

Psychological Disturbance and Violent Crimes: What do Mentions in Judicial Sentences Reveal?

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Abstract

The intersection between immigration and crime has been a focal point scholarly attention since the beginning of the 20th century following the large-scale settlement of migrants in the suburbs of Chicago. Subsequent events stimulated the development of a series of theories related to immigration and crime based around the deregulation of social class. In this context, an analysis was conducted of violent crimes (including murder, robbery, physical assault and rape) in Portugal (Guia, 2015a). The citizenship/ethnicity of prison inmates, convicted between 2002 and 2011, was assessed to determine if they were in fact Portuguese or foreign nationals (immigrants, third-country circulating individuals, Euro migrants or visitors from EU countries). The analysis did not reveal any significant relationship between immigration and violent crime, with the exception of robbery, where there is a growing overrepresentation of foreign nationals. The findings indicate that the selective policing of foreign nationals and judicial practices that result in the increased application of preventive detention and imprisonment has led to foreign nationals being overrepresented in crime and justice statistics.

Nevertheless, and having analysed 116 convictions for violent crimes, psychological disturbances appear to be increasingly cited as mitigating reasons for violent crimes. The suggestion of psychological disturbances calls into question the offender's capacity and responsibility for the commission of such crimes. Consequently, more research is needed to determine the prevalence of psychological disturbances among violent criminal aggressors. Consequently, I have analysed judicial sentences for references to psychological disturbances in a bid to answer the following questions: What is the distinction between the burden of responsibility for violent aggressors and those who have mental health issues? Are arguments about mental health issues used to question responsibility or are they really about facilitating access to treatment? This article presents the preliminary results of this analysis and highlights the need for further analysis. Moreover, the outcomes of this study have implications for possible early intervention activities.

Keywords: Violent crimes; National and foreign national aggressors; Psychological disturbances; Bias in convictions

Introduction

Migration invariably results in social, cultural and behavioural changes to host societies, courtesy of the transposition of the migrants' historical and cultural heritage. Additionally, crime is paradigmatic to the study of sociology, criminology, law, anthropology, medicine, psychiatry and various other scientific disciplines. A multidisciplinary approach would, however, be more appropriate to the study of deviance and its effects on society.

Questions about immigration and crime often go hand-in-hand, although only recently have we developed a deeper understanding of the complex relationship between these phenomena. A new line of research suggests that stereotypes about immigrants (i.e. immigrants as criminals) act as a barrier to their integration in society. In other words, since the 1980s, there has been a growing negative perception that the supposed rise in global crime can be attributed to immigrants. These misperceptions stem from recent changes in immigration policies in the USA and the increasing use of immigration policies, which have slowly found their way into Europe. Consequently, several EU states have taken to criminalising the entry or overstaying of immigrants in irregularity with fines or prison penalties, further reinforcing the image of the immigrant as a criminal. This has subsequently influenced the way in which the mass media presents new waves of immigration into the EU and Portugal, institutionalising the perception that newly arriving migrants are a threat that should be targeted.

In this article, I take these reflections as an introductory point to the discussion about the responsibility of convicted violent aggressors and whether mentions of mental health issues is a factor in determining the length of their sentences. I begin by summarising the findings of previous research pertaining to the relevance of psychological disturbances among Portuguese and foreign national violent aggressors. Frequent references to mental health issues in judicial sentences for violent crimes suggests that there is a thin line between the use of these references to justify an increase in the length of prison

sentences and efforts to identify those aggressors who genuinely require distinctly different treatment. Understanding these issues may be useful for informing the design of early intervention programmes for aggressors, thus reducing recidivism. Moreover, targeted social interventions may be appropriate for violent behaviours attributable to psychological disturbances secondary to drug and alcohol abuse, juvenile socioeconomic hardship and family problems.

Background

This line of reflection stems from my earlier Ph.D. thesis (Guia, 2015a), in which I analysed the contribution of immigrants to violent crime in Portugal and their responsibility for the growing state of fear in Portuguese society that violent crime was on the rise. Throughout my studies, I have taken a scholarly interest the subject of citizenship-its origins, how citizenship is conceptualised, and differences between citizenship and nationality. This has enabled me to draw effective, albeit subjective, borders with which to differentiate the national citizen from the foreign national, and to discern differences in access to rights (a necessary precursor for integration) in the receiving country. Despite statutory prohibitions against discriminating foreign nationals from Portuguese, the practice of law reflects the prevailing social inequalities and favours the stratification of access to rights based on one's ethnic or national origins. An analysis of European and Portuguese cases reveals how regularised foreign nationals and those in irregularity have been accorded different levels of access to rights, depending on their origins, their ties to the receiving country (for those in regularity) or the documents, and the stimulus that motivated the foreigner to become an irregular migrant in the receiving country.

Questions have also been asked as to whether the regularisation of foreign nationals in receiving countries is beneficial in terms their potential contribution to the demographic and economic growth of the receiving society, or aversive because it favours the growth of crime. I have explored the question of irregularity and its management in Europe over the previous 30 years, tracing the impact of previous policies in relation to current decisions. This argument is further reinforced by a mitigated social state and the emergence of a penalising climate that contributes to the perception that foreign nationals are guilty of a generalised sense of uneasiness in receiving societies. At the same time, these accused offenders are in fact the victims of a system that prioritises preventive security and further criminalisation. Furthermore, offenders who are immigrants are seldom able to gain complete access to their rights, with additional conditions often being imposed on the basis of their countries of origin or the type of residence permits they hold. Such measures automatically exclude the migrant from enjoying legal neutrality and from fully integrating into the receiving society, thus putting them in a nefarious position. Not only are they powerless against this situation, but because the mass media routinely enhances and expands upon crimes committed by immigrants, immigrants are invariably conflated with foreign nationals and other categories of migrants, thus stigmatising them as being responsible for the rise of crime.

Theories of criminology have followed trends, such as the Chicago school and its ecological theory, subculture theory, anomaly theory; new criminology, based on the interactionist approach (i.e. selectivity and stigmatisation); and ethnomethodology and radical theory (i.e. social exclusion versus moral panic), where the importance of conflicts and systems of control take priority over the nature of specific crimes and delinquency. The criminological literature suggests that immigrants are frequently depicted as enemies, despite being comparable to national citizens in terms of their participation in crime. I have performed a state-of-art review of immigration and crime, looking to determine whether there is a correlation the two, thus revisiting a number of theories of immigration and crime along the way. The concept of violent crime, as described in my previous research (Guia, 2015a), is based upon an extensive review of the research literature pertaining to this topic and justifies the specific crimes under investigation here (i.e. robbery, murder, physical assault and rape). My research hypothesis and methods take into consideration four categories of foreign nationals, taking into account the juridical and sociological implications of each: immigrants, Euromigrants, third-country circulants and visitors from the EU (being conscientious of the rising concept of European citizenship and the inclusion of new EU countries that are no longer considered 'third countries'). For this doctoral research, I analysed 58 judicial sentences (representing 10% of all foreign convicted inmates for the four violent crimes subject to analysis) and the same number (n=58) of judicial sentences of Portuguese inmates convicted for the same violent crimes. After compiling relevant data into a grid, I performed a content analysis and checked references for differences between Portuguese offenders and foreign national offenders (murder: n=18+18; robbery: n=30+30; rape: n=5+5; physical assault: n=5+5). I also organised two focus groups to collect data on institutional perceptions in relation to the research topic: one with institutional actors (e.g. police officers, judges, prosecutors, prison directors) and the second with immigrant associations and NGOs that work to defend the rights of immigrants. Statistical data was collected on immigration-both European and Portuguese as well as crime in Portugal. Moreover, FBI, UN, Frontex and Eurostat data pertaining to convicted foreign nationals and Portuguese individuals was subjected to statistical analyses (using SPSS) in order to analyse several aspects of immigration and crime.

This analysis elucidated a picture of criminal justice in Portugal, with data on registered, convicted and accused criminals (for all forms of crime, including violent crimes). A statistical comparison of foreign national and Portuguese inmates (n=8438) over the years of 2002, 2005, 2008 and 2011 reveals multiple visions of criminality for convicted foreigners and those in prison for one or more violent crimes. I also performed a thematic analysis of the narratives found throughout the Annual Reports for Internal Security (RASIs) for 2002, 2005, 2008 and 2011, principally on violent crimes and the role of foreign nationals, foreigners and immigrants in the committal of such crimes.

I subsequently analysed the conviction data for foreign individuals, provided by the National Direction of the Prison

Services, for the groups of migrants previously identified (i.e. immigrants, Euromigrants, third-country circulants and visitors of the EU). A comparison of the data for certain categories of violent crimes provides a portrait of Portugal's prison inmates, following different sociological periods. I complemented this portrait with data pertaining to foreign nationals, thus comparing the contribution of foreign nationals and immigrant groups against the supposed rise of violent crime in Portugal. As a result of this analysis, robbery appeared to be the only crime influenced by an increase in the number of immigrants. That said, while there was evidence of a correlation, it could not conclusively shown that immigrants were the direct cause of the rise in robberies across Portugal over recent years.

Lastly, I presented the research done on the analysis of judicial sentences for the four violent crimes to check for inequalities in the justice system. I analysed the nationalities of convicted inmates, taking into account those who had entered Portugal in the last 10 years, their age, school level, profession, family background and criminal records. Differences were seen between Portuguese and foreign nationals convicted for violent crimes in terms of their motives for committing the crime and specific details of each violent crimes. After a lexicology analysis, I found that foreign nationals tended to be charged using heavier and more dangerous terminologies, received longer prison sentences and were more inclined to be sent to preventive prisons despite having lower levels of recidivism. Before concluding, I analysed the perceptions of professionals involved in preventing and combating violent crime, and those who work for NGOs, immigrant's associations and institutions charged with supporting and defending immigrants.

In conclusion, this research revealed: a low level crimmigration policy at the Portuguese level, amidst a high level crimmigration policy at the level of the European Union; the over-representation of foreign nationals in Portuguese prisons and in judicial layers; the selectivity of criminal justice, targeting more immigrants and making them more visible and thus more stereotyped with respect to their contribution to violent crimes; a high level of institutional control over socioeconomically disadvantaged populations (including immigrants); an increase in the rate of crimes across Portuguese society, particularly robberies; the increased visibility of foreign national offenders, some of whom hold Portuguese nationality, but who continue to be perceived as immigrants; and an over-representation of foreign nationals in Portuguese prisons, indicating prejudice in the judicial system and criminal policies.

Based on a reading and analysis of judicial sentences, quantitative statistics, the perceptions of focus group participants, and international and Portuguese institutional reports, there are no significant difference with respect to the violent crimes committed by Portuguese or foreign nationals. The only difference between these groups is the level of vulnerability faced by Portuguese and foreign nationals who have been convicted for violent crimes. Consequently, I arrived at the conclusion that foreign nationals were not responsible for the rise in violent crime in Portugal.

However, in reflecting upon this information in relation to this article, I became concerned about the frequency with which

psychological disturbances were mentioned for both Portuguese and foreign nationals convicted of the four violent crimes previously identified. The mentions of psychological disturbances are especially disconcerting in light of the more aggressive sentencing of foreign nationals found guilty of violent offences. Consequently, I present here an overview of some of the most important convictions subjected to analysis and add some reflections upon these issues.

Analyse of judicial sentences for perpetrators of violent crimes

A review of 116 judicial sentences for the four violent crimes subject to analysis reveals that most convicted individuals (i.e. Portuguese and foreign nationals) have at least some mention of drug and alcohol abuse. Substance abuse been described as a predictor of violence and crime [1]. However, it was only recently that a direct correlation between violence and mental disturbances was identified in the literature [2]. Swanson et al. [3] have shown a positive correlation between the consumption of alcohol and psychotropic substances, violent and criminal behaviour. Other factors have also been mentioned, such as the geographic connection or insertion of these aggressors in so-called sensitive urban zones, problematic zones of the outskirts of large metropolitan areas [4]. Family dysfunction, maladaptive coping strategies and psychiatric problems have also been cited as causative factors in violent crimes [1,5]. In fact, the mental health and criminality literature has only recently become an area of legitimate scientific interest, although most studies have focused on psychiatric inpatients with severe mental health problems [1]. In fact, up until the 1990s, sociodemographic variables were considered the primary predictor of violent acts [1]. It was about this time that Blomhoff et al. [6] wrote about the need to take into account clinical variables for the prediction of violent acts.

In reconstituting the life course of violent offenders before the commission of their crimes, the analysis of the 116 sentences for convicted violent offenders reveals the frequent mention of mental health issues. Antecedent behaviours and events are always referred to in the plural tense, suggesting a convergence of breaking points, as indicated by Guia and Leote [5,7].

A variety of adverse factors emerge within the family nucleus, which rapidly and frequently falls apart but is hardly (re) composed in a multiplicity of ways in which instability, recurrent violence and the absence of permanent reference figures constitute as a brand image letting this nucleus function as effective, and more than necessary, balanced affective support (2004: 10).

At the time of committing their violent crimes, Portuguese convicted inmates had a higher reported rate of drug use (n=21) than foreign nationals (n=9). Foreign nationals were more likely to report being unemployed at the time of their crimes (n=22), although unemployment was also a factor in the committal of crimes by Portuguese inmates (n=17).

Drug consumption and alcohol have often been cited as causative factors for violent behaviors [1]. These substances

alter the user's perceptions and judgement, thus resulting in the individual's inability to distinguish and interpret threatening situations and to react excessively [1,3,8]. In short, drug and alcohol users make erroneous assessments about environmental and social cues, which they perceive to be threatening, thus increasingly the probability of a violent fight or flight response. Such responses can lead to the commission of violent crimes for which they might not be liable, thus necessitating a different approach to the appraisal of guilt. According to Collins and Schlenger [3], these substances work to disinhibit aggressive impulses, thus contributing to 'the development of antisocial personalities' and, where there is a predisposition to psychiatric disturbance, leads patient 'to social environments where violent crime and delinquency are very common [1,3].

While substance abuse is one factor influencing the committal of violent crimes, psychological disturbances are also frequently mentioned mitigating factors, thus evoking Lombroso's theories on the study of crime. Influenced by the theories of Darwin, Lombroso embraced a biological perspective to the study of crime. Lombroso supposed that specific individual physical characteristics might be correlated with one's propensity for crime. Anomalies of the skull were thought to infer mental disturbances and criminal psychopathology. Consequently, Lombroso reasoned that the criminal was as much a victim of inheritance, that their base impulses made the committal of crime unavoidable certainty. While Lombroso's work had, for a time, a loyal following, his theories were later contested and eventually abandoned [5].

With respect to mental disturbances, a study by Almeida (1999: 395) found that subjects convicted murder tended to have low rates of recidivism for the same crime. The previous criminal records, however, exhibited a history of having engages in a number of less serious offences. Consequently, in considering these criminal records, judicial sentences for these offenders tended to note a 'marked personality disturbance and a high degree of danger' [9], suggesting that the individual was intrinsically predisposed to criminality.

While not explicitly attributing the actions of violent offenders to mental health issues, the wording used to describe both Portuguese and foreign national offenders at the time of judicial sentencing is highly suggestive of mental health issues, as the following excerpts demonstrate.

The accused is endowed with a special personality prone to the repetition of criminal activity (Sentence nr 11, Portuguese inmate).

This type of action by the accused denotes a coldness of mind, a sense of impunity and such a great distance from the rules that allow us to live in society (Sentence nr 12, Portuguese inmate).

Impetus of violence and cruelty (Sentence 1, foreign national inmate).

He manifested an inadequate personality to the most basic values of social interaction, with a violent and cowardly behaviour (Sentence nr 15, foreign national inmate).

Disaggregated mentions of mental health issues and violent behaviour: homicides, robbery, physical assault and rape

Analysing the primary motives mentioned in the sentencing hearings of convicted murderers, I was able to verify that a temporary lack of control was the most often mentioned motive for Portuguese inmates (Figure 1). This temporary loss of control commonly occurred in the context of a game of cards, interactions with neighbours or close acquaintances, or in inmate's dealings with a commercial establishment, among others. Curiously, Almeida also notes that the most mentioned psychopathological factor for the committal of crime was 'without any relevant psychopathological picture at the moment of the crime' (1999: 398). This would suggest that the emotions and disturbances that precipitate non-premeditated homicide are momentary, not pathological.

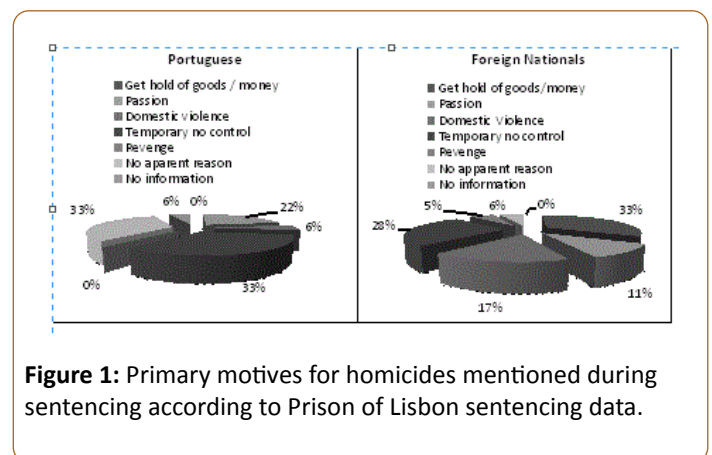


Figure 1: Primary motives for homicides mentioned during sentencing according to Prison of Lisbon sentencing data.

The second most often mentioned motivation in these sentences concerns unknown reasons (with the perpetrator's habitual use of drugs, alcohol or neuroleptic medication often being mentioned concurrently). Almeida [10] observes that drug addiction, especially alcoholism, was often mentioned in his study during the course of sentencing offenders for homicide. In his study, Almeida [10] found that alcohol dependency was mentioned in 92% of homicides, while dependency on other substances (including also alcohol) was mentioned in a further 46% of sentencing hearings.

In the conviction of non-national offenders, the most often mentioned primary motives included: illegally obtaining assets and/or money and temporary dislocation. These motives were most often found in crimes that involved domestic violence, passionate motives or revenge, and could sometimes occur in contexts as simple as a card game.

The reason for the crime is, as it is thought, the outburst of rage of which the accused was afflicted, his lack of control, the agent's inability to contain hostility, the aggressiveness that emerged against his wife at that particular moment (Sentence nr 20, Portuguese inmate). Resulting, instead of the proven facts, a previous circumstantialism that culminated in a discussion between the accused and the offended man, having made several offensive expressions of the honour of the defendant, which led to a situation of discontent on the part of the

defendant, motivating his action (Sentence nr 62, Foreign national inmate).

After considering the type of crime and having performed an analysis of secondary motivations (i.e. the cause of the crime), I found that few sentences had considered anything beyond the primary motives. Nonetheless, there were passing mentions given to the accused's state of alcoholism (n=3 sentences), drug dependence (n=3 sentences) and personality/psychological disorders (n=3 sentences), these statements tending to be restricted to native Portuguese offenders. As far as foreign nationals accused of violent crimes were concerned, there was no mention of secondary motives, thus reinforcing what has already been said regarding the possibility that less information is collected for the reconstitution of crimes involving foreign national perpetrators.

We have the psychological and emotional involvement of the agent, symptoms of depression, the couple's bad relationship, ongoing discussion and derogatory expressions uttered by the victim... the possibility of that depressive psychological state interfering with the behaviour, reducing the agent's self-control ability (...) it is a crime of 'emotional explosion', of the defendant's lack of control (Sentence nr 20, Portuguese inmate).

Idealised and wanted to take life... the defendant wanted to instil in his statements that he acted in self-defence (...) identical physical complexion of the victim... that there was no news of being an especially violent individual (...) the accused acted guilty (Sentence nr 5, Foreign national inmate).

These considerations support what I had already concluded following a detailed analysis of robbery sentences: that Portuguese offenders are disproportionately more likely to engage in substance abuse and, as such, are more susceptible to a temporary loss of self-control, with these drug-induced mental disturbances being cited as the primary mitigating factor in their behaviour. Such transient losses of self-control also occur among offenders who are foreign nationals; however, in these cases, drug-induced mental disturbances are held to be of secondary importance as mitigating factors. The judiciary is more likely to conclude that the primary motive behind similar offences committed by foreign nationals is a desire to illegally obtain goods and/or money. This would indicate that robbery is in fact the primary motivation for homicides committed by foreign nationals.

They wanted to seize these goods with the use of weapons and physical aggression (...). When tying the offended, they acted to deprive them of their physical liberty, which they have succeeded in (...). The mouth of the offended, knew that he could cause death to the same but did not refrain from acting as described (Sentence nr 23, Foreign national inmate). In proceeding as described, the defendants acted deliberately, freely and consciously, well-knowing that the money they appropriated did not belong to them and that they acted against the will of their rightful owner (...). Reasons for homicide and robbery are highly censurable, not only because they threaten people's liberty and life (even criminals have a right to such freedom and life), but also because the generalisation of it is likely to create serious problems of public order and tranquillity,

as in other countries in which drug-related 'settlements' and 'battles' constitute a 'puzzle' for law enforcement authorities, courts, and government officials (Sentence nr 43, Foreign national inmate).

Regarding the motives mentioned in the sentencing hearings for physical assault cases, differences were observed between Portuguese and foreign national accused. These motives can be subdivided between several forms of misunderstandings between parties and the absence of any apparent motives. Motives such as the desire to illegally obtain goods/money, among other motives, are deemphasised. Personality disorders (i.e. psychological problems) form a discrete classification of motives.

While a number terms were used to describe the accused, few of these terms were common to both groups (only exceptions being emotional instability and disarray). Native Portuguese inmates were commonly describes as having experienced relational difficulties and egocentrism, followed by neurological disorders, fragile and immature personalities, antisocial personality traits, having problems with impulsiveness and aggressiveness, distrust, irritability, coldness and callousness. For example:

Violent, with serious problems of social relationship, with neurological disorders (Sentence nr 55, Portuguese inmate).

The sentencing of foreign nationals, however, saw the frequent use of such terms as self-criticism and self-denial, followed by insensitivity and contempt for human life, perversity, cruelty and wickedness.

Attitude of lack of self-criticism (...) reveals little personal control and difficulties in solving problems (Sentence nr 3, Foreign national inmate).

Final reflections

With respect to the initial question that prompted the writing of the paper, neither my data nor the subsequent analysis was sufficient to comfortably distinguish between violent aggressors who bore personal responsibility for their actions and those whose actions might best be attributed to mental health issues [11]. That said, this question was not the primary focus of my research into violent crimes. Nevertheless, these mentions occurred with such astonishing frequency that the question simply had to be asked. What was not clear was whether arguments about mental health issues were used to aggravate responsibility or whether they were being mentioned to facilitate the offender being linked with treatment providers. I would hypothesise that aggravation of responsibility may have been the primary motivator for these mentions as none of the judicial sentences analysed here resulted in compulsory mental treatment. Instead, all accused (Portuguese and foreign nationals) were convicted with prison penalties.

In a previous reflection about young adults, crime and intersections with mental health issues [5], I reported on a recent study by Anderson et al. [12]. The investigators of this study found that adolescents who were experiencing episodes of depression were more likely to become involved in property

crimes in the future. Nonetheless, there is little evidence linking depression in adolescence with future involvement in violent crime or drug trafficking. In fact, in this earlier reflection, I indicated that difficulties at school, where aggression is propagated through fighting or threats, the detention of firearms or others in early ages, and defiant attitudes were common to both Portuguese and foreign national offenders. These factors create a sense of early vulnerability to propagating violence in the future through criminality. Consequently, the prison invariably functions as a school of crime, thus explaining the high degree of recidivism seen among Portuguese inmates in particular. Factors such as mental illness, stress, traumatic experiences or other issues among foreign nationals and their subsequent involvement in the world of crime tend to be reported less frequently. As such, I concluded that reflection with the belief that greater effort should be expended to prevent the consumption of alcohol and psychotropic substances among youth, thus avoiding future violent behaviours that may favour the commission of crimes. Such an age-orientated form of prohibition acknowledges the developmental inability of adolescents to judge certain situations, which is only made worse under the influences of psychotropic substances and alcohol. Therefore, the fight against violent crime involves the prevention of high risk behaviours.

It almost goes without saying that more research is needed with respect to mental health issues and the commission of violent crimes. The frequency by which mental health issues are mentioned during sentencing and vocabulary related to psychological disturbances are connected to the commission of violent crimes. Such research should be predicated on the assumption that there are a number of factors-behavioural and psychosocial-that are not only predictive of violence, but controllable. In the course of my research, no differences were discerned between Portuguese and foreign national inmates with respect to the mentioning of mental health issues. It is my firm belief that questions of mental health and psychological disturbances should form the cornerstone of European and national strategies to prevent violent crime, with these issues already taking centre stage in judicial sentences.

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