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**TEACHING COMPARATIVE LAW
IN EIGHTEENTH-CENTURY ENGLAND:
THOMAS BEVER AS A COMPARATIVE LAWYER
AS EXEMPLIFIED BY HIS LECTURES ON POLISH LAW
AND THE CONSTITUTION¹**

Abstract. The origins of comparative legal studies usually date back to the late 19th century. These kind of studies, however, were undertaken on a regular basis much earlier. Among the first serious adherents of the idea of comparing different legal systems was Thomas Bever. Bever was a civilian lawyer who successfully combined practice in the ecclesiastical and admiralty courts of England with Oxford's fellowship and teaching duties. In the 1760s and 1770s, Bever was teaching the Civil law course on behalf of (or independently of) the current holders of the Regius Professorship. His lectures, unique in many aspects, were crowned with a set of comparative lectures. Bever was presenting the constitutional and legal systems of several European countries, including Poland, both in historical and modern dimensions. The aim of this article is to discuss Bever's attitude towards comparative legal studies as well as to present his comparative method by reference to part of his lectures devoted to the old Polish law and constitution.

Keywords: Eighteenth-century, Oxford, Comparative law, Teaching, Old Polish law.

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NAUCZANIE PRAWA PORÓWNAWCZEGO W OSIEMNASTOWIECZNEJ ANGLII. THOMAS BEVER JAKO PRAWNIK KOMPARATYSTA NA PRZYKŁADZIE JEGO WYKŁADU O POLSKIM PRAWIE I USTROJU

Streszczenie. Zazwyczaj początki badań prawnoporównawczych datuje się na schyłek dziewiętnastego stulecia. Badania tego rodzaju prowadzone były jednak już znacznie wcześniej. Wśród pierwszych poważnych zwolenników koncepcji zestawiania różnych systemów prawnych był Thomas Bever. Był on prawnikiem cywilistą, który skutecznie łączył praktykę występując przed angielskimi sądami kościelnymi i admiralicji z przynależnością do jednego z oksfordzkich kolegiów oraz obowiązkami wykładowcy. W latach 60. i 70. osiemnastego stulecia Bever prowadził w zastępstwie (bądź równolegle do) królewskiego profesora wykład prawa rzymskiego. Jego wykłady, które były pod wieloma względami wyjątkowe, wieńczyła seria spotkań prawnoporównawczych. W ich trakcie, Bever omawiał ustroje i porządki prawne kilkunastu europejskich krajów, tak w ujęciu historycznym, jak i współczesnym. Celem artykułu jest omówienie poglądów Bevera nad temat badań prawnoporównawczych, jak również zaprezentowanie tematyki wspomnianych wykładów.

Słowa kluczowe: osiemnasty wiek, Oxford, prawo porównawcze, nauczanie.

1. THOMAS BEVER – BIOGRAPHICAL NOTE

Although Thomas Bever is not widely known, even among legal and legal educational historians, it is appropriate to call him one of the leading figures of Oxford's civil law faculty of the second half of the eighteenth century.

He was born in c. 1725. In that year he was baptised at the parish church of Stratfield Mortimer (Berkshire), a village in which Bever's family had resided since at least the fifteenth century (Barton 2004, 585; Helmholz 2016, 336). At first, the Bevers were tenants of the manor (its owner changed several times between the fifteenth and late seventeenth centuries), but in the time of the Restoration part of the original manor was acquired by Thomas's ancestors. It comprised other lands that they already purchased in earlier decades. In 1724, the Duke of Kent sold another part of the manor to Robert Bever (the younger). He conveyed the so-called Bever House to his younger brother, Thomas, the father of Thomas Bever – the civilian (Ditchfield, Page 1923, 425). This short family background demonstrates that Bever came from a well-to-do, landed gentry family. It is interesting, however, that up to Thomas's matriculation in Oxford, none of the Bever family was studying in any of the two English universities.

Bever's intellectual abilities manifested themselves early. In 1736 he became King's Scholar at Eton College (Austen-Leigh 1927, 30). After spending eight years there, on 16 May 1744 he matriculated at Oriel College, Oxford. After four years, he obtained a bachelor's degree in arts and after that he obtained a fellowship at All Souls College and started to study civil law. In 1753 he obtained a bachelor of civil law degree and in 1758 he was awarded a doctoral degree (Foster 1888, 105).

Shortly later, he applied to be admitted to the College of Advocates, known as the Doctors' Commons. His admission took place on 21 November 1758 (Squibb 1977, 193). However, unlike most of the civilians who became practitioners, Bever did not resign from his fellowship at Oxford.

While spending time in Oxford, Bever was eagerly involving himself in different library-related works. This was probably connected with his bibliophile attitude. He was a collector of many books as well as music scores (Eggington 2014, 86–87, 253–254; Boden 2016, 237). In the 1750s, he was responsible for cataloguing part of the collection of Codrington Library. From 1763 to 1780, he was a member of the Library Committee of the College (Chateris 2000, 179–180). In addition, his civilian training was used also by the University. Between 1758 and 1759 Bever was an assessor of the University's Chancellor's Court and he was temporarily replaced by William Blackstone (Prest 2008, 120, 4).

The most important of all the academic activities undertaken by Bever, however, was his lecturing of civil law after 1762. This was not his first didactical duty. A year earlier, Bever along with Robert Vansittart was listed by Blackstone to deputise for him in reading his common law lectures (Prest 2008, 161). As to the civil law lectures, Bever was not appointed Regius Professor, but he started to fulfil most of the professor's duties. The circumstances that led to open this new course are briefly explained in the printed version of Bever's introductory lecture. It was proclaimed that Bever received an approbation to teach civil law from Robert Jenner, the Regius Professor, as well as receiving formal permission from the Vice-Chancellor of the University. It was pointed out that Jenner's ill health rendered him unable to deliver the lectures to the civil law students (Bever 1766, *Advertisement*). It seems that Bever's lectures were meant to be a temporary remedy. This may explain why Bever never became a deputy professor of civil law and the course remained a private one (Barton 1986, 598).

Archival queries demonstrate that he was teaching civil law both in the 1760s and in the 1770s. The latest confirmed academic year of Bever's teaching is the year 1772/1773.² It cannot be ruled out, however, that the lectures were continued in the following years too. It is worth noting that at least since 1767, the original excuse for Bever taking the course could no longer be made. In that year Robert Jenner died and the Regius professorship was entrusted to Robert Vansittart. There is not much reliable information regarding Vansittart's teaching habits. It is not clear if Bever was continuing his lecturing on behalf of the new Regius Professor or alongside him.

Besides his fellowship in All Souls College and membership of Doctors' Commons, Bever was also involved in other non-academic tasks. The analysis of different registrars and published records show how absorbed in work he

² The so-called Edinburgh manuscript of Bever's lectures was written down in academic year 1772/1773.

was, especially in the final two decades of his life. As early as 1770 Bever was fulfilling only one ecclesiastical function – he was an Official to the Archdeacon of Oxford (*The New* 1770, 43). This did not change in the following years (*The New* 1776, 42), but suddenly in 1779, *The Royal Kalendar* certifies that Bever was involved in numerous different works. He was Commissioner to the Archdeacon of Huntingdon, judge of the Cinque Ports, Chancellor of Bangor, Commissioner to the Dean and Chapter of Westminster as well as Official to the Archdeacon of Oxford (*The Royal Kalendar* 1779, 107). In 1783, he was appointed Official to the Archdeacon of Nottingham (“Personnel”). Since the late 1780s, Bever was also performing the duties of the Chancellor of Lincoln (Beatson 1788, 145). In 1789 he is named as the Commissary of the Royal Peculiar of St. Catherine’s church and hospital (*The Royal Kalendar* 1789, 200).

It is not clear why Bever suddenly started to be involved in so many extra-academic works. He did not resign from his fellowship at All Souls College. It is possible that at that time he ceased to teach civil law, but it is not clear whether this was the result of the increasing number of extra-academic duties.

Bever left behind numerous narratives, but only some of them were published. Among them, it is necessary to enumerate first the 1766 edition of his introductory lecture entitled *A Discourse on the Study of Jurisprudence and the Civil Law*. The work, however, was not technically an introductory lecture, but rather a general synopsis of the lectures’ content. For this reason, the work seems to be a bit chaotic and was harshly received by the critics (*The Critical* 1766, 470). In 1781, a book entitled *The History of the Legal Polity of Roman State* was published. It seems that at least some parts of that book were reused lecture materials used by Bever. Besides these two printed works, a substantial number of his manuscripts survived until modern times. Most of them can be found in All Souls College. They include lecture notes, short works on the history of feudal and canon law, a question and answer manuscript that contains the questions derived from one of Puffendorf’s treatise and Bever’s responses to them (Coxe 1842, 34). Additional manuscripts survived in other British archives and libraries: Law Society (London), British Library, Trinity Hall (Cambridge) and Edinburgh. Some of Bever’s manuscripts, however, were lost. One of his biographers noted that during his final illness, he destroyed some manuscripts by throwing them into the fire (Chalmers v 1812, 195).

In the obituary note published in *The Gentleman’s Magazine*, it was only pointed out that he died at his house in the Doctors’ Commons on 8 November 1791 “after a short illness” (*The Gentleman’s* 1791, 1068). More elaborate information regarding the causes of his death was presented by Alexander Chalmers who noted that Bever died because of asthmatic problems. The biographer admitted, however, that the illness “probably would not then have been fatal, if he had suffered himself to be removed from London to a less turbid air” (Chalmers 1812, 195). Bever was buried in his hometown parish church (*Ibidem*).

2. THE LECTURES

As has been mentioned, since 1762 Bever was delivering a course of lectures devoted to civil law studies. There is no doubt that at least in the first few years he was doing this on behalf of Robert Jenner who permitted Bever to deputise for him. Nonetheless, Bever's lectures were never transformed into public ones. It is possible that the reason for that related to Bever's double life as a member of the academic community as well as that of a legal practitioner. Surviving syllabuses and teaching calendars of Bever's lectures support that supposition. They clearly show the atypicality of the course. The very first of Bever's lectures started on 10 May 1762 (Edinburgh Dc. 4.25, title page). In 1764, the course of lectures began on 14 May and lasted until 2 July (The Newberry). In 1765, the same lecture started on 21 May (Sprigge 2017, 86). The information regarding the academic year 1772/1773 is even more peculiar. The course was divided then into two parts. The first part commenced in October, but after only one month, the classes were suspended until March. From 2 March until Easter (11 April 1773), Bever was delivering the second part of his lectures. It is certain that these odd arrangements were down to Bever's other activities beyond that of the University.

The overall course comprised more than thirty individual classes. In 1764, there were thirty-one regular lectures and one additional lecture known as the "Appendix." The number of reading days in a single week differed – from three to five (The Newberry). In the academic year 1772/1773, the overall number of lectures increased to thirty-six ordinary classes and three additional ones that bear the name "Appendix."

The lectures were also unusual because of their content. Typical English civilian lectures were based on Justinianic sources. In the previous centuries and in the early eighteenth century, most of the Regius Professors were analysing certain titles taken from the *Digest* of Justinian. It seems that many of them interlaced those titles with their canonical counterparts. In Bever's time, more common practice was to base the lecture on the pattern of the *Institutes*. This was a kind of simplification. The *Institutes* were the book of the bachelors of civil law – newly established bachelors were entitled to teach the content of this Justinianic textbook (Griffiths 1888, Tit. IX, sec. 5, § 6–7). In the case of Bever, however, neither model was used.

Bever divided his lecture into three general parts. The first one can be described as the closest to the usual Roman civil law lecture. Bever divided the first part into several sections – starting with the "Introduction" (known also as "Preliminaries historical and moral"), then he moved to the "Objects of Law," "Ways of Acquiring Property" and "Of Civil Injuries, to Person and Property." The categories of persons and property loosely refer to the Roman categories of *personae* and *res*. While the law of persons was presented in a typical way, the

category of property is the mixture of the law of things, law of contracts and modes of acquiring property. The overall character of these subjects and the way in which they were presented by Bever suggests his dependence on Blackstone's *Commentaries*. It is also characteristic that Bever avoided procedural issues. The second part of the lectures was entitled "Political Law." This part is not traditional at all. Bever dealt there with the constitutional ideas, forms of government as well as prerogatives of the authorities. It was constructed as a learned discussion about constitutional theory. Its linkage with the traditional civilian lecture seems to be only historical. Indeed, the civilian sources were heavily reinterpreted by the medieval and early modern jurists who were building their constitutional theories on the experience of ancient law. In the end, Bever was presenting the subjects assembled under the title "Public Law." This was the shortest of all three parts of his lectures. They were planned as a short introduction to some general concepts of international relations and law. As in the case of "Political Law," the civilian context of the deliberations seems to be mainly historical.

After these three ordinary parts, Bever was familiarising his students with the so-called "Appendix." In this additional part, he was presenting a brief legal and constitutional history of different European countries. During these final lectures, Bever was transforming, and he was entering into the shoes of the true legal comparatist. This fact deserves a bit of a broader explanation. The attitude of Bever presented during the last part of his lectures was very unusual. Comparative legal studies did not exist at that time. In fact even today most of the representatives of the theory of comparative law place the origins of the comparative method in the 19th century and the true development of it in the last decades of it (Heutger and Schrage 2006, 512).

Manuscripts of Bever's lectures survived until modern times in several forms. As has already been mentioned, his lecture notes can be found in All Souls College together with the remaining manuscripts attributed to Bever. In Trinity Hall, Cambridge there is a set of several lectures under the general title "Bever Civil Law" (Trinity Hall, MS 41). The bound volume contains the notes of four consecutive lectures: 10. *Persons*, 11. *Family status. Husband – Wife*, 12. *Origin and Return of Property* and 13. *Occupancy*. The authorship of the notes is unclear. Inside the manuscript, it is possible to spot the inscriptions of John Coxe Hippisley, a civilian who was matriculated at Hertford College in 1764 (Blacker 1891, 10). It is likely that he was the author of at least part of the notes, but the manuscript had been written by several other hands as well ("Law Lectures"). The third copy of the lectures is currently in possession of the archives of the University of Edinburgh. This seems to be the latest version of the lectures, written down in the academic year 1772/1773 by an author who used the initials "P.S." All the notes were collected in five volumes (Edinburgh Dc. 4.25–4.29).

3. COMPARATIVE APPROACH

As has already been shown, Bever's lectures were far from the typical civilian academic course. However, it must be emphasised that in the eighteenth-century Oxbridge civil law professors were allowing themselves freedom regarding the content of their lectures. By way of example, Francis Dickins, Professor at Cambridge, was treating medieval canon law as a continuation of the ancient Roman law, while Robert Jenner and French Laurence, both of Oxford, were much more focused on the law of nations.

In the case of Bever, the most conspicuous feature of the lectures is the comparative approach. The above-mentioned "Appendix" seems to be a kind of "icing on the cake" of the lectures. After weeks of teaching civil law, constitutional theory as well as the law of nations, Bever was introducing his students to the diverse world of legal systems of continental (mostly) Europe. It might be suggested that the three parts of the ordinary lectures can be described as the course of a general jurisprudence while the "Appendix" was designed more as an illustration of practical jurisprudence.

The number of reading days devoted to the comparative lectures increased between the 1760s and the 1770s. The course syllabus from 1764 provided only one lecture of the "Appendix." The course of lectures delivered in the academic year 1772/1773, instead, provided three separate reading days. What is even more important is the number of the legal systems discussed increased only slightly – by two. It means that Bever significantly increased the information about the various countries and their law.

In the latest version of the lectures, Bever was discussing fifteen different legal and constitutional systems. Some of them related to a single country, but the others were amalgamations of legal systems of certain territories. The above mentioned fifteen headings were: (1) the German continent, (2) France, (3) Italy states, (4) Spain and Portugal, (5) Poland, (6) Prussia, (7) Sweden, (8) Denmark, (9) Russia, (10) Turkey, (11) Scotland, (12) Ireland, (13) England, (14) Holland and (15) Switzerland.

Such enumeration of states is reminiscent of the content of the book written a century earlier by another English civilian – Arthur Duck. In his 1653 treatise *De Usu et Autoritate Iuris Civilis Romanorum in Dominiis Principium Christianorum*, Duck also discussed extensively fifteen legal systems: (1) states of the German Empire, (2) Italian states, (3) the kingdom of Naples and Sicily, (4) France, (5) Spain, (6) Lithuania, (7) England, (8) Switzerland, (9) Scotland, (10) Poland, (11) Hungary, (12) Denmark, (13) Sweden and (14) Bohemia (Helmholz 2015, 215–220; Marzec 2015). It can be assumed that Bever knew about Duck's work, and he could use it as a certain starting point for his comparative deliberations. It is necessary, however, to note several important

differences. First, Duck had a different aim in presenting these legal systems. He was predominantly focusing on the primary aim of his work, clearly stated in book's title, "the use and the authority of the Roman civil law." Therefore, Duck was talking about the legal and political systems of different states, and he was seeking the civilian traces in them. Bever, instead, was focusing on the general concept of law and constitution of the discussed countries. Civilian tradition was not omitted by him, but it was only part of the larger picture. Another difference is also connected with the aim of Duck's work. He emphasised that he was interested in the "Christian kingdoms" of Europe. This explains the lack of Turkey in his work. Instead, Bever was not introducing such limitations.

4. BEVER'S VIEWS ON POLISH LAW AND CONSTITUTION

To explain more clearly the method used by Bever it would be best to focus on one of the kingdoms that he discussed in the "Appendix." It seems that Poland (Edinburgh Dc. 4.29, 131–135) might be a good example for several reasons. First Polish legal and constitutional systems were much different from the English eighteenth-century experience. The distance, social and religious differences made Poland a rather exotic subject for the discussion. It must be admitted that some Polish-British relations existed in the 1760s and 1770s due to the Anglophilia of Polish king Stanisław August Poniatowski, but in comparison to long-standing diplomatic relations between Great Britain and the Western European countries, Polish-British relations were not strong. Finally, the Polish example is interesting also because of the lack of substantial English language literature on Polish law, constitution, and its history.

Bever started his lecture by referring to the ancient history of Eastern Europe. He explained what kind of nations lived "beyond the Danube." In his opinion, a common name for those was Sarmatia. His deliberations on this subject were a mixture of semi-mythical stories repeated by many authors since the times of the Ancient Greeks.

According to Bever, in the early medieval period, the entire area of Eastern Europe was left by the ancient tribes who moved to the south and they were soon replaced by the eastern nation known as "Polacy." The term used by Bever was most unusual (though it appears in some eighteenth- and nineteenth century works). Bever used the term to describe one of the Slavic groups, the Polans, who were the ancestors of the future Polish nation. Bever's early history of Poland is far from perfect even in comparison to other early-modern historiographical descriptions (at least several of these works were easily accessed by Bever; some of them of English origin, some others of continental origins but translated into English). After a short introduction, Bever moved swiftly to the history of late medieval Poland, the creation of the kingdom and its development. It is

characteristic that Bever did not consider the passage of time as vital for his discussion. For him, Polans became suddenly Poles; the tribal organisation of the Polans appeared to be equal to the feudal organisation of the Polish state etc. Bever was also eager to make a fanciful comparison between Polans and their early family (tribal) organisation and the Scottish clans or the Irish septs.

Regarding the law and constitution, Bever noticed that at first the Kings had unlimited powers, but they were steadily restrained by the local feudal lords. Again, the picture seems to be achronological. His description is based more on Polish sixteenth and seventeenth-century reality than the medieval one. Bever acknowledges however the legislative achievements of Casimir the Great (1310–1370) who enacted the first semi-codification of Polish law (*Piotrków-Wiślica* statutes). As to the later kings, Bever noticed only that the statutes “were improved by several succeeding Princes, especially Sigismund II” (1520–1572). This general statement summarised almost two centuries of rather intense political changes and reforms about which he remained silent.

In a later part of the lecture, Bever focused mainly on the constitutional history of Poland in the early modern period. He discussed the end of the Jagiellonian dynasty (1572) and the election of the new king – Henry of Valois who eventually escaped from Poland in 1575 to become a king of France. He mentioned also the establishment by Stephan Báthory of permanent “tribunals for the regular distribution of justice.” This time Bever’s knowledge was accurate. The tribunals he mentioned were the Crown Tribunal (for Poland) and the Lithuanian Tribunal, both established respectively in 1578 and 1581 by Báthory. The tribunals were designed as the supreme appellate courts for Polish and Lithuanian nobility (Stone 2001, 187–188).

The final part of the lecture was devoted to the current political situation in Poland. Bever was aware of what was happening in Poland at the time. He was very fond of the reforming attempts of Stanisław August Poniatowski. He contrasted Polish national defects (that he extensively described earlier in his lecture) with Poniatowski’s virtues as the monarch. It seems that Bever was fully aware also of the political events of the ongoing first partition of Poland that took place later in 1772 (see Lukowski 1999, 52–81). He speaks about the partition and Poniatowski’s position in the following way: “he [i.e. the king] has now the mortification to see his dominions parcelled out, and torn off, by an insolent association of three powerful neighbours” (Edinburgh Dc. 4.29, 135).

It is hard to estimate what kind of literary sources Bever used to demonstrate the legal history of Poland to his students. In the lecture notes, it is possible to find only two clear references to the literature. Bever refers to the printed memoirs of Frederick II of Prussia. Their English translation had already been published in England in 1751 (*Memoirs* 1751). They are, however, hard to accept as a source of knowledge about the law. Bever proclaimed also that the Polish historians “are generally very mean and contemptible.” The only exception, in his opinion, was

Gotfryd Bogumił Lengnich. Bever mentioned two of his books. Further references to their content and the circumstances of their publications raise the question of whether he read them. Some fragments of the lecture seem to resemble Samuel Puffendorf's comments regarding Polish history gathered in the treatise translated into English under the title *An Introduction to the History of the Principal Kingdoms and States of Europe* (Puffendorf 1719, 303–328).

Regarding king Poniatowski, it is possible that Bever was consulting someone who personally knew the king – “from the accounts given of him by those who well known him” (Edinburgh Dc. 4.29, 134). This assumption cannot be treated as an exaggeration. It seems that Bever was a well-connected man who spent much time in London where he could meet many people from political and diplomatic circles. At that time, the Polish and Lithuanian Commonwealth finally had stable diplomatic relations with St James's Court. The Polish ambassador, Tadeusz Burzyński, obtained an honorary doctoral degree in civil law from Oxford University in July 1771 (Foster 1888, 105). In addition, Burzyński was rather an active representative of the Polish cause in England. He was visiting the Earl of Rochford – Secretary of State for the Northern Department. It is rumoured also that Burzyński was interested in studying English law, and for this reason he was in contact with Lord Mansfield (Konopczyński 1947, 111). Even, if that statement is an exaggeration there is no doubt that Burzyński was a well-known person in London and the whole of England in the late 1760s and early 1770s.

Besides, it cannot be forgotten that Poniatowski was an Anglophile who travelled to England in 1754 and who liked to refer to the British constitutional example in his reforming programs (Butterwick 1998, *passim*, especially 102–123). It is known also that the king was exchanging correspondence with the members of the York family (especially Lord Chancellor Hardwicke's son) and Lord Mansfield (Butterwick 1998, 124–125; Poser 2013, 144). These contacts were not secret. Public opinion seems to know about them. All of this may explain Bever's uncommon worship of the Polish king – “[W]ith qualities that render him worthy of the most flourishing Crown in the universe” (Edinburgh Dc. 4.29, 135).

5. CONCLUSIONS

The life story of Thomas Bever is quite unusual in comparison to other English civilians of the second half of the eighteenth century. He lived a double life of the Oxford don and ecclesiastical law practitioner. Also, the civil law lectures that he delivered to Oxford students in the 1760s and 1770s were far from ordinary. Bever was willing to enter the world of comparative legal studies that at the time were still in their infancy. The comparative approach he brought to the lecture hall must be viewed as a serious and unprecedented step (at least concerning the scale of the enterprise). It is true that Bever followed the steps of some great English

civil lawyers who were willing to admit that legal comparisons are important (e.g. Duck and George Harris³). His predecessors, however, limited the sharing of their knowledge to readers of their books. Bever, instead, shared that knowledge with Oxford's students.

The importance of that event is not diminished by Bever's crude and unmethodical approach to comparative law. It is true that, at least in regard of Poland, Bever was repeating some general ideas that may not always be recognized today as scientific. His method was more descriptive than comparative. Nevertheless, the task that he undertook was a fresh approach that ultimately may be treated as an introduction to much more elaborate English jurisprudence that developed in the nineteenth century.

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³ About Harris and his comparative approach see Korporowicz (2021, 120–139).

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