary is the **procedure** that Harry has admitted was applicable to the Jews to whom Jesus spoke. The thing that Harry and others seek to bind is that the "cause" must be for adultery before it is a divorce, but this is not supported by scripture.

> So why do these brethren seek to bind a procedure of which Jesus did not speak, rather than the one of which He did speak? Surely they know that they cannot bind the procedure of Deuteronomy 24. Why? Because Jesus abrogated that provision of Mosaic Law. Any procedure included in Deuteronomy 24 was abolished when the law was annulled. >

First, Jesus DID IN FACT speak of a procedure when He asked, "What did Moses command you?" Second, if what Harry said above is true then there is **no** definition of divorce in the New Testament. We then are left with the **assumption** that leaving, departing, sending away, etc., resulting in what thinking people KNOW to be mere *separation*, is divorce. But even our courts recognize a difference in a separation and a divorce. There is even a difference in a separation and a legal separation, but neither is considered a divorce or a legal or scriptural *sundering* of the marriage.

> Jesus granted one the right to "put away" a spouse even though that person could not take action through the procedure present at that time. In the time of Jesus, the Jewish hearers were governed by the provisions of Deuteronomy 24:1-4 and the rabbinical traditions concerning the procedure for sundering a marriage. **Deuteronomy 24:1 required the husband to take the procedural action commanded in the text.** That is what the text clearly shows. There was no provision in this law for the woman to take that action. >

Yes, Jesus spoke of the possibility of a wife "putting away" her husband, but Harry assumed this is divorce. It is not. The woman did not, at that time, under the current circumstances, have the right to divorce. Harry's point is seen as a "well without water" by those who understand the real issue Jesus was dealing with.

> It was in a society with these procedures that Jesus raised the possibility that a wife may "put away her husband" (Mark 10:12). How could that be possible if putting away demands taking the procedural action of civil divorce? >

"Putting away" is not a civil action or even the biblical action that Harry admits was required. Thus, Harry has helped to prove that "put away" is not divorce.

> The text shows that Jesus stated this possibility *to the people who surrounded Him* who were governed by the provisions of Jewish law. >

Indeed, Harry's effort here to apply good hermeneutics is notable, but he demonstrates a profound failure to use good hermeneutics when he applies the procedure only to the Jews but disregards it and makes up his own procedure, which he calls a "cause," to be applicable to all after the cross.

> The Scriptures help us understand the meaning of the biblical term "put away" which is translated from the Greek word *apoluo*. In Matthew's Gospel, the word *apoluo* is used 11 times outside of texts related to sundering of a marriage. It is used of sending people away (14:15-22; 15:23). It denotes releasing a debt obligation (18:27). It describes the action of releasing a prisoner (27:15-26). If the word *apoluo* necessarily implies the initiating of a specified civil procedure and receiving a civil judgment, where is such found in these texts? >

Again, Harry is on the right track in pointing out that *apoluo* does not mean divorce, as many contend. Unfortunately, he evidently has not been able to grasp the idea that Jesus did not incorrectly speak of divorce. Rather, He was actually condemning the evil practice of putting away but not divorcing according to the Law.

> According to Jesus in Matthew 19:6, the term "put asunder" is synonymous with "put away." This writer does not know of a passage that specifies the exact time at which that occurs. Can anyone provide the passage that so specifies? >

Brother Osborn has admitted a serious problem with his theory. His problem here is comparable to the problem denominationalists have with their teachings regarding when one is saved. Their doctrine leaves the sinner wondering when, or if, he has been saved. Harry cannot nail down the exact time when the divorce takes place. The bigger problem with his theory is that he cannot establish that a divorce has taken place at all. But it is not difficult. God made it clear what constitutes a divorce and exactly when it takes place (Deut. 24:1-2; Jer. 3:8).

Brother Osborn presented a chart with 7 blanks and challenged anyone to provide one part of the divorce procedure. He said, "We shall see when these brethren attempt to fill in the chart whether their pattern is from <u>heaven</u> or from men." Well, I'm pretty sure what is written in Deuteronomy

and Jeremiah is "from heaven" and that what Harry is teaching is "from men."

Under the heading, **"What Does the Bible Teach?"** brother Osborn wrote the following:

"Every passage dealing with this subject must be changed by those binding the civil divorce procedure as synonymous with biblical putting away. When they see the term "put away," they must force a civil procedure into the term complete with judge, plaintiff, defendant, filings and rulings, despite the fact that no such action was present when Jesus spoke the words. Let us be content to leave the passages worded as God guided them to be written without imposing a meaning on the words that could not have been true when the passages were revealed."

The above is relevant to the issue and well said, but it destroys his own doctrine along with those who he seeks to expose. The Law teaches that divorce ends a marriage and Harry correctly laid out the process, yet he rejected it. Those who reject the divinely prescribed means of ending a marriage fall into one of the two following categories: 1) Jesus changed the Law in speaking what is written in Matthew 19:9, or 2) What Jesus said about divorce was not applicable to anyone at the time but would become applicable under the new covenant. Both of these positions are hermeneutically unsound—a sandy foundation for a house that will not stand when the flood of truth makes contact.

I wish to conclude this review by quoting Harry's conclusion verbatim. What he said is needed and I could not say it any better:

> May God help us to seek unity in matters of truth, liberty in matters of opinion, and open discussion in an effort to reach that goal. Let the right hand of fellowship remain extended to those holding as matters of personal conscience views that may differ from our own. Let us always require of ourselves the action we must take to live in clear conscience without binding our opinions or procedures as tests of fellowship. If division comes over this issue, this writer will not initiate it. Dear brother or sister, do you intend to press for division over this matter? Can you honestly say it pleases God to bind the decrees of man as if they were the law of God? May we all with open Bibles and open hearts unite upon the simple teaching of our Lord without addition or subtraction. >

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