ABSTRACT. Sovereignty and freedom are interlinked in a manner of both ambivalence and interdependence. Neither can sovereignty confirm itself without presupposing for itself a pure state of freedom; nor can freedom conceive and realise itself without interweaving with sovereignty. Both concepts collide with each other as sovereignty usually signifies a certain social or cultural power or order; and freedom regularly is related to a sovereign subjectivity. Therefore, the question is: how far might sovereignty serve as a source of freedom that, at the same time, has to be limited by this freedom itself. When the sovereign (subject) defines where the limits of freedom are, he will mostly define the limits of experiencing such freedom for all those who have to follow his decision on the limit. Further, if the free (sovereign) subject itself defines its own limits, it will supposedly end up rejecting its interweaving with any other subjectivity beyond its own. The problem remains: both sovereignty and freedom cannot be realised if they are already limited.

KEY WORDS: freedom, Jean-Luc Nancy, Marquis de Sade, modernity, myth, power, self, sovereignty, subjectivity

Kant/Sade

Freedom is held to be one of the most successful mythologemes of modernity. Indeed, as the French Revolution’s slogan Freedom, Equality, Brotherhood shows, when modernity came to be born freedom rapidly became one of its central emblems. If one has still to state such a questioning coincidence concerning the coming up of freedom as a political, juridical and cultural keyword together with the institutions of modernity, one is led to ask, in this manner, also for the essence of freedom. What is freedom? In which cultural context does there arise a certain (possibly still legitimate) imagination, or why not say it – an image, of freedom?

For this reason a brief schematic look back at the origins of the institutionalisation of freedom might be helpful. In a speech from 20 April 1791 Robespierre points out the undeniable connection of...
freedom with ethics: freedom ‘will be established solidly only on the fundament of ethics’. And, on 29 July 1792, he proclaims freedom as a mission of the revolution when he pleads for the continuation of the war: ‘There are only two alternatives: whether we surrender and bury the freedom of manhood together with us, or we develop great virtues and are willing to make great sacrifices’. Following from these quotes of one of the leaders of the French Revolution one thing becomes clear: to speak of freedom does not necessarily mean to speak of an individual freedom. Following Robespierre, freedom obviously has two dimensions: first, its initial meaning as an act of political emancipation against oppression; and second, an ethical dimension without which freedom would remain unfulfilled. All in all, Robespierre aims at a general form of social freedom, which does not necessarily have to be identical to either personal or individual freedom. In this sense he is not only a good pupil of his admired scholar, Jean-Jacques Rousseau, but also conforms to the head of German enlightenment, Immanuel Kant.

It was the philosophy of the enlightenment that placed the question of/for freedom on the agenda. However, the philosophy of the enlightenment pronounced freedom’s individual dimension without losing the connections to questions of social order. For Kant freedom is equal to autonomy and the capability to be a law (Gesetz) to/for oneself. That means that we have to grant the idea of freedom, under which one acts alone, by cause, to every reasonable being that owns a will. It seems that there is no contradiction between freedom and the law – neither in a legal nor in an ethical sense. Freedom is neither bound to an anarchistic denial of order, celebrating a personal will (in contrast, this will as such is meant to be a true expression of the general ethical law); nor is freedom a human evil, as Schelling pointed out in his Theodicee. Simply put, freedom is supposed to lie in the agreement of the individual to an order that is of more importance than this individual alone, who, too, could abuse his own freedom. ‘It seems’, Kant writes, ‘as we would only assume the moral law, that means the principle of the autonomy of the will itself, to be realised in

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1 P. Fischer, ed., Reden der Französischen Revolution (München, dtv, 1974), 124 [All quotations are translations of the author].
2 Ibid., at 178.
4 Ibid., at 83 (BA 101).
the idea of freedom and we could not prove its reality and objective necessity’. After Kant, a true kind of freedom is always linked up to the idea of an ethical foundation in the general law of morality. Freedom realises itself where it submits to the limiting bounds of the law. In Kant’s view this is equivalent to a certain concept of self-restriction in favour of a general moral benefit.

Such freedom by reason corresponds, now, to a certain concept of social sovereignty. Seemingly, freedom is not imaginable without being bound to an understanding of sovereignty as a guarantee for the continued existence of social order. The ancient sovereign, as represented by the absolute king, seems to have been torn down but, to avoid a Hobbesian chaos, one has only to acknowledge a new kind of sovereignty. This sovereign is realised through the most abstract principle of the moral law, defined by authors like Kant, Schiller or, as a predecessor, Rousseau. Hence, freedom is a political end maintained in this philosophy of the enlightenment that aims at an individual freedom, which is yet defined independently from any other moral instance or social institution. Individuality seems to unfold, here, into a power of creating the world itself, and it could be said that Fichte’s concept of the ‘I’ is possibly meant in this very way. At least, not every individual is likely to submit to another variant of social and legal power – and the question is whether the abstract power of an ethical law is less suppressing than the ancient power. Some revolted against this new ethical system and the one who is best known is probably D.A.F. Marquis de Sade.

Without a doubt Sade is meant to be the true antagonist of any moral attitude favoured by the enlightenment philosophers like Kant or Rousseau and their political followers like, for instance, Robespierre. For this reason Sade plays a key role in the history of modernity as a first amalgam of both a radical individual anarchism and a brutal power. Sade wrote his most important works Justine, Juliette, 120 Days of Sodom or Philosophy in the Boudoir shortly before or during the period of the French Revolution – and most of them while in prison. Occasionally he even officially took part in the revolution, having been a member of Robespierre’s Section des

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5 Ibid., at 84f (BA 103).
7 The humanities from Freud to Foucault and after are still heavily involved in showing the suppressing dimension of abstract social powers.
Piques. His writings, nevertheless, are telling the story of an ethos of the individual (and of an individual law, too), taking itself seriously through radicalising its own mechanisms of self-legislation towards a logic of egomania and despotism. Those writings entail a dual manner: they are true fiction while being pure phantasies of de Sade’s mind, but they also declare de Sade’s standpoint in politics, law and morals. For instance, Noirceuil (the biggest libertine ever to appear in this prose of cruelty) explains the function of the law in the following manner:

Obviously man felt that the bent for crime inside of him is of invincible power. Therefore, he created his laws which are unjust, because they take more away from man than they give. Hence, the philosopher must not pay any attention to these only man-made laws; they must not influence his actions at any time. Let us only use them for our own protection, but never as a restriction.

And, with a view to Hobbes’ political theory of social satisfaction through the sovereign’s power in legislation, another libertine remarks: ‘Can I be devoted to laws that oppose both my instincts and my reason?’ This attitude realises the truest opposition to a self-restricting freedom of self-legislation wherein any individual imagines being its own little sovereign in morals and sociality, but in fact submits to the sovereign law of society at large.

THE ANTSOCIAL SOVEREIGN

The Kantian law, therefore, is the first rigorous declamation of a subtle discursive power within society, realising itself among/in the individuals. It is even more radical, than Rousseau’s version of a general will that forces the individuals to freedom, while it shifts to a willing and complete internalisation of the sovereign power by the individuals themselves. Kant and Sade, like Jacques Lacan says, are showing only two sides of the same bourgeois concept of freedom.

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8 Cf. for the outline of the concept of an individual law, leading to both personal and social morality not only Kant (cf. supra n. 3), but also Simmel: G. Simmel, Das individuelle Gesetz (Frankfurt/Main: Suhrkamp, 1987).
10 D.A.F. Marquis de Sade, Justine oder Die Leiden der Tugend (Köln: Kö nemann, 1995), 406.
Though outlining different intentions, they both show that freedom is entangled with sovereignty. Simultaneously, freedom is still meant to be the absolute opposite of sovereignty. As such, the demarcating line unfolds of a very mystical relationship between freedom and sovereignty, enfolding both ambivalence and interdependence.

It was Bataille who connected openly to a Sadean concept of sovereignty when he explained that we usually call freedom what in fact should be called a ‘voluntary renunciation of freedom’.\textsuperscript{12} Instead, real freedom necessarily is simultaneously an expression of sovereignty. That is why the Kantian subject (Bataille calls it an ‘accountant’) still is ‘a free being, but not a sovereign being’.\textsuperscript{13} This kind of free subject would have absolute freedom at its disposal. For this reason it would be sovereign – as its own legislator, in the term’s true meaning, and precisely as someone who might be inconsiderate of all others. The absolute sovereign subject would not depend on the other’s acknowledgement; it would have won the mythical and endless Hegelian fight between master and servant. Like Jacob against the angel it would have succeeded. At least the price this sovereign has to pay would be its antisocial character, like that shown by the Sadean libertines. The question remaining is whether such a solipsistic sovereignty can still be called ‘sovereignty’. Seemingly, Jean-Luc Nancy agrees with Bataille’s definition of an absolute sovereignty. ‘Sovereignty’, he writes, ‘has to be identical with itself in both its institution and performance. It owes nothing external. [...] The sovereign does not find sovereignty as something given: he has to constitute sovereignty and therefore to constitute himself as the sovereign’.\textsuperscript{14} This is an ambivalent expression emphasising the sovereign’s solitude and yet still insisting on his integration in social processes.

This double-bind of ‘sovereignty’ corresponds clearly to the double-bind of ‘society’. Society is founded on a mutual acknowledgement and yet still on the implementation of a kind of social or general sovereignty for demonstrating the social order and its limits to its individual members. At least, because society is meant to be an artificial man-made institution it is not thinkable without sovereignty. But the single individual’s position against the sovereign remains

\textsuperscript{13} \textit{Ibid.}
\textsuperscript{14} J.-L. Nancy, \textit{Die Erschaffung der Welt oder Die Globalisierung} (Zürich-Berlin: Diaphanes, 2003), 129.
disparate. Sovereignty held as a necessary institution in society is bound to the empowerment of individuals and also, nevertheless, constitutes a permanent active discursive power against those individuals. Representing a boundary to the social, sovereignty marks-and-guarantees its basic dispositifs. As a social institution, sovereignty therefore realises itself precisely there where it consumes its subjects. However, the sovereign presupposes his legitimacy from a transcendent sphere of social legislation. The dilemma of sovereignty was not only, as Nancy says, to be outside (‘external’) from the social institutions, but to be as an integral part of them as well. Here, it has to be stated, lies a crucial difference between sovereignty and the social order. On the one hand, sovereignty has to be independent from the latter, while it is concerned with the very founding and directing such an order. Thus, sovereignty has to be an integral part of this order in so far as it is supposed to re-present this kind of order and to derive its legitimacy from it. The theologian philosopher Jacob Taubes, therefore, claims that ‘the principle of hierarchy in all its manifestations requires a sovereign whom is situated “beyond” order; who stays transcendent towards the system of law; who guarantees the system as a “prima causa”’. However, Taubes is wrong in his judgement that this model would be adequate to a hierarchical system of society, but would be invalid to a democratic one. On the contrary, it is especially the democratic order that seems to be in urgent need of mediums for the purpose of a legitimation and of ‘new’ spaces for the purpose of its symbolic manifestation.

Wherever sovereignty is objectively abandoned and yet normatively still claims to be valid within the sphere of politics, there remains a place for such a transcendent ‘beyond’, that is, once more a sovereignty. Normativity always remains connected to a kind of ‘nomos’, which is legitimated as an order beyond society. Being beyond society and simultaneously inside it, also means to act (if one acts) from the starting point of first acquiring a special position as such. The sovereign position, with Carl Schmitt, is defined as the ‘exception’ (Ausnahme) and consistently and accordingly Nancy concludes on this that: ‘Thus, if the sovereign uses his power, he uses

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15 Cf. J. Ahrens, Œdipus. Politik des Schicksals (Bielefeld, transcript, 2004), where I outline the implications of a social sovereignty.
it entirely within the “state of exception”, wherein all laws are abolished”.\(^{18}\) Even the republic still lives from an understanding of the ‘exception’, which has to be identified as a manifestation of a transcendent sovereignty, as the French Revolution (amongst other revolutions) has shown. The social home of sovereignty is always situated within the symbolic order of society. In the last instance, society always refers to a term of sovereignty reigning over the individuals – however abstract this reign might be. Hence, the free discourse of autonomous individuals only takes place in its anteroom. Referring to the term of symbolic order it is possible to relate it to Nancy when he defines the sovereign as ‘the one that exists without being dependent on anything. Because the sovereign is dependent on nothing, he also is completely thrown back upon his own resources’.\(^{19}\) In considering this view, the very unique conditioning of sovereignty as freedom can be reinvestigated for our reflections anew. Neither can sovereignty confirm itself without acting in a presupposed pure state of freedom; nor can freedom realise itself without entering into the excepted realm of sovereignty. This far, both concepts compete for social and cultural priority. Although pure freedom is realised within a pure sovereignty, the category of freedom at the same time aims to neglect or overcome the category of sovereignty. Both categories collide as sovereignty usually re-presents a certain presupposed social power or order, while freedom regularly is related to subjectivity as sovereign. Even Kant did not separate freedom from sovereignty when he outlined in his *Metaphysics of Morals* a moral of duty as quoted above. Nevertheless, freedom as an individual capability aims to go beyond the bounds of any institutional limitation; while, sovereignty appreciates freedom almost only as its own freedom (to reign). Moreover, pure sovereignty, just as pure freedom, seems to collapse right in the state of its realisation, denying the other side of the same (as the supposed counterpart) that is necessary for its own seemingly paradoxical acknowledgement (of its-self).

Following Sade freedom has to be solipsistic by nature, whereas in a common sense it is conceptualised in a communitarian way. One of the consequences of this combination was the transfer of social sovereignty from the individual to a kind of general abstraction. However, freedom after Sade has to neglect the general interest and

\(^{18}\) Supra n. 14, at 136.

\(^{19}\) Ibid., at 135.
has to be anti-social. Here, freedom is explicitly meant to be that stage of individual development that makes any social institutionalising, as such, impossible. A real freedom would be the crossing out of any sociality. Within the Sadean system freedom and sociality are absolutely incompatible. That is also why Robespierre’s revolution turns into a mere substitute for sovereignty wherein the king seems to be substituted by ‘the people’. Sovereignty remains; and it remains absolute in its operation, even in its paradoxical or enlightened relation to the social. The ‘people’ are founded on its imaginary reference, practiced through a delegation to a certain figuration of representation – for example, a ‘Robespierre’. He himself intends to save sovereignty and prevent its decline by transforming it into a different medium. Therefore the freeing (unbinding) revolutionaries are, no more-no less, a substitution for the bind of the king’s sovereignty. Instead, it is Sade’s revolution that aims at a complete overthrow of all former un-real conditions. He aims to destroy the old form of sovereignty completely in order to find a new variant of it: a new kind of sovereignty that obeys the libertines only and neglects any kind of social responsibility – ‘Egoism is the sacred law of nature, one can say it is wicked. As long as it reins my soul I will follow. [...] I am the man of nature not of society and therefore, I follow the unerring laws of nature, even when they run counter to the laws of men’, according to the credo of monarch Sylvestre.

Such a radically outlined freedom might be seen to lead to a culture of (sacralised) egoism. And, in seeming contrast, an equally radical outline of sovereignty might appear as the true fulfilling of individual freedom (while it might also prove to be the destruction of the freedom of all other individuals.) Even if it is now obvious that freedom can neither be realised without an understanding of an acting individual legislative sovereignty, nor can sovereignty be such without the realisation of a freedom in action; the question remains: how far might sovereignty serve as a source of freedom that has yet to be limited by freedom itself?

That is, how far can it be maintained that freedom is the potential of sovereignty in actu and sovereignty is the potential of freedom in

20 Cf. R. Girard, Das Heilige und die Gewalt (Frankfurt/Main: Fischer, 1994).
21 Supra n. 10, at 216.
When the sovereign himself (as an acting subject) defines where the limits of freedom are, he mostly will define the limits of experiencing such freedom for all those who have to follow the command or decision of such a sovereign. And, if the free subject itself (as a sovereign of its own) defines its limits it supposedly will end up rejecting any other subjectivity beyond itself.

As if accepting the view of Sade’s protagonist, as quoted above, Schmitt outlines the nearness of sovereignty to dictatorship in the following manner: ‘The difficulty of public law, focused in the term sovereignty and its uniting of highest law and highest power, could not have been solved either by the means of political-technological theory or by ignorance [...] The problem always leads back to the term of dictatorship [...]’. Schmitt goes back to the baroque theorists of sovereignty, writing during a permanent state of civil war. With them he concludes that there was ‘no essential difference between dictatorship and sovereignty’.

Stressing the dimension of freedom-in-sovereignty he shortly declares ‘the true sovereign would not appreciate anyone above himself than God’. However, this might seem to be an almost modest statement when compared with the Sadean libertine Saint-Fond’s declaration that – ‘Yes, we are gods[!]’, whereby he fulfils the paradigm of the autonomous (that means sovereign) subject through the analogy of man with god. Sovereignty means more than humanness; it crosses the limits of ‘the human condition’ (according to Hannah Arendt) by crossing them out and fully concentrating on a solipsistic version of subjectivity. Freedom here remains only as an instrument for the realisation of a sovereign stage of being against all the others who will not ever reach, but only get a glimpse of it.

In contrast to this, Jean-Luc Nancy argues for a more ambiguous relationship between sovereignty and freedom. The aspect of freedom-in-sovereignty Nancy finds in the act of founding: ‘Both sovereign and founder are correlating and therefore connected one to each other like two absolutes or like two sides of the same absolute. The one who is founding is sovereign [...] – and the one who is sovereign is founding [...]’.

23 Supra n. 22, at 28.
25 Supra n. 9, at 181.
26 Supra n. 14, at 137.
two concepts. Nevertheless, even in the view of Nancy an open space remains in addressing sovereignty, because, as he says, ‘the founding sovereignty cannot be founded itself. Moreover, there is no founded sovereignty in general: *contradictio in adjecto*.\(^{27}\) Although sovereignty must appear without any condition, it always remains entangled to freedom. Therefore ‘freedom’ remains an independent factor in implementing or founding a stage of sovereignty. The lack of a foundation in and of freedom in this manner might undermine sovereign power. Up until now it is not ‘sovereignty’ serving as a source of ‘freedom’, but ‘freedom’ serving as a source of ‘sovereignty’ – even if freedom possibly is still limiting its own dimensions for the sake of the latter.

That paradigm of sovereignty outlined by Marquis des Sade represents an amalgamation of the classic concepts of political sovereignty (like Hobbes or Bodin and also, later on, Schmitt) and a consequent but thoughtless reading of Kant’s conception of the autonomous (self-legislating) individual. While individual (and in this conception at the same time social/collective) freedom (in a Kantian sense) is meant to be one of the preconditions in shaping a just society with ethically educated individuals living in it; Sade follows the contrary aim of destroying every social or moral bounds by the means of a fulfilled personal autonomy as a new absolving sovereignty. By this reasoning the nearness between Sade and Bataille concerning their understanding of sovereignty can be explained. For Bataille, too, it is a problem of anti-morality: ‘Morals teach the good which regularly is my neighbour’s advantage’.\(^{28}\) Nancy, however, does not accept this anti-moral, solipsistic gesture of sovereign subjectivity. Against Bataille he states that he must have had a very ‘extreme experience of the world’, that must have led him to his theses on sovereignty. Bataille, Nancy suggests, gave up ‘thinking the comm-unication [*Mit-Teilung*] of community as well as the sovereignty inhered in this comm-unication, or that comm-unicated sovereignty, which is supposed to be a sovereignty communicated and distributed between the single beings [*Daseinen*] [...]'\(^{29}\) Sovereignty in this sense is something shared by all those who exist in community and one has to be aware that those ‘beings’ [*Daseinen*], Nancy mentions, do not mean subjects or individuals in a general sense.

\(^{27}\) *Ibid.*, at 142.  
\(^{28}\) *Supra* n. 12, at 48.  
They both gain more and less than a (maybe transcendent) subject. They develop out of a communicating unification that crosses the dimension of single subjective existences towards a multi-complex existence as a community.

A realised community, for Nancy, would abolish \textit{aufheben} individuality, and individuality is what remains after experiencing the dissolving of community.\textsuperscript{30} In so far as the widest possible freedom would be reached in a stage of less individuality but of a fulfilled community (which is what Nancy calls a \textit{communism}). Maybe the shaping of such communism remains as abstract as are the concepts of freedom and sovereignty after all. But Nancy does not remain in this abstract dimension and comes back to the worldly problem of sovereignty as such. As I have shown above, he is a sceptic of sovereignty and he also stresses the ‘ambiguity of sovereign power’ concerning its shaping and its violent dimension.\textsuperscript{31} As Sade and Schmitt have outlined, it is this (the ability for unrestrained violence) that shapes the freedom and the power of individual, as well as of political, sovereignty. However, Nancy denies that this structure of sovereignty is still valid. Instead he states that ‘nowadays we are not located into such ambiguity: we are not able to notice such a founding power. (…) Power has become unilateral. Together with sovereignty it appears as pure violence that has lost its legitimacy right from the beginning’.\textsuperscript{32} This then is Nancy’s claim: that contemporary society, or even culture, has lost its original ambiguity over sovereignty’s power. This ambiguity might have served the creation of a community imagined (but unrepresentable) according to Nancy. Its abolishment leads to an entirely unilateral power like that explained by Sade and Schmitt in its two antagonistic dimensions.

Thereby sovereignty occupied freedom in strategies of representation, delegation, biopower, self-autonomy and so on. Freedom as a permanent desire of the modern subject also entails its desire for individual sovereignty, substituting the rules and order of culture or sociality. In parallel manner, as many authors have shown, modern techniques of power are aiming at the individual, its competences, responsibilities and self-respect to serve a more or less abstract power

\textsuperscript{30} Cf. \textit{ibid.}, at 15.

\textsuperscript{31} Cf. \textit{supra} n. 14, at 138; for this ambiguity of sovereign power also see W. Benjamin, \textit{Zur Kritik der Gewalt und andere Aufsätze} (Frankfurt/Main: Suhrkamp, 1966); J. Derrida, \textit{Gesetzeskraft. Der ‘mystische Grund der Autorität’} (Frankfurt/Main: Suhrkamp, 1991).

\textsuperscript{32} \textit{Supra} n. 14, at 138.
of sovereignty. This kind of sovereignty is fulfilling by/as the means of the individuals, and hence the two cannot be separated from each other. This at least Foucauldian approach to sovereignty is not one to deny the requirements of the subject;\textsuperscript{33} moreover, sovereign power at least enables the individual to act. Nevertheless, freedom as individual freedom remains unfolded in the discourse of an abstract sovereign power of the social.

Freedom, at least, has lost its value as a correcting term of sovereignty. Where they coincide, freedom rather seems to be abolished by sovereignty. This is what Alexander García Düttmann unfolds as the logic of a theory of subjectivity of the enlightenment: ‘Only an autonomous subject, having himself at his own disposal, would be able for self realisation. Having oneself to his own disposal implicates self-realisation, whereas self-realisation implicates the self’s free disposal of itself’.\textsuperscript{34} The problem was that between person and individual there remains a difference: why were self-realisation and self-disposal separated yet again? The logic of the enlightenment itself implies that the freedom for self-realisation only results in self-disposal, necessarily neglecting the dimensions of the good and of society. Both sovereignty and freedom are not realised if they are already limited. But as the consequence of their realisation, freedom always ends up in the operation of sovereignty, while any un-limiting process is characterised negatively almost by definition for its anti-social aspects in the modern topography of values. This does not mean that freedom is purely antagonistic of sovereignty. More precisely, one could say that sovereignty is freedom’s own other while the desire of freedom to be realised always ends up in a logic of sovereignty and negation. Freedom’s (own) other constantly negates every other of the individual – both abstract and concrete. Real freedom, therefore, violates anything that is truly other.

Although and while Nancy insists that ‘the invention of sovereignty truly was not the secularised version of political theology’,\textsuperscript{35} the implementations of all those social, legal and moral institutions in modernity have the \textit{Katechontical} task of preventing, by necessity, modernity from fulfilling its terms as absolute paradigms. The myth of freedom then perhaps appears as the freedom of/for its myths


\textsuperscript{34} A. García Düttmann, \textit{Philosophie der Übertreibung} (Frankfurt/Main: Suhrkamp, 2004), 95.

\textsuperscript{35} Supra n. 14, at 140.
themselves with which the cultural and legal concepts of freedom are still interwoven. The myth’s *wilderness* might fit to its imaginary realisation, even as concerning sovereignty. *Both seem to be situated into an iterative circle of sovereign freedom and free sovereignty; always re-presenting the phantasms of modernity.*

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