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Reparations for Racism

*Why the Persistence of Institutional Racism in America Demands
More than Equal Opportunity for Black Citizens*

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Schellhase Ethics Essay Contest

4,817 words

Racism has had a pervasive and persistent presence in the New World, reaching even further back than the founding of the United States of America¹. Manifesting itself in physical violence, sexual assault, and legal disenfranchisement, abuse of blacks specifically has run rampant since the early 17th century². From kidnapped Africans brought to Jamestown colony, to slaves traded amongst the white population in the colonial United States, the injustice of forced, unpaid labor is glaring in our nation's history. As slaves, these men, women, and children were sucked lifeless by daily toil, gaining no due returns for their work which had breathed life into the economic system of our budding country.

Through and through, the injustices which plagued the lives of black Americans prior to the freeing of the slaves are deplorable. However, these offenses to human dignity are only the beginning of the long history of racially-driven attacks on the freedom and equality of blacks in our country. Though the social and legal treatment of blacks may appear to have changed in the course of our nation's history, the black citizens of this country still face a number of injustices against their civil rights and economic prospects.

Considering the persistence of these injustices, and the extent to which they are still affecting the well-being of black Americans, I argue that reparations should be given by the United States government in aim to equalize the life prospects of our black citizens. This project will work in three parts to develop this argument. Within Part I of the project, I will suggest and defend a specific system of distributive justice, with the help of a larger ethical framework. Then, in Part II, I will defend the need for social or monetary reparations to be paid in recompense for the historical and contemporary oppression of blacks. Finally, in Part III, I will assess historical

¹ Berlin, Ira. *The Origins of Slavery*. The Gilder Lehrman Institute of American History. 2009

² Berlin. *Origins of Slavery*. 2009.

examples of reparations given by the United States, and propose possible ways to learn from these precedent cases to create positive, equalizing change for the benefit of black Americans.

Part I: Defending Rawls's Framework of Distributive Justice

Justice as Fairness

We should start by asking: what is distributive justice? Distributive justice is the topic encompassing the question “How ought wealth and resources to be fairly distributed throughout society?”³ Formed from principles that govern the distribution of economic benefits to individuals in a society, distributive justice is a practical consideration for a moral concern⁴. Specifically, this means that a theory of distributive justice for a society must work in accordance with the functional capabilities of a society.⁵ In our society, the moral basis for the need for Distributive Justice is that all people are morally equal and, therefore, ought to be subject to a fair system which works toward protecting the rights and needs of every individual. Though there are many proposed theories of distributive justice, I wish to focus on one which I find morally defensible. In the following paragraphs, I will introduce and give proper critical attention to John Rawls' theory of distributive justice, Justice as Fairness.

This principle was conceived in his 1971 book, *A Theory of Justice*, and later updated in 1991. The ultimate conception of Justice as Fairness rests upon two key features:

1. Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all

³ Pojman, Louis P and Robert Westmoreland. *Equality: Selected Readings*. Oxford University Press. 1997.

⁴ Pojman and Westmoreland. *Equality*. 1997.

⁵ This can be thought of as a matching of the capabilities concerning production of goods and services, and the technology accessible to the society.

2. Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)^{6,7}.

Rawls uses the term *veil of ignorance* to describe the appropriate perspective from which one must view the hypothetical social contract⁸. His conception of Justice as Fairness, he explains, is used then not to mean that the two are synonymous, but that justice *relies on* this conception of fairness, and in turn fairness is applied through justice⁹. Rawls's expectations of this conception of justice are that those participating in a social contract for fairness would choose to defend three basic standards for all: equal basic liberties, equality of opportunities, and that these first two standards align with reflective equilibrium, through which Rawls provides ethical justification for the entirety of his method (more on this later).^{10,11}

Rawls's Justice as Fairness model of distributive justice has several intriguing benefits. Because these standards are built on a trio of principles (Liberty, Fair Equality of Opportunity, and the Difference Principle, in order of priority), it has a diverse set of outcomes and applications¹². The primary principle, the Liberty Principle, states that all individuals have an equal right to 'basic liberties'— those which constitute an adequate amount of personal property. Second is the Fair Equality of Opportunity Principle, a principle which equalizes individuals' chances of holding an "office or position", regardless of ethnicity, social background, gender, or

⁶ *Justice as Fairness: a Restatement, 2001*

⁷ Pojman and Westmoreland. *Equality*. 1997.

⁸ Pojman and Westmoreland. *Equality*. 1997.

⁹ Pojman and Westmoreland. *Equality*. 1997.

¹⁰ Pojman and Westmoreland. *Equality*. 1997.

¹¹ One caveat in Rawls's conception of justice explains that not all principles would guarantee equality, but all principles would favor the wellbeing of those who are the worst off.

¹² *Distributive Justice*. Stanford. 2015.

sexual preference¹³. The third principle composing Rawls's Justice as Fairness is the Difference Principle. Arguably the most unique and distinguishing principle in his concept, the Difference Principle states that only inequalities which favor the progression of the least advantaged are allowed¹⁴. The difference principle, as you will see later in this essay, plays a key role in necessitating reparations.

Reflective Equilibrium

Now that the idea of distributive justice has been introduced, I will move on to introducing the ethical framework called reflective equilibrium, also proposed by Rawls. The purpose of using reflective equilibrium is to critique Justice as Fairness, thereby confirming the ethical soundness of this form of distributive justice. Seeking reflective equilibrium consists of one considering the principle causes and implications of one's intuitions on the whole of one's beliefs, and attempting to balance these intuitions into a coherent body of principles¹⁵. Though this is not inherently a moral consideration, the methodology is well suited to determine moral quandaries because it demands both a weak and a strong requirement¹⁶.

The weak requirement of the method is the coherence of all beliefs, and the strong requirement is that some of these beliefs even provide support for, or the best explanations of, other beliefs we hold¹⁷. So, under a set of beliefs tried with reflective equilibrium, the intuitions and reflections one has in regard to moral issues are both coherent with one another and supportive of one another. Because it naturally leads to one's belief system remaining a dynamic composition of beliefs, principles, and judgments, the reflective equilibrium methodology is designed to allowing frequent re-evaluation of these component parts. By placing the methods in

¹³ *Distributive Justice*. Stanford. 2015.

¹⁴ *Distributive Justice*. Stanford. 2015.

¹⁵ *Reflective Equilibrium*. Stanford. 2015.

¹⁶ *Reflective Equilibrium*. Stanford. 2015.

¹⁷ *Reflective Equilibrium*. Stanford. 2015.

questions in comparison to one another, with regard to the implicit outcomes of certain situations, one can address a wide range of critical pressures on this topic. Known as *wide* reflective equilibrium, this method is the method by which this essay will operate.

Why use reflective equilibrium, though? Some criticize the method of reflective equilibrium as being overly complicated. Because this method relies so heavily on coherence and support of beliefs, constant testing of beliefs in a web of moral convictions is required. However, it seems to me that this difference in mode gives reflective equilibrium freedom from the difficulty of explaining why a certain belief is *a priori* true, and thus aligns more with a sense of logical reason. It seems to me that with the acknowledgement of the fickleness of our perception of right and wrong, we gain the understanding that constant reflection upon our intuitions—not blind, dogged belief—leads us to the most morally conscious concept of the issues we face. Thus, I chose this methodology to assess the forms of distributive justice because Rawls's conception is both uncommonly clear in the process – it is one of few that explicitly describe the methodology—and is favorable to ignoring challenges to one's perceptions by piling firmly-held dogmatic beliefs on top of one another. It allows for, even demands, purposeful reflection and reassessment upon uncovering more morally relevant material.

Next, we move on to the second part of this essay, wherein the framework of Justice as Fairness will be applied to the issue of standing injustices against black Americans.

Part II: Defending Reparations

Primary to the concern of defending reparations is defining the word, and supplying clear examples of what reparations looks like in action. For the sake of clarity, consider the distinction between these two possible conceptions of reparations:

1. Paying back a group of people for wealth that they would have had, were it not for past injustice
2. Or, giving a group of people the special benefits and necessities needed to bring them up to a socially-deemed acceptable or sufficient level of wealth and well-being, in restitution for past injustices

If, in fact, these are the two conceptions of reparations that exist, it will be necessary to gather which represents the actions which are being called for in this essay.

The first conception of reparations pursues justice strongly in that repaying individuals for specific injustices which they and their ancestors were subjected to creates a supremely just and fair consideration to the effects that the oppression has had on their lives. However, reparations in this conception require in unattainable level of knowledge of who was victim to suffering, and in what ways this suffering impacted the life of those individuals and their proceeding generations. Furthermore, if the first definition of reparations is used to designate the actions that should be taken, there must be a value metric assigned to the injustices suffered that can be applied to modern day benefits.

With this in mind, I believe that the second conception of reparations is more actionable, and is therefore more likely to attain the necessary political support. Therefore, I propose that the second conception is the right conception of reparations for the purpose of this essay. And with the philosophical backing of Rawls's Justice as Fairness, this conception of reparations is

certainly defensibly just. As a functional tool, the latter conception of reparations gives a much more clear idea of what is expected to come from the reparations, and at what point the actions of past transgressors can be said to be buried by justice. Lastly, it is clear that this idea fits better with Rawls's conception of justice because, besides being pragmatic and applicable, it satisfies the difference principle in that it focuses on meeting the needs of the least advantaged in relation to a minimum level of wealth and well-being.

With this definition and conception of reparations detailed, take a moment to address how Rawls's form of distributive justice, Justice as Fairness, supports the issuing of reparations to black Americans. Here, I will show that in conjunction with Rawls's conception of Justice as Fairness, reflective equilibrium suggests reparations are not only morally favorable, but are a moral necessity.

Justice as Fairness insists that inequalities in societal wealth or benefits must exist *only in the case that they are in the greatest interest of the least advantaged*¹⁸. As our current society exists, and as it has existed for generations past, this is strictly not true. Statistics show that not only have whites economically and socially dominated our country since its inception, but they have, knowingly or inadvertently, skewed the laws and practices of our society to serve the interests of whites over blacks and other minorities. In the following paragraphs, I will present the most striking statistics in order to demonstrate the considerable inequalities that have been perpetuated against the well-being of the least-advantaged people in our country in the years since the abolition of slavery.

It is no surprise to any observer of our society that whites, statistically, are not the least advantaged people in our society. According to polling research conducted by the Pew Research Center and presented in a New York Times article from July of 2015, black children are still four

¹⁸ Pojman and Westmoreland. *Equality*. 1997.

times more likely to live below the poverty level—about 38% of the population do—than children of white families¹⁹. One possible explanation of this inequality is that the elevated rate of black unemployment is causing, or at least linked to, the frequency of black children living in poverty²⁰.

In his article written for the Atlantic, Ta-Nahisi Coates explains how this drastic difference in economic wealth is apparent in inner city areas. Neighborhoods with all non-white populations were “ecologically distinct” from mixed-race or all white populations, he explains, in that they generally suffer rates of homicide, child mortality, unemployment, and severe poverty that are magnitudes greater than other Chicago neighborhoods²¹. Many people feel that affirmative action, such as reparations, are unnecessary to solve this problem. Rather than creating inequalities in our society in favor of underprivileged and underrepresented minorities, they believe that equal opportunity ought to be implemented to create a fair playing field for all individuals²². Under the ‘fair’ system of equal opportunity, they claim, any difference in these statistics between black communities and white communities can be blamed on the cultural shortcomings of black communities. Tied to this conception of cultural differences is the social stigma against blacks as unmotivated and lazy leads many to see them as undeserving of special benefits.

Equal opportunity simply can’t do the work though. Since 1963, seven different acts have been implemented by the Federal Office of Equal Employment Opportunity to fight Civil Rights

¹⁹ Tavernise, Sabrina. *Black Children in U.S. Are Much More Likely to Live in Poverty, Study Finds*. The New York Times. 2015.

²⁰ Tavernise. *Black Children in Poverty*. 2015.

²¹ Coates, Ta Nahisi. *The Case for Reparations*. *The Atlantic Monthly Online*. June 2014. June 2015.

²² Coates. *Reparations*. 2015.

violations of minorities and disabled individuals²³. Yet, according to the Pew Research Center, black Americans have consistently had an unemployment rate twice that of white Americans since the Bureau of Labor Statistics began taking data in 1954²⁴. It seems apparent from statistics like this that simply outlawing the most blatant forms of racial discrimination is insufficient to improving the economic stance of black Americans. Without reparations being paid to the disproportionately poverty-stricken black communities, most of these individuals will never gain the chance to pursue a life of economic success and social equality.

Coates also discusses the way that this cultural prejudice against blacks penetrates the mindset of members of the black community. “One thread of thinking in the African American community holds that these numbers partially stem from cultural pathologies that can be altered through individual grit and exceptionally good behavior”, writes Coates²⁵. Here, he draws attention to the issue of how our society perceives success. Our job market is built in a way as to perpetuate the harmful concept that only blacks who are “white-washed” in their appearance and their mannerisms are worthy of achieving success. Black culture, therefore, is seen as something which must be abandoned or suppressed if a black individual hopes to find work in a professional environment.

This phenomenon links inextricably with the concept of ‘color blindness’ in whites, a problem discussed heavily in Eduardo Bonilla-Silva’s book *Racism without Racists*. Color blindness, in this case, refers to the societal practice of removing the factor of race from

²³ *Federal Laws Prohibiting Job Discrimination: Questions and Answers*. The U.S. Equal Employment Opportunity Commission. 2009.

²⁴ Desilver, Drew. *Black Unemployment Rate is Consistently Twice that of Whites*. Pew Research Center. 2013.

²⁵ Coates. *Reparations*. 2015.

decisions regarding the hiring of individuals to jobs or the election of individuals into office²⁶. Proponents of this practice claim that it is an equalizing practice, and that it is the best way to ensure racism does not influence one's chance to attain a certain position. However, according to Bonilla-Silva's argument in this work, most whites endorse an ideology of color blindness only because it removes from their conscience the sense of responsibility for persistent racial inequalities while still maintaining their white privilege²⁷. In this way, even our most progressive steps toward achieving racial equality are proving to be ineffective.

Known as *institutional racism*, this pattern of legal and political discrimination serves as the modern day monster facing egalitarian efforts. Solving this is not a single-step process, nor can an end to it be foreseen. However, as we have seen in Rawls' reflective equilibrium, we are socially obligated to address the issues as long as institutional racism directs and sanctifies social actions that are counter to equality and justice. Here, I will address the wider systems which exist in opposition to the equal social standing of blacks with whites, as well as demonstrate, through specific examples, the ways in which these systems antagonize the progress of blacks in our society.

The political system which is responsible for the oppression of blacks is composed of several branches of government. Both the judiciary and the legislative system are involved in the political disenfranchisement of blacks and their families²⁸. Michelle Alexander addresses this system in her book *The New Jim Crow*. Alexander titles her book to reflect the idea that the political control of blacks has always come from reducing their political rights and their means of accruing wealth, from the early days of slavery, through legal segregation and even into our

²⁶ Bonilla-Silva, Eduardo. *Racism Without Racists: Color-Blind Racism and the Persistence of Racial Inequality in the United States*. Rowman and Littlefield Publishers, Inc. 2006.

²⁷ Bonilla-Silva. *Racism without Racists*. 2006.

²⁸ Alexander, Michelle. *The New Jim Crow*. The New Press. 2010.

post-Civil Rights society²⁹. The mass incarceration of black men, and the legal system that funnels these “perps” into jail cells is simply the newest form of institutionalized racism and legalized discrimination³⁰. According to her writing, blacks, who are imprisoned at a startlingly high rate, face challenges in attaining and accruing wealth afterward, due to loss of job availability and political disenfranchisement³¹. Convicted felons lose several basic rights, such as voting, jury service, and social benefits like food stamps, public housing, and federal cash assistance³². This is of relatively high concern to our situation today because of the historically unprecedented state of mass incarceration³³. Furthermore, with blacks already living the most impoverished lives, removing the last of their socially-funded benefits and their job prospects leads inevitably to more dire situations for post-rehabilitation convicts.

The information presented above leads me to my ultimate claim; color blindness, mass incarceration, and other modern forms of institutionalized racism act in counter to Rawls’s conception of distributive justice, Justice as Fairness. To continue with these structures in place is acting against our most favorable form of distributive justice, as they economically ruin and politically disenfranchise our black citizens. We cannot claim to be fulfilling the necessities of a just society, as our institutional discriminatory practices violate the three components of Rawls’s distributive justice theory. Thus, to right the wrongs that have been, and continue to be inflicted upon black Americans, we must demand that reparations be paid to the least advantaged community: black Americans.

The distribution of reparations to those who have suffered injustice is not an unprecedented act, even by the United States. Consider that in the last century, a few major fiscal

²⁹ Alexander. *New Jim Crow*. 2010.

³⁰ Alexander. *New Jim Crow*. 2010

³¹ Alexander. *New Jim Crow*. 2010

³² Alexander. *New Jim Crow*. 2010

³³ Alexander. *New Jim Crow*. 2010

reparations were paid out in response to crimes against communities or populations. The most recent example of reparations paid by the United States in response to widespread political wrongdoing and racial discrimination was to Japanese-Americans. In 1988, a bill passed that set off to pay out \$1.3 billion to Japanese-Americans interned during World War II³⁴. It was estimated at the time of the bill's passing that half of the 120,000 people interned over the four-year period were still alive³⁵. To each surviving internee, a reward of \$20,000 and an apology was offered³⁶. Of those still alive, awards were prioritized to be given to the eldest first, and then given by descending age in the following years³⁷. The decision to include monetary reparation came in response to records of economic ruin befalling Japanese-American citizens after they were forced to abandon or liquidate their homes and businesses upon the passing of Executive Order 9066, the authorization of the internment process³⁸.

Internee John Tateishi describes the whole experience as 'humiliating and disorienting', as the community of Japanese-Americans left the internment camps with an undue sense of shame and guilt³⁹. Later, Tateishi realized that this feeling was unfair, and led a campaign with the Japanese American Citizens League to seek redress⁴⁰. According to Tateishi, though, the campaign had little to do with the money:

"There is a saying in Japanese culture, '*kodomo no tame ni*,' which means, 'for the sake of the children.' And for us running this campaign, that had much to do with it," he said. "It's the legacy we're handing down to them and to the nation to say

³⁴ Molotsky, Irvin. *Senate Votes to Compensate Japanese-American Internees*. The New York Times. 1988.

³⁵ Molotsky. *Japanese-American Internees*. 1988.

³⁶ Molotsky. *Japanese-American Internees*. 1988.

³⁷ Molotsky. *Japanese-American Internees*. 1988.

³⁸ Molotsky. *Japanese-American Internees*. 1988.

³⁹ Qureshi, Bilal. *From Wrong to Right: A U.S. Apology for Japanese Internment*. NPR. 2013.

⁴⁰ Qureshi. *Apology for Japanese Internment*. 2013.

that, 'You can make this mistake, but you also have to correct it — and by correcting it, hopefully not repeat it again’⁴¹.

According to the Civil Liberties Act of 1988, the government wished to a) acknowledge the injustice of the evacuation and internment of individuals of Japanese ancestry, b) present a formal apology for said injustice, c) provide public education to inform the public of these occurrences in hopes of preventing repetition of the injustice, d) make restitution to those of Japanese ancestry who were interned, e) make restitutions to the Aleutian Islanders who were relocated and whose property was destroyed or seized, f) discourage future occurrences of similar injustices, and, that which I find most intriguing, g) to make the United States concern for cases of foreign violations of human rights a more credible and sincere declaration⁴².

With regard to the individuals of Japanese ancestry, the Congress recognized the “grave injustice was done to both citizens and permanent resident aliens of ancestry by the evacuation, relocation, and internment of civilians during World War II”⁴³. The injustice of the Executive Order, Congress said, laid in the absence of any documented security threats, such as espionage or sabotage, and the motivation by “racial prejudice, wartime hysteria, and a failure of political leadership”⁴⁴. Among the losses faced by Japanese-American civilians were “material and intangible...[including] incalculable losses in education and job training, all of which resulted in significant human suffering”.⁴⁵

More recently, in the international sphere, reparations were paid from Germany to Israel to further redress the actions taken against the Jewish population during the Holocaust. Germany has committed to paying out 772 million Euros (approximately \$1 billion) to surviving

⁴¹ Qureshi. *Apology for Japanese Internment*. 2013.

⁴² *Civil Liberties Act of 1988*. Densho Encyclopedia. 2015.

⁴³ *Civil Liberties Act of 1988*

⁴⁴ *Civil Liberties Act of 1988*

⁴⁵ *Civil Liberties Act of 1988*

Holocaust victims⁴⁶. The payments began in 2014 and will continue until 2017, and will provide aging survivors with home nursing care, medication, and social services⁴⁷. The payout focuses on those subjected to both ‘closed’ (walled) and ‘open’ (non-walled) ghettos and the restrictive lifestyle implemented in these ghettos⁴⁸. Jews living in these ghettos were subjected to unfair persecution, fear of deportation, were refused jobs, and lived under curfew for the war years⁴⁹. This extension of reparations to the previously excluded populations of the open ghettos is said to be an acknowledgement that even the residents of the non-walled neighborhoods were stripped of liberties, and are owed recompense⁵⁰.

Though these are only a couple of the historical examples of reparations, the examples given here represent a wide range of possible methods that may be used to seek redress from past injustices through reparations. In the case of the Japanese-American payout, the payments were limited to individuals who had been personally subjected to the internment camps, thus focusing on doing good for those who were most affected by the governmental actions. There is also the payment by Germany to Israel for the improvement of palliative and geriatric care. In this case, the money paid directly benefitted the well-being of those who were wronged, but the benefits were directed by the governing state of the affected people.

Though these practices are only a few of the possibilities, I believe that either could be used to direct the payment of reparations to black Americans. If the payment were modeled after the case with the internment camps, for example, then tax-free money could be sent to all surviving members of any number of specific racially biased crimes. The decision regarding which types of discrimination would qualify may be difficult, but it seems to me that even a

⁴⁶ *Holocaust Reparations: Germany to Pay 772 Million Euros to Survivors*. Spiegel Online International. 2013.

⁴⁷ *Holocaust Reparations, 2013*.

⁴⁸ *Holocaust Reparations, 2013*.

⁴⁹ *Holocaust Reparations, 2013*.

⁵⁰ *Holocaust Reparations, 2013*.

reparations plan which favors a certain group of those being discriminated against would be superior to continuing to ignore the discrimination altogether.

Perhaps the more economically and politically empowering move, though, would be to follow the model of the reparations paid from Germany to Israel. Although the United States can't pay reparations to itself to improve black lives and redress the discrimination against blacks committed within its own governmental systems, payment of large reparations sums to the social justice groups which lead black advancement initiatives may be a functional alternative. By paying reparations directly to groups like the National Associate for the Advancement of Colored People, the African American Museum Association, the American Associate for Affirmative Action, and others, the government could be placing the resources directly in the hands of those most concerned with, and equipped to, improve the lives of black Americans⁵¹.

Any of these forms of reparations may lead to great change in the economic, political, and social standing of blacks in our nation. As I have argued in this essay, not only will the payment of reparations set our nation toward healing our racially discriminatory wounds, but it is absolutely necessary to reach the level of justice and equality which our nation has long touted as defining characteristics. Through Rawls's theory of distributive justice, we see that not only must our legal and judiciary system be reformed to fairly represent all people—as if the laws were created under the veil of ignorance—but that the inequalities of our society must be reverted from the benefit of the most advantaged to the benefit of the least advantaged. This is a necessity if we wish for the laws of our country to be truly just. I find Coates's call to the nation to perfectly capture what is to be gained from these drastic changes:

⁵¹ *Black Organizations and Organizations Serving Black Communities*. The Network Journal. 2011.

“An America that asks what it owes its most vulnerable citizens is improved and humane. An America that looks away is ignoring not just the sins of the past but the sins of the present and the certain sins of the future”⁵².

America must not continue to ignore the sins of the past and the sins to come. I will not make a strong claim as to the exact form these reparations must take—whether it be a greater, more directed societal emphasis on affirmative action, or a check signed over to the benefit of black individuals, it will move us toward justice for this historically oppressed community of people. What I do know is that America’s relation to its black citizens has been in a constant state of repair since the arrival of that first shipment of slaves, but the wounds of the injustices inflicted upon these people will not heal until genuine change is brought to our country.

⁵² Coates. *Reparations*. 2014.

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