

Clean Trade, Anti-Paternalism and Resources' Entitlement

Post-print version of the following publication: | Versione post-print della seguente pubblicazione:

Original Citation/Citazione:

Gentile, Valentina. (2017). Clean Trade, Anti-Paternalism and Resources' Entitlement. *FILOSOFIA E QUESTIONI PUBBLICHE*, (ISSN: 1591-0660), 7:1, 79-94.

Availability/Disponibilità:

This version is available at: [11385/180650](https://iris.luiss.it/handle/11385/180650) since: 2018-07-30T19:01:49Z - Questa versione è disponibile alla pagina: [11385/180650](https://iris.luiss.it/handle/11385/180650) dal: 2018-07-30T19:01:49Z

Publisher/Casa editrice:

LUISS University Press

*Published version/Pubblicato:**License/Licenza:*

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SYMPOSIUM
TYRANNY, DEMOCRACY, AND ECONOMY



CLEAN TRADE, ANTI-PATERNALISM
AND RESOURCES' ENTITLEMENT

BY
VALENTINA GENTILE

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Clean Trade, Anti-Paternalism and Resources' Entitlement

Valentina Gentile

In standard debates on global justice, the sovereignty of peoples and moral concerns about a fair distribution of natural resources at the global level seem to be mutually exclusive. Proponents of peoples' sovereignty generally insist on the significance of peoples' free control over their resources. They argue that a global distributive regime should be very limited insofar as people living within a specific territory have a legitimate claim to it and to their own resources.

Different versions of this argument have been articulated by statist scholars. For statism, a particular institutional setting – the liberal one – is the legitimate source of political authority. In general, the statist ideal of people's sovereignty over their resources is founded on two features: the acceptance of peoples' freedom to choose and support their institutional settings, and a commitment to anti-paternalism. One cannot tell free peoples what to do about their own resources within their own boundaries. Distributive concerns arise insofar as free institutions are not able to compensate for some structural conditions that are disadvantageous, arbitrary from the moral point of view (e.g. social lottery), and unjustly affect a proportion of the population.¹ From a statist point of view, although the distribution of natural resources across the world is a matter of luck, except in marginal

¹ John Rawls, *A Theory of Justice* (Cambridge MA: Harvard University Press 1971).

cases, well-functioning institutions are able to prevent that resource scarcity translating into poverty. There is therefore no need for a global distributive principle.² Another version of this argument insists on the problem of coercion. States' coercive actions, which should be justified on the basis of people's ideal consent to them, require principles of fair distribution to compensate for the inequalities they create; yet, because natural resources are distributed across the world by chance and their distribution does not depend on any global coercive power, any such global distributive principle would be seen a form of coercion without consent.³

In contrast, supporters of what we might call 'moral cosmopolitanism' argue that a global principle of equality should compensate for the unjust distribution of natural resources across the world.⁴ Proponents of this view generally consider the global distribution of resources as a matter of brute luck; some sort of compensation is morally required for those who live in unfortunate conditions.⁵ For some 'moral cosmopolitans', then, Western countries and international institutions owe a responsibility towards the global poor: the global market is in fact

² John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press 1999).

³ Thomas Nagel, "The problem of global justice," *Philosophy and Public Affairs* 33(2005), pp. 113–47.

⁴ Charles Beitz, "Cosmopolitanism and global justice," *Journal of Ethics* 9 (2005), pp. 11–27; Charles Beitz, *Political Theory and International Relations* (Princeton, NJ: Princeton University Press 1979); Brian Barry, "Humanity and Justice in Global Perspective," in J. Pennock and J. Chapman (eds.), *Nomos XXIV: Ethics, Economics and the Law* (New York: New York University Press 1982), pp. 219–52; Thomas Pogge, *World Poverty and Human Rights* (Cambridge: Polity Press 2002).

⁵ Charles Beitz, *Political Theory and International Relations*; Brian Barry, "Humanity and Justice in Global Perspective."

the product of historical injustices that have created a fundamental asymmetry between a wealthy West and the rest of the world.⁶ Different views of 'moral cosmopolitanism' insist, however, on an alleged *global ownership* of natural resources, which should transcend state boundaries. As Beitz suggests, all moral cosmopolitans share the idea 'that every human being has a global stature as the ultimate unit of moral concern.'⁷ In this view, domestic and global justice exist on a continuum: natural resources belong to humanity and global institutions should be responsible for their fair distribution.

Is it possible to reconcile traditional liberal commitments to both peoples' freedom and anti-paternalism, typical of a statist view, with our moral concerns regarding a global economic system that is deeply unjust? In his fascinating book, *Blood Oil*, Wenar argues that the solution is so close to us that we fail to recognise it. To counter most of the injustices that characterise the global market, especially those caused by allegedly unjust *resource ownership* and control, we should appeal to and defend the principle of peoples' sovereignty (or 'popular sovereignty', as Wenar puts it). This principle holds that 'it is the people, not power, that should control a country's natural assets.'⁸ Wenar's analysis primarily focuses on 'resource-cursed' countries in Africa, Asia and Latin America where 'resource-enriched regimes oppress their populations.'⁹ Responding to the situations there, he argues, necessitates redressing popular sovereignty at a global level. According to Wenar, it is possible to break the vicious cycle

⁶ Thomas Pogge, *World Poverty and Human Rights*.

⁷ Charles Beitz, "Cosmopolitanism and global justice," p. 17; Thomas Pogge, *World Poverty and Human Rights*, p. 169.

⁸ Leif Wenar, *Blood Oil: Tyrants, Violence, and the Rules That Run the World* (New York: Oxford University Press 2016), p. xliv.

⁹ *Ibid.*

of illicit power and burdened economies in these countries if liberal societies support their own values within their own boundaries. The Clean Trade scheme enables consumers, states and corporations to trade *globally* in accordance with a political principle which is widely supported by international law and by liberal thought – that is, the respect of peoples’ sovereignty.

In this paper, I examine whether Wenar succeeds in providing a theory able to accommodate the statist commitment to peoples’ sovereignty without dismissing the cosmopolitan concern regarding a just global market. Contextualising *Blood Oil* within the broader debate on global justice and resource ownership, I focus on some specific aspects of Wenar’s Clean Trade scheme and explain why it comes to quite radical conclusions. Yet, if these conclusions are taken seriously, Clean Trade seems too demanding from the point of view of a statist account of justice. For cosmopolitans, too, the lack of normative justification for any alleged national resource sovereignty might weaken this position, especially for those who might oppose arguments to justify different forms of resource ownership. I will therefore discuss two problems with Wenar’s theory. First, I will show that, in spite of its statist premises, Wenar’s radical conclusions hardly pass the test of anti-paternalism. Is the Clean Trade scheme able to accommodate the demand of pluralism emerging in the Society of Peoples? Second, I focus on an issue that is neglected in Wenar’s book and which refers directly to the normative basis of resources ownership. I argue that this is a crucial issue, especially in contexts where the traditional idea of national sovereignty is contested, which often occurs in resource-cursed societies.

I

Resource Ownership and the Global Clean Trade Scheme

Natural resources are distributed very unequally across the globe. Some countries are placed in territories with abundant

natural wealth (mineral, gas, oil, water, etc.), while others face a serious problem of resource scarcity and may even lack access to resources essential to human survival, such as clean water. Such an unfair distribution of resources is morally arbitrary: one should not be held responsible for being born in richly resourced Norway or poor and resource-scarce Malawi – this is obviously a matter of mere luck.¹⁰ To compensate for such injustices, a ‘resource distribution principle’¹¹ or forms of international taxation that extend the idea of *ownership* of natural resources to the global level seem to be needed.¹² Yet, the abundance of one or more natural resources is not always a guarantee of wealth and prosperity. Rawls famously argued that, apart from rare cases, it is the political culture of a society, rather than its resources, which makes the difference in terms of economic outcomes and development.¹³ This is clear if we compare a relatively resource-poor country, like Japan, with a resource-rich country, like Argentina: the economic performance of the former is greater than that of the latter regardless of the differences in resource distribution. In most cases, poverty is not in fact caused by scarcity of resources – in other words, it is not a matter of resource *ownership*; rather it is the product of several concurring elements including ‘the political culture, the political virtues and civil society of the country, its members’ probity and industriousness, their capacity for innovation, and much else.’¹⁴

There is, however, another way to look at the problem of resource ownership which circumvents the thorny empirical

¹⁰ Charles Beitz, “Cosmopolitanism and global justice;” Brian Barry, “Humanity and Justice in Global Perspective.”

¹¹ Charles Beitz, *Political Theory and International Relations*, p. 141.

¹² Brian Barry, “Humanity and Justice in Global Perspective.”

¹³ John Rawls, *The Law of Peoples*.

¹⁴ *Ibid.*, p. 108.

question of whether poverty is caused by an unequal distribution of resources among countries.¹⁵ One could argue that the reason for the weakness of some countries' economies – especially those in Central and West Africa – is rooted in certain unjust historical conditions of power (e.g. colonialism) that have been perpetuated by the global market, its institutions and rules. Thus, although an unequal distribution of resources may be unimportant from the point of view of justice, the issue of resources *ownership* and particularly the historical ways in which resources came under the control of certain groups in certain countries is still morally relevant from the point of view of justice.¹⁶

In *Blood Oil*, Wenar argues that a *just* account of resource *ownership*, which says that resources should belong to sovereign peoples, should be secured globally via a Clean Trade scheme.¹⁷ For Wenar, the problem of several burdened states in Africa (e.g. Equatorial Guinea) is in fact the huge quantities of certain resources they own: not only do their economies suffer from being structurally dependent on these certain resources' extraction and trade, but these activities are done under the strict control of authoritarian or violent regimes. In these contexts, low levels of economic performance are often related to institutional failure and increased likelihood of civil conflict. Economists and political scientists call this phenomenon the 'resource curse': it is the paradox that countries with an abundance of certain resources also show less propensity for economic development, democratic stability and institutional transparency.¹⁸ For Wenar, certain unjust power conditions, which characterise the global

¹⁵ Chris Armstrong, *Global Distributive Justice: An Introduction* (London: Routledge 2012), p. 144.

¹⁶ Thomas Pogge, *World Poverty and Human Rights*; Leif Wenar, *Blood Oil*.

¹⁷ Leif Wenar, *Blood Oil*.

¹⁸ *Ibid.*, p. xv.

market, affect the *ownership* of the resources at the local level in a specific way. Global trade rules and institutions presuppose an international legal system based on 'effectiveness', premised on the idea that 'whoever can seize it can sell it'. This principle 'puts consumers into business with some of the world's most violent and divisive men.'¹⁹ It is therefore necessary to break the vicious cycle that links consumers and corporations in the West in supporting the illicit power of criminals or dictators who have control over the resources in these countries. Wenar suggests that the well-known principle of *popular sovereignty* over natural resources should be redressed and the trade with these criminals should be prohibited via strict control over such trades with foreign countries and corporations.

Blood Oil is sophisticated, well-argued and pathbreaking. It combines a rich empirical enquiry with a deep and convincing philosophical reflection. In addition, by avoiding the traditional discussion of whether resource *ownership* is a matter of brute luck, the argument seems to overcome some of the limits of the standard debate between statist and moral cosmopolitans regarding resource ownership and distributive justice. Wenar's theory fits the desiderata of the statist account insofar as it seems to maintain a strong commitment to both peoples' freedom and anti-paternalism. In the introduction, Wenar clarifies that his proposal asks Westerners to 'enforce their own principles, within their own borders on their own soil.'²⁰ In this sense, the proposal seems to embrace the pluralist premises of a statist account, à la Rawls, and to respect the Law of Peoples; Wenar reminds us that 'it is not for us to tell the Saudis or the Nigerians how to run their own countries (these are matters for the Saudis or the Nigerians

¹⁹ Ibid., p. 76.

²⁰ Ibid., p. xxvii.

to decide).²¹ But Wenar's proposal is also meant to accommodate our moral concerns regarding global inequality: it suggests a strategy for redressing the historical injustices on which the global market rests.

The proposal outlined in *Blood Oil*, however, is quite radical: it does not call for any sort of taxation or compensation for the *unjust* global trade; rather, it calls for the cessation of *illegitimate* resource trades and suggests a significant change in the global trade structure.²² Wenar admits that several concerns might be raised by his view. He lists three main objections: its high costs, the 'first-mover fear' and the 'short-termism.'²³ In light of these objections, are there still good reasons for supporting the Clean Trade scheme? First, although reform might be very costly, Wenar reminds us that a Clean Trade system would provide compensations in terms of the increased trust of Western countries.²⁴ Thus, the long-term advantages will help in overcoming most of the short-term difficulties, including the 'first-mover fear'. What Wenar calls 'short-termism' is undeniably a major obstacle for his theory. He provides a series of arguments for supporting a long-term perspective. In line with his theory's anti-paternalist premises, Wenar is particularly concerned with securing good reasons for consumers and peoples in the West to invest in the Clean Trade agreement. The theory is, in fact, directed to consumers, states and corporations who share some moral premises regarding issues of basic justice and want their conduct to conform accordingly.

Yet, is this enough to guarantee that the Clean Trade scheme will solve the problems in resource-cursed societies? What is its

²¹ Ibid.

²² On this point, see also Chris Armstrong, *Global Distributive Justice*, p. 150

²³ Leif Wenar, *Blood Oil*, p. 268 ff.

²⁴ Ibid., p. 271.

actual impact on these societies? The next sections will address these questions. I will show that when we consider the point of view of (non-Western) resource-cursed societies, the theory might ultimately reveal itself to be inconsistent with its anti-paternalist and pluralist premises.

II

Anti-Paternalism and the Clean Trade Scheme: Between Globalism and Pluralism

It is far less clear what the impact of Wenar's proposal would be on the global poor and, especially, on resource-cursed societies. One could say that one important 'short-term' consequence of the Clean Trade scheme would be the exclusion from the global market of precisely those burdened societies who see their sovereign rights over their resources constantly violated by authoritarian and violent regimes.²⁵ For these societies, the 'short-term' consequences on living standards and poverty might make their condition of life worse than it was prior to the establishment of a Clean Trade framework.

Paradoxically, then, a proposal that is aimed at redressing the problems with peoples' sovereignty of resources has the effect of excluding precisely these resource-cursed peoples – at least in the short term. Would it be feasible to expect these peoples to prioritise a principle – popular sovereignty – over such basic needs as secure access to food and water? Wenar might respond that this should not be a problem since the *long-term* consequences will be the incentivisation of good governance, which would certainly improve their life conditions.²⁶ One could still object,

²⁵ Chris Armstrong, *Global Distributive Justice*, p. 150.

²⁶ Leif Wenar, *Blood Oil*, pp. 324-325.

however, that we are asking peoples to accept and endorse principles – popular sovereignty and property rights– that, albeit widely shared by the international society, might still be perceived by them as being imposed upon them from ‘outside’. This is an objection not only to the feasibility of the Clean Trade scheme but also to its desirability, from the point of view of a statist account of justice.

Wenar himself would certainly agree that peoples’ political problems are for them to solve.²⁷ He would be reluctant to ask these societies to share and endorse a principle of political justice that is imposed on them from the outside. Yet, he seems to want to convince us that long-term gains will prevail over short-term shortcomings if resource-cursed societies are able to embrace the principles supported by the Clean Trade scheme - those of popular sovereignty and individual property rights. These principles will enable them to become liberal-democratic regimes and full participants of the global Clean Trade framework. This seems to suggest that the long-term goal of the theory is for us in the West to trade (globally) only with liberal societies.

If my understanding of Wenar’s argument is correct, there appears to be a problem of consistency between the envisaged implementation of the Clean Trade scheme and its anti-paternalist premises. In my view, Wenar fails to recognise the form of pluralism that characterises the international Society of Peoples. Famously, in his theory Rawls proposes an account of institutional decency aimed at including non-liberal, non-democratic constitutional republics (which he calls ‘decent hierarchical societies’) in – what he calls - the Society of Peoples.²⁸ Rawls does not provide a clear definition of decency,

²⁷ *Ibid.*, p. 324.

²⁸ John Rawls, *The Law of Peoples*.

but suggests that it might be understood as a kind of weak reasonability.²⁹ Rawls's notion of 'decent peoples', however, has important implications for the idea of international toleration, for the kind of pluralism that characterises the international society will inevitably be reflected in a diversity of political forms, some of which may be non-liberal democracies but which still satisfy the conditions that justify their recognition as 'equal participating members in good standing of the Society of Peoples.'³⁰

The ideas of decency and decent political orders significantly influence Rawls's overall statist design and, especially, his minimal account of human rights and the contested idea of duty of assistance. In the ideal theory, Rawls is resistant to the idea that liberal peoples' foreign policy could be based on incentives aimed at forcing other people to become more liberal. He defends a strong principle of self-determination that enables decent peoples 'to decide their future for themselves.'³¹ In this vein, Rawls assumes that liberal and decent peoples should be committed to the protection of a very restricted group of what he calls 'urgent rights' that include 'freedom from slavery and serfdom, liberty (but not equal liberty) of conscience, and security of ethnic groups from mass murder and genocide.'³² In the non-ideal part of the theory, then, Rawls clarifies how the Society of Peoples should react to special situations that occur in the international arena. He distinguishes two further kinds of societies: an 'outlaw state', which is either internally repressive (violating the human rights of its citizens) or externally aggressive, and a 'burdened society', which is characterized by what Rawls calls 'unfavourable

²⁹ *Ibid.*, p. 67.

³⁰ *Ibid.*, p. 59.

³¹ *Ibid.*, p. 85.

³² *Ibid.*, p. 79.

conditions.³³ Liberal peoples are not asked to tolerate the former, as they have a right to self-defence, but they ought not to intervene in the internal affairs of the latter. In this specific case, Rawls envisages a special duty of assistance which is aimed at supporting these societies: ‘peoples have a duty to assist other peoples living under unfavourable conditions that prevent their having a just or decent political and social regime.’³⁴ Although the extent of this duty is debatable, Rawls suggests that it should be limited to the goal of developing ‘decent’ institutions that protect the basic human rights of its members.

Wenar doesn’t expressly relate his Clean Trade to Rawls’s duty of assistance, but it is possible to recognise important similarities between the two theories, especially with regard to their commitment to anti-paternalism. Although it is not clear whether ‘resource cursed societies’ would fall under the Rawls’s category of ‘burdened societies’ or ‘outlaw states’, my impression is that they could be both. Wenar distinguishes between failing states ‘where public accountability is absent’ from those societies where institutional weakness prevents them from becoming full liberal societies.³⁵ He therefore argues that by adopting the policies envisaged by the Clean Trade western societies ‘will disengage commercially from resource-exporting countries where public accountability is absent and will support public accountability in countries where it is weak.’ He adds that this will not create a problem for political legitimacy since a Clean Trade scheme will not be pursued by military intervention or via a direct action in these countries; it should rather be based on a soft-policy based on incentives that will enable these peoples to take democratic

³³ Ibid., p. 105ff.

³⁴ Ibid., p. 37.

³⁵ Leif Wenar, *Blood Oil*, p. 281.

control of their resources.³⁶ Yet, the Clean Trade scheme is far more demanding than Rawls's duty of assistance. It asks not only that these societies develop institutions that support basic human rights and peace – say, decent institutions. They ought also to show a strong commitment to the liberal principles of popular sovereignty and property rights.

Consider for example the case of Venezuela, a constitutional republic committed to basic human rights and to the principle of popular sovereignty of its resources, which is a pillar of *chavismo*. In addition, this regime is committed to a certain degree of political pluralism. In the presidential elections of 2013 following the death of Hugo Chávez, Nicolás Maduro defeated his more moderate opponent, Henrique Capriles, by a slim margin (only 1.5 per cent). This result was deeply contested by the opposition and threw into doubt the legitimacy of the whole democratic process (McCarthy and McCoy, 2013).³⁷ Contrast this with President Chávez's openness to political pluralism and the system of cooperative relationships that he built with his moderate opponents between 2006 and 2012.³⁸ This attitude strengthened Chávez's political legitimacy and popular support³⁹ – yet his

³⁶ *Ibid.*, p. 282.

³⁷ Michael McCarthy and Jennifer McCoy “The limits of legacy: the post-Chávez challenge and electoral legitimacy,” *Americas Quarterly*, Summer 2013, available at <http://www.americasquarterly.org/the-limits-of-legacy-post-chavez-challenge> (accessed 29 October 2017).

³⁸ According to McCarty and McCoy (*ibid.*), ‘From 2006 to 2012, the government and the opposition established a working relationship that effectively bolstered the electoral system’s legitimacy, as demonstrated by public opinion polls and record-high citizen participation rates.’

³⁹ Jones Owen, ‘Hugo Chavez proves you can lead a progressive, popular government that says no to neo-liberalism,’ *Independent*, 8 October 2012, available at <http://www.independent.co.uk/voices/comment/hugo-chavez->

political regime relied on a robust refusal of the liberal principle of property rights: in line with its socialist premises, *chavismo* is based on the idea that national resources belong to the population and the government has the right to revoke the ownership of private firms or individuals in the name of the Venezuelan people. The refusal of the liberal principle of property rights is perhaps the most problematic aspect of *chavismo* from a liberal-democratic perspective. But should liberal peoples thus support a foreign policy aimed at incentivising Venezuelan people to become more liberal and to accept and support a political liberal regime committed to liberal property rights? My impression is that Venezuela, at least under Chávez, falls within the category of a decent society and so liberal peoples ought to tolerate this regime in the Society of Peoples. Not so in Wenar's eyes: in his view, Venezuela represents one specific case of resource-cursed society where public accountability is still weak. He argues that 'citizens are at least partly free – they have some, but not enough, power over their natural assets.'⁴⁰ In his view, the consequence of adopting the Clean Trade scheme would be the transition of Venezuela from a partial to a full liberal democratic regime, which is committed to the protection of individual property rights.

III

Resource Pwnership and Popular Sovereignty: What Has Been Left Out?

A further issue with Wenar's theory refers directly to the normative basis of *resource ownership*. More specifically, it is not clear on what grounds Wenar justifies the very principle of

proves-you-can-lead-a-progressive-popular-government-that-says-no-to-neo-liberalism-8202738.html (accessed 17 October 2017).

⁴⁰ Leif Wenar, *Blood Oil*, p. 321.

popular sovereignty of resources. In line with modern statist tradition, Wenar seems to take for granted that states should own their natural resources by virtue of their jurisdiction over a specific territory.⁴¹ In this respect, he still relies on the standard view, widely supported by international norms and covenants,⁴² according to which the modern state can properly work only if it wields control over its territory. However, as Wenar puts it, this control should be based not on the principle of 'effectiveness' but on the democratic principle of popular sovereignty. But why should a specific group, say a national population, own the rights over a territory's wealth? *Blood Oil* leaves this question unanswered.

Yet, the issue of who is entitled to the control over and/or benefit from natural resources is very controversial, and the impetus for significant political conflicts in several countries. We are constantly confronted with situations in which the principle of popular sovereignty is opposed to the claims of other groups, such as indigenous peoples or national and ethnic minorities. Consider, for example, the case of Brazil. In this country, a conflict arises between the claims of the urban poor who argue that their poverty should be addressed through the exploitation of the resources of the Amazon, and the claims of Amazonian indigenous tribes who want to maintain control over the resources of their region.⁴³ This kind of problem might become

⁴¹A.J. Simmons, "On the Territorial Rights of States," *Philosophical Issues: Social, Political and Legal Philosophy*, 11 (2001), pp. 300–326.

⁴² See for instance the 1933 Montevideo Convention on the Rights and Duties of States (art. 1), according to which states are defined 'as entities with fixed territories (and permanent populations) under government control and with the capacity to enter into relations with other states'.

⁴³ On this case see also Margaret Moore, "Natural resources, territorial rights and global distributive justice," *Political Theory* 40(2012), pp. 84–107.

even more pressing in resource-cursed societies where competing claims for the control of territory and resources among different ethnic groups are very often at the root of civil strife and violence. An appeal to the principle of popular sovereignty seems unlikely to be of much help in adjudicating the dispute between these groups. We would need a normative theory to justify why a certain group has a sovereign right over a territory and its resources.

In conclusion, while we saw above that the Clean Trade scheme seems to ask ‘too much’ from the point of view of an anti-paternalist account of justice, here it seems that the theory is leaving out ‘too much’ in terms of the normative basis of national resource ownership. Wenar may respond to this that, again, it is not for ‘us’ to adjudicate these sorts of disputes; we should leave it to the Brazilians to decide. Yet, my impression is that by implementing the Clean Trade rules with the Brazilian government, we would in fact be presupposing a defence of a certain idea of national resource ownership that is not adequately justified by the theory.

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