

## **Cynicism, Civil Disobedience and the Rule of Law: Reflections on Political-Ethical Categories of Asylum Policy**

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The dominant UN conception of asylum as the protection of persecuted people has been challenged by recent changes in international affairs, e.g. wars, the break-down of states, famine, extreme poverty and climate changes. The aim of the paper is a critical policy analysis of some political-ethical categories articulated in asylum policy processes and applied in asylum policy. Taking the point of departure in a Danish case where a group of rejected Iraqi asylum seekers were deported back to Iraq, the paper reflects the complexity of norms articulated and regulating asylum, national and international, and the conflict of interpreting these norms in the concrete policy process. In the Danish case three normative categories were articulated: *rule of law*, *civil disobedience* and *cynicism*. On the one hand, one could point at people defending the rule of law and the necessary use of sovereign power in isolation and deportation of the denied asylum seekers with reference to the incorporation of UN Conventions in national law and judicial procedures. On the other hand, one could point at people defending their break of the law by helping and hiding denied asylum seekers with reference to the idea of civil disobedience and their critique of what is labelled the cynicism of the official asylum policy and its implementation. From the point of view of critical policy analysis, then, the paper will analyse the normative categories authorising and legitimising the use of power, i.e. rule of law, and the contestation of the language of power from the languages of resistance constituting civil disobedience and cynicism as normative categories and criteria for a critique of power. This analysis includes the implied power relationships between judicial expertise, politicians, citizens and asylum seekers.

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## Introduction

Early in the night Thursday August, 13 2009 up till 150 Danish policemen gathered in front of Brorson Church at Nørrebro, a district of Copenhagen, and up till 50 policemen went into the church. Since May 17, 2009 a group of approximately 60 failed Iraqi asylum seekers had taken shelter in the crypt of the church. When the police entered the church the Iraqis went frightened and confused to the altar of the church and gathered under the Crucifix protecting themselves with chairs and candlesticks. One of the Iraqi men climbed up to the organ claiming that he would commit suicide. After two hours the police they took on their helmets and shields when some of the Iraqis began throwing glasses on them. Under huge tumult, then, the police arrested and handcuffed 19 Iraqi men and carried them to a bus waiting outside the church in order to send them into a prison, Ellebæk, near the detention place, the Sandholm Camp.

When the police arrived in front of Brorson Church a few minutes past 1 a.m. the people taken care of the Iraqis in the crypt, Kirkeasyl (Church Asylum) sent a text message to up till 700 people saying: "The police is right now carrying the Iraqi's out of Brorson Church by force. Come to the church and sit down on the road." (*Jyllands-Posten*, August 14, 2009) After quarter of an hour the first people arrived and at three o'clock in the morning up till 300 people were at the place demonstrating against the police emptying the church and barricading in order to prevent the police to deport the failed Iraqi asylum seekers. When the police came out of the church with the 19 Iraqi men the people demonstrating made human chains by linking each other together and sat down on the ground, some threw paint bombs on the bus, others screamed angrily at the police. The police wearing helmets and shields took their batons and beat the sitting people in order to dissolve the human chains. After half an hour fierce struggles the bus left the area and drove to the nearest police station. A few minutes past 4 a.m. the police left the place and the people demonstrating lighted candles. During the police action the Iraqi women and their children had left the church and gone underground.

At night Thursday September 2, 2009 the police deported 22 of the Iraqi asylum seekers back to Iraq and the same was the case the night of November 4, 2009.

The emptying of the church and imprisoning of the Iraqi men caused popular reactions. In the same evening as the police action took place earlier in the morning approximately 25.000 people demonstrated against the imprisonment walking from Brorson Church to Christiansborg, the Danish

Parliament. A few days later, August 18 25.000 people attended the sympathy concert in front of the City Hall in Copenhagen collecting money for the failed Iraqi asylum seekers. Again after the group of 22 Iraqis was deported back to Iraq in early September 25.000 people demonstrated against the deportation.

The denied Iraqi asylum applicants took shelter in first Our Lady Church in Copenhagen and then Brorson Church because the Danish government had signed an agreement with the Iraqi government on repatriation of the failed asylum seekers May 13, 2009. According to the police 282 failed Iraqi asylum applicants were in Denmark at that point of time waiting for repatriation. In June UNHCR criticised the Danish government for the agreement with the Iraqi government because some of the Iraqis were refugees according to the UN refugee conventions. In the middle of June the Iraqi Ministry of Foreign Affairs questioned the agreement on repatriation if the repatriation would be enforced by the police, a point of view repeated by the Iraqi Prime Minister Nuri al-Maliki as late as August 12, 2009. This was, however, denied by the Danish Minister of Integration, Birthe Rønn Hornbech. After a couple of months she criticised the police for letting the Iraqis hide in the church without doing anything probably because of political pressure from the Danish People's Party supporting the right-wing government. Apart from the general nationalist and xenophobic ideology of the Danish People's Party, their specific asylum policy had through the years emphasised that refugees were to be helped in the areas near to their country of origin in stead of giving them asylum in Denmark. This parliamentary support from the Danish People's Party had had a very high impact on the so-called "firm and fair" foreigner policy of the government.

This dramatic case of the police emptying Brorson Church of denied Iraqi asylum seekers and deporting the men, first, to a prison at a detention camp and, second, back to Iraq focus on the last link in the chain of implementing the Danish foreigner policy. Indeed, this is a link in the chain of implementation where the characteristics of the modern state as the legitimate monopoly of violence are put into reality (Cf. e.g. Ellermann, 2008, 2009; Gibney, 2008). At the same time, the demonstrations and public reactions showed that it was highly contested whether the monopoly of violence of the police was considered legitimate in the concrete case. This raises the question which political-ethical categories were articulated in the contestation about the police action and the deportation of the failed Iraqi asylum seekers either to justify the deportation or criticise it and the asylum policy behind. In the few days after the police action three categories were articulated; *cynicism* describing the action, *civil disobedience* defending the strategies of counter-reactions, and *rule of law*

justifying the police action and the deportation. In order to understand the normative dimensions of the contestation about the Danish asylum policy this paper will explore these categories further. From the point of view of critical policy analysis, then, the paper will analyse the normative categories authorising and legitimising the use of power, i.e. rule of law, and the contestation of the language of power from the languages of resistance constituting civil disobedience and cynicism as normative categories and criteria for a critique of power. This analysis includes the implied power relationships between judicial expertise, politicians, citizens and asylum seekers.

## Cynicism

The day of the police action and the days after politicians, clergy and public intellectuals began using the term *cynicism* to characterise the action and the political rationale behind it. For instance the Member of Parliament from The Unity List – the Red-Green Alliance, Johanne Schmidt-Nielsen herself demonstrating in front of Brorson Church during the night said just after the police had emptied the church and deported the Iraqi men: “The *cynicism* of the government in this case is emphasised by the fact, that the Iraqi government probably is not prepared to receive the deported Iraqis under the present conditions. Therefore, this demonstration of power of the government appears to be totally meaningless.” (*Politiken*, August 13, 2009).<sup>1</sup> A couple of days later she said: “This is a brand new and thoroughgoing *cynicism* to pull people out of their beds in the middle of the night and carry them away in their pyjamas and with bare feet letting the children see their fathers being driven away by bus with their hands tied. This is really obnoxious that the Danish state treats human beings in such a manner.” (*Information*, August 22, 2009)

Also the former Prime Minister from the Social Democrats, Poul Nyrup Rasmussen did also say the day after the emptying of the church: “I am heavily chocked over the *cynicism* that holds on in the Danish society. We have transgressed the borders of humanity and decency.” (*Information*, August 14, 2009; *Politiken*, August 14, 2009) In his sense, cynicism does not only describe the concrete police action, the use of power and the government rationale behind, but also characterises a more widespread (a)moral tendency in the Danish society different from the social morality that Nyrup Rasmussen calls for under the label *humanity* and *decency*. The use of cynicism operates as a negation of what is conceived an appropriate social morality supposed to guide governmental rationales.

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<sup>1</sup> All translations and emphases are mine.

This is also the case in what the dean of Our Lady Church in Copenhagen, Anders Gadegaard said after the first group of Iraqi men had been deported back to Iraq: “The case about the rejected Iraqi asylum seekers and the vicar of Brorson Church, Per Ramsdal, is the worst example till now, that the *cynicism* in society is moving towards heights undreamed of. [...] It puzzles me, that we accept such a *cynicism*.” (*Politiken*, September 5, 2009) Gadegaard contrasts the cynicism of the government with the Christian ethic that the vicar of Brorson Church, Per Ramsdal showed by giving the asylum seekers shelter in the church: “He did what every vicar has to do towards a distressed human being.” In this understanding it is a Christian obligation to take care of people in distress instead of frightening them and deporting them by means of power. Gadegaard is worried that the cynicism is that widespread and tacitly accepted in society and asks people to act against like the vicar in Brorson Church did.

Furthermore, cynicism is also ascribed to the meaning of a systematic demonization of minorities associated totalitarian political regimes rather than democratic. A group of public intellectual wrote in a chronicle under the pseudonyms of Ogier the Dane, The Little Mermaid and other Danish national persona a critique of Danish People’s Party and their leader, Pia Kjærsgaard. In the chronicle they mentioned, among other things, the emptying of Brorson Church and the deportation of Iraqi asylum seekers: “We are tired of her [...] *cynicism* that demonise [...] minorities with the wrong faith, origin and sexuality.” (*Politiken*, August, 23, 2009) And in an earlier chronicle the author Klaus Rifbjerg wrote about the general public atmosphere in Denmark created by the right-wing government and its alliance with Danish People’s Party: “One could go a step further and say that the soft *cynicism* has its origin in a political programme which *cynicism* is anything else than soft. Since the beginning of the 21<sup>st</sup> Century it has promoted itself that ostentatiously that one has not seen its equal since Hitler’s ‘Machtübernahme’ in 1933.” (*Politiken*, July 19, 2009)

These few quotations from the public discourse the days after the police action in Brorson Church emphasises the critical use of the term cynicism and the various meanings of the term: cynicism characterises the police action, the use of power and governmental rationale behind it; it is widespread and tacitly accepted in society; in that sense, cynicism is a systematic demonization of minorities that operates as both soft and hard power reminding of totalitarian political regimes rather than a democracy. These dimensions of how cynicism operates are conceived a negation of an appropriate social morality of *humanity*, *decency* and *charity* supposed to guide governmental rationales and policies.

This is summarised in the press release from the humanitarian organisation established in order to take care of the rejected Iraqi asylum seekers in Brorson Church, Kirkeasyl (Church Asylum) when they closed down the organisation February 9, 2010. They wrote about the case: “The Minister of Integration, the government and Danish People’s Party has shown a limitless cynicism and inhumanity in the treatment of the Iraqis. They have not taken care of neither children nor elderly and ill people, when what it has been about is to get rid of a group of victims from the Iraqi war. Unluckily 47 people have been deported to Iraq, one of the most dangerous places in the world.” (<http://kirkeasyl.dk>)

At the demonstration the evening after the police’s action the author Carsten Jensen said in his speech: “We praise ourselves for our tolerance. We are tolerant indeed; tolerant to bluntedness, *cynicism*, the blind self-sufficiency, the most infamous human doctrine.” (*Berlingske Tidende*, August 23, 2009) What he asked for was – like the dean of Our Lady Church in Copenhagen, Gadegaard – to act against the widespread cynicism. One mode of action was referred to as *civil disobedience*.

## **Civil Disobedience**

The term civil disobedience was first of all applied to the shelter given to the failed Iraqi asylum seekers in Brorson Church. Although theologically and legally contested the church was until the police action August 13, 2009 commonly conceived as a sacred place where secular powers did not have the right to intervene. In that sense, the civil disobedient act followed another morality than the secular laws governing and regulating society. As the dean of Aarhus Cathedral, Poul Henning Bartholin wrote in an essay a couple of days after the police emptied the church: “This kind of *civil disobedience* is a kind of self-defence against what is conceived inhuman. This is the case of various situations where the people have reacted against the foreigner policy. The Church Asylum in Brorson Church is the latest of these examples. A great minority of the people find that the present foreigner policy has gone too far. It deprives the foreign people their decency and it reduces our decency, too. [...] It is not difficult to understand why some people react against the humiliating treatment we give refugees and immigrants with *civil disobedience* like for instance Church Asylum.” (*Kristeligt Dagblad*, August 27, 2009) And he continued reflecting upon the moral sources of *humanity* and *decency* that had inspired the people taking care of the denied asylum seekers to their acts of civil disobedience: “Where do they get the force to this decency and humanity? They get it from the various narratives carried on till us through our culture; it is our common history, language and faith. The Danish history tells us a story about

immigration, about a new faith (Christianity) that came to us from strangers. It is a story about a language developed in common and in relationship with others. We are not linguistically unique; we have common roots and history with others. [...] Our faith or our religion is behind everything as a common reservoir of narratives, symbols, hope, trust and consolation. The faith appears in the everyday life and the churches tell us that they are places where the important words about human life can be told and where all human beings are one.” In other words, in his essay Bartholin embedded the morality of *humanity* and *decency* in the common Christian heritage and emphasised that the Christian community is not an isolated Danish community, but a community of all human beings.

During the contestation of the implementation of the Danish asylum policy the term civil disobedience was used in another sense, too. The humanitarian organisation Church Asylum that took care of the Iraqis in the church and organised the demonstration when the police arrived at Brorson Church through text messages calling people to “come and sit down on the road” had got the people demonstrating against the police to agreed on a strategy of civil disobedience. This strategy was exactly the passive protest by human chains of people sitting on the ground in order to prevent the police doing their job. One of the activists said in an interview afterwards: “People should sit down as close to the church as possible either to prevent the police to get into the church or to prevent them to get away from the church in their cars. The plan was that it should be a quiet demonstration.” (*Politiken*, August 14, 2009)

After the first deportation of Iraqi men back to Iraq September 2, 2009 the chief editor of *Politiken*, Tøger Seidenfaden wrote in a leading article: “Is it a criminal act when a Minister gives wrong information about what is legal and illegal in this country? At least it is not satisfactory when it is done with such self-confidence and for the sake of filthy political lucre. The question turns up because the Minister of Integration, Birthe Rønn Hornbech says that people who ask others to help the rejected Iraqi asylum seekers, whom the police hounds, ask to commit a crime and commit a crime themselves. If it really is criminal to take the point of view that *civil disobedience* is a possibility in a situation, where the authorities proceed with a brutality unheard of, freedom of speech would have straitened circumstances in Denmark. [...] Birthe Rønn Hornbech has as Minister not only the possibility to give humanitarian residence. She could also show a minimum of decency and wait and see whether the failed Iraqis are able to get another legal basis for staying in this country. [...] Rather, it looks like the possibility that these distressed people could succeed in establishing in this country without being a burden for the state frightens the Minister, the police and her political supporters that much that they

have enforced the deportations as we experienced the night between Thursday and Wednesday.” (*Politiken*, September 4, 2009) Seidenfaden referred in this leading article to the situation that Church Asylum tried to establish a temporary employment agency for some of the Iraqis so that they could earn sufficiently to get the legal ground for staying in Denmark. This attempt was criminalised in the sense that the police confiscated the money donated to the project because they suspected that they were to be used to feed and help the hidden Iraqi women and children instead as real salaries to the Iraqis involved. In November *Politiken* took over the idea and established a temporary employment agency, the Iraq Centre and it is still a political controversy whether this is to be prohibited and closed down. The government has in a new foreigner policy programme formulated together with Danish People’s Party proposed legislation that will prohibit the Iraq Centre.

To sum up: Civil disobedience refers to three different kinds of action: First, the shelter given to the group of failed Iraqi asylum seekers in Brorson Church by the vicar and the vestry with a common understanding of the church as a place of asylum in mind; second, it refers to the act of hiding the Iraqis from deportation after the emptying of the church and helping them to stay in Denmark; and third, the strategy of preventing the police to get into the church and get away from the church with the Iraqis. In all three cases civil disobedience describes actions that break the law out of conscience or what is conceived decency and humanity in opposition to the present asylum policy. The question is, however, how far reaching the civil disobedient acts are in respect of changing existing foreigner policy and legislation. They aim at changing the asylum policy and decisions by operating within and at the borders of the existing legislation and by intervening into the general public discourse on common values and moral principles. But it is hard to see how they can fulfil their task under the political circumstances since 2001 where a small majority – the right-wing government and Danish People’s Party – is dominant in the Parliament. The reactions against civil disobedience from the government in alliance with Danish People’s Party are – as part of the contestation – the criminalisation and prohibition of these actions if not by the existing laws, then by new legislation. This refers to the government’s main normative argument, the rule of law, not only supported by Danish People’s Party, but also by the leader of the Social Democrats, Helle Thorning-Schmidt in the case of the failed Iraqi asylum seekers.

## The Rule of Law

The day after the police had emptied Brorson Church and deported the denied Iraqi asylum seekers the Minister of Integration, Birthe Rønn Hornbech wrote a chronicle defending the police with reference to the principle of the rule of law and equality before the law: “The principle of equality before the law is not entered in the Constitutional Act, but it is implied in every legislation and explicitly stated in Administrative Acts and Antidiscrimination Acts. Nevertheless, the Social Liberals have recently advocated for repressing the principle of equality before the law by proposing Bills that aim at the *injustice* to give special treatment of a group of people, Palestinians in a church [...]. The Social Liberals will not accept the state of things. They want to change the Aliens Consolidation Act. When it cannot be done by parliamentary means they try by other means to bring out a Social Liberal foreigner policy that the electorate has rejected at the last three elections to Parliament. What one cannot achieve through democratic rules and principles one attempt to obtain in another and more irregular way. The Social Liberals have quite simply left democracy and the state governed by law when it comes to the policy towards failed asylum seekers.” (*Jyllands-Posten*, August 14, 2009)

In her defence of the rule of law and equality before the law Rønn Hornbech referred to a former situation in 1992 where a group of Palestinian asylum seekers took shelter in a church and after a while got asylum because of a change in the foreigner legislation, an act nicknamed the Palestinian Act. She claimed that the same was at play in this case and she considered any kind of compliance with the failed Iraqi asylum seekers an *injustice* because it would not be according to the principles of rule of law and equality before the law. Furthermore, she accused the vice-president of the Social Liberals, Morten Østergaard to be undemocratic because disagreeing with the foreigner policy of the government: “The vice president of the social liberals, Morten Østergaard peaked in his undemocratic disposition and absolute misunderstanding of democracy, citizenship and the tripartite division of power when he Thursday morning, a few hours after the police had done their legal job in Brorson Church, said that it was a political commissioned work. [...] In a state governed by law the principle [of equality before the law] must naturally mean that the authorities guarantee the law and if necessary by the use of power. [...] The alternative would be that power was given to 300 violent people who are organised that professionally and able to communicate that effectively that they were able to be on the spot at Brorson Church before the police could complete their job. The police took time to negotiate with the Iraqis

before the uniformed corps was inserted. But the violent people would not let the asylum seekers leave the church quietly. They wished the violence.” (*Jyllands-Posten*, August 14, 2009)

The police action was, then, described within the rule of law and the legitimate monopoly of power, while the real violence in the streets in front of Brorson Church was caused by the people demonstrating and sitting down on the ground. Rønn Hornbech did not doubt this description at all, and she denied the political pressure to intervene put on the police. Inversely, the Church Asylum described the same situation as police violence, while the sit down demonstration was conceived an act of civil disobedience. So what was described by normative categories as civil disobedience and cynicism was at the same time understood as the legitimate use of power according to the rule of law. This is in a nutshell the contestation of normative categories applied in describing the same situation and guiding the foreigner policy.

The Minister of Integration, Birthe Rønn Hornbech went a step further in her critique of the politicians that disagree with the foreigner policy of the government. They are not only favouring an administration of the asylum policy that she considers an injustice, they are not only undemocratic having a political programme different from the government elected by the people, they are also accused of being willing to use violent means in order to promote their political programme: “They do not take the distressed people in the world into consideration; they only consider to bring out their own points of view if necessary with violence. In that way the heart has undermined any kind of law and order. Without law and order the rule is arbitrary dictated by the parliament of the street and the right of the strongest.” (*Jyllands-Posten*, August 14, 2009) What Rønn Hornbech hinted at in the chronicle is the point of view that morality – acting with one’s heart – could be heartless, too, and whether it is or not is politically irrelevant; what matters is law and order, i.e. a legal register rather than a moral register informing police and legislation.

In another chronicle a couple of days later the Minister of Integration responded to the wish that she gave the failed Iraqi asylum seekers humanitarian residence: “What is the case with humanitarian residence that everyone refer to? Is it really true that the Minister just can give humanitarian residence as she like? [...] My post cannot be administered bypassing the Parliament. [...] I am administering a law and I do not have any plans of changing the law. The asylum policy of the government is firm. [...] The principles of legal administration include also humanitarian residence [...]. But it does not give the Minister arbitrary power; of course not. In the Danish democracy the power of the Minister is given by

the Parliament to whom the Minister is responsible. [...] If I gave humanitarian residence to people hiding in a church everyone who arrived in Denmark should have the same right if they hide. This is absurd and against the policies that the government and Danish People's Party has support to from the electorate the last three elections to Parliament. [...] This rule [i.e. humanitarian residence] is an exception. [...] I do not wish to change praxis or law in order to introduce this injustice that people who discard the law are rewarded. [...] There will not be introduced new laws or given humanitarian residence against the law. This will attract other asylum seekers in expectation that one can arrive to Denmark, be denied asylum, hide in a church and, then, still obtain asylum. [...] The point of view will give an impetus to the violent people who fight against legal decisions and the police work. But first of all the point of view is a bomb under the state ruled by law." (*Berlingske Tidende*, August 16, 2009)

Within her frame of understanding the principles of rule of law and equality before the law and her understanding of formal democracy and the relationship between Parliament (politics) and Ministry (administration) Rønn Hornbech denied the possibility in the asylum legislation to give humanitarian residence to some of the failed Iraqi asylum seekers. This point of view was, however, in conflict with the interpretation of humanitarian residence forwarded by various professors of law and experts of human rights. They were just discredited as politicising rather than speaking on the basis of the juridical knowledge. Furthermore, the Ministry's perception of the situation in Iraq were different from the latest reports from UN on some of the areas in Iraq considered too dangerous places for the denied asylum seekers which was reflected in the reactions from the UNHCR towards the Danish government's agreement on repatriation with the Iraqi government. In these cases, the Minister of Integration denied the authority of these points of view referring to the small majority of the government and Danish People's Party in Parliament as the ultimate democratic authority in Denmark.

## **Critical Reflections**

Taking the point of view of critical policy analysis the focus is the normative standards and principles for criticising the use of power in the identification of policy problems, the articulation and contestation of the policy and the policy implementation (Cf. e.g. Dryzek, 2006; Hajer, 2009). What is special, however, with the Danish case of failed Iraqi asylum seekers is that the articulation of normative categories is part of the contestation of the asylum policy and its implementation in public discourse. Having reconstructed the normative categories at play in public discourse, *cynicism*, *civil disobedience* and

*the rule of law* the question is rather how to establish a point of view wherefrom one can analyse and criticise the use of power involved in this articulation and contestation of the languages of power. At this point, Hannah Arendt's thoughts about the politics of founding and re-founding the constitutional laws are to be introduced briefly because she offers an alternative perspective on the immediately fixed opposition between the government's rule of law argument and the government critical voices defending civil disobedience. For Arendt rule of law and civil disobedience are two sides of the same coin (Arendt, 1965, 1972; cf. also Bernstein, 2010; Smith, 2010). In that sense, she offers an interpretation of civil disobedience and the rule of law different from the ones in the Danish case. From such an alternative point of view one can reflect critically upon the various points of view forwarded in the Danish case and their associated normative categories authorising and legitimating the political programmes and actions.

The Arendtian perspective would be government critical in the sense that it considers democratic politics to be a still ongoing contestation of a plurality of points of view rather than a fixed formal structure for representing the electorate in Parliament. This is the formal bottom line for democracy, but not democracy in its vitality. This understanding of democratic politics, then, opens for an alternative idea of rule of law as part of an ongoing political contestation at the same time as the principle still guarantees constitutional stability. Civil disobedience is not to be discredited as illegitimate actions but as serious contributions to the ongoing contestation that secures the democratic responsiveness of the constitution. This alternative perspective gives visions of a civil contestation with respectful disagreement instead of discrediting and criminalising one's opponents and, thus, closing down the democratic dialogue. So, it is a critical perspective on the Danish public discourse on asylum policy and, perhaps, a faint hope for the future. Until then, however, cynicism seems to be the most plausible descriptive and normative category.

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