

Joseph Mazor

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Joseph Mazor

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Can liberal egalitarians protect the occupational freedom of the economically talented?

This article considers and ultimately rejects three prominent liberal egalitarian strategies for safeguarding the occupational freedom of the economically talented. First, Dworkinian concerns regarding the envy of the talented for the less talented are shown to be insufficient to rule out occupationally coercive taxation. Second, Rawlsian arguments about the priority of basic liberties in general and freedom of occupation in particular are shown to be unsuccessful, primarily because Rawls lacks the theoretical resources to protect freedom of occupation as a basic liberty. Finally, concerns about the practical difficulty and moral undesirability of gathering the information necessary to implement occupationally coercive taxation are shown to be insufficient to rule out such taxation. The aim of the article is not to lead liberal egalitarians to reject freedom of occupation. Rather, the aim is to highlight the difficulties in protecting freedom of occupation and to motivate work on alternative liberal egalitarian strategies for safeguarding this important economic liberty. At the end of the article, a hypothesis is put forward for why occupationally coercive taxation should be rejected that appeals to the prohibition on using people as means.

Keywords: freedom of occupation; envy test; basic liberties; information constraints; endowment taxation

Introduction

The right to ‘choose a profession and practice it’ is, according to Benjamin Constant (1988, p. 311), one of the freedoms that constitute the liberty of the moderns. Indeed, a commitment to freedom of occupation is endorsed not only by classical liberals like Constant but also by contemporary liberal egalitarians, including John Rawls (2001, p. 158), Ronald Dworkin (2000, p. 90), and G. A. Cohen (2008, pp. 218-220).

However, when it comes to protecting the occupational freedom of the economically talented, liberal egalitarians face a dilemma: On the one hand, forcing the economically talented to abandon low-paying occupations for high-paying ones can, at least in theory, generate significant additional tax revenue – tax revenue that can improve the condition of the disadvantaged. On the other hand, doing so seems to violate occupational freedom, an important liberty.

Faced with this dilemma, liberal egalitarians have generally chosen to protect freedom of occupation, rejecting occupationally coercive taxes, despite their egalitarian benefits. They have given a wide variety of justifications for this position – more than can possibly be explored in a single article. My goal here is to examine the viability of three of the most prominent liberal egalitarian justifications for rejecting occupationally coercive taxation:

1. The argument that a commitment to economic equality, understood in terms of envy-freeness, rules out occupationally coercive taxation (Dworkin 2000, pp. 90-91)
2. The argument that occupationally coercive taxation violates the priority of the Rawlsian basic liberties (Rawls 2001p., 158).
3. The argument that implementing occupationally coercive taxation would require information-gathering by the state that is impractical, counterproductive, or entails unacceptable violations of privacy (Cohen 2008, pp. 218-219)

I shall argue that none of these prominent strategies succeeds.

In criticizing these three strategies, I do not wish to suggest that liberal egalitarians should abandon their commitment to the occupational freedom of the economically talented or that liberal egalitarianism is fundamentally incapable of safeguarding this important liberty. Instead, my aim is to motivate liberal egalitarians to devote greater scholarly attention to alternative justifications for rejecting occupationally

coercive taxation. Such alternatives include Kristi Olson's (2010) appeal to an egalitarian notion of occupational options to which citizens have strong moral claims, Warren Quinn's (1989) and Michael Otsuka's (2008) appeal to the integrity of the individual, and Paula Casal's (2009) appeal to the importance of the fair value of occupational liberty.

At the end of this article, I shall make a preliminary case for one of these neglected alternatives: an idea put forward (but not developed) by G.A. Cohen (2008, p. 220) that certain types of occupational coercion impermissibly use the economically talented as a means. Liberal egalitarians are more likely to seriously engage with this idea and with other approaches to safeguarding the occupational freedom of the economically talented once the problems with the three traditional strategies considered in this article have been revealed.

1. Liberal egalitarianism and occupationally coercive taxation

Liberal egalitarian theory is defined in part by a commitment to egalitarianism of some type in the economic sphere. This commitment is grounded in the idea that the distribution of certain factors (e.g., natural talents) is in some sense morally arbitrary. Liberal egalitarians generally call for tax schemes whose aim is to spread the economic benefits that flow from these morally arbitrary factors more equally (Kymlicka 2001, Ch. 3).

However, certain taxes that appear well-suited to achieving this egalitarian goal are morally problematic. Consider, for example, the following tax:¹

Endowment Tax: Adrian has an extraordinary knack for agriculture that gives him the ability to be a farmer with a yearly salary of \$500,000.

However, Adrian would much prefer to be a poet, an occupation in which he could earn a more modest salary of \$50,000.

If the government were to subject Adrian to a 30% income tax (a tax on the income he actually earns), Adrian would choose to be a poet. The government would obtain \$15,000 of tax revenue.

However, the government instead subjects Adrian to a 30% *endowment tax* (a tax based on the income he could earn at his highest paying occupation). With this \$150,000-a-year tax in place, Adrian can no longer afford to be a poet, and so he becomes a farmer.

Note that endowment taxation has impressive egalitarian benefits relative to income taxation. The government obtains just \$15,000 from Adrian under income taxation compared with \$150,000 under endowment taxation. Assuming that these additional funds are redistributed to the disadvantaged, endowment taxation seems to have significant potential for fostering economic equality (at least relative to standard income taxation with similar rates).²

Yet I take it that endowment taxation is impermissibly occupationally coercive, despite these egalitarian benefits – a position shared by many liberal egalitarians.³ A key challenge for these liberal egalitarians is justifying the rejection of endowment taxation without also rejecting income taxation. This challenge has come to be known as the endowment tax puzzle (Olson 2010, pp. 240-241).

While the endowment tax puzzle is difficult to solve, it may in fact constitute only part of the challenge facing liberal egalitarians committed to safeguarding occupational freedom. After all, there may well be other taxes that are unacceptably occupationally coercive besides standard endowment taxation, and liberal egalitarians interested in safeguarding freedom of occupation will need to be able to coherently reject them all. The question, then, is how large is the set of unacceptably occupationally coercive taxes.

Some theorists endorse an account of the features of unacceptably occupationally coercive taxation that implies that few taxes if any besides endowment taxation are unacceptably occupationally coercive. Liam Murphy and Thomas Nagel (2002, p. 123), for example, claim that a tax is unacceptably occupationally coercive only when it forces a person into *a single* occupation. Mark Kelman (1979) claims that taxation is unacceptably occupationally coercive only when it forces a person to enter the labor market. If we accept these views, then perhaps there is no other type of taxation besides standard endowment taxation that is unacceptably occupationally coercive. If so, then liberal egalitarians need only solve the standard endowment tax puzzle to safeguard the occupational freedom of the economically talented.

However, Murphy & Nagel and Kelman's views are problematic for two reasons. First, there is an unresolved tension between their narrow accounts of what constitutes a violation of occupational freedom in the taxation context and what seems to constitute a violation of occupational freedom in other policy contexts. Consider, for example, a law that precludes blacks from being architects (passed in order to satisfy the preference of a white majority). In addition to being discriminatory, I take it that this law violates blacks' freedom of occupation. Yet this law does not restrict blacks to only one occupation nor does it force blacks to enter the labor market. If this law does indeed violate blacks' freedom of occupation, then proponents of Murphy & Nagel or Kelman's positions will need to explain why the conditions for unacceptable occupational coercion are so much more stringent in the taxation context compared to other policy contexts such as this one.

A second, more serious problem with these views is that they ask us to condone taxes that seem intuitively unacceptable. Consider, for example, the following tax:

Endowment Tax with Beachcombing Exemption: Adrian (and everyone else in society) has the minimally decent option of becoming a beachcomber. The government implements a 30% endowment tax *with an exemption for beachcombing*. Adrian would have chosen to be a poet under income taxation, but instead chooses to become a farmer.

Note that Endowment Tax with Beachcombing Exemption would not force anyone into only one occupation. Although Adrian would still be forced to abandon poetry, he has the option of beachcombing. Moreover, Endowment Tax with Beachcombing Exemption would preserve everyone's option to remain outside the labor market (they could comb beaches instead). Nevertheless, I take it that Endowment Tax with a Beachcombing Exemption is unacceptably occupationally coercive. If so, then neither Kelman nor Murphy & Nagel's account of what makes a tax unacceptably occupationally coercive is sufficiently broad. More generally, this case suggests that the class of unacceptably occupationally coercive taxes may well be larger than many theorists have realized.

Indeed, throughout this article, I shall introduce several taxes besides standard endowment taxation that I take to be unacceptably occupationally coercive. I will then demonstrate that the three strategies listed above are unable to rule out these taxes. If my arguments are right and if the taxes I introduce are indeed unacceptably occupationally coercive, then I will have shown that the three strategies above cannot safeguard the occupational freedom of the economically talented.

At the end of this article, I will provide a tentative account of why the taxes introduced in this piece are unacceptably occupationally coercive. However, it bears

emphasizing that my main task in this article – criticizing the three strategies listed above – only depends on the reader accepting that the taxes introduced in this article are indeed unacceptably occupationally coercive. It does not depend on the reader endorsing my tentative explanation for why this is so. Indeed, I fully acknowledge that there are plausible alternatives to both the three strategies criticized here and to my preferred explanation. One of the aims of this piece is to motivate further scholarly attention to these possibilities.

With these clarifications in mind, let me turn to my central task: Demonstrating that none of the three prominent strategies considered above enable liberal egalitarians to coherently and consistently protect the economically talented from unacceptable occupational coercion.

2. The appeal to Dworkinian economic equality

I suggested in the first section that occupationally coercive taxation presents liberal egalitarians with a fundamental dilemma between economic liberty and economic equality. However, Dworkin argues that, properly understood, there is no dilemma after all. A commitment to economic equality precludes the type of coercion (‘the slavery of the talented’ as Dworkin (2000, p. 90) calls it) perpetrated by endowment taxation.

To understand Dworkin’s argument, we first need to understand his conception of economic equality. Dworkin holds that economic equality obtains when no one *envies* anyone else’s bundle of impersonal and personal resources, including occupation.⁴ A distribution is envy-free when no one would willingly trade her bundle of resources for anyone else’s bundle.

Dworkin appeals to this egalitarian standard to reject endowment taxation.⁵

He writes:

[T]he principle that people should not be penalized for talent is simply part of the same principle we relied on in rejecting the apparently opposite idea, that people should be allowed to retain the benefits of superior talent. The envy test forbids both of these results. If Adrian is treated as owning [and thus as entitled to exclusively benefit from] whatever his talents enable him to produce, then Claude [who lacks Adrian's economic talents] envies the package of resources, including occupation, that Adrian has over his life considered as a whole. *But if Adrian is required to [pay an endowment tax], then Adrian will envy Claude's package.* (Dworkin 2000, p. 90, emphasis added).

To clearly see how Adrian could envy the personal and impersonal resources of the less economically talented Claude under an endowment tax regime, assume that Claude can *only* be a poet (i.e., Claude lacks Adrian's talent for farming) but is otherwise identical to Adrian. In this case, endowment taxation would certainly lead Adrian to envy Claude's bundle of resources. After all, Claude's bundle does not include the talent for farming and therefore allows Claude to pursue poetry without being subject to endowment taxation. Since Adrian wants to be a poet, he would happily trade his bundle of resources for Claude's. The envy test thus appears to rule out the type of occupational coercion perpetrated by endowment taxation. Although equality and freedom of occupation might initially appear to be at odds, Dworkin's example suggests that a commitment to economic equality in fact protects the talented from unacceptable occupational coercion.

One problem with Dworkin's argument is highlighted by Miriam Christofidis. Christofidis (2004) rightly points out that the simple demonstration that a tax leads the economically talented to envy the economically untalented is insufficient reason to dismiss it on grounds of Dworkinian equality. After all, a fully envy-free solution is *impossible* in any society with a plausible diversity of non-transferable talents and

occupational preferences (Varian 1975). Indeed, as Dworkin (2000, pp. 104-105) recognizes, the progressive income taxation that he ultimately endorses leaves some less economically talented individuals envying highly economically talented individuals. Christofides (2004, pp. 285-287) rightly concludes that, in order to dismiss violations of the occupational freedom of the talented on egalitarian grounds, Dworkin needs to explain why we should worry so much more about the talented envying the untalented rather than the other way around.

Christofides's argument is sound. But it does not present an insurmountable challenge to the Dworkinian view. Dworkin does not, after all, develop an account of how to choose between two distributions neither of which is envy-free. If a Dworkinian were able to justify granting moral priority to the envy of the talented,⁶ then a concern with Dworkinian economic inequality could plausibly serve as the foundation for the freedom of occupation of the talented, Christofides's critique notwithstanding.

However, I shall argue in the rest of this section that, *even if* we grant priority to the envy of the economically talented, we will still be unable to protect their occupational freedom. There are two different cases that can support this conclusion. Consider first the case of endowment taxation in a society with a radically restricted range of talents. Imagine, for example, that the rest of Adrian's society is made up entirely of middle-income fishermen who have no talent for either poetry or farming. Even with an endowment tax in place, it is not necessarily true that Adrian will envy any of the fishermen. He might prefer being a farmer while paying an endowment tax to being a fisherman earning a middling income. This society could fully satisfy the envy test, then, even with the endowment tax in place. Yet I take it that endowment taxation would

nevertheless be unacceptably occupationally coercive, even in a society with such a restricted set of talents.

More generally, in order to *unambiguously* rule out Endowment Tax by appeal to Adrian's envy, someone in Adrian's society must lack the talent that Adrian does not want to use (farming) while having the talent that Adrian wants to use (poetry). If there is no one in society with this combination of talents, then endowment taxation need not run afoul of the envy test at all. If endowment taxation is nevertheless constitutes a violation of occupational freedom, this demonstrates that an appeal to the envy of the talented is insufficient to protect the economically talented from unacceptable occupational coercion.

There is a second way of challenging the appeal to the envy of the talented - one that has purchase even in a society with a wide variety of talents. Instead of endowment taxation, consider a tax that I call the *talent-use tax*. The talent-use tax works in the following way: Whenever a person uses a particular talent as part of her work, she has to pay a per-time-unit tax proportional to the income that would be generated by the *highest market value* use of that talent for that time unit. She does not, however, have to pay a tax based on a talent that she chooses not to use. We might imagine the government having a series of meters with different rates that start running whenever someone uses a talent as part of her work.

To better understand the tax, consider following example:

Talent-Use Tax: Bianca has a rare talent for abstract mathematical reasoning. She would most prefer to use her talent for constructing mathematical puzzles for popular entertainment. This occupation would provide Bianca with a pre-tax income of \$50,000. Bianca can also use her rare mathematical gifts as a financial engineer, an occupation with a pre-tax income of \$500,000. Finally, Bianca could work as a bookkeeper, a

profession which also pays \$50,000 but which makes no use of Bianca's special talent for abstract mathematical reasoning.

If the government were to place a 30% talent-use tax on Bianca, she would no longer be able to afford to be a puzzle creator because that occupation requires the use of *the same* talents that could be more productively employed in finance.

Thus, Bianca has two options: Be a financial engineer with a high income, or a bookkeeper with a decent income. Bianca decides to become a financial engineer.

Carol is similar to Bianca except that Carol lacks Bianca's abstract mathematical reasoning and thus cannot become either a puzzle creator or a financial engineer.

The talent-use tax demonstrates the inadequacy of the appeal to envy-freeness to protect the occupational freedom of the economically talented. I take it that the talent-use tax is unacceptably occupationally coercive. Yet it does not run afoul of the envy test. After all, by foregoing the use of her unique talent for highly abstract mathematical reasoning altogether, Bianca could avoid the talent-use tax and have the exact same range of opportunities open to her as Carol does. If Bianca chooses to use her talent despite the talent-use tax to become a financial engineer, it must be that she at least weakly prefers having her native endowment, even with the tax in place, to Carol's native endowment.

Note the difference between Adrian's and Bianca's situations. Adrian wishes to use a less economically productive talent (poetry) rather than a more economically productive talent (farming) – a talent that Adrian wishes he did not have. Bianca, on the other hand, does not have a talent that she views as a curse. Rather she has a talent (a rare ability for abstract mathematical reasoning) that she wants to use in a way *that she finds most valuable* rather than in a way that society would find most valuable. Although a commitment to envy-freeness can rule out an endowment tax that forces Adrian to

abandon poetry (at least assuming a certain distribution of talents in society), it cannot rule out a talent-use tax that forces Bianca to abandon puzzle-creation.

To summarize, Dworkin argues that a commitment to economic equality, understood in terms of envy-freeness, protects the talented from unacceptable occupational coercion. However, as both the example of a society with endowment taxation and a limited diversity of talents and the example of the talent-use tax in a society with a wide range of talents demonstrate, even if priority were given to the envy of the economically talented, unacceptably occupationally coercive taxation cannot be rejected solely by appealing to the Dworkinian conception of economic equality.

3. The Rawlsian appeal to the priority of liberty

Unlike Dworkin, Rawls does not argue that unacceptably occupationally coercive taxation should be rejected on egalitarian grounds. Instead, in his discussion of endowment taxation in *Justice as Fairness: A Restatement* (2001, pp. 157-158),⁷ Rawls rejects these taxes on the grounds they violate the priority of liberty. Rawls writes:

For our purposes ... the relevant difficulty is that [endowment taxation] would violate the priority of liberty. It would force the more able into those occupations in which earnings were high enough for them to pay off the tax in the required period of time; it would interfere with their liberty to conduct their life within the scope of the principles of justice. They might have great difficulty practicing their religion; and they might not be able to afford to enter low-paying, though worthy, vocations and occupations.

(Rawls 2001, p. 158)

Rawls seems to appeal here to endowment taxation's propensity to violate *basic* liberties, which are granted lexical (or roughly lexical) priority over the demands of economic equality in Rawls's theory of justice (Rawls 1999, pp. 53-55).⁸ Indeed, Rawls seems to be claiming here that *a variety* of basic liberties are violated by endowment taxation, including some of type of freedom of occupation ('the ability to afford to enter

low-paying, though worthy, vocations and occupations') as well as freedom of conscience (endowment taxation might cause individuals 'real difficulty practicing their religion'). If unacceptably occupationally coercive taxation does violate Rawlsian basic liberties, then it can easily and coherently be rejected by Rawlsian liberal egalitarians, regardless of the egalitarian benefits it might produce.

However, I shall argue in this section that this Rawlsian strategy for protecting the occupational freedom of the economically talented is unsuccessful. My criticism proceeds in two steps. First, I shall argue that Rawlsians cannot appeal to the violation of *a variety* of basic liberties to rule out unacceptably occupationally coercive taxation. In order for the appeal to the priority of basic liberties to succeed, Rawlsians must appeal specifically to a violation of a broad conception of freedom of occupation as a basic liberty. Second, I shall argue that freedom of occupation (of the kind needed to rule out endowment taxation) cannot be convincingly defended as a Rawlsian basic liberty. Therefore, the Rawlsian appeal to the priority of basic liberties to rule out unacceptably occupationally coercive taxation cannot succeed (at least not without a very substantial reworking of the idea of the basic liberties and their place in Rawlsian liberal egalitarianism).

3.1 The need to appeal to freedom of occupation as a basic liberty

Rawls is no doubt right that *some* unacceptably occupationally coercive taxes violate a wide variety of basic liberties. For example, endowment taxes that are set so high that they force the economically talented to work for every possible waking hour for the sake of the disadvantaged would indeed make it very difficult for individuals to

practice their religion, thus violating freedom of conscience. This extreme endowment tax regime would violate a variety of other basic liberties as well.

However, the claim that *all* unacceptably occupationally coercive taxes necessarily violate *a variety* of Rawlsian basic liberties is false. To see why, consider the following example:

Endowment Tax with Permissible-Income-Tax Rates: Assume that Adrian's society currently has an income tax regime with rates set so that none of the basic liberties are violated (e.g., those in high-paying occupations do not pay so much in income taxation that they have difficulty practicing their religion). Under this regime, Adrian chooses to be a poet.

The government implements an endowment tax regime with rates *equivalent* to the rates of the income tax regime.⁹ Faced with this regime, Adrian becomes a farmer.

This endowment tax regime is, I take it, unacceptably occupationally coercive. Yet it can be rejected by appeal to the priority of the basic liberties *only if* freedom of occupation is accepted as a basic liberty. To see why, note that, before the endowment tax regime was introduced, those in high-paying occupations were ex hypothesi able to enjoy all of the basic liberties while paying income taxes. And since the rates of the endowment taxation are no higher than the rates of the basic-liberties-respecting income tax regime, as long as the economically talented (e.g., Adrian) surrender their preferred occupations in favor of their highest-paying occupation available to them, they would be able to enjoy just as many basic liberties as were enjoyed by those who were in highly-paid occupations under the income tax regime. For example, if highly-paid farmer McDonald is able to practice his religion under the original income tax regime, then Adrian cannot complain that the endowment tax violates his freedom of conscience. Adrian would also have sufficient time to practice his religion *as long as he gives up*

poetry for farming. Thus, unless Adrian can appeal to freedom of occupation as a basic liberty, he cannot claim that his basic liberties have been violated by Endowment Tax with Permissible-Income-Tax Rates.

Note also that a *narrow* conception of freedom of occupation as a basic liberty will not do here. After all, the Endowment Tax with Permissible-Income-Tax Rates does not frogmarch individuals into some arbitrary occupation determined by some central authority. And if we assume a beachcombing option for all individuals and add a beachcombing exemption to this version of the endowment tax (as was done in Section 1), we also will not be able to appeal to a principle of occupational freedom that only rules out individuals being forced into a single occupation. In order to protect Adrian from these variations on standard endowment taxes that are, I take it, unacceptably occupationally coercive, Rawlsians will have to endorse a conception of freedom of occupation as a basic liberty that is fairly broad.

3.2 Is the freedom of occupation a Rawlsian basic liberty?

The key question, then, is this: Can freedom of occupation (in the broad sense needed to rule out the different variations of endowment taxation suggested above) be coherently included as a Rawlsian basic liberty?

In considering this question, it is worth noting that Rawls himself does not endorse a consistent view of freedom of occupation as a basic liberty (Cohen 2008, pp. 196-197). In the canonical statements of the basic liberties in *Theory of Justice*, freedom of occupation is not included (Rawls 1999, p. 53). It is only included as a basic liberty in some of Rawls's later work (2005, p. 335). Whether or not this later inclusion is the

result of Rawls's grappling with the problem of endowment taxation (posed to him by Musgrave) is difficult to say.¹⁰ But this inconsistency within Rawls's work suggests that freedom of occupation may not be an obvious candidate for a Rawlsian basic liberty.

Indeed, several scholars have expressed doubt about the theoretical coherence of including freedom of occupation as a basic liberty. For example, G. A. Cohen (2008, p. 197) asks, 'What, precisely, [is the warrant for including freedom of choice of occupation as part of the liberty principle], within the machinery of the original position?' Cohen (Cohen 2008, p. 197) then suggests (without explanation) that freedom of occupation can be included as a basic liberty in Rawls's theory only with 'a decrement of systemic orderliness.' My aim in this section is to argue, in line with Cohen, that Rawls cannot justify the inclusion of freedom of occupation as a basic liberty in a way that is compelling and coherent with his broader theory, at least as it currently stands. If so, then Rawls's strategy of rejecting unacceptably occupationally coercive taxation by appeal to the priority of the basic liberties fails.

For Rawls, the basic liberties are those that provide the social conditions for the adequate development and full exercise of the two moral powers of free and equal persons (2001, p. 45). The two moral powers are:

- i) The capacity for a sense of justice
- ii) The capacity for a conception of the good – the capacity to have, to revise, and rationally to pursue an ordered family of final ends and aims which specifies what is regarded as a fully worthwhile life (Rawls 2001, pp. 18-19).

It is fairly clear how, say, protection from slavery is necessary for the adequate development and exercise of the two moral powers. However, it is not at all clear how a tax that forces some of the economically talented to abandon their preferred low-paying

occupation interferes with the adequate development and exercise of the two moral powers. Highly paid farmer McDonald (who, let us assume, has no talent for poetry) is, I take it, able to develop and exercise his two moral powers. Why, then, would Adrian the highly paid farmer be unable to develop and/or exercise his two moral powers simply because he was forced to abandon poetry for farming?

Unfortunately, Rawls says little about *why* freedom of occupation is necessary for the development and exercise of the two moral powers. What we are told in *Political Liberalism* is that freedom of occupation is part of the ‘the liberty and integrity of the person’ which, along with prohibitions against slavery, serfdom, and freedom of movement, is necessary to safeguard the exercise of *the other* basic liberties (Rawls 2005, p. 335). Since the other basic liberties are necessary for the exercise the two moral powers, and since freedom of occupation is necessary for safeguarding these other basic liberties, freedom of occupation is necessary for the adequate development and full exercise of the two moral powers.

But how would a tax that did nothing more than force the economically talented to abandon certain low-paying occupations for high-paying ones threaten any of the other basic liberties? Although Rawls does not answer this question, perhaps the answer is that certain occupations are inextricably tied up with certain basic liberties. For example, I may hold a very strict religious creed that requires me to become a monk. Or I may need to become a (low-paid) community organizer in order to exercise my political liberties. When particular occupations are tied up with these basic liberties, the violation of freedom of occupation perpetrated by endowment taxation would admittedly also threaten these other basic liberties.

However, this threat can be neutralized by allowing exemptions in endowment taxation for individuals in occupations connected to the basic liberties (e.g., certain religious or political vocations). Societies do, after all, provide exemptions of this sort in the case of other forms of taxation (e.g., making certain goods like ritual wine exempt from sales tax). There is admittedly a problem of where to draw the line. But just as it would be implausible to reject all sales taxes on the grounds that a) goods connected to freedom of conscience should be exempt from sales tax; and b) it is difficult to draw the line between goods needed to exercise freedom of conscience and other goods, so too it seems difficult to argue that *all* unacceptably occupationally coercive taxation must be rejected merely because a small minority of occupations may be necessary for the exercise of freedom of conscience or political liberty. Once we admit the possibility of targeted exemptions, it seems very difficult to rule out non-extreme forms of endowment taxation by appealing to the connections between certain occupations and the other basic liberties.

Michael Titelbaum (2008) offers a different argument for including freedom of occupation as a basic liberty. Titelbaum (2008, p. 291) argues that when individuals pursue their vocation, they are acting on a consideration that is *central to their reasonable life plans*. Titelbaum then argues that respect for the second moral power protects individuals from interference in their ability to pursue aims that are central in this way (2008, p. 314). Indeed, he suggests that the centrality of pursuing one's vocation is similar to the centrality of living according to a person's religious, philosophical, or moral doctrines (2008, pp. 309-314, esp. fn. 80). Just as individuals in the original position would refuse to jeopardize freedom of conscience for the sake of the

redistributive concerns, so too, Titelbaum (2008, p. 309) argues, they would refuse to jeopardize their freedom of occupation for the sake of the considerations covered by the second principle of justice. Since freedom of conscience is protected as a basic liberty, freedom of occupation should be so protected as well.

There are, however, several problems with Titelbaum's argument. The first is that the analogy he draws between freedom of occupation and freedom of conscience relies on an important misreading of Rawls. Titelbaum (2008, p. 310) appeals to the following passage from *Political Liberalism* in making his analogy:

Here it is fundamental that affirming [religious, philosophical, and moral] views and the conceptions of the good associated with them is recognized as non-negotiable. They are understood to be forms of belief and conduct the protection of which we cannot properly abandon or be persuaded to jeopardize for the kinds of considerations covered by the second principle [of justice]. (Rawls 2005, pp. 311-312)

Based on this passage alone, the analogy that Titelbaum draws between freedom of conscience and freedom of occupation appears plausible. After all, we might view occupational choice as something that is non-negotiable in the sense that it is more central to many people's reasonable life plans than wealth or power (the considerations covered by the second principle of justice).

However, if we read a bit further, it becomes clear that Rawls's is not appealing to the claim that religion is non-negotiable in the sense of being central to life plans. Rather, Rawls's point is that one's religious, moral, or philosophical beliefs are *not the kind of thing* that could properly be changed 'by reasons of power and position, or of wealth and status' (2005, p. 312). Rather, abandonment of religious and philosophical commitments, properly understood, can only be 'the result of conviction, reason, and reflection' (2005, p. 312).

Occupational commitments are not non-negotiable in this sense. Although one cannot abandon religious and philosophical beliefs (properly understood) simply because it would be advantageous to do so, one can (at least sensibly) consider abandoning a preferred occupation if doing so would be advantageous in other ways (e.g., greater wealth). Thus, occupational choice is not non-negotiable in the way that Rawls himself views as necessary for granting freedom of conscience its status as a basic liberty.

A second problem with Titelbaum's argument is that his protection of talented individuals' occupational freedom is inconsistent with the Rawlsian values of reciprocity and fraternity as Titelbaum himself understands them. On Titelbaum's view, in order for the priority of freedom of occupation to be consistent with these values, 'Both [the economically talented and the worst-off must] agree that it is more important that the [economically talented person be able to] choose his job on the basis of personal commitments central to his plan of life than it is that the worst-off individual's economic prospects be improved' (2008, p. 314). However, Titelbaum does not sufficiently explain why the worst-off would agree that society must, say, protect Adrian's ability to pursue poetry or Bianca's ability to pursue puzzle-making if that means failing to improve the unfavorable economic opportunities of the least advantaged.

The answer cannot simply be that personal commitments like pursuit of one's vocation are more important than enjoying greater material well-being (even when one is badly off). After all, there is no warrant for assuming that the worst off will utilize the proceeds of occupationally coercive taxes merely to improve their material well-being. They might use the additional resources instead to fulfill the personal commitments that are central to *their* life plans (e.g., to move to be closer to an aging parent or to be able to

pursue *their* occupational calling). Thus, there are good reasons to be skeptical that the worst-off would agree to granting priority to the occupational commitments of the economically talented. If so, then it is not clear that the Rawlsian requirements of reciprocity and fraternity (as Titelbaum himself understands them) are consistent with protecting freedom of occupation as a basic liberty.

A third problem with Titelbaum's argument is this. Protecting all goals that are central to reasonable life plans (in Titelbaum's sense) under the aegis of the basic liberties seems to require a drastic expansion of the scope of the first principle of justice – an expansion that unattractively limits policies aimed at general social welfare and at improving the prospects of the least advantaged. There are, after all, a large number of commitments that are non-negotiable in the sense that individuals can reasonably refuse to sacrifice them for wealth and power. For example, the connections that individuals have with their home might arguably be non-negotiable in this sense. Should we therefore include the freedom not to be forced from one's home as a Rawlsian basic liberty?

Doing so might initially appear attractive. But the consequences of such a blanket expansion of the first principle of justice are unappealing. Imagine a very poor area of some society would benefit enormously from a new railroad line. However, the only economically viable route is through a mountain pass where one person has legally built a home and the person is sincerely unwilling to move for any amount of money. However, any other option for the railroad line would be \$1 billion more expensive, money that could be used to significantly help the poor. It does not seem plausible to grant this one person's right to stay in his home lexical priority over all distributive considerations, as

we would be forced to do if we accepted Titelbaum's account of the Rawlsian basic liberties.¹¹

Indeed, difficulties arise even if we only give lexical priority to protecting occupational choice. As Kirk Stark (2005, pp. 58-65) points out, an uncompromising protection for occupational choice would require liberal egalitarians to reject income taxation. Stark gives the example of Hillary who, if she were not subject to income taxes, would be able to save enough money from her lawyer's salary to afford becoming a mountain climber, but who abandons mountain-climbing because income taxation makes it unaffordable (2005, p. 64). Should Hillary be exempted from redistributive income taxation so that she can become a mountain climber?¹² I think not. Once again, allowing the goals of the economically talented, central though they might be to reasonable life plans, to *always* take precedence over considerations of social welfare and economic equality (as we would be required to do if we protected these goals under the aegis of the first principle of justice) seems to necessitate accepting distributive consequences that few liberal egalitarians are likely to (or should) endorse.

To be clear, these criticisms do not imply that freedom of occupation should never be given priority over egalitarian considerations. Moreover, I agree with Titelbaum that the centrality of occupational choice to reasonable life plans is a key reason why freedom of occupation is worthy of special protection, despite the greater economic benefits that its violation can produce. My claim is only that freedom of occupation of the kind needed to rule out most forms of endowment taxation cannot be plausibly and coherently protected by being granted the status of a Rawlsian basic liberty, at least not given Rawls's theory as it currently stands.

4. The appeal to problems of information

The third and final strategy for protecting freedom of occupation that I wish to consider appeals to problems relating to information. Some have argued that unacceptably occupational coercive taxes should be rejected because they are unfeasible, counterproductive, or morally unacceptable due to information-related problems. To implement standard endowment tax, for example, the government must determine how much income a person could potentially earn in her highest-paying occupation. Many liberal egalitarians have pointed out that the government simply lacks access to the relevant information (e.g., Rawls 2001, pp. 157-158). And attempts to gather the information could counterproductively lead citizens to hide their talents, leading to inefficiency and loss of redistributive tax revenue (Rawls 2001, p. 158), (Dworkin 2000, p. 100), (Cohen 2008, p. 219). Even more problematically, such information-gathering would, G. A. Cohen (2008, pp. 221-222) claims, require unacceptable violations of privacy. Thus, on this view, occupationally coercive taxes are unacceptable due to the practical and moral problems with gathering the necessary information.

One obvious problem with this information-based argument is that perfect information does not seem to make occupationally coercive taxation morally acceptable. To take a fantastical but clear example, imagine that a genie causes every person's maximum earning potential to be clearly displayed above their heads. In this case, there would be no information-based objections to endowment taxation. Yet I take it that endowment taxation would still be unacceptably occupationally coercive. If so, then problems relating to information cannot constitute *the fundamental* objection to occupationally coercive taxation.

There is also a second objection to relying on information-based problems to reject unacceptably occupationally coercive taxes - one that does not rely on unrealistic perfect-information assumptions. Namely, information problems do not preclude all forms of unacceptably occupationally coercive taxation. Indeed, I shall argue in the rest of this section that there is a tax that is unacceptably occupationally coercive, economic-equality-enhancing, and feasible without gathering information about particular individuals: the *economically-suboptimal-occupation tax*.¹³

The economically-suboptimal-occupation tax works in the following way. Assume that there already exists a progressive income tax (with tax levels set using the reader's preferred liberal egalitarian theory). In addition to this income tax, the government adds a set of taxes (economically-suboptimal-occupation taxes) on anyone engaged in certain occupations. The targeted occupations are those that require special talents, but that pay significantly less than other occupations that require *the same* special talents. A tax is levied on a particular occupation only if economists are fairly certain that such a tax would increase total tax revenue. Moreover, occupations that are deemed to be particularly socially valuable or equality-promoting (e.g., teachers, social workers, etc.) are exempted. The aim of the tax is to increase redistributive tax revenue by inducing individuals to enter more economically productive vocations.

To see how this task would work more concretely, consider one possible economically-suboptimal-occupation tax:

Economically-Suboptimal-Occupation Tax on Sports Statisticians:
Dan has a good head for statistics and a love of sports. In a world with only an income tax in place, Dan would have become a sports statistician (despite the relatively low salary associated with this profession compared with other statisticians).¹⁴

However, the government places a heavy economically-suboptimal-occupation tax on sports statisticians. Faced with this tax, Dan becomes an actuary.

I take it that this tax is unacceptably occupationally coercive. Yet this tax is perfectly feasible. Moreover, as I shall argue, it is difficult to object to this tax either on grounds that information problems would make it counterproductive from an egalitarian perspective or on ground that it violates individual privacy.

Note first that this tax is very likely to increase rather than decrease equality overall, primarily because it will increase redistributive tax revenue. Unlike endowment taxation, this tax cannot be avoided by hiding one's talents. The only way to avoid it is by abandoning sports statistics. And since sports statisticians have economically valuable mathematical skills, many individuals who abandon sports statistics will enter higher paying occupations (e.g., they will become statisticians in a less exciting field such as insurance). With a progressive income tax in place, this means that the government's redistributive tax revenue will increase significantly. The government would also obtain higher tax revenue from the individuals who remain sports statisticians despite having to pay the economically-suboptimal-occupation tax.

Admittedly, some individuals who would have otherwise been sports statisticians will enter lower-paying occupations, thus reducing overall redistributive tax revenue. However, given that sports statisticians are not paid particularly well yet have mathematical skills that are economically valuable, it is easy to imagine a society in which the tax revenue gained would outweigh the tax revenue lost.¹⁵

Some might object that this tax could decrease equality because of its effects on *the welfare* of those who must leave their preferred occupation. However, this is

unlikely. After all, most individuals subject to economically-suboptimal-occupation taxes will have the option of entering less desirable but still high-paying occupations. They also have the option to pursue occupations that do not require their uncommon, economically valuable talents. It seems unlikely that an economically-suboptimal-occupation tax would make individuals subject to it worse off than the average person. And even if *some* individuals were brought below some society average, given the additional redistributive tax revenue that this tax is likely to generate, the egalitarian effects of this tax seem very likely to be positive in aggregate.

It is also difficult to object to this tax on grounds of invasions of privacy. Unlike endowment taxation, economically-suboptimal-occupation taxes do not require information about *any particular person's* talents or preferences. There are several relatively low-paying, generally enjoyable occupations that clearly require the same (or sufficiently similar) talents as are required by much higher paying, less satisfying occupations. Sports statisticians have the mathematical skills to be other types of statisticians. Political philosophers generally have the skills to be good lawyers. Given the availability of economic data, computing power, and the relative sophistication of labor economics, it seems plausible that governments in contemporary liberal democracies would be able to implement a set of economically-suboptimal-occupation taxes that, on the whole, would raise more revenue for redistribution than progressive income taxation alone, producing a net increase in economic equality without the need to gather information about the talents of particular individuals.

In summary, information problems provide insufficient grounds for rejecting unacceptably occupationally coercive taxation. Assuming perfect information does not

make endowment taxation morally acceptable. Moreover, even in the real world, information problems cannot protect the economically talented from unacceptable occupational coercion. Economically-suboptimal-occupation taxes are practicable and equality-enhancing without requiring private information about particular individuals' preferences or talents. Yet I submit that they are also unacceptably occupationally coercive.

5. What makes a tax unacceptably occupationally coercive?

I have argued thus far that appeals to Dworkinian equality, the priority of Rawlsian basic liberties, and problems relating to information-gathering cannot protect the economically talented from unacceptably occupationally coercive taxes. This class of taxes include not only standard endowment taxes, but also endowment taxation with beachcombing exemptions, the talent-use tax, and the economically-suboptimal-occupation tax introduced in this piece. In this final section, I wish to return to the question of why these taxes are unacceptably occupationally coercive. Building on an idea briefly mentioned (but not developed) by G. A. Cohen, I will suggest that these taxes (but not income taxes) are unacceptably occupationally coercive because they use the economically talented as a means in a certain morally impermissible way.

In giving his reasons for rejecting occupational coercion of the economically talented, G. A. Cohen (2008, p. 220) briefly appeals to the following (presumably Kant-inspired) principle: [W]e should not use a person as a means.' However, Cohen does not explain this principle in any detail,¹⁶ and his very brief discussion of it leaves many questions unanswered. Why is using people as means morally problematic? What kind

of occupationally coercive policies use people as a means? Cohen (2008, pp. 218-220) affirms that Stalinistically frogmarching a person into a particular occupation would impermissibly use her as a means. But what about endowment taxation? And what about the other taxes introduced in this piece? Why does forcing a person into a particular occupation entail impermissibly using them as a means while seizing the revenue from their labor through income taxation does not?

Clearly, I cannot hope to answer all of these questions here. The question of what is wrong with using people as means – which has long been debated by Kant scholars interested in the Humanity Formula of the Categorical Imperative (Johnson and Cureton 2016, Section 6) – would, by itself, require more extensive treatment than I can provide in the remainder of this article. My aim in this final section will therefore be a modest one - to suggest one way in which all of the taxes presented in this piece (but not income taxation) use the economically talented as a means for the sake of the disadvantaged.

Despite its modesty, this task is useful for three reasons:

1. It may go some way to convincing those who are unsure that that the taxes introduced above are indeed unacceptably occupationally coercive.
2. It may give pause to scholars such as Kirk Stark who believe that there simply is no plausible, principled way of distinguishing income taxation from unacceptably occupationally coercive taxation (Stark 2005).
3. It can serve as an illustration (albeit preliminary) of the kind of development of an alternative strategy for safeguarding occupational freedom that this article aims to motivate.

One sense in which all of the taxes introduced in this piece (but not income taxes) use the talented as a means is this. They *intentionally* induce the talented to abandon their preferred occupations *in order to* extract additional tax revenue from them.

Occupational abandonment is not some incidental by-product of endowment taxation and of the other taxes introduced in this piece. Rather, leading talented individuals to abandon their preferred occupation - a key life goal for many of them - is very much the *intention* of the tax designer. The designer's aim is to induce the talented to put their minds and bodies to work in ways that are more socially productive rather than in the ways that the economically talented would choose for themselves. And it is *through* inducing the talented to abandon their preferred occupation that much of the additional revenue for the disadvantaged is raised.

Consider, for example, the economically-suboptimal-occupation tax (in many ways, the least coercive of all the taxes considered here). This tax admittedly leaves Dan with the option of entering a variety of occupations outside of statistics. This tax also may not necessarily be so onerous so as to take Dan below some minimal acceptable standard of living if he chooses to remain a sports statistician. Nevertheless, this tax imposes significant costs on those who resist utilizing their talents in the socially optimal way. And it does so *in order to* induce a large number of these individuals to abandon their preferred occupation for higher-paying vocations – vocations in which they will pay higher taxes.

In doing so, this tax and the other taxes introduced in this piece deny, in at least one important sense, that the economically talented are entitled to have authority (without being subject to coercively-imposed penalties) over how their talents should be used. In denying the talented this authority, these taxes effectively treat these talents, at least to some extent, as social assets – something that can be permissibly put to work for the least advantaged - rather than something *that belongs* to particular talented individuals in

question.¹⁷ In this way, these taxes treat the economically talented as a means for the sake of the disadvantaged.

Income taxation, on the other hand, does not use the talented as a means in this way. It does admittedly demand some of the proceeds of the talented individual's market labor. However, income taxation recognizes that a person's tax burden should be based on what *she chooses* to do with her talents. It thus respects in at least one important way the authority a person has over her talents.

Admittedly, as Stark points out in the case of Hillary, income taxation can deprive individuals of the ability to enter certain occupations (e.g., by making Hillary's mountain climbing unaffordable). However, this type of occupational deprivation is caused as *an unintended by-product* of helping the disadvantaged. The income tax is not *designed* to deprive Hillary of the ability to make climbing mountains her eventual vocation, and it is not *through* inducing Hillary to abandon her preferred occupation that the redistributive tax revenue for the disadvantaged is raised. Thus, the claim that the economically talented should not be used as means for the sake of the disadvantaged, developed in a particular way, ties together the taxes introduced in this piece and does so in a way that does not classify income taxation as unacceptably occupationally coercive.

Clearly, much more remains to be said in defense of this tentative hypothesis. I have not explained why using the talented as a means in this way is problematic, why occupational choice should be given more protection than the proceeds of one's labor, nor why the talented have the kind of partial self-ownership that grants them authority to use their talents as they choose (given what others are willing to pay for those talents) rather than being forced to use them in the most socially desirable way.¹⁸ I have also not

considered the myriad other possible ways of explaining why certain taxes are unacceptably occupationally coercive while income taxation is not.¹⁹

However, my aims in laying out this hypothesis were self-consciously modest. And the brief development of the idea that certain forms of occupational coercion impermissibly use the talented as means provided here is, I hope, sufficient to achieve these modest aims – not least of which is motivating future research into the important question of why certain forms of occupational coercion are impermissible.

Conclusion

This article's central claim is that the following three prominent liberal egalitarian strategies for protecting the freedom of occupation of the economically talented all fail:

- 1) The Dworkinian argument that economic equality (as captured by the envy-free standard) rules out unacceptable occupationally coercive taxation.
- 2) Rawlsians' appeal to the priority of basic liberties to rule out unacceptably occupationally coercive taxation.
- 3) The argument that unacceptably occupationally coercive taxation should be rejected due to the practical and moral problems with gathering the necessary information.

The rejection of these strategies does not imply that liberal egalitarianism cannot protect freedom of occupation. The argument does suggest, however, that compellingly and coherently protecting freedom of occupation while remaining committed to economic equality is more difficult than many of the leading liberal egalitarian thinkers have recognized.

Some liberal egalitarians might respond to these difficulties by stepping back from their commitment to the occupational freedom of the economically talented.

However, my hope is that liberal egalitarians will respond instead by devoting greater scholarly attention to finding alternative justifications for rejecting occupationally coercive taxation. One of these alternatives, which appeals to the prohibition against using the talented as mere means, has been tentatively proposed and preliminarily developed here. This avenue and others will, I hope, receive greater scholarly attention once the three prominent strategies for safeguarding occupational freedom considered in this article have been recognized as ultimately unsuccessful.

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Notes

1. This example is based on on a case presented by Dworkin (2000, p. 90).
2. This example admittedly overestimates the revenue benefits of endowment taxation by ignoring the general equilibrium consequences of forcing large number of individuals into high-paying occupations. However, setting aside practical difficulties, there is little doubt that replacing income taxation with, say, endowment taxation with equivalent rates will almost surely raise more revenue for redistribution. For discussion, see (Zelenak 2006, pp. 1149-1153)
3. For a review of liberal egalitarians' objections to endowment taxation, see (Zelenak 2006, pp. 1153-1172)
4. Dworkin offers different formulations of equality in different places. This is the standard of equality that Otsuka (2002) attributes to Dworkin.
5. The proposal that Dworkin (2000, p. 90) considers is a special type of endowment taxation that would result if we allowed individuals to bid for others' labor in Dworkin's hypothetical auction.
6. There are many ways one could defend this type of claim. One could, for example, argue that causing inequality (relative to some no-tax baseline) through the tax system is worse than allowing inequality to occur.
7. Although Rawls uses the term 'head taxes,' it is clear he is considering what is generally known as endowment taxation in the literature – taxes based on what individuals could earn rather than what they do earn.
8. I recognize that Rawlsians may have other ways of ruling out endowment taxation besides appeal to violations the basic liberties. An inquiry into these alternative avenues for ruling out unacceptably occupationally coercive taxation is precisely the kind of scholarly work that this article hopes to motivate.

9. For example, if the average rate of income tax on individuals earning \$500,000 is 75%, Adrian's endowment tax rate is also set at 75%.
10. Rawls's section on endowment taxation in *Justice as Fairness* is, as Rawls (2001, p. 157 fn. 32) points out, drawn from his "Reply to Alexander and Musgrave."
11. Even Anna Stilz, who defends a very strong right to occupancy, accepts that this right should not be given lexical priority over distributional considerations. See (Stilz 2013, pp. 353-355)
12. Titelbaum might reply that, insofar as projects (e.g., climbing mountains) are very costly in terms of forgone economic resources for society, they are not part of *reasonable* life plans. However, Adrian's project of pursuing poetry as a vocation may be every bit as expensive in terms of forgone economic resources as Hillary's project of mountain climbing. In Endowment Tax, for example, the cost in terms of forgone government revenue and economic wealth for society of Adrian's pursuit of poetry runs in the hundreds of thousands of dollars *per year*.
13. To be clear, I do not advocate this tax. Rather, my aim in proposing it is to reveal the inadequacy of appeals to real-world information problems as a strategy for safeguarding the economically talented from unacceptable occupational coercion or as an argument for lowering the priority that should be given this topic in scholarly enquiry. Nevertheless, I recognize that, for those welfare economists and liberal egalitarians who would happily implement endowment taxation in the genie example above, the tax introduced in this section might be of interest as a practical policy proposal.
14. For an informal description, basic salary information, and educational requirements for sports statisticians, see (Echaore-McDavid). As noted, according to a 2014 SimplyHired survey, the average salary for sports statistician was \$36,000 in the United States. This is much lower than the average salary of \$80,110 for statisticians more generally according to the U.S. Bureau of Labor Statistics (2016).
15. There are many economic complications that I am not fully addressing here. For example, an influx of sports statisticians into related professions might lower salaries in these other professions lowering income tax receipts. However, the pretax salary of sports statisticians will also rise with the exodus of sports statisticians leading to an increase in income tax revenue from those remaining in the profession. Although I cannot consider all of the complications, none of them obviously undermines the possibility that an economically-suboptimal-occupation tax will increase overall tax revenues.
16. Although Cohen does devote greater attention to this principle in other works (Cohen 1995), study of Cohen's treatment of this principle elsewhere by no means settles the question of why the prohibition against using people merely as means rules out occupationally coercive taxation.
17. It is worth highlighting that Rawls argues that the rejection of endowment tax through appeal to the basic liberties establishes that 'our native endowments are ours and not society's.' (Rawls 2001) The view presented here turns the Rawlsian argument on its head. It is because our native endowments are ours and not society's (a view whose rejection would entail impermissibly treating us as

- means) that our freedom to pursue our preferred occupation must be respected, even at the cost of significant egalitarian benefits.
18. Self-ownership of the kind the hypothesis relies upon been criticized by many scholars, including Cohen (1995), and I certainly do not claim that Cohen would endorse the particular way in which I develop his brief appeal against using persons as a means.
 19. For some examples, see the introduction to this article.

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