



Arrivals

THE OUTSIDE OF THE ASYLUM

A New Zealander's guide
to the world out there

Eric Crampton

Foreword by Joe Bennett

THE
NEW ZEALAND
INITIATIVE

The Outside of the Asylum

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About the New Zealand Initiative

The New Zealand Initiative is an independent public policy think tank supported by chief executives of major New Zealand corporations.

We develop evidence-based policies that help build a better, stronger New Zealand for all New Zealanders. We promote a prosperous, free and fair society with a competitive, open and dynamic economy. We also develop and contribute bold ideas that will have a profound, positive and long-term impact for our future.

About the author



Dr Eric Crampton is Chief Economist with The New Zealand Initiative. He has served as Lecturer and Senior Lecturer with the Department of Economics at the University of Canterbury. He is co-author of several Initiative reports, including *In the Zone* and *Decade of Debt*. He is also author of the popular economics blog *Offsetting Behaviour*.

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Contents

About the author	2
Acknowledgements	2
Foreword	5
1. Noticing the Asylum	7
2. We don't know how lucky we are	11
3. A sense of proportion: The tax system	13
4. Airport security	19
5. Policing	23
6. Driving you to drink	31
7. For your own good	35
8. Defending the Asylum Wall	39
Endnotes	41
Bibliography	47

Foreword

This is a think tank report. I distrust think tanks. The very name think tank is smug and presumptuous. It implies giant thrumming intellects addressing the topics that we scuttling proles are too silly or simple to grasp.

And what grandiose names think tanks give themselves. The Center for American Progress, The Heritage Foundation, even, I'm afraid, The New Zealand Initiative. Not A New Zealand Initiative, but The, the one and only.

Many think tanks do the opposite of independent thinking. They just come up with the answers their paymasters want. They exist only to give the appearance of intellectual rigour to preconceived opinion.

Some implicitly admit as much in their self-description – a conservative think tank, for example, or a Christian think tank. Such think tanks start with what ought to be conclusions. That's not thinking. That's prejudice.

But while I distrust think tanks I cherish good thinkers. And a good thinker is easy to spot. He or she clarifies complexity and writes well. Indeed those two qualities are effectively the same thing.

Good thinkers use no jargon. They deal in concrete matters. Their words and their sentences are short and emphatic. Their meaning is immediately apparent. And to read them is to feel a suffusion of delight, because the truth is always pleasing and often comic.

Such a thinker is Eric Crampton. I have never read a piece of his I haven't enjoyed. When he asked me if I'd write a foreword for his next report I hoped I'd be able to say that here was a think tank piece that deserved the name. And now that I've read it, I emphatically can.

In the following pages Eric illustrates the lunacy of various authorities around the world and the comparative sanity of most New Zealand authorities. In doing so he maps the awful path that awaits us if we follow bad examples and succumb to bad thinking. *The Outside of the Asylum* is a heartening read for New Zealanders at the same time as being a much-needed warning. And it's a bloody good laugh.

Joe Bennett

Lyttelton

1.

Noticing the Asylum

*Hold stick near center of its length. Moisten pointed end in mouth.
Insert in tooth space, blunt end next to gum. Use gentle in-out motion.¹*

John Watson realised the world had gone mad when he noticed the instructions on a packet of toothpicks – at least as Douglas Adams tells it in *So Long, and Thanks for All the Fish*. A world needing the instructions copied above was not a sane place.

If you had the good fortune to be born in New Zealand after the 1980s reforms, you might only recently have started learning about the true nature of the world.

I grew up in Canada.

As a teenager there, seeing farmers on the news handcuffed for selling their own wheat without the permission of the Canadian Wheat Board, I started to understand Watson's point.²

Canada is a wonderful place. It is among the world's saner places. But it is still a mad place.

At the same time as wheat farmers were being handcuffed for selling wheat, dairy farmers were paying thousands of dollars to milk a cow. Not to buy a cow, mind you, but the permit to sell the milk. The cost of the permit to milk a cow has only gone up since then. Dairy products face tariffs nearing 300% at the border, so news stories of cheese smuggling are no surprise.³

Yes, people smuggle cheese into Canada due to insane tariffs on cheese.

It sounds like the plot for a Pixar film with heroic mice sneaking cheese into Canada for hungry Canadian mouselings.

It gets better. The muddled regulations around cheese imports meant that until 2013, Canadians could import cheese-and-pepperoni pizza kits without facing the tariff wall – the kits counted as food preparations rather than cheese. Restaurants started buying the kits to make ‘fresh’ pizzas, until Canada’s dairy cartel forced a rule change.⁴

But ice-cream makers continued to import American products close enough to cream to make ice-cream, but not close enough for the cream to be hit by tariffs.⁵ The quality of Canadian ice-cream was not improved by any of these tariff-induced shenanigans.

And if Guy Ritchie were ever hard up for a plot, he need look no further than Canada’s Great Maple Syrup Heist.

Quebec has a vast strategic maple syrup reserve. Now that may not seem entirely mad. A country short of essential strategic resource like maple syrup may risk revolution.

But the industry is propped up by the classic Canadian quotas and rules, and supply management.

One maple syrup producer who tried to defy the Quebec maple syrup cartel reported, “It’s a mafia. Last year, they tried to seize my syrup. I had to move [the syrup to New Brunswick] at night.”⁶

Vanity Fair reported on the Heist, in which some 10,000 barrels of maple syrup, each worth some \$1,300, were stolen from the maple syrup reserve.

The Reserve is a monument to collective planning, to thousands of little guys each giving up a little freedom in return for security. Canadians call this a better life. Americans call it socialism. Austrian economist Friedrich Hayek might call it “the Road to Serfdom.” It’s like all the other roads in Quebec. Calm and predictable, without a single Camaro blasting Bon Jovi, or a sticker of a cartoon man flipping you off while peeing. But it’s had the perverse effect of pooling wealth, of creating just the sort of target Willie Sutton meant when he supposedly said he robs banks because that’s where the money is. [the Federation of Quebec Maple Syrup Producers’ Caroline] Cyr encouraged me to lift one of the barrels. I couldn’t budge it. Imagine trying to steal one of those barrels – now imagine trying to steal 10,000.⁷

As a movie plot, this would have been too incredible to believe – if you have not adjusted to the madness of Canada.

And if Canadian dairy quotas came as a tattoo fixed to the cow rather than as a footnote in a spreadsheet, Canada would have had similar problems with cattle rustling.



I was finishing my doctorate in economics at George Mason University just outside Washington, D.C. and looking for an academic posting when I first visited New Zealand.

America, too, was mad. But its madness was very different from Canada's.

Anything fun required layers of forms and waivers absolving everyone involved of legal liability for everything. Even then, nobody was sure they couldn't be sued into bankruptcy. Trial lawyers' billboards all but promised to use the legal system to make you rich while crushing your enemies.

It is not that America eschews danger and risk. Only danger and risk pursued voluntarily seem illegal. Even kids selling lemonade on their driveway is deemed risky.⁸ If things are too safe, the police restore the fear factor by being heavily armed with surplus army equipment, sending SWAT teams whenever possible, and shooting people posing no conceivable threat to anyone.⁹

The 2001 terrorist attacks on the Pentagon and World Trade Center made everything worse. On the ride to Reagan National Airport past the Pentagon, a soldier with a large machine gun on top of a Humvee watched me and the other commuters crawling past.

The airports themselves became armed camps with machine-gun toting police everywhere. Every high school bully who resented everyone who had made something of their lives, and who longed to resume his position on the school yard, seemed to be employed as an airport guard.

It was a relief to be on an outward-bound plane.

On arriving in Christchurch for my job interview with the Economics Department at the University of Canterbury, Associate Professor Jeremy Clark took me for a drive around Port Hills. Driving on roads that would have sent council lawyers in America into apoplexies over the lack of guardrails (and over the sheep occupying the roads), I started to have a feeling that I had stumbled on something substantial.

But I knew it for sure when Jeremy took me to Cave Stream.

In the middle of Arthur's Pass, a river had carved an underground channel through the limestone. At the head of the trail by the Department of Conservation's parking lot was a sign.

The sign had instructions that were the opposite of the ones on John Watson's packet of toothpicks. The instructions were a sign of a sane civilisation, a society I yearned to join.

The sign read, essentially, as follows.¹⁰

Welcome to Cave Stream. The cave is dark and cold. We do not provide any lights. The ladder at the end is very slippery. If you enter the cave in winter without proper clothing, you may die of hypothermia. Have fun.

We had fun.

Confronted with the reality of the world, Douglas Adams's John Watson did the only sensible thing. He changed his name to Wonko the Sane, built a wall around his beachfront property, decorated the outside of the wall, and put a sign welcoming visitors to his Outside of the Asylum.

Adams's book was published only in 1984, so for Wonko the Sane escape to New Zealand was not an option. New Zealand was only just coming out of the Asylum. It would soon show its brilliance to the world, but it was still too late to be able to help poor Wonko.

I was far luckier. The University of Canterbury offered me the lectureship, and I moved to New Zealand. The sign at Customs when I arrived might have said, "Welcome to New Zealand." What it really meant was, "Welcome to the Outside of the Asylum."



This isn't an essay on the madness of Canada. Or, not just on the madness of Canada, or America, or even the rest of the world.

It is an essay about the sanity of New Zealand – and the importance of keeping it that way.

A pessimist might say New Zealand is only going mad far less quickly than the rest of the world. But it is still just about the only sane place left.

We don't know how lucky we are in this country.

2.

We don't know how lucky we are

*I was speaking to a mate of mine, just the other day
A bloke called Bruce Bayliss actually who lives up our way
He's been away on a round the world Eighth Army do for a year,
More or less
I said "Describe the global position, Bruce."
He said "Fred, it's a mess.
We don't know how lucky we are in this country.*

— **Fred Dagg**¹¹

The Dunning-Kruger Effect¹² holds that ignorant people never adequately appreciate the depths of their own ignorance, and so have a difficult time compensating for it.

New Zealand suffers from what I call the Dagg Effect. We don't know how lucky we are in this country.

In totalitarian states, the safest way to survive is to convince yourself that the leader really is good – so you can show appropriate emotions at appropriate times and avoid being shot dead.¹³

Everywhere else, complaining about the government is a national sport. New Zealand is no exception. And while the complaints are very often very right, they can lack a sense of proportion.

Armchair quarterbacks can rightly point out the failings of every provincial rugby team, and they can all be correct. But if each of those provincial teams

still has a decent chance of beating the British and Irish Lions, a team drawn from a population 10 times that of New Zealand, the provincial teams' problems might not be that big in the grand scheme of things.

None of this is to say New Zealand is perfect: far from it. New Zealand's housing affordability problems stem directly from terrible urban planning policies. And while those policies may make sense as the outcome of terrible incentives facing councils, the system as a whole is ludicrous and destructive. Policies in too many other areas risk sliding into the Asylum.

But we really should take a world tour of policy insanity to appreciate just how lucky we are. Perhaps then we might be less quick to smash holes in the Asylum's walls.

The Dagg Effect: A cognitive bias in which New Zealanders fail to recognise how fortuitous are their circumstances – and what is required to maintain those circumstances.

Example: “Remember how great Fred's house was? Well, he did a bit of DIY to open things up a bit and took out a load-bearing wall. Whole place is a bit average now.”

“Ah, sounds like the Dagg Effect.”

3.

A sense of proportion: The tax system

“He’s spending a year dead for tax reasons.”

Ford Prefect, of Hotblack Desiato – lead singer of Disaster Area, the band which is the loudest noise of any kind anywhere in the universe, and whose tax returns “prove that the whole fabric of the space-time continuum is not merely curved, it is in fact totally bent.”¹⁴

It is difficult to like taxes. It is easy to like many of the services funded by taxes, but taxes themselves are terrible things. When they are managed well, they are an unwelcome imposition. When they are managed badly, they are a nightmare.

New Zealand’s tax system is probably the best in the world, largely due to a strong commitment to the principle of sound taxation. Taxes are levied on a broad base at a low rate. Wellington tax wonks call it BBLR.

And a good principle for public policy in New Zealand is not to break BBLR.

Consider the Goods and Services Tax (GST). It is a beautiful value-added tax applied cleanly and comprehensively across the tax system. But nobody in New Zealand appreciates it. Because nobody in New Zealand appreciates it, everybody wants to carve out a tax exemption for their favourite thing: fruits, vegetables, healthy foods generally, and feminine hygiene products are recent examples.

Here is what happens if you do that.

Australia runs a messy GST riddled with exemptions. Somebody decided groceries should not be subject to GST, but some snack foods should be. So bread is not taxed while crackers are.

In 2010, Justice Sundberg of the Federal Court in Melbourne had to decide whether an oven-baked Italian flat bread, a mini-ciabatta, counted as a bread or a cracker for tax purposes.

The importer of the bread flew in Giampiero Muntoni to testify in court that the mini ciabatta was a bread, not a cracker. And Muntoni is far from a layperson in such matters. As Australia's Centre for Independent Studies reported, Muntoni "holds an EU certificate that entitles him to certify whether a product is a bread or a non-bread item for value added tax purposes in Italy."¹⁵

Think about that. Italy's value-added tax needs expert certified bread deciders. A certified profession dedicated to determining whether something is bread. The only conceivable reason such a profession can or should exist is to satisfy the requirements of a broken tax system.

Australia had to fly in Muntoni to decide the fate of one type of mini-ciabatta. But it gets worse. The Australian Broadcasting Corporation reported:

Under the GST law, food is generally GST-free unless it is a type of food specifically listed as being subject to GST.

This appears to be reasonably straightforward but is not. Pizzas, pizza subs, pizza pockets and similar foods are subject to GST.

In contrast, pizza rolls are generally GST-free but can be subject to GST when they are similar to "pizzas, pizza subs or pizza pockets."

Defining whether something is a pizza or a similar food has proved complex in the context of various baked goods.

The ATO has advised that determining whether a pizza roll is taxable requires consideration of the depth of any filling or topping, the recipe for the dough and whether the roll can be cut, have additional filling added or is expected to be served as is.

This analysis is complex and undertaking it places a considerable burden on businesses.

The rationale for having different tax treatments apply to pizza rolls with thicker topping is not clear.¹⁶

Just imagine the conversations the bread deciders might have at cocktail parties.

“Oh, what do you do for a living?”

“Well, I’m a bread decider.”

“A what?”

“A bread decider. I decide whether or not things are bread.”

“But doesn’t everybody know what’s bread and what isn’t?”

“Ah, but think about a mini ciabatta, which is an interesting borderline case.”

“But why would anybody care?”

“Well, taxes ...”

“And you’ve not shot yourself yet?”

“Well, I also have a side-gig as a pizza decider ...”

We do not know how lucky we are in New Zealand. We have no need of bread-decidors. So far.

Canada has a similar set of problems in its messy GST. Children’s clothing is exempt from GST but adult clothing is not, so smaller sized adults shop in the children’s section. You just have to tell the check-out clerk the dress is for your niece.

And in the United Kingdom, the tax on a takeaway Cornish pasty may depend on how recently it has been in an oven. Politicians want to exempt groceries from sales tax, but not restaurant meals. But how to set rules that tell the difference? Is a sandwich an exempt grocery item or a taxable catered meal?

As the Financial Times’s John Kay put it:

Officials translate the incompletely formulated thoughts of policy makers into enforceable laws and regulations. But this is rarely an easy or trivial task ... The common sense that says “I know the difference between a Cornish pasty and a ham sandwich when I see it” is appealing, but we would rightly find it unacceptable that the decisions of a tax inspector should be based on the principle that he knows what to tax when he sees it. And that is before you encounter the problem of tax advisers whose profession it is to make a Cornish pasty resemble a ham sandwich (or the reverse).¹⁷

The United Kingdom also enjoyed a 13-year lawsuit over a Marks & Spencer teacake: whether it was a cake or a biscuit for tax purposes, whether the government owed Marks & Spencer £3.5 million in back-taxes, and whether HM Revenue & Customs should pay millions of pounds in court costs.¹⁸ The instructions on John Watson's packet of toothpicks look positively sane by comparison.

America's patchwork of state-level sales taxes are even worse. Every state can apply its own unique taxes. This is not limited just to deciding the rate of taxes, but also the definitions of what is and is not taxable. Some states apply sales taxes to candy but not to other foods, and different states have different definitions of what counts as candy. Wisconsin's Department of Revenue even issued a 1,437-word memo explaining which types of ice-cream cakes, or slices thereof, are taxable or untaxed.¹⁹

The mess is just as bad at the federal level, where free tans at video-rental stores are taxable but not tans provided as part of a health club membership. A simple enough (albeit ludicrous) 10% tax on tanning services proved anything but.²⁰

The economic consequences of a system riddled with bread-deciders and jam-deciders and ice-cream deciders and tan-deciders can be staggering. Taxes become far less efficient not only because of the holes riddled throughout the system, but also the legal costs of producers trying to convince courts that their product is exempt rather than taxable.

When there are experts aplenty whose livelihood depends on complicated, messy and incomprehensible tax systems, with large penalties for anyone getting things wrong, it is difficult to make the tax system less complicated, messy, incomprehensible and punitive.

New Zealand's GST is uniquely, and admirably, clean. It applies broadly. Every producer has an incentive to report honestly because they also report the GST they paid to their suppliers on every item when claiming GST on their inputs.

Were New Zealand to exempt healthy foods from GST, we would well be on the slippery slope. It is one of those things that sounds really easy, but would be an utter disaster in practice.²¹

What counts as healthy? Not only does the medical evidence keep changing, but there would also be a string of boundary cases needing adjudication. If beans are healthy, what about frozen beans? Beans in a can?

Beans in a can with pork fat and sauce? How much pork fat and sauce before it is taxable? What if we use Jamie Oliver's recipe and fly him in to say it's good?

Even worse, think through the consequences of tax exemption.

Under the current beautiful broad-base, low-rate system, companies gather all their receipts for everything they purchased when making things and claim the GST on them. They then charge GST on the full value of their final product. Their net GST is on the value they added to their inputs along the way, since they netted out the GST from the inputs. Nice, clean and easy.

If some goods were exempt from GST, we would have problems. Imagine you were a food manufacturer making two products. One attracts GST and one does not. It is possible to charge GST on one product and not the other, but all the point-of-sale terminals would need to be reprogrammed – feasible but expensive. But how do you start thinking about claiming the GST on your inputs if you are selling an exempt product. You will need to justify how you apportion all your plant's shared costs across the different product lines.²² And Internal Revenue would worry you were loading costs onto the taxable line to claim GST where you shouldn't. The auditors would be kept busy.

And an industry would quickly emerge to make everything seem easier – and to prevent it all from ever really being easier.

The political case for exemptions is dangerously tantalising. And when you've granted one, it is almost impossible to resist granting others.²³

Even more perilously tempting are proposals to tax some politically disfavoured thing in order to provide a special pool of funding for some politically favoured thing.

These 'hypothecated' taxes make sense under limited conditions. Petrol excise in New Zealand goes into a special fund to cover road building and maintenance. If it is too hard to charge drivers for using roads, petrol levies are the next best thing.

That's different from taxing soda to fund early childhood education – as Philadelphia proposed.²⁴ Canada is considering taxing Internet services to fund and promote Canadian content.²⁵

It's an easy game to play. Would you support a tax on frappuccinos if it supported orphans with cancer? And if you don't support it, do you hate

orphans? I mentioned that it's orphans with cancer, right? How about a tax on Wellington hipsters' beard oil if it supported recovery programmes for the endangered tieke, the New Zealand saddleback? None of these proposals encourage sensible conversations around the projects' relative merits.²⁶

There are worthy causes innumerable. But if government is to fund them, it is almost always best to do it from general tax revenues. The overall tax system is already designed to balance equity and efficiency – to place the burden where it can most easily be borne.

When spending proposals face off at budget time, we can hope they are held to similar cost-benefit standards. Mix-and-match tax-and-spend programmes short-circuit that process.

We don't know how lucky we are to have a clean tax system. Because of the Dagg Effect, we don't know what we risk when we countenance daft proposals that would drag New Zealand's tax system into the Asylum. Contemplate the tax horrors on the other side of the Asylum's wall before taxing things you don't like, or exempting things you do. It is far riskier than you might think.

4.

Airport security

*He twisted his head till he was looking straight up into his captor's face.
A thought struck him.*

"Do you really enjoy this sort of thing?" he asked suddenly.

*The Vogon stopped dead and a look of immense stupidity seeped slowly
over his face.*

"Enjoy?" he boomed." What do you mean?"

*"What I mean," said Ford, " is does it give you a full satisfying life?
Stomping around, shouting, pushing people out of spaceships ..."²⁷*

Stop to appreciate the case of the knee that failed to jerk.

In February 2008, Asha Ali Adbille tried to hijack Eagle Airways Flight 2279 en route from Blenheim to Christchurch. She had a knife, claimed to have bombs on board, and demanded to be taken to Australia.

The plan failed. Her interference with the controls risked crashing the plane, but the crew subdued her. The plan to reach Australia was never going to work: the British Aerospace Jetstream had just over half the necessary range, even if fully fuelled.

Adbille was sentenced to only nine years in prison due to her guilty plea and mental health issues.

In 2017, when her release was imminent and she threatened repeat action, Wellington Airport barred her from the airport.²⁸ The Parole Board went

further and banned her from all airports and airplanes,²⁹ and transferred her to the care of the mental health system.³⁰

The official reaction to the threat was measured and proportionate. The government required cockpit doors be secured against entry. Many threats can be averted by locking cockpit doors, though it does make passengers more vulnerable to suicidal pilots. Other measures aimed to help Adbille, while protecting everyone else.

To this day, I can board an airplane in New Zealand simply by waving my phone at a kiosk. The Air New Zealand app puts up a QR code with my boarding pass, and I'm on the plane having shown no identification to anyone. The lines at security are short and easy; I can even carry my coffee through without worrying about whether the cup is over 100 mL.³¹

And due to the Dagg Effect, the government's entirely sensible response is being taken entirely for granted.

The Americans have not been so lucky.

In December 2001, not long after the 9/11 attacks, Richard Reid tried to set his shoes on fire on American Airlines Flight 63 from Paris to Miami. He had packed the soles of his shoes with explosives to blow up the airplane.

The plan failed, partially because other passengers interfered with Reid's attempts to light the fuse, and partially because his sweaty feet messed up the bomb. He was sentenced to three life terms plus 110 years without parole.

But in a broader sense, Reid succeeded. For the 16 years since his failed attempt, passengers in US airports have been taking off their shoes at security, just in case someone tries it again.

Security expert Bruce Schneier warns against measures targeted at yesterday's threats. Real terrorists adapt to security measures and use new tactics. Hardening cockpit doors guards against a range of threats. Making people take off their shoes only guards against shoe-related threats.

Schneier describes such measures as "security theater."³² They provide a pantomime of security that might make a few people feel safer – no real benefit for very real cost.

For instance, at the busy Los Angeles International, every 5 minutes of delay per passenger costs \$103 million per year of passenger time, and \$64 million in forgone airline revenue.³³

You might say this is only a bit of time delay that counts for little against human life. And you would be right, in one sense. But there are several ways government regulations can add a little time to processes to save lives. We need to be careful that every dollar's cost, and every minute's delay, does as much as possible to improve safety.

By the standard thresholds in US cost-benefit assessment, a 5-minute per-passenger delay at an airport like LAX needs to save at least 10 lives per year to be cost effective considering only the passengers' time cost.

It gets worse. Post 9/11 security measures made air travel such a hassle that people turned to the road. And driving is more dangerous than flying. One study estimated that in late 2001, more than 300 people were being killed per month in car accidents because they chose to drive rather than risk American airport security measures. The total tally by 2005 was more than 2,000.³⁴

Unless stepped-up security measures after 9/11 prevented at least 2,000 deaths from terrorist attacks, those safety measures have, on net, killed people – just by pushing people out of planes onto the roads. This is without even considering the additional costs imposed on those who still do fly, and the wasted resources on security measures.

An Australian study found the US Federal Air Marshal Service, which puts marshals on selected flights, costs \$900 million per year – about \$180 million per life saved.³⁵ By contrast, regulations mandating smoke detectors in houses cost about \$200,000 per life saved. Firing the air marshals and diverting the savings to smoke detectors would save, on net, almost 4,500 lives per year.

US airports are a madhouse. And New Zealand's airports have remained outside of that particular Asylum, with one exception. Passengers destined for the United States must pass through the Asylum's security measures.

Which is how it should be. Wonko the Sane had a plaque at the exit of the Outside of the Asylum, inscribed with the toothpick packet's instructions – just to remind him what he was in for whenever he visited the Asylum. America's security measures at New Zealand's airports, for those wishing to visit that part of the Asylum, are a nice caution.

5.

Policing

“So are you going to come quietly,” shouted one of the cops again, “or are you going to let us blast you out?”

“Which would you prefer?” shouted Ford.

A millisecond later the air about them started to fry again, as bolt after bolt of Kill-O-Zap hurled itself into the computer bank in front of them.³⁶

New Zealand’s housing shortage is the logical outcome of a mad system. Growing councils bear the hassles of growth, such as dealing with residents who hate change and figuring out how to fund faster roll-out of infrastructure, but see little of the benefits. Central government, meanwhile, enjoys the increased income tax, company tax, and GST that comes with growth.

Housing shortages, and ongoing friction between central and local government, are inevitable.

The great social scientist Ice-T reminds us never to hate the playa, only the game.³⁷ Rather than blame local government for responding to incentives, we should change the game.

Now consider the incentives facing police in America and how they lead to the unnecessary death of Sal Culosi – and many others.

Police departments there are funded, in part, from the sale of seized assets: cash, cars and homes.

Fair enough, if police were seizing the proceeds of crime after a conviction to fund victim compensation. If a fraudster bilked seniors of their savings

and bought a house with the money, selling that house might go some way towards setting things right. The logic is understandable: making sure that crime does not pay, by seizing the proceeds of a convicted criminal's illegal activities, can be an effective deterrent.

But the system distorts police incentives when police benefit directly from asset forfeiture. Solving a mugging or a murder might help the local police department's clearance rate, but busting a drug dealer, or an illegal gambling operation, can boost the department's budget. Time and effort are shifted to crimes that are profit-centres for the local police.

It gets worse when police seize assets without convicting anyone of anything.

Under US civil asset forfeiture rules, police can seize property they suspect to be the proceeds of crime. It is up to the property owner to sue for the return of the property.

The origins of the rule are suitably mad: centuries-old Admiralty Law. If all the pirates on a ship were arrested, the ship's owner could simply re-crew and sail off – and be difficult to find to boot. So the law let the government seize the ship and require the owner to prove its innocence to get it back.³⁸

Fast forward from the 17th century to the 20th century, when US police departments started finding it profitable to routinely seize cash. Travellers from out-of-state zipping along interstate highways proved lucrative targets: travelling back for several court appearances, spread over months and years, to recoup seized assets was a deterrent if the amount seized was small. Investigative journalist Radley Balko described the more lucrative parts of the interstate as “forfeiture corridors.”³⁹

Balko also reported on asset seizure in Cook County, Illinois, where police made more than 23,000 seizures from 2012 to 2017: three-quarters of all seizures involved cash, not property, and the median amount seized was just under \$1,500. The legal costs of fighting a seizure exceeded the value of the property, and the poorer neighbourhoods targeted had little political heft.⁴⁰

But not all seizures are small. Police in the City of Philadelphia seized nearly 1,200 homes from 2002 to 2012. Having a teenager selling a small amount of marijuana in the front yard could have the family home seized under civil asset forfeiture rules.⁴¹

Although some states enacted legislation to reform police incentives, federal legislation allows local police to help federal investigation – and funds seized as part of those investigations are shared with the local police under ‘equitable sharing’ rules. The Institute for Justice’s report on asset forfeiture tallies annual federal forfeiture revenues rising from under \$500 million per year to more than \$5 billion in 2014.⁴² National Review, a conservative publication, noted that the collections have helped fuel police militarisation: departments use the money to purchase “armored personnel carriers, automatic weapons, and sniper gear.”⁴³

The combination of heavily armed police and the incentives inherent in asset forfeiture is lethal.

Just down the road from where I went to graduate school in Fairfax Virginia, optometrist Sal Culosi was shot dead by a SWAT team when he answered his door.

Culosi liked to bet on American football. An undercover agent encouraged Culosi to raise the stakes, betting more than \$2,000 in a single day, so Culosi could be charged with running a gambling operation.

The SWAT team came to make the arrest, and Detective Deval Bullock shot and killed Culosi. The police eventually settled, paying Culosi’s family \$2 million. Bullock was never charged.⁴⁴

In Fairfax County, police can keep all the assets seized in state gambling cases; for other cases, they must share.⁴⁵ So Fairfax Police prioritised gambling cases likely to lead to seizures.

Balko contrasts SWAT strategies – no-knock drug raids in the middle of the night – with Winston Churchill’s (possibly apocryphal) quip, “Democracy means that when there’s a knock on the door at 3 a.m., it’s probably the milkman.”⁴⁶ Culosi’s case attracted a reasonable amount of media attention, partly because people don’t expect peaceful, unarmed, middle-aged optometrists to be shot and killed by police for answering the door.

But police in America shoot and kill people all the time: 991 in 2015 and 963 in 2016; 2017 is on track to match those figures.⁴⁷ Police officers are rarely charged; those charged are rarely convicted.⁴⁸ While crime dramas feature situations where the best course of action for police really is using deadly force, they rarely feature cases like Culosi’s. Or Brian Claunch: a

double-amputee, in a wheelchair, in a group home for the mentally ill, shot in the head by police because they found his pen threatening.⁴⁹

If the instructions on the side of a packet of toothpicks are a sign of a civilisation gone mad, what should we think about American policing?

New Zealand has so far remained outside of the American policing asylum. From 1941 to 2015, police in New Zealand shot and killed 29 people.⁵⁰ Adjusting for population size, police here take about 37 years to kill as many people as American police kill every year.

This is largely due to New Zealand's unarmed constabulary. When police do not have immediate access to firearms in situations they view as threatening, they must use other methods while seeking armed assistance – if it is necessary.

Policing in New Zealand is, all things considered, safe – even without firearms. Auckland University of Technology criminologist John Buttle tallied the figures for 2008–09, a high point in assaults against police. He found police reported being assaulted 2,481 times that year – out of 1,221,823 incidents attended by police. In the 123 years from 1886 to 2009, 29 officers were killed by a criminal act in the line of duty.⁵¹

If loss of life at work is a measure of how dangerous an occupation is, then policing comes quite far down the list of hazardous jobs. This raises the distinct possibility that it is more dangerous being a farmer than it is a police officer.

Farmers do not carry sidearms to guard against enraged livestock.

And just as New Zealand avoided knee-jerk responses to an attempted airplane hijacking, it has also avoided knee-jerk responses to the rare and tragic cases in which police are shot at work.

Police Commissioner Mike Bush:⁵²

The death of Senior Constable Len Snee was deeply felt by police officers of all ranks, all over the country.

Our data on risk has been improved under my watch and it shows police frequently deal with people with weapons.

In Len's case, the weapon was a gun. This has, quite rightly, led to public discussion about whether all field officers should be routinely armed.

The majority of commentators say 'no.' That is in line with the public feedback Police received when we consulted on the Policing Act 2008; it's also in line with the sentiments of police officers themselves.

Being unarmed is a unique and cherished feature of the policing style adopted by New Zealand Police – a style for which we are held in high regard internationally.

Routine arming of the police would not erase this style of policing, but it would make the job of being a community police officer considerably more difficult.

...

So our strategies rely on officers' good judgment. They are trained to identify risk and if they encounter an armed situation, to withdraw, cordon and contain until appropriately armed officers can be deployed. If the situation is equivocal, they have arms at ready resort with which to equip themselves.

This tactic has worked very well for over 40 years.

International evidence gives me no cause to think it is outdated. Literature on police experience and practice points to a high risk that officers can have their own weapons turned against them, having been overpowered in otherwise innocent situations.

There is also concern about the number of officers shot because they didn't want to fire their weapons. ***People tend to join the New Zealand Police because they want to help people, not shoot them.*** [Emphasis added]

But the Asylum door has crept open, just a little.

In 2009, National passed the Criminal Proceeds (Recovery) Act. Where the Proceeds of Crime Act 1991 required a criminal conviction before asset seizure, the new Act requires a High Court order.

In criminal cases, guilt must be proved beyond reasonable doubt. Both the old and new Acts allow seizure after conviction. Police recently sought to seize a \$1.2 million Kaitaia backpackers owned by Michael Harris, convicted in 2017 of stupefying and indecently assaulting guests.⁵³

It is a stretch to view Harris's backpackers as the proceeds of crime, but it would have counted as tainted property under the old Act and as property used to commit or facilitate an offence under the new Act. At least, this forfeiture proceeding is subsequent to conviction.

Forfeitures under the new Act require only the High Court be satisfied that, on balance of probabilities, the property is tainted.⁵⁴ Recovered funds go into a pool administered by the Ministry of Business, Innovation and Employment. Police, and other agencies, can apply to use the funds for crime prevention projects. In 2014, the Police Association's newsletter noted:

One thing that is clear, however, is that the demand for asset recovery investigations is increasing, especially from other government departments, such as the Ministry for Primary Industries, Customs, the Serious Fraud Office and ACC, as awareness of the units' work grows.⁵⁵

In December 2015, the New Zealand Herald reported that \$326 million in "drug-funded assets" had been seized under the 2009 Act in the past five years. Seizures grew from \$22 million in 2010 to \$93 million in 2015. The burden of proof lies on the owner of the seized asset to prove it was not tainted, and they often find it makes more sense to settle.⁵⁶

Outside criminal cases, the asset recovery unit is increasingly making settlements with property owners over forfeiture orders, [Detective Senior Sergeant Craig] Hamilton said.

Forfeiture cases are determined on the civil level of proof, rather than the higher criminal threshold of evidence beyond reasonable doubt.

"People will come to us and look at a settlement – that is occurring more frequently. They will look at it pragmatically and say, yes, I can spend a lot of money fighting this and come second or engage with police and settle," Hamilton said.

Incentives in New Zealand are not nearly as perverse as in America. Police here do not directly profit from asset seizures. But they can apply to the pool of funds established by seizures. In 2016, Prime Minister John Key gave millions to anti-meth efforts from seized assets.⁵⁷

If the seized proceeds of crime are not used to compensate victims, those proceeds should be part of general government revenues. If police drug enforcement activities become self-financing because of asset forfeiture, police attention may plausibly shift towards drug crime – at the expense of less profitable lines of policing.

Although New Zealand's police do not usually carry firearms, taser use has reflected poorly on them. Greg McPeake, a suicidal and morbidly obese man, was tasered by police in 2015 while trying to follow police instructions to get out of his small vehicle, then set upon by two police dogs. He died of the overdose of pills he had taken before the police showed up to help.

Mark Scott's report for *North & South* magazine reads far more like an American case of excessive police force than something that could or should happen here in New Zealand.⁵⁸

At least, on this side of the Asylum wall, the police do not carry firearms.

The next time the Police Association demands New Zealand's police be armed, don't fall prey to the Dagg Effect. We are lucky to be one of the few countries with an unarmed constabulary.⁵⁹

6.

Driving you to drink

*Trillian did a little research in the ship's copy of *The Hitchhiker's Guide to the Galaxy*. It had some advice to offer on drunkenness.*

"Go to it," it said, "and good luck."

It was cross-referenced to the entry concerning the size of the Universe and ways of coping with that.⁶⁰

I grew up on a farm in Manitoba in the 1980s and '90s. Drinking might not be the best way of coping with Canada's crazy rules, but it's understandable.

If you wanted to farm without dealing with government-run marketing boards and quotas, you avoided growing wheat, barley, pork, poultry, eggs or dairy. Classmates expecting to inherit their parents' dairy quota swore it was the best system in the world, but I had my doubts.

If you wanted to listen to the radio while cutting hay, Canadian content regulations meant listening to the few tolerable Canadian songs that got played over and over again until you wanted to throttle whoever had designed the rules.

Taking to the lake instead of the fields wasn't any help. Commercial fishers on Lake Winnipeg, which is roughly half as big as Canterbury, had to sell their fish through the government-backed monopoly fish buyer, the Freshwater Fish Marketing Corporation.

The system then worked tolerably well for fishers around Selkirk, at the south end of the lake, but abysmally for the aboriginal fishers at the north

end, far from the only place they could legally sell their fish. Political clout drove outcomes, and the Indian reserves at the north end had none.

It was enough to drive you to drink. But where? Manitoba had only two breweries for its million people – and no imports. Under provincial regulations, to sell beer in one province, you had to brew it there. Americans could get beer from other parts of Canada more easily than Manitobans.

Other regulations made it near impossible for craft breweries to emerge.⁶¹ Half Pints led the charge for craft brewing in Manitoba. When they wanted to expand their home-based brewery to a more commercial size, they phoned the provincial regulator, who just laughed and hung up.⁶²

Manitoba has been liberalising its rules since 2013, but the rules are still archaic and complicated by New Zealand standards. The rules are such a mess that the Manitoba government has had to consider subsidising small brewers to get the industry going. Ronald Reagan's quip about government sums up Manitoba rather well: "If it moves, tax it. If it keeps moving, regulate it. And if it stops moving, subsidise it."

New Zealand's regime, by comparison, is pretty sane. But keeping it that way requires vigilance.

Here in New Zealand, home brewing is legal and easy – as is distilling your own spirits. You will get into trouble for selling your home brew without paying excise. But making your own whisky to share with your friends is perfectly legal – as it should be.

And while America might never have had Nascar if it had sensibly allowed home distillation, as Appalachian moonshiners' races with the revenuers was where Nascar got its start,⁶³ that is no reason to ban alcohol production.

Distilling your own vodka, in most parts of the world, is likely to get you arrested. If you do a good enough job of it in New Zealand, you wind up building 42 Below from the still in your garage, turning it into a multimillion dollar business,⁶⁴ and selling it to Bacardi for \$138 million.⁶⁵

It is easy to set up shop as a new brewer or distiller – and many home brewers do. So long as you pay your excise, it's not harder than any other kind of drink production.

One of my favourite New Zealand brewers, Cassels & Sons, started by giving samples, and selling a few bottles, of their home-made beer at the

Lyttelton Farmers Market on Saturdays at the local school playground. Their stand was a plank on top of old milk crates.

That small-scale production and sale let them figure out that people were willing to pay for what they were selling, and gave them the confidence to turn their old brick woolshed in Opawa into a brewpub. They opened just a few months after the Christchurch earthquakes.⁶⁶

That kind of story is utterly unremarkable in New Zealand, but would be impossible in too many other places. The rules around alcohol production elsewhere often mean you cannot start small – compliance costs are so high you have to start big. And starting big is risky.

Because New Zealand's rules for starting craft production are simple, we have a fantastic craft beer scene. The Brewers Guild lists some 95 members, and not all small brewers are members. For a country of 4.7 million people, that's pretty good: about 20 breweries per million people.

Manitoba has a population of 1.2 million and nine breweries. Which itself is an improvement over a decade ago when you would have been lucky to find three.

New Zealand's alcohol excise is also simple. The general principle: the excise levy on drinks should be proportionate to the amount of alcohol in them.

We can argue about whether excise is the right way to stop dumb people from doing dumb things while drunk. And I have argued that. To steal a line from my friend Edward Stringham,⁶⁷ taxing alcohol to prevent problem drinking is like hiking the petrol tax to reduce speeding.

But let's leave that one for another day.

Let's also ignore how odd it is that a bottle of whisky carries about double the excise per unit of alcohol as a bottle of beer.

New Zealand's excise system just makes more sense than trying to control prices through state monopoly retail outlets, like those in Ontario, Canada. There, the rules help the public sector union that staffs the liquor outlets hold the whole province hostage by threat of strike.⁶⁸

For all of New Zealand's problems with police extorting licensing conditions from shop owners,⁶⁹ we are nowhere near Pennsylvania, where liquor permits are rare and tradeable – and sell for hundreds of thousands of dollars.⁷⁰ Pennsylvania is not alone – in one part of New Jersey, a liquor licence traded for \$700,000.⁷¹

But the Asylum's wall does need defending. Anti-alcohol activists in New Zealand have been pushing to restrict the number of places allowed to sell alcohol.⁷² This would inevitably make liquor permits scarce and valuable resources, build a powerful constituency for further regulations that tighten access, and boost the value of the permits. Let's not build self-perpetuating holes in the Asylum wall.

7.

For your own good

The way [the Nutri-Matic Machine] functioned was very interesting. When the Drink button was pressed it made an instant but highly detailed examination of the subject's taste buds, a spectroscopic analysis of the subject's metabolism and then sent tiny experimental signals down the neural pathways to the taste centres of the subject's brain to see what was likely to go down well. However, no one knew quite why it did this because it invariably delivered a cupful of liquid that was almost, but not quite, entirely unlike tea. The Nutri-Matic was designed and manufactured by the Sirius Cybernetics Corporation whose complaints department now covers all the major land masses of the first three planets in the Sirius Tau Star system.

...

"Listen, you machine," [Arthur] said, "you claim you can synthesize any drink in existence, so why do you keep giving me the same undrinkable stuff?"

"Nutrition and pleasurable sense data," burred the machine. "Share and Enjoy."

"It tastes filthy!"

"If you have enjoyed the experience of this drink," continued the machine, why not share it with your friends?"

"Because," said Arthur tartly, "I want to keep them."⁷³

As a general principle, peaceful people minding their own business, doing no harm to others, should not be interfered with. The sign at the entry to Cave Stream, noted at the start of this report, exemplified that kind of principle. It stood in stark contrast to the American system.

America's broken tort law means property owners take on a lot of risk for letting anybody do anything risky on their land. This makes it hard to do many fun things. New Zealand's accident compensation system has avoided that problem. For limited ability to sue for compensation in case of accidents, and a clip from the weekly pay cheque, we all get accident insurance.

It is also arguably one reason New Zealand has a space launch facility in Mahia. Peter Beck, the hero entrepreneur who has brought New Zealand into the space age, has always been a tinkerer. Bloomberg's profile highlights his first taste of rocketry:⁷⁴

In 1999, at 18, Beck did something most people would consider very stupid. After checking out books from the library to learn how to make his own fuel, he set up a laboratory in a backyard shed and set to work on a rocket engine. Lacking a hazmat suit, he wrapped himself in plastic bags and put on a welding helmet as he distilled peroxide and other chemicals.

After successfully testing one of his engine designs, he decided it was time for a proper adventure. He strapped the engine to the back of a custom-built bicycle, dressed himself in a red jumpsuit and white helmet, and fired up a trial run in a local parking lot. Leaning forward in a near-prone position, he managed to reach about 90 miles an hour. To slow himself down, he first sat upright, allowing wind resistance to do some of the work lest the brake pads or wheels melt. "Only a few people on the planet have put their legs inside a rocket," Beck says. "It's a very good feeling."

New Zealand is the kind of place that builds Peter Becks – and Burt Munros.

Or, at least it used to be.

Health and safety rules have started achieving here what defective tort law in the United States wrought there: excessive risk aversion ruining everything fun.

This year, Dave Hunger's Stratford dairy farm slash adventure park was killed by health and safety worries. Hunger would occasionally open his farm to the public for cow rides, magic carpet rides behind a tractor, and a flying fox.⁷⁵ In March, he closed it – at least until he takes out enough of the fun to satisfy the fun police.

“One or two members of the public came to me and said ‘we think you’re putting yourself in a really vulnerable situation because your gear is uncertified and it’s all home made, it hasn’t been ticked off by an engineer or designed by an architect,’” he said.

“So when I stopped and thought about that and realised what would be involved in being prosecuted, it wasn’t an appealing prospect.”

Hunger said he put a hold on the open days he’d been running and had the place checked by health and safety experts who gave him a list of more than 70 different improvements needed to get to a legal standard.

...

He said he understood the government had to find a balance between protecting people and making sure they were still allowed to have fun, but he thought the current law, brought in after the Pike River Mine disaster, went too far.

“It’s a balancing act between keeping people alive and keeping people that are alive enjoying life,” he said.

“We’ve got to strike that balance sometimes and I think the balance has gone a bit too far to keep people breathing and not letting people enjoy life.”

It had also been difficult to work out which standards he would have to use, as the farm was so unique.

“There are industry standards around flying foxes, with height and what have you, there’s industry standards around rivers and safety, and I’m not sure what industry standard we’re going to use for riding a cow, I don’t think there is one unless they lump us in with jockeys or something,” he laughed.⁷⁶

New Zealand is losing something special because of the 2015 Health and Safety rules. Schools are scared of being sued for letting kids climb trees or enjoy playgrounds.⁷⁷ Boy Scouts volunteers worry too. Why? Criminal liability can be huge if anything goes wrong.

While WorkSafe and the Ministry will swear up and down that they never intend such effects, these effects are entirely predictable. Combine massive penalties for getting things wrong with uncertainty about proving you’re right and everyone will hunker down and halt all things fun.

As one Scout leader (and fellow economist) wrote to me when the rules were coming in:

I know you write periodically about crazy laws and being inside the asylum. As you might know, I'm a scout leader. A volunteer. One of things that I have enjoyed in scouting is the ability to let children and youth take risks. You know, tackle bulrush, climbing trees, crossing rivers, hiking, making and playing with gun powder, making their own bows and arrows (one shot an arrow clean through a window without breaking it :)) and so on.

They might not have any impact, but! Since volunteer organisations fall under the jurisdiction of the health and safety in employment act you can see why the sentencing act changes are a potential problem for them. It also seems to me to undermine the no-fault basis of the ACC scheme. I think ACC has some problems, but the no-fault provision is incredibly useful in not having to worry about frivolous lawsuits to extract payments to avoid the costs of the suits going to court, which then result in noticeable restrictions on people's activities, such as children playing where there is any tiny risk of an injury!

They keep making changes to health and safety laws which potentially undermine the ability to do this. The first was throwing in volunteers in the Health and Safety in Employment Act back several years ago. That added to our paperwork and probably did restrict some activities at the margin (but not hugely), which was a pain at the margin but that seemed to be all. But they are currently making a couple of other changes which increases costs to volunteer organisations and I'd predict the benefits are negative once they take into account lost consumer surplus from eventual changes and reductions in volunteer activities.⁷⁸

It's hard now to imagine a teenager being free to muck about with rocket engines.

The Asylum wall needs defending. What we have here is worth protecting. Whatever the rules intend, if the effect is schools clamping down on playground fun, wholesome fun like Hunger's farm being shut down, and Scouts leaders fearing criminal liability, then the rules need fixing.

8.

Defending the Asylum Wall

He fished in his pocket for his two pairs of sunglasses ... he felt much more comfortable with them on. They were a double pair of Joo Janta 200 Super-Chromatic Peril Sensitive Sunglasses, which had been specially designed to help people develop a relaxed attitude to danger. At the first hint of trouble they turn totally black and thus prevent you from seeing anything that might alarm you.⁷⁹

New Zealand's Outside of the Asylum status is not to be taken for granted. The Wall needs constant vigilance. While enjoying what we have, we need to leave the peril-sensitive sunglasses at home.

Sometimes, the best defence is a good offence. So I suggest we revisit New Zealand's tourism campaigns and officially brand New Zealand as the Outside of the Asylum. It is the right time.

The tourism ads practically write themselves.

Picture a European family on a trip to the Orlando Disney World. The kids are all excited with their little Mickey Mouse hats with big ears. When they reach customs, the American security officer standing in front of a picture of President Trump sees a stamp from dad's work trip to Iran. They're hauled into a little room, subjected to indignities, and sent back to Europe on a United Airlines flight – with another passenger on the flight hauled off and beaten.⁸⁰

Their neighbours flew to Taupo on Air New Zealand, were welcomed by friendly customs officers and biosecurity staff, who give their boots a

free cleaning, and had a wonderfully sane experience. They came to a place where things just work as they should – and as they used to elsewhere. The sign at the customs entry gate: Welcome to the Outside of the Asylum.

Taking that brand to heart, we must watch more carefully for threats to the Asylum wall. Would we ban medium-rare hamburgersst if our coveted Outside of the Asylum status were at risk? I don't think so. It is easy to forget how lucky we are here. We have to keep the peril-sensitive sunglasses off and be vigilant. We have to stop the chipping of the Asylum wall.

Parts of New Zealand are less sane than they used to be – but other parts have improved. New Zealand's approach to prostitution regulation is far more sensible than in most countries. New Zealand brought in civil unions and marriage equality before many other countries – and nobody did it with more style. Parliament's waiata was beautiful.

Even a pessimist would agree that, at worst, the rest of the world is growing mad faster than we are.

New Zealand is the world's last sane place. Let's keep it that way.

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Good thinkers use no jargon. They deal in concrete matters. Their words and their sentences are short and emphatic. Their meaning is immediately apparent. And to read them is to feel a suffusion of delight, because the truth is always pleasing and often comic.

Such a thinker is Eric Crampton. I have never read a piece of his I haven't enjoyed. When he asked me if I'd write a foreword for his next report I hoped I'd be able to say that here was a think tank piece that deserved the name. And now that I've read it, I emphatically can.

Eric illustrates the lunacy of various authorities around the world and the comparative sanity of most New Zealand authorities. In doing so he maps the awful path that awaits us if we follow bad examples and succumb to bad thinking. *The Outside of the Asylum* is a heartening read for New Zealanders at the same time as being a much-needed warning. And It's a bloody good laugh.

Joe Bennett

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