

ANNALS OF INQUIRY JANUARY 13, 2020 ISSUE

# THE EQUALITY CONUNDRUM

*We all agree that inequality is bad. But what  
kind of equality is good?*



**By Joshua Rothman**

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**M**ichael and Angela have just turned fifty-five. They know two people who have died in the past few years—one from cancer, another in a car accident. It occurs to them that they should make a plan for their kids. They have some money in the bank. Suppose they were both killed in a plane crash—what would happen to it?

They have four children, who range in age from their late teens to their late twenties. Chloe, the oldest, is a math wiz with a coding job at Google; she hopes to start her own company soon. Will, who has a degree in social work, is paying off his student debt while working at a halfway house for recovering addicts. The twins, James and Alexis, are both in college. James, a perpetually stoned underachiever, is convinced that he can make it as a YouTuber. (He’s already been suspended twice, for on-campus pranks.) Alexis, who hopes to become a poet, has a congenital condition that could leave her blind by middle age.

At first, Michael and Angela plan to divide their money equally. Then they start to think about it. Chloe is on the fast track to remunerative Silicon Valley success; Will is

burdened by debt in his quest to help the vulnerable. If James were to come into an inheritance, he'd likely grow even lazier, spending it on streetwear and edibles; Alexis, with her medical situation, might need help later in life. Maybe, Michael and Angela think, it doesn't make sense to divide the money into equal portions after all. Something more sophisticated might be required. What matters to them is that their children flourish equally, and this might mean giving the kids unequal amounts—an unappealing prospect.

The philosopher Ronald Dworkin considered this type of parental conundrum in an essay called “What Is Equality?,” from 1981. The parents in such a family, he wrote, confront a trade-off between two worthy egalitarian goals. One goal, “equality of resources,” might be achieved by dividing the inheritance evenly, but it has the downside of failing to recognize important differences among the parties involved. Another goal, “equality of welfare,” tries to take account of those differences by means of twisty calculations. Take the first path, and you willfully ignore meaningful facts about your children. Take the second, and you risk dividing the inheritance both unevenly and incorrectly.

In 2014, the Pew Research Center asked Americans to rank the “greatest dangers in the world.” A plurality put inequality first, ahead of “religious and ethnic hatred,” nuclear weapons, and environmental degradation. And yet people don't agree about what, exactly, “equality” means. In the past year, for example, New York City residents have found themselves in a debate over the city's elite public high schools, such as Stuyvesant and Bronx Science. Some ethnicities are vastly overrepresented at the schools, while others are dramatically underrepresented. What to do? One side argues that the city should guarantee procedural equality: it should insure that all students and families are equally informed about and encouraged to study for the entrance exam. The other side argues for a more direct, representation-based form of equality: it

would jettison the exam, adopting a new admissions system designed to produce student bodies reflective of the city's demography. Both groups pursue worthy egalitarian goals, but each approach runs against the other. Because people and their circumstances differ, there is, Dworkin writes, a trade-off between treating people equally and treating them "as equals."

The complexities of egalitarianism are especially frustrating because inequalities are so easy to grasp. C.E.O.s, on average, make almost three hundred times what their employees make; billionaire donors shape our politics; automation favors owners over workers; urban economies grow while rural areas stagnate; the best health care goes to the richest. Across the political spectrum, we grieve the loss of what Alexis de Tocqueville called the "general equality of conditions," which, with the grievous exception of slavery, once shaped American society. It's not just about money.

Tocqueville, writing in 1835, noted that our "ordinary practices of life" were egalitarian, too: we behaved as if there weren't many differences among us. Today, there are "premiere" lines for popcorn at the movies and five tiers of Uber; we still struggle to address obvious inequalities of all kinds based on race, gender, sexual orientation, and other aspects of identity. Inequality is everywhere, and unignorable. We've diagnosed the disease. Why can't we agree on a cure?

**I**n January of 2015, Jeremy Waldron, a political philosopher at New York University's School of Law, delivered a series of lectures at the University of Edinburgh on the fundamental nature of human equality. He began by provoking his audience. "Look around you," he said, "and look at the differences between you." The crowd included the old and the young, men and women, the beautiful and the ugly, the rich and the poor, the healthy and the infirm, the high-status and the low. In theory, Waldron said, the audience could contain "soldiers as well as civilians, fugitives and convicts as well as law-abiding citizens, homeless people as well as property owners"—

even “bankrupts, infants, lunatics,” all with different legal rights.

In a book based on those lectures, “One Another’s Equals: The Basis of Human Equality,” Waldron points out that people are also marked by differences of skill, experience, creativity, and virtue. Given such consequential differences, he asks, in what sense are people “equal”? Waldron believes in our fundamental equality; as a philosopher, however, he wants to know why he believes in it.

According to the Declaration of Independence, it is “self-evident” that all men are created equal. But, from a certain perspective, it’s our inequality that’s self-evident. A decade ago, the writer Deborah Solomon asked Donald Trump what he thought of the idea that “all men are created equal.” “It’s not true,” Trump reportedly said. “Some people are born very smart. Some people are born not so smart. Some people are born very beautiful, and some people are not, so you can’t say they’re all created equal.” Trump acknowledged that everyone is entitled to equal treatment under the law but concluded that “All men are created equal” is “a very confusing phrase to a lot of people.” More than twenty per cent of Americans, according to a 2015 poll, agree: they believe that the statement “All men are created equal” is false.

In Waldron’s view, though, it’s not a binary choice; it’s possible to see people as equal and unequal simultaneously. A society can sort its members into various categories—lawful and criminal, brilliant and not—while also allowing some principle of basic equality to circumscribe its judgments and, in some contexts, override them. Egalitarians like Dworkin and Waldron call this principle “deep equality.” It’s because of deep equality that even those people who acquire additional, justified worth through their actions—heroes, senators, pop stars—can still be considered fundamentally no better than anyone else. By the same token, Waldron says, deep equality insures that even the most heinous murderer can be seen as a member of the human race, “with all the worth and status that this implies.” Deep equality—among other principles—

ought to tell us that it's wrong to sequester the small children of migrants in squalid prisons, whatever their legal status. Waldron wants to find its source.

In the course of his search, he explores centuries of intellectual history. Many thinkers, from Cicero to Locke, have argued that our ability to reason is what makes us equals. (But isn't this ability itself unequally distributed?) Other thinkers, including Immanuel Kant, have cited our moral sense. (But doesn't this restrict equality to the virtuous?) Some philosophers, such as Jeremy Bentham, have suggested that it's our capacity to suffer that equalizes us. (But then, many animals suffer, too.) Others have nominated our capacity to love. (But what about selfish, hard-hearted people?) It would be helpful, on a practical level, if there were a well-defined basis for our deep equality. Such a basis might guide our thinking. If deep equality turned out to be based on our ability to suffer, for example, then Michael and Angela might feel better about giving their daughter Alexis, who risks blindness, more money than her siblings. But Waldron finds none of these arguments totally persuasive.

In various religious traditions, he observes, equality flows not just from broad assurances that we are all made in God's image but from some sense that everyone is the protagonist in a saga of error, realization, and redemption: we're equal because God cares about how things turn out for each of us. He notes that atheists, too, might locate our equality in the idea that we each have our own story. Waldron himself is taken by

Hannah Arendt's related concept of "natality," the notion that what each of us share is having been born as a "newcomer," entering into history with "the capacity of beginning something anew, that is, of acting." And yet Arendt herself was pessimistic about the quest for a proof of equality; in her view, the Holocaust had revealed that there was "nothing sacred in the abstract nakedness of being human." If that's true, then equality may be not a self-evident fact about human beings but a human-made social construction that we must choose to put into practice.

In the end, Waldron concludes that there is no "small polished unitary soul-like substance" that makes us equal; there's only a patchwork of arguments for our deep equality, collectively compelling but individually limited. Equality is a composite idea—a nexus of complementary and competing intuitions.

**T**he blurry nature of equality makes it hard to solve egalitarian dilemmas from first principles. In each situation, we must feel our way forward, reconciling our conflicting intuitions about what "equal" means. Deep equality is still an important idea—it tells us, among other things, that discrimination and bigotry are wrong. But it isn't, in itself, fine-grained enough to answer thorny questions about how a community should divide up what it has. To answer those questions, it must be augmented by other, narrower tenets.

The communities that have the easiest time doing that tend to have some clearly defined, shared purpose. Sprinters competing in a hundred-metre dash have varied endowments and train in different conditions; from a certain perspective, those differences make every race unfair. (How can you compete with someone who has better genes?) But runners form an egalitarian community with a common goal—finding out who's fastest—and so they have invented rules and procedures (qualifying heats, drug bans) that allow them to consider a race valid as long as no one jumps the

gun. By embracing an agreed-upon theory of equality before the race, the sprinters can find collective meaning in the ranked inequalities that emerge when it ends. A hospital, similarly, might find an egalitarian way to do the necessary work of giving some patients priority over others, perhaps by adopting a theory of equality that ignores certain kinds of differences (some patients are rich, others poor) while acknowledging others (some patients are in urgent trouble, others less so). What matters, above all, is that the scheme makes sense to those involved.

Because maintaining such agreements takes constant work, egalitarian communities are always in danger of disintegrating. Nevertheless, the egalitarian landscape is dotted with islands of agreement: communes, co-ops, and well-organized competitions in which a shared theory of equality is used for some practical purpose. An individual family might divide up its chores by agreeing on a theory of equality that balances quick, unpleasant tasks, such as bathroom-cleaning, with slower, more enjoyable ones, such as dog-walking. This sort of artisanal egalitarianism is comparatively easy to arrange. Mass-producing it is what's hard. A whole society can't get together in a room to hash things out. Instead, consensus must coalesce slowly around broad egalitarian principles.

No principle is perfect; each contains hidden dangers that emerge with time. Many people, in contemplating the division of goods, invoke the principle of necessity: the idea that our first priority should be the equal fulfillment of fundamental needs. The hidden danger here becomes apparent once we go past a certain point of subsistence. When Fyodor Dostoyevsky went to military school, he wrote home to ask his land-owning but cash-strapped father, Mikhail Andreevich, for new boots and other furnishings, arguing that, without them, he would be ostracized. Mikhail Andreevich recognized his son's changed needs and granted his request; he died soon afterward, under mysterious circumstances, and Dostoyevsky came to believe that he had been

murdered by the serfs he had overworked. The episode, which helped inspire “The Brothers Karamazov,” also illustrates a core problem that bedevils egalitarianism—what philosophers call “the problem of expensive tastes.”

The problem—what feels like a necessity to one person seems like a luxury to another—is familiar to anyone who’s argued with a foodie spouse or roommate about the grocery bill. It applies not just to material goods but to societal ones. To an environmentalist, protecting the spotted owl is a necessity; to a logger who stands to lose his job, it’s a luxury. The problem is so insistent that a whole body of political philosophy—“prioritarianism”—is devoted to the challenge of sorting people with needs from people with wants. It’s difficult in part because the line shifts as the years pass. Medical procedures that seem optional today become necessities tomorrow; educational attainments that were once unusual, such as college degrees, become increasingly indispensable with time. In a study for the National Bureau of Economic Research, four economists evaluated the success of President Lyndon Johnson’s War on Poverty. They found that, judging by a modernized version of the definition of “poverty” which Johnson used, the poverty rate in America fell from 19.5 per cent in 1963 to 2.3 per cent in 2017. Still, they note in their paper, “expectations for minimum living standards evolve.” Today, taking advantage of the social safety net that the War on Poverty put in place—food stamps, Medicaid, and so on—is itself a sign of poverty. A new, more robust safety net—free college, Medicare for All—becomes, for some, an egalitarian necessity.

Some thinkers try to tame the problem of expensive tastes by asking what a “normal” or “typical” person might find necessary. But it’s easy to define “typical” too narrowly, letting unfair assumptions influence our judgments. In an influential 1999 article called “What Is the Point of Equality?,” the philosopher Elizabeth Anderson pointed out an odd feature of our social contract: if you’re fired from your job, unemployment benefits

help keep you afloat, while if you stop working to have a child you must deal with the loss of income yourself. This contradiction, she writes, reveals an assumption that “the desire to procreate is just another expensive taste”; it reflects, she argues, the sexist presumption that “atomistic egoism and self-sufficiency” are the human norm. The word “necessity” suggests the idea of a bare minimum. In fact, it sets a high bar. Clearing it may require rethinking how society functions.

Perhaps because necessity is so demanding, our egalitarian commitments tend to rest on a different principle: luck. The philosopher Richard Arneson explained the idea a couple of decades ago: “Some people are blessed with good luck, some are cursed with bad luck, and it is the responsibility of society—all of us regarded collectively—to alter the distribution of goods and evils that arises from the jumble of lotteries that constitutes human life as we know it.” Anderson, in an influential coinage, calls this outlook “luck egalitarianism.”

Instead of dividing things up by asking what people need, a luck-egalitarian system tries to equalize the distribution of misfortune. If you’re born on the wrong side of the tracks, or if your house is destroyed in an unpredictable natural disaster, luck egalitarianism suggests that you deserve help. If you screw up—by squandering your savings, launching a failed business, and so on—you’re on your own. It’s to luck egalitarianism that we owe the metaphors of the “level playing field” and the “social safety net.” The first equalizes the bad luck we’re born with; the second, the bad luck that finds us as adults.

As Americans, we are charged with recognizing two conflicting values: individualism and egalitarianism. By smoothing out the unlucky differences while accepting those for which people are responsible, luck egalitarianism promises to help us be individualists and egalitarians simultaneously. But, as Anderson and others have argued, doing this is

harder than it sounds. One problem, Anderson writes, is that luck egalitarianism condescends to those it helps: by seeing them as hapless victims of circumstance, it denies them the “equal respect” they’re due as citizens of a democracy. (It’s perhaps for this reason that the people who might benefit from the extension of government programs so often vote against them.)

Another problem, which the political theorist Yascha Mounk explores in “The Age of Responsibility: Luck, Choice, and the Welfare State,” is that the distinction between choice and luck is hard to sustain. If you sleep in instead of coming to work every day and then get fired, you’re clearly making bad choices. But what if you’re born into a family with an income just north of the poverty line, then drop out of high school to get a dead-end job? In all likelihood, you’ve suffered from bad luck and made bad choices. Suppose you turn down a place at your state university to take a job at the auto plant where your parents work, and the plant then closes. The closing of the plant was out of your control, but the decision to work there rather than go to college was yours to make. If you’d acquired more skills, would you be more employable? Or would the forces of globalization that led to the closure of the plant have narrowed your job prospects no matter your training? You might lie awake night after night mulling such questions without settling on answers; it’s absurd, Mounk writes, to expect “a real-world state bureaucracy to answer such intricate hypothetical questions about millions of citizens.”

The distinction between choice and luck, he argues, is a matter not of fact but of perspective. Explanations of human behavior have traditionally been divided into two groups: those which focus on the forces that push us around and those which emphasize how, as individuals, we can choose to resist them. The same phenomenon can be viewed from either side of the so-called structure-agency distinction. For most of the twentieth century, Mounk writes, criminologists looked at crime from a

structural perspective: they urged politicians to fight it by reducing poverty—its root cause. Later, however, they changed tack: they began examining the motivations of individual criminals and asking how potential wrongdoers, as “agents,” might be dissuaded from committing crimes. The criminologists weren’t repudiating their prior insights about poverty, Mounk says; they were just looking at crime from a different perspective. The agent-based perspective was more useful to police officers, who couldn’t lift a neighborhood out of poverty but could change the way they patrolled it.

Mounk thinks that most people understand, intuitively, that the distinction between structure and agency is—like the distinction between “nature” and “nurture”—an artifact of explanation, not a part of reality. All explanations are limited, we know, and tell only part of the story. This, he writes, is why we are so ambivalent about luck egalitarianism and the politicians who see the world through its lens. Conservatives, hoping to constrain the size of the welfare state, overstate how much control people have over their lives; liberals, hoping to expand it, overstate our powerlessness. But both positions are unconvincing. “While voters are receptive to the idea that it is deeply unjust for some public schools to have better funding than others, they balk when they are told that students who do well in school are merely lucky,” Mounk writes. “And while they recognize that the explanation for the stagnating living standards of average people lies in larger structural transformations of the world economy, they are skeptical when they are told that the choices of specific individuals don’t play any role in determining their particular economic fate.”

**T**here’s a problem with finding problems with egalitarianism. The head fights the gut; complexities can’t drown out the moral law within. Reading Waldron, Anderson, Mounk, and other thinkers on egalitarianism, I found myself remembering a time that started when I was eleven or twelve years old. My parents were divorced and rarely spoke; I went to three middle schools in three years, one bad, one middling,

one good. The bad school was near my mother's house, where we lived in the basement, having rented out the main floor. The good school was in a wealthy suburb. I attended it by claiming to live at the address of a family friend who had a small apartment, above a commercial space, on its edge. (So-called enrollment fraud is common across the country, especially in places where rich and poor school districts border each other.)

For a while, I took the bus home to the apartment, hanging out there until late in the evening. When this arrangement grew untenable, my mother devised a plan. She'd struck up a conversation with a cabdriver and taken his card; she called him and asked if, for a flat monthly fee, he'd pick me up at school each day and drop me at my father's house, a short drive away. There weren't many fares at two-thirty in the afternoon in the Maryland suburbs, and he said yes.

Peter, the cabdriver, began picking me up from a hidden spot past the soccer fields, under some trees. He was from West Africa, with an accent I sometimes struggled with. We talked about his home town, his girlfriend, the books I was reading—Stephen King, for the most part—in which he sweetly expressed an interest. Eventually, two of my friends, who were also picked up after school, discovered my secret spot and joined me there. As Peter and I drove away, everyone waved.

One day, Peter was agitated when he arrived. "I have to make a detour, O.K.?" he said. "Don't tell your mom." He didn't wave to my friends, and we took a left instead of a right, eventually entering a neighborhood of small, unkempt row houses. As we drove, Peter told me how the taxi business worked. He didn't own his cab; he rented it from the cab company, in a rent-to-own arrangement. If he missed his monthly payment, the company took the cab back. The payment was extremely high. "I drive and I drive and I drive," he said. "But I can't make it. I can't make it!" As we pulled up in front of his cousin's house, he sobbed. I watched from the back seat as he returned to the cab,

weeping, with borrowed cash in his hand.

I wasn't a sheltered kid; I knew about economic hardship. A few times that year, my mother had fallen behind on our bills, and our power had been cut off; we'd showered and eaten dinner in the dark. She'd hidden her despair, but Peter had shared his. For him, the bottom could fall out faster and more completely. More than a decade later, in a Dickensian coincidence, Peter, who was still driving cabs, picked my father up from the airport and gave him a business card. Peter started driving him, too; that year, on a trip with my dad and his family, Peter and I were reunited, to our great delight. But not long afterward he died. He suffered from diabetes and hypertension, and had no health insurance; he

went too long before seeking treatment for an infection in his toe. It got into his bloodstream, and he died of septic shock.

Injustice isn't cerebral. Peter and I were two equal people on the same earth. What's so complicated about that?

**T**he gap between intuition and argument—between outrage and the best response to that outrage—is the subject of Robert Tsai's "Practical Equality: Forging Justice in a Divided Nation." Tsai, a law professor at American University, places great weight on the intuition that we are "one another's equals"—and yet, he writes, it's inevitable that, "in a diverse democracy, people will disagree about what

equality means.” Hashing out questions of equality, he concludes, can be so fraught, so confusing, that the wisest course is sometimes to circumvent them. Inequality can be resisted, and equality pursued, by other, less tangled means.

Tsai, a constitutional litigator, is intimately familiar with how arguments about equality have unfolded in the courts. Often, he writes, the moral magnetism of equality backfires. To crusade for it is to be on the side of justice, and so there is no choice but to accuse those obstructing it of being racists, misogynists, élitists, or oppressors. Tsai tells the story of *City of Cleburne, Texas v. Cleburne Living Center, Inc.*, a Supreme Court case from 1985. A private company proposed opening a group home for thirteen intellectually disabled residents in the small city of Cleburne; it was thwarted by a local ordinance that required a permit for the opening of facilities for the “feeble-minded.” City officials opposed to the home cited a variety of concerns: the preservation of the neighborhood’s “serenity,” the danger to nearby elderly people, the possibility that bullies from a nearby junior high school would torment their new neighbors. Advocates for it pointed out that the ordinance’s origins lay in the country’s eugenicist past. (In 1927, a Supreme Court decision permitted the sterilization of the intellectually disabled “for the protection and health of the state.”)

When the case reached the Supreme Court, the arguments against the ordinance were mostly framed in terms of equality. Some people likened it to an apartheid law: it was no different, they argued, from a rule barring the construction of hospitals for people of a particular religion or ethnicity. The Reagan Administration, defending the law, argued that, since the disabled did have “distinctive needs and abilities,” treating them differently need not reflect “invidious and derogatory aims.” The table was set for an intractable egalitarian debate. A morally charged yet abstract question had been raised about the place of intellectual disabilities within a society committed to equality; the answer would concretely affect millions of disabled people. And that discussion, in

turn, had been connected to the accusation that those who objected to the home were closed-minded bigots—a charge sure to rally many of their fellow-citizens to their defense. The likelihood of the Court coming to a universally convincing conclusion seemed remote.

In the end, Tsai writes, the Justices decided to avoid thinking in terms of equality. Instead, they applied the “rule of reason,” asking whether the citizens’ concerns had any rational basis, and concluding that they did not. By taking this approach, the Court avoided entirely the question of whether the citizens who objected to the home were motivated by bigotry; it also skirted the Waldronesque question of what it might mean to treat intellectually disabled people equally. And yet, Tsai writes, the Court still created a basically egalitarian outcome, and “placed discriminatory action based on damaging cultural stereotypes off-limits.”

The Court used the same approach in other equality-enhancing decisions. In *United States v. Virginia*, from 1996, a female high-school student filed a complaint against the Virginia Military Institute (the so-called West Point of the South), which excluded women. The arguments on her behalf, which leaned heavily on equality, soon got bogged down in the question of what it might mean for the Institute to treat male and female cadets equally. Instead of weighing in on that issue, the Court ruled that there was no rational basis for denying women admission.

These cases and many others, Tsai believes, show that it’s often more practical to pursue “equality by other means” than to sail into the crosscurrents of egalitarian debate. Reasonableness, or rationality, is one test to which we can subject inegalitarian systems or rules. One can also ask whether they are fair, whether their specific consequences are cruel, whether all relevant voices have been heard. Answering these questions isn’t always easy, but it’s easier than generating consensus about what “equal” means. We make more progress, Tsai argues, when we “shift the focus of moral

outrage.”

Language itself may be misleading us. Appalled by inequality, our minds turn immediately to its opposite. Sidestepping that impulse, as Tsai advocates, requires giving up a satisfying rhetorical clarity, but it may bring us closer to our moral common sense. The philosopher David Schmidtz explains why in a 2006 book titled “Elements of Justice.” Schmidtz begins by asking us to contemplate what makes a neighborhood a good place to live: a thriving community might have a grocery store, a fire station, a library, a playground. Similarly, a system of justice must have a few different structures to be livable. It’s easy to imagine justice as a unitary thing—a single, imposing building, a Supreme Court. But it’s more like a collection of buildings, each with its own function.

In the neighborhood of justice, Schmidtz identifies four structures: equality, desert, reciprocity, and need. We consult these in different contexts, to solve different kinds of problems. Citizens are owed equality before the law. Workers, by contrast, should be compensated differently, depending on what they have accomplished. In relationships with our partners, we favor reciprocity. In trying to do right by our children, we ask what they need. (Michael and Angela, in considering their will, might focus on necessity more than the other concepts: instead of asking “What do they deserve?” or “What have they done for us lately?,” they might ask, “What do our kids need?”) None of these principles are capacious enough to serve in every situation; in fact, they are often in tension with one another. And they can be used inappropriately. No one wants a merit-based marriage. A workplace that operates by reciprocity is a dysfunctional one.

In real life, therefore, we amble around the neighborhood of justice. A coach doesn’t run her team on egalitarian principles alone; to win, she must field the best players

more often. But she doesn't run a ruthless meritocracy, either. On a good team, players get the help they need, they assist one another reciprocally, they're rewarded for their individual accomplishments, and they are treated similarly enough that they feel connected in a common enterprise.

The frustrations and complexities of egalitarianism reflect the hidden complexity of equality. It looks simple and self-evident, as though one could proclaim it into existence. But achieving it requires a willingness to recognize, and to shift among, many different conceptions of what's right—a kind of moral egalitarianism. Even equality itself, as an ideal, is insufficient. No one version of the good can rule the rest. ♦

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*Joshua Rothman, the ideas editor of newyorker.com, has been at The New Yorker since 2012.*

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