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Turning GOLD into EPG: Lessons from Low-Tech Democratic Experimentalism for Electronic Rulemaking and Other Ventures in Cyberdemocracy

PETER M. SHANE

1 Introduction

For cyberdemocrats—researchers and activists who champion the potential for new information and communication technologies (ICTs) to improve upon our practice of democracy—electronic rulemaking seems a tantalizing prospect. Federal agencies engrafting Web-based tools onto notice-and-comment rulemaking are operating across a domain of policy making that affects the lives of every American. Within this domain, U.S. federal law already mandates, even if indirectly, that agency experts and their politically accountable supervisors take some deliberative account of public input. The federal commitment to electronic rulemaking thus seems to hold out the potential to enlarge significantly a genuine public sphere in which individual citizens participate directly to help to make government decisions that are binding on the entire polity.

Central to this vision of what might be called 'Government On-Line Deliberation', which I abbreviate 'GOLD', are values of democratic

collaboration and participation. These values align the project of cyberdemocracy with a family of reforms that political scientist Archon Fung and sociologist Erik Olin Wright call 'Empowered Participatory Governance', or EPG. EPG is a style of deliberative democracy that seeks to 'deepen the ways in which ordinary people can effectively influence policies that shape their lives' (Fung and Wright 2003b: 5). Although writers on EPG have yet to consider seriously the political role of ICTs in such reforms, their work can be of enormous use to cyberdemocrats. That is because EPG theory attends thoughtfully to the issue that, so far, is the least usefully addressed in the burgeoning literature on electronic democracy, namely, the conundrum of power. Researchers and activists have persuasively demonstrated the theoretical potential for ICTs to undergird more robust democratic practices, strengthening both the deliberative and representative aspects of our institutional life (Froomkin 2004). What has been less successfully addressed is the question of how to get 'there' from 'here'. In particular, what are the social conditions and conditions of political power that would make it practicable to implement and sustain some version of GOLD that is genuinely collaborative, participatory, and democratic?

With this question in mind, I will now briefly do three things. First, I will sketch the theory of EPG. Second, I will argue for the centrality of the issues of power to any realistic assessment of the future for electronic rulemaking. I will do this by elaborating on how questions of power pervade every aspect of the electronic rulemaking agenda as it is currently being both studied and implemented, and consider the lessons of EPG research for the future of this particular form of GOLD. Finally, I will discuss whether there is a role for GOLD or other ICT initiatives in EPG projects other than electronic rulemaking. That is, to the extent researchers have identified obstacles to EPG in low-tech democratic initiatives, what might be the role of ICTs in addressing those obstacles?

2   What is EPG?

EPG is a model of governance that Fung and Wright derive partly from democratic theory and partly from the study of 'real world' attempts to institutionalize 'transformative strategies' for democratizing social and political decision making (Fung and Wright 2003b: 4). The model seeks to connect a set of normative commitments for strengthening democracy with a set of institutional design prescriptions intended to meet that objective. Such a project necessarily highlights what Joshua Cohen and Joel Rogers (2003) call the 'conditions of background power' (240) that make more or less reasonable 'the hopeful, radical-democratic assumption' (241) that underlies EPG. This is the assumption 'that ordinary people are capable of reducing

the political role of untamed power and arbitrary preference and, through the exercise of their common reason, jointly solving important collective problems' (Cohen and Rogers 2003: 240). Doubts about that assumption are not only, or even primarily, a reflection on the capacities of the participating citizens themselves. Rebecca Neaera Abers (2003) has posed the key issue: '[W]hy would governments transfer decision-making power to deliberative spaces in which 'ordinary people' have influence and why would those ordinary people, most of whom have little political experience beyond the occasional vote, voluntarily subject themselves to time-consuming and often frustrating deliberative processes?' (201).

Most generally, as seen by Fung and Wright, EPG is a form of institutionalized deliberative democracy. That is, it is a way of producing legitimate governmental decision making through reasoned public dialogue that is conducted under conditions of equality. As they describe it, EPG projects seek to involve those people who are affected by specific, tangible problems in addressing those problems through the deliberative development of solutions that are actually implemented by institutions of state power (Fung and Wright 2003b: 15). The emphasis on specific, tangible problems is intended to facilitate collaboration in democratic decision making among erstwhile policy competitors who are enabled to focus their problem solving attention on a constrained set of issues (Fung and Wright 2003b: 16). The direct engagement of ordinary citizens assumes that their experiential knowledge and immediate participation will improve problem solving through enhanced information, as well as increasing accountability for the implementation of any solutions developed. Experts remain deeply engaged in such institutions, but, ideally, as enablers, not deciders.

There are three design features on which EPG initiatives generally rely in order to stabilize and deepen the practice of its animating principles. First, EPG seeks to 'devolve' decision making authority to empowered local units. This reflects the skepticism among many contemporary activists about the problem-solving capacities of highly centralized state organizations (Fung and Wright 2003b). On the other hand, because local units cannot solve all problems themselves and can also benefit from the sharing of insights and from objective oversight, EPG initiatives tend, as a second feature, to depend upon 'formal linkages of responsibility, resource distribution and communication' between local units and central state offices (Fung and Wright 2003b: 16). Finally, EPG must be embodied in state institutions that actually make decisions and are capable of implementing an allocation of public resources that is both more effective and more equitable in addressing public problems. EPG thus envisions a kind of 'inside' revolution. EPG

is distinguishable from wholly voluntary and spontaneous organizational efforts that seek to influence state outcomes through outside pressure alone.

Of course, EPG projects cannot be expected to arise or be sustained solely by good intentions or noble aspirations. The likelihood of engaging citizens successfully in such ventures will depend, for example, on their own attitudes and capacities, such as literacy. Attitudes and capacity are, however, presumably not insurmountable obstacles. Even at an early stage in this field of research, evidence shows it is possible to mobilize ordinary citizens, including those of profoundly modest means, into genuinely deliberative institutions that effectively make significant public decisions.

The tougher hurdle is one of political context, namely, the existing allocation of political decision making power in the domain over which activists might wish to achieve EPG. Existing power structures are likely in all societies to reflect some imbalance of influence and control, in which relatively advantaged groups are disproportionately able to direct the distribution of social resources in their favor. As Fung and Wright (2003a) recognize, these 'inequalities of background power can subvert the democracy-enhancing potential of institutional designs such as EPG' (260). The question is, what can be done about it?

Fung and Wright do not so much offer a confident answer to this question as underscore its significance. They elaborate on the possibility of what they call, 'countervailing power', meaning that 'variety of mechanisms that reduce, and perhaps even neutralize, the power advantages of ordinarily powerful actors' (Fung and Wright 2003a: 260). Mechanisms of countervailing power may include such things as effective grassroots organizing or a judicial order requiring some powerful institution to respond in particular ways to less powerful interests. Fung and Wright do not yet have a theory as to the mobilization of countervailing power or how much is enough to achieve the democratic potential of EPG institutional designs. They do, however, assert four relevant propositions:

> EPG will not yield its intended benefits in a context without a substantial presence of countervailing power;

> The sources and forms of countervailing power that are efficacious in the collaborative exercise of power are likely to differ from those sources or forms that are effective in redressing power imbalances under conditions of adversarial interest group pluralism;

> The adversarial and collaborative forms of countervailing power are not easily converted to one another, so that actors effective in mobilizing for the underrepresented in one context may not have the 'skills, sources of support, and bases of solidarity' necessary for success in the other; and

> Well designed public policies and institutions can facilitate, but will not themselves generate the countervailing power needed for collaborative governance (Fung and Wright 2003a: 266-267).

Fung and Wright point to political parties, 'adversarial organizations', and social movements as sources of countervailing power.

The facial plausibility of Fung and Wright's cautionary propositions might alone be thought sufficient to generate a fair amount of pessimism about the future of EPG. But it may be a mistake to think about transformation in general, or EPG specifically, in entirely categorical terms. Rebecca S. Krantz (2003) has suggested it is most helpful to understand EPG reforms as part of a larger trend towards direct participatory innovation, a trend that may be advanced by steps more partial or gradual than the case studies Fung and Wright highlight. The key question, she posits, is not whether EPG can erupt full-blown, but whether 'gradualist forms of participatory civic innovation might contribute to more widespread adoption of EPG' (225). Under the Krantz view, what is needed to nudge things forward is only a political context in which sufficient countervailing power is present to trigger some degree of participatory institutional reform.

In this way, there might be hope, in the words of Fung and Wright (2003b), for a 'reorganization of formal state institutions [to] stimulate democratic engagement in civil society, and so form a virtuous circle of reciprocal reinforcement' (15). This could happen, for example, if institutional reform yielded benefits to both those traditionally empowered and those traditionally disempowered. As expressed by Rebecca Abers: '[T]he success of participatory institutions depends on a dual-process of commitment-building'. The key is for each round of reform to intensify the motivation of 'state actors (ranging from politicians to bureaucrats) and ordinary people… to support, take part in, and respect EPG experiments' (Abers 2003: 201).

In sum, EPG researchers offer a model of politics under which institutional reforms would truly deepen democratic effectiveness and legitimacy. They offer a sensible rubric for conceptualizing conditions under which reforms tending towards EPG are likely, at least, to be plausible. They identify the obstacles likeliest to impede the realization of those conditions. These elements provide a firm basis for asking the question: What is the role of GOLD in the future of EPG?

3   Electronic Rulemaking and EPG

At first blush, electronic rulemaking of the sort now either implemented or on the 'drawing board' of the federal 'E-Rulemaking Initiative', does not

easily fit the EPG model.[1] Current electronic rulemaking resembles a global suggestion box, appended to an electronic library. Agencies use the World Wide Web as a vehicle for facilitating both citizen access to information about rulemaking and the capacity to submit comments efficiently. But electronic rulemaking does not yet involve actual dialogue among citizens or between citizens and agencies about either proposed rules or about comments already submitted. Neither does anything about the process provide assurance that agencies will give greater weight to electronically transmitted citizen comments than to citizen views conveyed in the days of predigital notice-and-comment rulemaking. Nor is there any necessary connection between the citizens who participate in electronic rulemaking and some set of specific problems that the rules address and that affect the commenting citizens in specific and tangible ways. Rulemaking operates on a national scale; there is no devolution at work. The interest a rule elicits may have more to do with abstract ideology than actual problem solving.

The barriers to moving towards an EPG model are not technological. Software tools already exist that could be deployed to support online democratic deliberation (Noveck 2005: 21). It is already possible to imagine, with currently available software, the following model of electronic rulemaking: a government agency—perhaps the Environmental Protection Agency—sets up deliberative groups around the country with access to software for conducting online deliberations both asynchronously and in real time. Various of these groups are invited, depending on the issues presented, to develop deliberative recommendations concerning issues on the agency's agenda. The EPA would support 'formal linkages' among these deliberative groups; it might even convene regional and national online assemblies of representatives elected from local and regional discussions, respectively. Even if the deliberative groups were not empowered with formal decisional influence, as full-blown EPG would require, such a network of deliberative bodies would much more closely resemble the style of democratic governance that Fung and Wright have in mind.

The reason this scenario seems so unlikely is because of the inertial force exerted by the current allocation of power with regard to federal rulemaking decisions. This is true at every level. First, insofar as rulemaking is an exercise in what Fung and Wright (2003a) call 'top-down adversarial governance' (259-262), there are numerous firms and organized groups,

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[1] Links to key documents explaining the Federal E-Rulemaking Initiative appear at http://www.regulations.gov (last accessed November 14, 2008). Additional background information and research may be found at E-Rulemaking Resource Web Site maintained by the Regulatory Policy Program at Harvard University's Kennedy School of Government, http://www.hks.harvard.edu/m-rcbg/rpp/erulemaking/home.htm (last accessed November 14, 2008).

representing business interests, government entities, and like-minded citizens that have mastered the current system. They are able either to elicit substantive results satisfactory to their clients or to persuade their clientele sufficiently of the importance of their adversarial activity as to remain viable actors on the current political stage. In addition, within each agency, there is an existing equilibrium of power for the management of rulemaking that the infusion of new information technologies necessarily threatens to disturb. There are presumably people within every agency who have succeeded at managing the predigital rulemaking process; they might not have the same level of capacity or effectiveness when it comes to managing an electronically enabled process.

This does not mean that proponents of a more transformative version of electronic rulemaking are utterly without current and potential sources of countervailing power. Deregulatory forces might become enamored of deliberative forms of electronic rulemaking if they think that more deliberative policy making will actually delay new regulations, an end that many powerful interests will likely find attractive in itself. Moreover, if deliberative processes hold the promise of sensitizing agencies to adopting regulatory alternatives in a variety of contexts that are more palatable to small business and to state, county, and local entities, that, too, would be a boon for federal legislators. Agency decision makers could come to see genuinely deliberative electronic rulemaking as a way of building public support for an agency. And there may exist reform entities, such as the American Bar Association or the Administrative Conference of the United States, who might be mobilized to nudge government forward in a more participatory direction.

One also should not underestimate the possible influence of peer reputation. The trend towards online citizen consultation is global and is likely to accelerate. Agency policy makers travel in international professional circles, where innovation gives rise to bragging rights. For example, in reporting to Congress on its regulatory activities, the Office of Management and Budget routinely refers to the regulatory affairs research of the international Organisation for Economic Co-operation and Development (OECD), headquartered in Paris (Office of Management and Budget 2004: 31). The OECD has been a strong champion of cyberdemocracy efforts (OECD 2003).

Things also look more promising if we ask a question less ambitious than whether electronic rulemaking is likely itself to be so transformative as to generate EPG. Following Rebecca Krantz's (2003) analysis, the better question is whether, and under what circumstances, electronic rulemaking could come to represent one of those 'gradualist forms of participatory civic

innovation [that might] contribute to more widespread adoption of EPG' (225). It may be that the greatest contribution of electronic rulemaking to EPG would be the imitative effort it spawns at the state and local levels. Rather than pursuing forms of electronic rulemaking now that will immediately shake our adversarial, pluralist system of federal notice-and-comment rulemaking into something collaborative and participatory, the federal government could assess tools and develop model processes for online citizen deliberation which, in turn, would be available for adoption by local governments that would not otherwise have the resources to launch such an effort.

Of course, it may well be that the burgeoning of ICT-infused deliberative democracy at the local level is better seen as a precondition, rather than as an objective of federal transformative efforts. It seems all but inevitable, however, that well-publicized federal experiments in online citizen consultation, even if episodic, would stimulate local efforts along the same lines to invigorate citizen input into public policy making. People would begin to ask, 'If they can do it, why can't we?' It also seems predictable that, the more local the effort, the greater would become the likely expectation that the formal processes of actual decision making would have to take account of the input gleaned from online citizen forums. That is, for the very reasons Fung and Wright tie EPG to local decision making, the pressures to give online citizen consultation genuine decisional influence would seem greatest for smaller government units.

In sum, the obstacles to the promulgation of genuinely deliberative electronic rulemaking strongly resemble the obstacles Fung and Wright identify as facing EPG generally. Those obstacles seem quite powerful enough, in the near-term, to rebuff any serious movement towards an ICT-enabled paradigm shift in the role of citizens in federal administrative rulemaking. They seem less daunting, however, if the objective is not near-term federal transformation, but only sufficient innovation at the federal level to both inspire and facilitate local efforts. A spread of local participatory policy making could, of course, create a new round of pressure on the federal government to intensity its democratic ambitions as well. Whether any of this is plausible will require more substantial analysis. It is clear, however, that Fung and Wright provide helpful conceptual tools for assessing the possibilities.

4   GOLD and EPG

The foregoing analysis, urging that electronic rulemaking be understood as a possible prod to local Government On-Line Deliberation, or GOLD, necessarily leads to the question: Would local versions of GOLD be helpful in

institutionalizing EPG? In Fung and Wright's collection of papers on EPG, *Deepening Democracy*, the only reference to ICTs is the potential, noted by political scientist Craig W. Thomas, for a Web-based library of draft and final Habitat Conservation Plans to facilitate public input, monitoring, and the diffusion of expertise in this Department of Interior-sponsored experiment in collaborative environmental planning and management (Thomas 2003: 164). But, of course, virtually every democratic initiative would benefit from online repositories of expertise, relevant data, and records of past decisions. Given the ease at which vast amounts of critical information can be made available cheaply to unprecedented numbers of people, one would wish that some sort of online library were incorporated into every effort at democratic reform.

Information technology could also be of profound utility with regard to training, data gathering, and monitoring. Training is critically important to empowering citizens with the mastery of both data and deliberative processes critical to sustaining effective deliberative problem solving at the local level. Much of this training would surely be amenable to presentation in the form of online tutorials and simulations. GIS-oriented websites would enable citizens to visualize much more richly the resources, opportunities, and challenges confronting particular neighborhoods, towns, and counties.[2] Interactive GIS tools could enable citizens to upload information to a community website about the location of environmental hazards, roads in need of repair, traffic safety problems, or other geographically based public needs.

Similar tools could vastly improve the quality of monitoring efforts during the implementation phase of EPG governance. Projects could be publicly tracked online. Complaints could be channeled more efficiently to relevant administrators. Individual citizens could check on the progress of local agencies in responding to specific needs. Perhaps most famously, the advent of process-tracking software in Seoul, Korea not only enhanced government efficiency but greatly reduced suspicions of 'irregular' practices and municipal corruption.[3]

On top of all this, the proliferation of Web-based organizing tools among civil society groups could greatly magnify their capacity to provide the checking and balancing of more powerful interests that is a necessary

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[2] 'GIS' stands for 'geographic information system', which is a combination of hardware and software designed to enable the storage, retrieval, mapping, and analysis of information tied to specific physical locations.

[3] Seoul's project is called OPEN, which stands for Online Procedures Enhancement for Civil Applications. For an archived version of the OPEN system, see http://web.archive.org/web/20060628204152/http://www.unpan.org/training-open-manual.asp (last accessed November 14, 2008, original site http://www.unpan.org/training-open-manual.asp, is no longer available).

element of EPG under the theory of countervailing power. The deployment of Web-based tools in the 2004 presidential election in the United States enabled the Democrats to compete with Republican fundraising, turn out enormous numbers of volunteers, schedule countless planning meetings, and elicit more voters for a presidential challenger than in any prior presidential election in American history.[4] The same tools, deployed locally, could have effects of equally profound importance, focused on a smaller venue.

What, then, would GOLD add? All of the tools I have mentioned already would help provide a context for sustaining deliberative democracy, but would not extend deliberation itself. Among the most profound potential contributions ICTs can make to EPG is precisely that—to extend deliberation beyond the limited times and limited venues of face-to-face deliberation. I am not suggesting the substitution of one for the other but an augmentation of face-to-face encounters through computer-mediated discussion. The reliance of deliberative democratic institutions solely on face-to-face meetings necessarily imposes a drastic limitation on the scale of possible citizen participation. Webcasting face-to-face meetings (and perhaps receiving online input even in those sessions), and then allowing conversations to be extended through both asynchronous bulletin boards and self-scheduled real-time online meetings, would permit large numbers of citizens to participate who otherwise could or would not.

It is easy to anticipate four possible objections to the recommendation of GOLD-enhanced EPG institutions: GOLD costs money. The 'digital divide' will distort the population of online discussants. The formats for online discussion privilege those categories of citizens who prefer the modes of communication that work most effectively online. Finally, online deliberation is less likely than face-to-face discussion to induce the feelings of mutual respect and solidarity on which long-term EPG depends.

The first point is undeniable. Even if GOLD is sustained by open source software—avoiding any issue of licensing fees—all software needs support, whether in-house or contracted to others.[5] Any worthwhile system will entail monitoring and the updating of content. The cost of hardware systems administration will go up. These costs, however, are not likely to be pro-

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[4] 'From Jan. 1 through June 30, Kerry and Democrats raised $292 million, compared with $272 million for President Bush and Republicans' (VandeHei and Edsall 2004: A1).

[5] Delibera, an open source software product to support online deliberation, was developed at Carnegie Mellon University for the purpose of enabling users to access a rich menu of online deliberative options. See http://virtualagora.org/ (last accessed November 14, 2008). Its developers, including this author, provided a royalty-free license for educational, research, and civic uses. The software has received little use, however, because it would be difficult to implement without the help of a skilled programmer.

hibitive and need to be weighed against the benefits. Government agencies may well be able to negotiate favorable terms for some of the necessary services given the volume of business involved. And EPG may lead to ideas for accomplishing sufficient economies in the spending of public resources to generate any additional revenues that might be needed to sustain GOLD.

The digital divide question seems more serious because it runs counter to the aspiration for genuinely democratic vitality on which EPG rests. But, as long as the legitimacy of EPG depends in part on its inclusion of substantial numbers of citizens, it is difficult to see that empowering larger numbers of citizens to contribute through online participation hurts more than it helps. This is true even if not every mechanism for expanding participation reaches every segment of the population with equal success. Moreover, there is no a priori reason to believe that the online participating population will always be less representative than the face-to-face participating population. Low-income single parents, people of limited physical mobility, citizens uncomfortable with speaking in public—these are just a few of the population subgroups likely to be underrepresented in face-to-face deliberations. More than half of all U.S. households now have Internet connections (U.S. Department of Commerce 2004: 4). There is virtually no access-based 'digital divide' by gender (U.S. Department of Commerce 2004: A-1). Even underrepresented populations on the Internet—for example, Latinos and African-Americans, non-college educated Americans, and low-income Americans—nonetheless participate at significant rates (U.S. Department of Commerce 2004). Computers and free Internet service are both common features of increasingly large numbers of libraries, senior centers, and community centers of all sorts.

The more profound long-term 'digital divide' issue may pertain not to physical access but to an unequal distribution of the skills necessary to motivate civic engagement through the Internet. Research is showing that a potential participant's lack of confidence in using the Internet in a way that will yield a rewarding experience may be a more significant barrier to Internet use than is the lack of home computer access (Muhlberger 2004). This only underscores the importance of combining GOLD efforts with the proliferation of computer literacy training for all adults.

The third likely objection to GOLD, that formats for online discussion will privilege certain categories of citizens over others, based on their preferred modes of communication, hugely underestimates the potential of new technologies. This might be a more serious concern if we were stuck with text-only, English-language Internet communications. New tools, however, already support text, audio, and video inputs. Language translation software can enable multilingual exchange to a degree never before possible. Proto-

cols for online meetings, such as software-enforced time limits to individual comments, can prevent domination of real-time discussions.

Finally, the objection that online deliberation is less likely than face-to-face discussion to induce feelings of mutual respect and solidarity is far from proven. Even more to the point, this concern is all but irrelevant to institutions where face-to-face and online encounters supplement and reinforce each other. Not only do face-to-face interactions strengthen the community-building potential of online interaction, but the possibility of continuing discussions online means that the momentum and sense of common purpose generated by face-to-face meetings can be supported even in the necessary hiatus between such occasions.

ICTs can also be used to create and sustain favorable circumstances for the maintenance of EPG, as well as bolstering its structural features. Deploying ICTs for community organizing will foster the countervailing power that provides EPGs sustaining context. The Internet can support the 'formal linkages of responsibility, resource distribution and communication' (Fung and Wright 2003b: 16) that Fung and Wright take to be essential to EPG design. Providing online documentation of local government decision making and enabling citizens to contribute their knowledge through both deliberative and data-gathering applications will insure enhanced levels of transparency and accountability. For all of these reasons, development of ICTs aimed at strengthening EPGs effectiveness ought to enjoy high priority on the agenda of EPG researchers and activists.

5   Conclusion

EPG represents a model of democratic governance that links significant objectives, namely, effective problem solving, increased equity, and broad participation, to particular features of real-world institutional design. Its proponents offer reasonable hypotheses as to the potential superiority of EPG in terms of problem solving and implementation. They make the case that a commitment to real-world problem solving, together with the institutionalization of modes of decision making that include more direct participation by the poor and disadvantaged, and in which decision procedures are governed by reason (not power), should tend towards more equitable outcomes (Fung and Wright 2003b).

These will not be easy outcomes to achieve, but the EPG vision is clear and compelling enough to inspire considerable interest among cyberdemocracy researchers and activists. From a cyberdemocratic perspective, there readily appears an extraordinary fit between the capacities of new ICTs and the needs of EPG, in terms of both accomplishing a supportive context and actually implementing the recommended institutional designs. It is not cer-

tain whether electronic rulemaking will prove a significant way station towards EPG. What does seems clear, given the promise of the EPG experimental agenda and the need to enlarge opportunities for meaningful citizen participation in decisions that affect their lives, is that the future of GOLD at least deserves to be bright.

Acknowledgements

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