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Moralism and Realism in Theorizing Social Norms

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Abstract: In *Morality and Socially Constructed Norms*, Valentini searches for a unifying principle that underlies whatever genuine obligations we might have to obey the norms of any and all social practices, ranging from line queueing norms, through offside rules in soccer, to obligations not to break the law. I argue that this search is driven, and distorted, by a commitment to what Bernard Williams labeled the ‘morality system’. Once we see this, we should question the value of the unifying project. Most social norms can be considered on their own terms, as part of a rich and variegated ethical life, without subsuming them under the question of whether others’ moral rights are at stake. Similarly, political obligation needs to be understood in relation to the practical activity of politics, not as an abstract moral quandary.

Keywords: political realism; moralism; political obligation; social norms; morality system

1 Introduction

Grappling with Valentini’s *Morality and Socially Constructed Norms*’ impressively concise yet ambitious arguments improved my thinking on a variety of issues; it especially helped clarify my ongoing unease with the debate over political obligation. As is usual in these critical fora, I pass over many places of agreement and focus on disagreements. I offer two lines of criticism. The first is methodological: Valentini assumes that for socially constructed norms to be *really* binding, they must be *morally* binding, thus driving her search for the moral principle P as the foundation of all justified social norms. This is a classic assumption of the morality system, as described by Williams ([1985] 2006).¹ Adopting some of Williams’ insights about moralism in theorizing social and political phenomena helps me explain my

¹ Williams’ critique is spread across his works, but is most concentrated in Williams [1985] 2006. For an overview, see Loudon 2007; for a detailed reconstruction, see Queloz 2022.

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discomfort with aspects of Valentini's project. We should expect the diversity of social phenomena described by Valentini to resist being subsumed under and explained by P.

My second line of criticism focuses on Valentini's discussion of political obligation (Valentini 2023, chapt. 5). I worry that Valentini's middle ground between full-blown general political obligation and political anarchism is unstable and unresponsive to some of the main desiderata of a theory of political obligation. This is directly related to the moralism diagnosed in my first worry. Valentini's view from within the morality system takes political obligation to simply be one socially constructed norm among many, and so the problem soluble with the same tools as the problems of, e.g., line queueing and football. But the middle ground position about political obligation is unstable because it doesn't take seriously politics as a distinctive practical domain.

2 Moral and Ethical Oughts

Valentini's project is an exemplar of the morality system in two ways. First, the suite of cases where we encounter social norms in order to elicit intuitions about some kind of violation, i.e. the data to be explained, are all swept into the category of morality. All oughts are moral oughts – or all *real* oughts are moral oughts. As Williams ([1985] 2006, 196) notes, the morality system “makes people think that, without its very special obligation, there is only inclination.” Second, Valentini's search for a principle P that explains the moral wrong of violating social norms in all these various cases is explicitly a search for a prior obligation (Valentini 2023, 88). This is a version of what Williams ([1985] 2006, 181) calls the “the obligation-in, obligation-out principle.” The only way to show that we have specific moral obligations not to jump queues in England or run lonesome red lights in Germany is to show that there is a general moral obligation which grounds the more specific obligations. This is the crucial role that the obligation of agency respect plays for Valentini.

Of course, authors can define their own projects, and investigating the morality of socially constructed norms is a fine one. I am not a skeptic about morality in general or about the possibility of good moral philosophy; I believe there are genuine moral obligations and that we can usefully philosophize about them.² So, my criticism is not that Valentini addresses morality at all. Instead, I think that there are

² This tracks Williams, who is sometimes happy to discuss morality as part of the ethical, leveling his critique against the morality system as a certain influential, historically and culturally specific way of approaching morality.

methodological tendencies in contemporary moral philosophy – largely philosophy of the morality system – that distort our understanding of the nature and place of morality, and specifically moral obligations.

We can perceive one such distortion in Valentini's drive for systematicity. There have been philosophical theories of this or that moral obligation to obey this or that socially constructed norm, but no overarching, unifying theory (Valentini 2023, 5). Valentini's project is an attempt to remedy this philosophical bric-a-brac, unifying the phenomena by grounding them all in P. The guiding idea, of course, is that such unification is both possible and desirable. This guiding idea is bolstered by the first aspect of the morality system I mentioned above, namely that all social-ethical phenomena must be brought under the morality system and bent to fit its mold. And the guiding idea is shaped by the second aspect, since the search for unification comes in the form of the search for a general obligation. Without a commitment to the morality system, though, the idea that such a diverse range of social phenomena could be unified and grounded in a single principle of moral obligation is dubious from the outset. Viewed from outside the morality system, such a project invites distorting the data to make unification possible.

Let me give you an example. Like Valentini, I lived in Germany as a foreigner. And like Valentini, I come from a culture (the US, in my case) where some socially constructed norms of daily life are more permissive than in Germany. A striking case that Valentini mentions is jaywalking, crossing streets against pedestrian lights or outside of crosswalks (Valentini 2023, 2–3, 160). In the US, jaywalking is an unremarkable commonplace; in other parts of the world, crossing busy roads outside of crosswalks is so common, and even necessary, that even applying the category jaywalking seems a mistake (Cairo stands out on this front, in my experience). In Germany, by contrast, jaywalking is commonly socially censured by bystanders, who issue barbed comments or simple expressions of disapproval. Importantly, I take these to be socially warranted responses in virtue of a social norm being violated.

From within the morality system, though, this means the jaywalking norm must be (or must be grounded by) a moral norm. If the Germans' responses to my norm violation were warranted, it must be the case that I had a moral obligation not to jaywalk, thus that when I jaywalked, I morally wronged them (at least insofar as they are norm-supporters, in Valentini's language) and correlatively I violated their moral right to be treated with agency respect. This seems to me an entirely overblown assessment of the situation. We have a whole host of normative categories for evaluating these kinds of social violations, some of which are moralized but most of which are not, instead following lines of the ethical, prudential, characterological, and much else. The morality system, in its quest for hegemony in our ethical life, eliminates these varieties of criticism, these thick concepts and

more nuanced modes of evaluation. Morality reduces them all down to rights and obligations, essentially creating a juridical framework that focuses on individuated actions, directed claims, and assigning blame through an analysis of voluntariness (Williams [1985] 2006, 192–5).

I never stopped jaywalking when I lived in Germany. I don't think that German people were wronging me by expressing their disapproval, but neither do I think I was wronging them by not conforming to their social norms. There is space in our normative evaluations to evaluate what I was doing, and what they were doing, without flattening the question to whether they had a moral right that I was violating. Perhaps I was being impolite, and so socially warranted correction. Similarly, someone who jumps an English queue is certainly a jerk, but is he morally wronging others or is he ... just a jerk?

Perhaps I am mistaking the idea of different kinds of social normativity for the idea of different degrees of moral normativity. Perhaps it's not that I am not wronging the Germans by jaywalking but merely that I am wronging them very little. Valentini of course agrees that moral rights and wrongs come in degrees (e.g., Valentini 2023, 50). Presuming a justified property rights regime, you have a moral right to your pens; someone taking one of your pens wrongs you, but not very much. But my concern is not that jaywalking or queue jumping are minor violations. My concern is that subsuming these norms under morality distorts them and the social relations they are relevant to. The morality system juridifies social relations (Williams [1985] 2006, 191–4). The point of saying you have a moral right to your pen is to establish a special kind of accountability between you and others with respect to the pen. If someone takes it, you have a specific kind of public claim against them, which enables you to make accusations, to seek recompense, to call on social support, and so on. But many aspects of our lives are distorted by juridification and so should not be subsumed under the morality system, including aspects of our lives that are much more important than our pens. Imagine Romeo is obsessed with Juliet in secret, but Juliet doesn't know Romeo exists and treats him with indifference upon their first meeting. Even though Juliet's indifferent treatment deeply hurts Romeo, she did not morally wrong him in any way. Romeo has no claims against her. But we can still use a wider array of social, ethical concepts to assess the situation, for example to ask whether he was boorish or caused a scene, or whether she acted with tact or skill. So although it's true that there can be minor moral wrongs, the question remains: why subsume violations of queueing norms and others under morality? Why not stick with richer, contextually specific thick ethical terms?

In one respect, Valentini has a ready reply. Early in the book, she stipulates that she is only interested in “norms the violation of which triggers *moral reactive attitudes*” (Valentini 2023, 48; cf. also 19–22). She focuses her analysis on this class precisely to avoid debate over which kinds of norms fit her analysis, for example

ruling out aesthetic, epistemic, and linguistic norms. And she recognizes that there will be disagreement about which norms trigger moral reactive attitudes, so the precise scope of her analysis is indeterminate. Does this eliminate my concerns? No, for two main reasons. First, the cases I'm interested in are still practical norms about how we treat others; I've been calling them ethical. They're not the kind of norm that is distinct enough in kind to be set aside along with grammar. And they're certainly within the scope as Valentini conceives it; in one example, she asks whether the rules of football are "*morally binding* for those participating in it" (Valentini 2023, 68).

Second, I precisely reject the idea that we can pick out moral norms by reactive attitudes. Valentini says "For my purposes, I focus on uncontroversial cases of moral emotions or reactive attitudes – such as blame, resentment, and guilt" (Valentini 2023, 48). This close connection between reactive attitudes and moral norms is consistent throughout the book: when Valentini uses cases to elicit warranted reactive attitudes or critical responses, she assumes that this shows the presence of a moral wrong. For example, she writes: "This behavior seems to me blameworthy, *hence morally wrong*" (Valentini 2023, 86, my emphasis). However, while blame is the characteristic reactive attitude for a moral violation, it is not *unique* to moral violations. No reactive attitude is. Peter Strawson's original discussion includes moral reactive attitudes as a subcategory of what he calls participant or personal reactive attitudes (Strawson 2008, 10, 12). Even emotions like guilt or shame that are often associated closely with morality have non-moral analogues. For example, when discussing punishment, Strawson (2008, 23, emphasis added) writes, "The concepts we are concerned with are those of responsibility and guilt, *qualified as 'moral'.*" Warranted feelings of guilt, shame, resentment, and so on can track social oughts and ethical oughts, not only moral oughts. The violation of a moral norm can warrant blame or guilt but the presence of warranted blame or guilt cannot on its own be diagnostic of a moral violation.

All social normativities include a structure of accountability, of calling to account, but this does not make them moral and it does not mean they require moral justification (cf. Valentini 2023, 30). As Williams ([1985] 2006, 194) emphasizes, the morality system's characteristic juridified practice of holding accountable by assigning blame – what he calls the blame system – actually depends on the rest of ethical life's pressures to function. Denying the possibility of warranted, non-moral, social normativity is key to the morality system's colonization of the social world. So, perhaps that is the main source of tension: I think we can be warrantably called to account within social practices without implicating our most basic claims on each other as free and equal persons, so without even raising the question of moral justification (Williams [1985] 2006, 192–3). That does not mean that all-things-considered we should have done what the social practice demanded of us,

it just means that social life is layered and complex and we are subject to norms that we are bound by from one perspective and free to ignore from another. (The idea that all such conflicting practical necessities can be resolved without loss is another distorting assumption of the morality system.) All social interactions can be conditioned by costs imposed on us by others or by the socially constructed environment and there's no reason to think that they are all therefore subsumed by the morality system. Assuming otherwise threatens to eventually devolve into a kind of knee-jerk moralizing libertarianism, where sociality itself is presumptively interfering and requires moral justification.

Another way of pushing the general point about Valentini's project resting on, and contributing to, the colonization of the lifeworld by morality is by considering the explosion of obligations implied by her discussions of political obligation and state sovereignty (cf. Valentini 2023, chaps. 5 and 6). Imagine we live in the more just world Valentini imagines where the international community is sufficiently just to ground duties of agency respect for international law, and that we are in a reasonably just state such that its citizens' commitments to rule of law ground duties of agency respect here as well (Valentini 2023, 184). If I steal a pen from my rule-of-law-committed colleague Sam, then on Valentini's account I have committed moral wrongs of at least four types – and millions or billions of token wrongs. First, I violate Sam's right to control over their pen. Second, I violate Sam and all other (norm-supporting) co-citizens' individual rights to inviolability to collectively determine rights of control through the legal framework (Valentini 2023, 147–8, 169–70). Third, I violate the right to inviolability of “the international community as a whole” to establish external sovereignty among the community of states (Valentini 2023, 201). Fourth, I violate the rights to inviolability of every international-norm-supporting individual member of each of state in the international community (Valentini 2023, 201). So, in addition to the plausible idea that I violate Sam's moral rights to property, on Valentini's account I minimally violate the moral rights of millions or even billions of my co-citizens and further millions or billions of other people around the world. However minor these wrongs may be, there are *billions* of them. Surely this is an example of the morality system spinning entirely out of control.

The upshot of all this is that when I read Valentini's examples of social norm violations, I often agreed that there was a violation, but it seemed to me not to be a moral one (such as: going offside in a football game really morally wrongs someone?). It was a failing to be explained with thicker ethical terms (such as: cheating) and non-moral oughts. Once we admit that there can be minor moral harms and egregious non-moral social harms, we have to ask what is gained from applying Valentini's schema and trying to find a general principle of moral obligation to obey social norms. Maybe there is no such thing; maybe that's why people have only tried to address these problems in various spheres. So far, though, this might simply

mean that Valentini's project is more limited in scope than she thought; the project is about *which* social norms are plausibly grounded by P, and perhaps the answer is: very few. My further suggestion is that the search for principle P is especially misleading, and even distorting, when applied to political questions.

3 Political Obligation

In this part I focus on political obligation. What I have called the flattening of our social life into morality is taken by Valentini to be a virtue of her account of political obligation. “[L]aw is not morally special,” it is just one kind of potential commitment that people can have and collectively build (Valentini 2023, 151). Under certain conditions, some people will have moral obligations to obey the law as a matter of agency respect for law-supporters who are committed to rule of law or to specific laws (cf. Valentini 2023, §6.4). As Valentini emphasizes, this puts her view more in alignment with philosophical anarchists such as A. John Simmons, who find that we often have reasons to do as the law says, even content-independent reasons, but deny the existence of a general content-independent political obligation (Valentini 2023, 151).

Of course, regardless of whether law is morally special, it is empirically special (Habermas 1998, chapt. 1). Legal norms are not simply one kind of social norm alongside queueing and football, as Valentini partly acknowledges (Valentini 2023, 155–6). Different people emphasize different aspects of (modern) law to make this point, but two features are paramount. The first is Hart's (2012) famous idea that law is systematized: it involves not only primary norms that tell people how to act but secondary norms that administer the primary norms, formalizing official roles and procedures (Valentini 2023, 167–8). The second is the idea that law is distinctively coercive: although all social norms involve pressures of various sorts, law threatens the most severe penalties and, via the state, directs a preponderance of coercive force in a territory while regulating other uses of coercion in that territory. This combination means that legal norms take on a very particular character. Laws are by definition in force, both as a matter of being a *de facto* part of the normative system that is effectively structuring society in a given moment (cf. Valentini 2023, 168) and as a matter of being actively connected to effective, systemic enforcement apparatuses. As Habermas (1998, 25–32) puts it, this means laws are “between facts and norms.”

From within the morality system, law's empirical significance does not matter. It may be true that law-in-force needs to be held to a particularly high moral bar and that we need to accurately describe law to ensure that we are applying appropriate standards. In that sense law is morally special, and would perhaps lead

to the conclusion that P does not ground many, or particularly stringent, content-independent obligations to obey laws (Valentini 2023, 176–7). But nothing about law requires a special way of theorizing how we normatively relate to it. Again, however, the morality system not only misleads, it distorts. Williams' critique of the morality system also led him to a critique of contemporary analytic political philosophy (Williams 2005). If we follow the morality system in subsuming all normativities to morality, then questions of politics and law become simply applied moral philosophy. We take whatever moral standard we adhere to, like respect for agency, and we see how it fits the specific details of different domains of human activity. Williams called this methodology political moralism, which he contrasted with his political realism. For the realist, politics is a particular practical activity and theorizing about politics requires shaping the elements of our theories – values, concepts, and so on – to fit their use in that activity.

Political obligation is an interesting test case for this idea. As described above, law is a normative system that assigns various pieces of deontic standing, e.g. rights and duties, and then secures legal subjects' conformity with a coercive enforcement apparatus. This leads to two moral questions. First, the question of the form that Valentini focuses on: whether legal subjects are morally obligated to do as they are legally obligated to do, or more generally whether legal status is mirrored by moral status (cf. Valentini 2023, 54). The other question is when coercion and punishment are morally justified, since intentionally and severely harming people is a paradigmatic moral wrong.³

Moralist attempts to answer these questions run into the problem of law's systematicity. It looks like law is an all-or-nothing package at both levels: at the system level, the problem is not so much the bundle of legal status any given citizen has at any given moment but the very fact that as legal subject they are definitionally and constantly liable to changes in standing through exercises of legal power; at the coercive level, the problem is not so much justifying this or that punishment (which is often easy enough) but about an entire apparatus of enforcement operating to structure expectations and patterns of behavior in society. This is why the search is not for a series of individual moral obligations matching legal obligations but for *general* political obligation and general *political* obligation. However, systematicity seems to imply that the only live options for relating to the state are total submission or revolution. Most moralists want to be able to both say that their state is bad in ways that permit some significant freedom from law and they want to say

³ The most straightforward solution to both these problems is for the highest legal authority or law-making entity to possess matching moral authority; then its commands simultaneously change both legal and moral status, including when it creates the specialized enforcement apparatus, simultaneously morally empowering it.

that their state is not so bad that we must overthrow it. Thus the search for a middle ground, whether Raz's piecemeal authority or Simmons' philosophical anarchism. But most people, including those like myself who are sympathetic to the overall stance towards states, are dissatisfied with the moralist's middle ground. I suggest Williams' critique explains why.

From the realist perspective, the problem is that this account of political obligation – this whole way of relating to law – can play no role in actual politics, and so no role in our lives as people in actual political communities. It is silent in our ethical lives. As far as I can tell, this is true of any philosophical anarchist's life; with respect to conforming to law, they are indistinguishable from an average citizen. This is not because both are completely submissive or radically revolutionary, but precisely because both relate to the law in a more nuanced way: they obey by default but not always, with some quite regular nonconformity. Rather than implying that the average citizen is a philosophical anarchist, this suggests that the middle ground is the moralist's best, flawed attempt to capture the richer social and ethical modes of relating to law that are actually operative in modern societies.

The realist analysis implies that moralist attempts to capture political obligation are necessarily flawed. Valentini's nuanced account of the role of commitments in the construction of social norms and her associated appeal to the conflicting values of individual freedom and agency respect actually exacerbate the political problem. On Valentini's account, whether we have a moral obligation to obey a particular law on a particular occasion depends on making private judgments about the following elements: whether legislating in that domain is morally permissible, impermissible, or required; whether the people's commitments (and which peoples' commitments) to that particular law and rule of law in general are authentic; and how burdensome complying with the law is (Valentini 2023, 169). In a society where people disagree about all these elements, the upshot of people believing they were in the middle ground would be chaos (assuming this is not an esoteric doctrine).⁴ Different people would disobey different laws in different ways, all believing they were righteously disobeying while many of their co-citizens were unjustifiably breaking the law. Of course, those co-citizens would include police officers, judges, and juries. People would be resentful of punishment they received for what they took to be morally permissible, or even required, disobedience.

The idea of assessing law with one's private moral judgment and acting on that basis is not foreign to political theorizing. It is most familiar from the contexts of civil disobedience and conscientious objection (cf. Valentini 2023, §5.6). But that's

⁴ This is not the conventionalists' claim that without a doctrine of total submission to law, anarchy results. It is the claim that a specific moralized doctrine of private judgment and obedience would create chaos, leaving open other possibilities.

the rub: we can only make sense of these behaviors as exceptions against a baseline of default conformity. In a society where everyone disobeys whenever they believe they morally ought to, based on how they perceive the middle ground, civil disobedience and conscientious objection lose their character as distinct political practices. When such defection from default obedience is widespread – when the law no longer secures what Habermas (1998, 31) calls “average norm compliance” – a society is approaching, if not fully embroiled in, a legitimacy crisis.⁵ This is directly connected to law’s distinctive character. The system, and especially its enforcement apparatus, must presume that legal obligations are binding and that legal responses to law-breaking are justified. The system doesn’t make sense without that. But a middle ground theory of political obligation precisely strips that presumption away and makes the system unworkable.

Legal systems are political systems and can therefore only function when legal officials, subjects, and other participants in the system take appropriately political attitudes towards the system and their contributions to it. Due to this, a society full of moralists inhabiting the middle ground cannot have a functioning legal system. Appeals to the middle ground are not socially presentable (Williams 2005, 120); as I will put it, such appeals are politically illegible. Illegible claims miss something important such that they cannot be used to make claims that co-citizens and opponents must take seriously in particular practical political contexts. A political anarchist who objects to a particular policy is making a politically illegible claim because their objection assumes there should never be any laws; it is not a premise that someone asking how to make better policy can seriously consider in the activity of making policy (Williams 2005, 85, 92–3, 120).

Similarly, then, appeals from the middle ground are illegible because they assume something inconsistent with the very existence of a functioning legal system, namely that whether people ought to conform to law is only ever answered by an outside standard of morality. This is the important difference between the middle ground and civil disobedience or conscientious objection as political practices. The latter are constructed so that citizens can communicate their deepest moral convictions in ways that are legible to a political audience. They claim exceptions to the default reality of ineliminably separate persons forging political consensus by exercising private practical judgment amidst deep practical, and moral, disagreement. The ongoing existence of that reality as a limiting condition on legible

⁵ Therefore, of course, my claim is not that citizens should not morally evaluate their state or legal systems and their fundamental claim to the right to rule. The point is that such evaluations must be made part of a political practice of political legitimacy. Legitimacy claims will, I think, ineliminably involve morality but they cannot be exhausted by assertions of moral truth because they must play the role of co-legibility in a particular political community.

political appeals is partly what defines an appropriately realist account of any political practice (Williams 2005, 92). The moralist's middle ground is illegible because it has no room for that reality, since private moral judgment trumps the fact of disagreement and the need for politics. In that sense, the moralist's account of political obligation appeals to a possible world that is as fantastical as the anarchist's (Williams 2005, 92–3).

As before, it may seem that Valentini has a direct response. Earlier in her discussion, she recognizes that there will be significant disagreement about these issues, for example whether a socially constructed norm tracks what is objectively morally permitted or required (Valentini 2023, 109). Somewhat surprisingly, this leads her to substantially weaken her view, holding that people should focus on whether the requirements of socially constructed norms are *reasonably* understood as permissible rather than whether they are objectively permissible, explicitly appealing to Rawls' (2005) idea of the burdens of judgment. Valentini appears to build reasonableness into what counts as morally permissible as we are to understand the notion throughout the book: "norms which fall within the realm of the reasonable ... are not ruled out by the moral permissibility qualification" (Valentini 2023, 110). Valentini argues that the desire for a peaceful and rich social life should motivate people to shift their standards for assessing others' commitments away from the true and to the reasonable (Valentini 2023, 109, 110).⁶ Famously, this is precisely to take some account of the reality of politics – this is Rawls' political turn – and to admit that appeals to objective moral truth are an unstable basis for politics. But a partial turn towards legibility is not enough.⁷ The problems of disagreement and the burdens of judgment reiterate on the boundaries of the reasonable, again destabilizing any appeal to extrapolitical consensus as the basis of social order.

Does this leave morality simply silent in the face of law? That would be unfortunate, and bizarre. Luckily, morally justifying social practices need not take the form of grounding them in mirrored moral obligations – that is precisely a distorting assumption of the morality system. Alternatives include Applbaum (2010), who argues that legitimacy is a moral power to create and impose non-moral normative systems, and my own focus on the role of legitimacy judgments in enabling social practices (Adams 2018, 2022). We can deny the need for mirrored moral obligations without denying that the law needs moral justification – justification at the system

⁶ In a sense, then, all social norms are to be evaluated from a political stance on Valentini's approach!

⁷ And, I would add, needs a lot more discussion than Valentini gives it; political liberals have famously been grappling with the notions of reasonability, political justification, and pluralism, and their implications, for thirty years without much headway.

level but not at the level of each element of legal status. Claims to system justification will have moral content but will be a political construction (Williams 2005, 76–8), shaped to make legible claims on others in the activity of politics. Claims in such an idiom can tell us something important about how we relate to the system as a whole without entailing that we are morally obligated exactly as it asserts we are. Once we abandon the morality system's assumptions that practical necessity is a matter of moral obligation and that moral obligation overrides all other considerations, we can pursue new strategies for moral justifications of social practices, and new understandings of what that means.

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