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Mother figures behind bars: Pregnant women and mothers in prison in England and Wales

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Abstract

For over 100 years, mothers have been allowed to keep their babies with them in prisons, with these arrangements being formalised in England and Wales in the early 1980s. Every year, 600 pregnant women are held in prisons in the UK, yet Ministry of Justice figures suggest that only 100 babies live with their mothers in prison. This chapter presents a Foucauldian-inspired critique of the production of meaning through discourse to examine the contemporary discourse around motherhood in prison in the UK, alongside a critique of Mother and Baby unit application criteria. This chapter exposes the implicit and yet underpinning notional representations of 'appropriate' motherhood in this context.

Key words: women in prison; motherhood in prison; pregnant women; mother and baby units

Introduction

Women have served custodial sentences separately from male prisoners in the UK since the first purpose-built female prison, HMP Holloway in London, was opened in 1902. Likewise,

for over 100 years, mothers have been allowed to keep their babies with them in prison, but no formal arrangements were made in the UK until the early 1980s (HM Prison Service, 1999). Present day arrangements are that women entering prison, who are pregnant or have a child under the age of eighteen months, have the right to apply for a place in a Mother and Baby unit (MBU). Every year, around 600 pregnant women are held in English prisons, yet in 2015, Ministry of Justice figures suggest that only 100 babies lived with their mothers in prison. The limited research base indicates that while this subject is a complex issue, despite finding that mothers and babies can often benefit from residing in a supportive MBU, this resource is significantly under-utilised.

In February 2016, the then Prime Minister commented that it was "absolutely terrible" to think of infants spending time behind bars, subsequently calling for an urgent rethink of the prison system. In the same year, a BBC Radio 4 soap opera "The Archers" carried a storyline of a pregnant woman in prison, resulting in national media attention and wide public debate, underlining the continued influence of political agendas and mediated representations of motherhood on real women's lives. This paper highlights the policy, research and current evidence-base in light of this increasingly politicised and culturally contested representational milieu. We utilise Foucault's notion of motherhood in prison as a historically situated figure which is put into discourse (Foucault, 1990). Through an examination of the MBU application policy and the current under-utilisation of MBU places, this paper exposes the implicit and yet underpinning notional representations of 'appropriate' motherhood in this context.

Motherhood in prison, a figure put into discourse

More than ten years ago, Kath Woodward argued that motherhood in contemporary Western culture occupies a:

'particular but ambiguous place. Motherhood is subject to strongly contested and often highly idealized representations. Motherhood is recognizable and identifiable through the discursive and symbolic regimes which produce meanings about the experience, and through which we make sense of our identities' (Woodward, 2003, p. 18).

This chapter utilises a cultural studies approach in order to examine the politics of representation by exploring the ways in which motherhood in prison is represented through

discourses in popular culture, political rhetoric and criminal justice policy documentation in England in the 21st-century. This chapter argues that as a signifying system, while the cultural representation of motherhood in prison can and does change, it continues to not simply reflect, but reproduce the dominant social order. In order to examine the influences on our ideas about motherhood within the prison context, we must pay attention to meanings and how they are produced and re-produced (Hall, 1997).

In Western cultures, idealised notions of motherhood are constructed, which operate to regulate and control the behaviour of women, via distinguishing a “good” mother from a “bad” mother (Maher 1992, p. 39). In Britain, media representations of female offenders conform to ‘discourses of representation specific to deviant women’ (Wykes, 1995, p. 52) traditionally based on women either being considered ‘bad’ or ‘mad’ (Wilczynski, 1991; Weatherby et al., 2008). The tendency to characterise female offenders as doubly deviant by way of breaking the law and society's gendered expectations, is argued to serve a two-fold moral function by both reinforcing concepts of appropriate gender behaviour, and as a cautionary tale to ward other woman against deviating from these expectations (Heidensohn, 1989, p. 102; Lloyd, 1995). With regard to motherhood in prison, these complex and pervasive ideologically-based decisions perceptions impact on criminal justice practitioner decisions around the sentencing of mothers (Carlen, 1986 cited in Medlicott, 2007, p. 255; Carlen, 1988), and are also internalised by female prisoners (Clarke, 1995; Schram, 1999). These judgements of appropriate notions of 'good' motherhood have significant impacts in the criminal justice context, which is important with regard to their implications on criminal justice policy as:

'of all the subtler constraints on the way women act and are supposed to act, few are more complex than the workings of social policies' (Heidensohn 1985, p. 191).

This chapter presents a Foucauldian-inspired critique of the production of meaning through discourse to examine the contemporary discourse around motherhood in prison in the UK. Drawing on Foucault's (1972; 1971) work, the authors draw together a range of discourses, describing the rules, dimensions and actual practices resulting from a particular body of knowledge or representational system, that encapsulates the figure of motherhood in prison in the 21st-century English context. This chapter is structured around three broad dimensions of discursive practice, underpinned by Foucault's concepts, which direct our attention as follows:

- First by incorporating a genealogical¹ aspect, to explore the order or emergence of the issue at hand (Foucault, 1977). This chapter provides a summary of the wider UK criminal justice policy context which underpins the management of both women and mothers in prison.
- Second, this chapter presents an exploration of the actual mechanisms of the MBU application criteria, imbued within existing power relations, to assess how they may function as an implicit demonstration (Foucault, 1982) of approved or refused motherhood status in prison. The author's research and other data in this area are used to contextualise this section.
- Finally, this chapter attends to issues of subjectification² (Foucault, 1983), through an examination of the signifying practices that impact on women who find themselves in this position - brought to life with selected excerpts of interviews with women having been through the MBU system - with the kind permission of Birth Companions³. This aim is also complemented by a broader critique of the national UK media-based discourse resulting from a pregnant woman in prison story line in a popular BBC Radio programme.

In this way, this chapter presents the examination of a representational system of discourse - as a figure of motherhood (Foucault 1981) that holds particular reverberations in mid-2000's England. A figure put into discourse through political, social policy discourse and media-generated representation, all of which have a powerful impact on those women in custody — with the right to active and on-going motherhood status in prison.

Discourse 1 — Women in prison and the UK penal policy context

In order to account for the order or emergence (Foucault, 1977) and development of the discourse around mothers in prison, this section provides a short historical contextualisation of the key events around women's imprisonment in the UK penal policy context (Crowther-Dowey, 2007; Prison Reform Trust, 2015, Medicott, 2007).

While mothers have been allowed to keep their babies with them informally in UK prisons for over a 100 years, these arrangements were not formalised until the early 1980s (HM Prison Service, 1999). In 1983, in response to increasing public concern around women in prison, the national charity and pressure group Women in Prison (WIP) was established to monitor developments in the female prison estate.

In 1989, the Home Office commissioned a report regarding the appropriate development of young children in prison mother and baby units (Home Office, 1989). By the early 1990s, the UK experienced a change in rhetoric contained within the Criminal Justice Act 1991 — which focussed on promoting justice through community rather than custodial sentences; however this change in penal thinking was short-lived and we saw a reversion to more punitive attitudes to social and criminal justice issues return, parallel with lone parents being subjected to national disparagement (see Crowther-Dowey, 2007). By 1993, the then Justice Secretary, declared "Prison Works" at the Conservative Party Conference and the future dominance of custodial sentences in the UK seemed assured.

However in 1994 the UK was rocked by the public scandal of pregnant prisoners being handcuffed whilst in labour and a year later, the Chief Inspector of Prisons staged a public 'walk-out' of HMP Holloway in response to the unsanitary conditions within the prison. A Home Office research report highlighted the high proportion of women in prison who were either pregnant or had dependent children. The survey found that 61% of women prisoners were mothers of children less than eighteen years of age, with a high percentage under 5 years of age (Home Office, 1997). The resulting media headlines sent an indignant message around the issue of sending mothers of young children to prison in the UK press, with reports such as: 'Pregnant women suffer behind bars' (The Independent, 7 August 1997); 'Call for rethink on jail mothers' (Evening Standard, 24 June 1997); and 'Pity for mums' (Manchester Evening News, 6 October 1997)' (cited in Caddle, 1997, p. 21).

A time for change?

In 1998, the Home Office responded to increasing public concern with the creation of the Women's Policy Group and the production of a Strategy for Women Offenders by 2000. A series of high-profile reports⁴ have subsequently concluded that prison is rarely a necessary, appropriate or proportionate response to women who get caught up in the criminal justice system. In 2008, the UK's newly formulated National Offender Management Service (NOMS) developed gender specific standards under the Prison Service Order 4800. By 2010, the impact of the introduction of the Equality Act 2010 in the UK was felt with its requirement of an assessment of different needs of women and men in the criminal justice system (Ministry of Justice and NOMS, 2012). Also in 2010, the UK signed up to the United Nations Rules for the Treatment of Women Prisoners for Women Offenders (the Bangkok Rules⁵). A recent Criminal Justice Committee concluded that the newly introduced Equity

duties do not appear to have had the desired impact on the provision of gender-specific services, or on broader policy initiatives (House of Commons Justice Committee, 2013). More broadly the UK criminal justice system remains in considerable upheaval as a result of the UK Government's Transforming Rehabilitation⁶ reforms.

The current landscape of criminal justice discourse

How the Transforming Rehabilitation changes will impact on mothers in prison is still to become clear. Given the penal policy rhetoric rationalising these transformations, one can hear both the justification of austerity (under the Coalition Government's austerity programme) and that since 2010, NOMS has been tasked with making savings of £900m (equivalent to a cut of just under 25%⁷), as:

"The cost to the taxpayer of reoffending is estimated to be £9.5 to £13 billion per year" (Ministry of Justice, 2010).

Similarly, in January 2013, the Government announced a review of the women's prison estate with the same rationale:

'We simply cannot afford — either financially or morally — to ignore these issues. It costs £45,000 to keep a woman in prison for one year, while almost 45 per cent of all women released from custody in 2010 reoffended within 12 months, committing further offences and creating countless more victims. Where women commit crimes, they must be punished appropriately and properly' (Ministry of Justice, 2013, p. 2).

In 2015, it was announced that the UK's biggest female prison HMP Holloway (which also contained a Mother and Baby Unit (MBU) up until 2013) was to close. Francis Crook of the Howard League for Penal Reform is reported as commenting "Simply moving women in order to sell off land during London's seemingly unstoppable property boom, is not courageous" (cited in Saner, 2015).

Since the 1970s, feminist criminologists have asserted that women's deviant behaviour is demonised by society as being doubly deviant: having not only broken the law, but having violated normative standards of femininity (Chesney-Lind and Pasko, 2013; Smart, 2013). Despite this however, mainstream criminology and criminal justice practice has largely continued to both explain and treat female deviance through the lens of physiological or

psychological disturbance (Gaarder et al., 2004). The ad hoc way in which women's prison regimes have been shaped by specific and ideological conceptions of idealised femininity, womanhood and motherhood, can be seen as a perpetuation of wider welfare anxieties about the role of women in the family and society (Carlen and Worrall, 2004).

Discourse 2 — Mother and Baby Unit admission criteria

In order to pay attention to mechanisms imbued with existing power relations and how they function (Foucault, 1982), this section provides a description of the MBU admission criteria as indicative of wider socially constructed perceptions regarding the criteria by which motherhood is accepted or denied within the criminal justice context.

In 2012, there were seven prisons with MBUs with a national capacity for 77 babies in the UK. At the time of writing, there are six prisons⁸ in England with mother and baby units (Ministry of Justice 2017). Currently, MBUs in the UK have a total capacity for 64 babies, who can stay with their mothers in prison until they are 18 months old (Delap and Abbott, 2016). Up until 2016, the actual number of pregnant and postpartum women in UK prisons was not known (see Albertson et al., 2012). Every year however, it is estimated that around 600 pregnant women are held in prisons in England and Wales (Kennedy et al., 2016, p. 1), and in 2015 100 babies spent time in an MBU (Delap and Abbott, 2016, p. 34). Numbers of children spending time within prison nurseries were likewise not collated, making them 'institutionally invisible' (Poso et al., 2011, p. 516). However, as of July 2016 data on MBUs is to be included as part of the National Offender Management Service Annual reporting (Ministry of Justice, 2016).

The operational framework for delivering MBU facilities is set out in Prison Service Instruction (PSI) 49/2014⁹ Mother and Baby Units. All MBU application — whether made before or after entering prison are considered by an Admissions Board (Ministry of Justice, 2016, p. 3):

The Board must be multi-disciplinary and include an Independent Chair, MBU Manager, Community Offender Manager, and have input from Local Authority Children's Services. The best interests of the child are the primary consideration, alongside the safety and welfare of other mothers and babies on the unit.

Each application decision is made based on the following criteria:

- There are no concerns about mother's conduct and behaviours which may place her own and other mothers and children on the unit at risk.
- The applicant has provided a urine sample for a Mandatory Drugs Test (MDT) which tests negative for illicit substances.
- The applicant is willing to refrain from substance misuse.
- The applicant is prepared to sign a standard compact, which may be tailored to her identified individual needs.
- The applicant's ability and eligibility to care for her child is not impaired by poor health or for legal reasons such as the child being in care or subject to a Child Protection Plan (Prison Service Instruction 2014, section 2.16, p. 8).

In order to put the MBU eligibility criteria listed above in context, before turning to the authors and other research findings regarding low rates of MBU utilisation in the next section, it is important to clarify the profile of the UK female prison population.

Prison Reform Trust (2016) figures from 2015 show that rates of self-harm in the UK's female prison estate are at the highest level ever, the female prisoner population account for 23% of these reports, despite representing just 5% of the total prison population. Over half of the female prison population in 2015 (53%) report experiencing some form of abuse as a child and just less than half (46%) have a history of domestic abuse. In terms of mental health profile, 26% of women in prison received treatment for a mental health problem in the year before custody. Finally, 46% of women prisoners report having attempted suicide at some point in their lives.

With these female prison population facts in mind, compounded by the idealised notions of 'good' motherhood, returning to the MBU application criteria above, it is therefore less surprising that a recent HMP Inspector of Prisons Annual Report (2015, p 15) found that MBU's were underused. Empirical data regarding these issues remains however scarce.

Discourse 3 — Representation, Subjectification and Reality: Motherhood in Prison

By attending to processes of subjectification (Foucault, 1983), this section examines signifying practices that influence women's decisions regarding having their children with them in prison in the UK. This section highlights a number of structural and cultural

constraints that negatively affect active motherhood role opportunities within the criminal justice system.

In 2016, it is estimated that around 50% of pregnant women or mothers of children under 18 months going into prison do not apply for, or are unsuccessful in their application for an MBU place, and were subsequently separated from their baby (Kennedy et al., 2016). Ministry of Justice (2016, p. 5) figures highlight that of the 173 applications to an MBU made in 2015, of those applications that resulted in a recommendation, 65% were approved and 35% were refused.

Gregorie and colleagues (2010) surveyed women with children less than 18 months old in seven prisons in the UK, 92% knew about MBUs before imprisonment, while just less than a third (30%) applied for an MBU place. Of the remaining sample, the rationales for not applying were: the child was already in a social services placement (24%); 23% did not feel prison was the right environment for their baby (23%); their child was settled with a family member (16%); 10% had children over the age limit and 4% did not know they could apply.

Of the mothers in the study who applied for an MBU place:

- 30% were refused on the grounds of their sentence length and 9% were awaiting a decision from the MBU Board.
- 6% were refused because of a previous childcare history; 6% had been removed; 6% had changed their minds.
- 3% were refused because of the nature of their offence; and the remainder were unclear about the reasons they had been refused a place (Gregoire et al. 2010, p. 384).

Subsequent studies have identified four significant factors which mitigate MBU applications: Criminal justice practice and processes; MBU eligibility criteria issues; The influence of perceptions of other family members and staff; and Wider perceptions that prison is not the right environment for a baby (O'Keeffe and Dixon, 2015).

Criminal justice practice and process

Current criminal justice practice and process leave mothers inadequately informed about the provision available in MBUs (Albertson et al., 2012; 2014; O'Keeffe and Dixon, 2015). Mothers appearing in court, not expecting to receive a custodial sentence, are unprepared for making the necessary care arrangements, including an MBU application. Further, on arrival

in prison, women do not reveal their status as mothers and are too distressed to absorb prison reception information (O'Keeffe and Dixon, 2015).

"I never knew what I was entitled to, there were no brochures. There was nothing that said this is what happens when you have a baby in prison, this is what you are entitled to"

(interview, in Kennedy et al., 2016, p. 22).

It has also been suggested that there is significant inconsistency in practice relating to MBU admissions (Children's Commissioner, 2008), while foreign national prisoners may be more likely to apply for and get an MBU place (Galloway et al., 2014). In addition, it has been argued that the selection criteria for MBUs favour women from ethnic minorities because they tend to be serving longer sentences and are less likely to have mental health issues (Birmingham et al., 2004).

Eligibility/criteria issues

A further mitigating factor regarding accessing MBU places is identified as an apparent lack of clarity on the application criteria cited by MBU prison staff (Albertson et al., 2012). The criteria appears 'to select out women with psychiatric morbidity, child care problems and other difficulties' (Birmingham et al., 2016, p. 393).

"I noticed they [healthcare staff] always spoke to the officers first even though I'll be sitting there, so it's like they discarded me as a human being" (interview with mother in prison, in

Kennedy et al. 2016, p. 23).

While mental health issues are not explicitly referred to in the MBU application exclusion criteria, this 'may have the effect of excluding women with recognised or unrecognised mental illness' (Gregorie et al., 2010, p. 379; Birmingham et al., 2006). These researchers go on to suggest that women with mental illness may therefore be much more likely to be found in the group of mothers who are separated from their babies in prison.

"I was handcuffed on my way to the appointment. It was so degrading, people looking at you and judging. It was the worst feeling in the world". (interview with mother in prison, in

Kennedy et al. 2016, p. 23).

In other words, women who have treatable mental health problems are effectively excluded from MBU places, based on these application-criteria linked issues (Gregoire et al., 2010).

The influence of perceptions of other family members and staff

The views of other family members and professional healthcare staff can prove influential in a woman's decision-making regarding applying for an MBU placement. For example, wider family members who either a) do not want the baby to be in a custodial setting or b) see the prison as a long distance from them as impeding access to the child (O'Keeffe and Dixon 2015). While other women's decisions submit to pressure from their partners, which can prove particularly problematic if the partner is controlling and/or abusive. In O'Keeffe and Dixon's (2015) study, it is asserted that some social workers working within a 'pro-separation' model focus on finding alternative care for babies as standard practice, rather than exploring the possibility of MBU placement fully with the potential applicants.

“I had two officers sitting outside the curtain so that the whole ward knows you are in prison”

(interview with mother in prison, in Kennedy et al. 2016, p. 23).

Deciding not to apply for an MBU place occur where mothers with other children report feeling like they will be 'choosing' their baby over their older children who may be living in the community (O'Keeffe and Dixon, 2015).

Prison not the right environment for a baby

A final influence on women's decision-making processes is the sense that prison is not the most appropriate space for their baby. Indeed, mothers 'struggle hugely with the concept of seeing their babies in prison. (...). Many mothers will view themselves as incapable of effective parenting and unless this view is challenged by professionals it is easy to see how women feel babies are better off without them' (O'Keeffe and Dixon, 2015, p. 17).

“When I arrived in Holloway I was the lowest anyone can be, my biggest fear being my failure as a mother. I'd left two small children and although they were being looked after by

my family, I couldn't help but feel heartbroken." (interview with mother in prison, in Kennedy et al., 2016, p. 21).

These wider cultural perceptions of the appropriateness of babies in prison were the subject of a 2016 storyline in a classic BBC Radio 4 soap opera "The Archer's". A pregnant character, having stabbed her abusive husband, was declined bail and gave birth whilst on remand. Birth Companions¹⁰, a UK charity having published a Birth Charter for women in prisons in England and Wales (Kennedy et al., 2016) were consulted on the Archer's storyline. BBC Action Line, a support service which provides information and support for issues covered in programmes received 25,000 calls about domestic abuse following the Archer's storyline¹¹.

"I was fortunate to go back to the Mother and Baby Unit. Thanks to support I completely turned my life around and have been clean six years this year." (interview with former mother in prison, in Kennedy et al., 2016, p. 23).

Donations to a JustGiving website set up for survivors of domestic abuse raised over £150,000 (Corf, 2016). In February, the then Prime Minister, called for a rethink of the way the prison system treats pregnant women and mothers with babies. The then Justice Minister saying: "We need radically to reform how we treat women offenders. At the moment, too many women are in jail. A prison sentence not only punishes them, but also makes life much tougher for their children" (cited in Foster, 2016).

Conclusion

This chapter presents a Foucauldian-inspired critique of the production of meaning through discourse to examine the contemporary discourse around motherhood in prison in the UK as being underpinned by notions of socially constructed appropriate gendered behaviour. This approach draws together a range of discourses, rules, dimensions and practices resulting from a representational system encapsulating the figure of motherhood in prison in the 21st-century English context.

Analysis of the MBU application criteria illustrate how they embody socially approved motherhood status in prison and highlights the signifying practices which influence women's decision-making processes regarding applying for an MBU place. In the last five years, fewer

pregnant women have passed the risk assessment enabling them access to an MBU. In some cases, however, this may be due to an increase in risk aversion rather than an increase in risk (Women in Prison, 2015, p. 23). This subject is further compounded by the wider UK criminal justice austerity landscape. Further work is required regarding why the numbers of mothers rejected for an MBU place in prison are so high and therefore are denied active motherhood status.

This chapter presents a broad brush examination of a representational system of discourse - as a figure of motherhood (Foucault 1981) that holds particular reverberations in mid-2000's England and Wales. It has shown that as a figure put into criminal justice discourse; motherhood in prison is subject to complex individual, cultural and policy constraints, compounded by fear of negative family and community reactions, and the social stigma mitigating women's decisions to apply for an MBU place.

Foucauldian ideas have been used to stress that institutions of discipline rest on the unwitting internalisation or acceptance of discourses of obedience, subservience and dependence in this context. Despite many attempts to overturn the experience of women in the criminal justice system, after 300 years - the pathological 'errant female' discourse seems to remain dominant in the UK criminal justice system (Zedner, 1998; Dobash and Dobash, 1986), and as this chapter has illustrated, in the impact on the social appropriation of those deemed worthy of motherhood status in prison.

With regard to the treatment of female offenders and motherhood in English prisons the observation remains that 'any official reform strategies in relation to gender-testing and gender sensitive regimes have remained at the level of rhetoric rather than being put into practice' (Carlen 2012, p. 157). Motherhood in prison stubbornly remains a figure brought into discourse which is subjected to 'enduring judgements of maternal deficiency' (Sharpe, 2015, p. 12) which is reinforced by messages from wider criminal justice policy, criminal justice practice, family members, professionals, the media and their peers.

Notes

1. A Foucauldian historical technique in which one questions the commonly understood emergence of various philosophical and social beliefs by attempting to account for the scope, breadth or totality of discourse.
2. A philosophical concept coined by Michel Foucault, referring to the construction of the individual subject in discourse.
3. Permission confirmed via e-mail contact with Birth Companions, 06/06/2016; Kennedy, A., Marshall, D., Parkinson, D., and Abbott, A. (2016) Birth Charter for women in prisons in England and Wales, Birth Companions.
4. The Prison Reform Trust's Committee on Women's Imprisonment (2000- the Wedderburn Report), the Review of Women with Particular Vulnerabilities in the Criminal Justice System (2007- the Corston Report) and the Women's Justice Taskforce report (2011- Reforming Women's Justice) and the Scottish Government's Commission on Women's Offenders in 2012.
5. Bangkok Rules, adopted 6 October 2010 www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf (Accessed 23/10/2014).
6. Transforming Rehabilitation is the name given to the government's programme for how offenders are managed in England and Wales from February 2015. The programme has involved the outsourcing of a large portion of the probation service in England and Wales.
7. Women in Prison (2015) State of the Estate: Women in Prison's report on the women's custodial estate, p 21: [on-line]: <http://www.womeninprison.org.uk/perch/resources/sote-2015.pdf> (Accessed 12/01/2017).
8. Bronzefield, Eastwood Park, Styal, New Hall, Peterborough and Askham Grange.
9. Superseding PSI 54/2011 Mother and Baby Units and PSO 4801 Management of Mother and Baby Units.
10. Birth Companions is a UK charity which supports women experiencing severe disadvantage during pregnancy, birth and early parenting to overcome the inequalities they face and fulfil their potential. Birth Companions are the UK's leading organisation working in this area, with widely acknowledged expertise in the needs of perinatal women facing severe disadvantage both in prison and the community. Their web-site address is: <http://www.birthcompanions.org.uk/>.
11. Reported in the Sheffield Star Newspaper on Friday 30th December 2016, p. 3.

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