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HERMENEUTICS OF THE MIGRATION CRISIS

Abstract

In the following pages, I will try to examine how and why do juridical and political decisions on life and death of others incorporated as refugees in our contemporary times produce disposable lives, that are not recognized as worth living, and death that is not worth mourning and by that is death of the nameless multitude of corpses. The violent site of Fortress Europe is making even more tragic the biggest migration crisis after the World War II, and now the refugees who reach the soil of Europe are not in space common to others. When we analyze the ongoing crisis as an inner crisis of the subject, we are witnessing not only the techniques of dehumanization and desubjectivation, but even more – of desingularization.

Key words: *refugee, crisis, law, power, fortress*

No no: they definitely were
human beings: uniforms, boots.
How to explain? They were created
in the image.
I was a shade.
A different creator made me.
(*Testimony*, Dan Pagis, 1989)

On November 9, 2017, Berlin's *Der Tagesspiegel* newspaper published a document called The List (Die List)[2] with names of 33,293 refugees who lost their lives through the networks of force and physical destruction of the Fortress Europe border regime. As the cause of death for some of them was noted: "drown", "missing", "suicide", "frozen to death, during river crossing of the EU-Russia border", "died from lung infection that his detention guards ignored for months", "died giving birth, on a boat between TR & I"... The list gathered data for a certain period, but does not pretend to be complete due to the absence of a large quantity of data and the inability to record everyone's death in the search for new ground and living conditions. Although to some extent "The List" represents an exception, very often in data communicating the death of others, there is an omission of two things: their names and their faces, making it the death of nameless (*nōnumnoi*) and faceless. In order to understand the necropolitical power of the European frontier system, that is, to understand the power circulating along the edges of the sovereign units of the nation-states, it is necessary to understand what Achille Mbembe called the "material destruction of human bodies and populations". Namely, the hermeneutical reading of the refugee crisis or as it is often called – the biggest migration crisis after World War II, in the first place, face us with the *Right to Kill*, which re-evaluates politics in necropolitics, and then

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[2] The List in English is available here: https://bit.ly/2KpwQ9U, and in German here: https://bit.ly/2reT0DV

also faces us with population fragmentation with the aim of production of precarious populations, of lives that are not worth living, and death that is not worth the mourning. The latter undoubtedly confirms the crossing of the "threshold of modernity", since now is the time of the "modern man", as Michel Foucault pointed out, "who is an animal whose politics places its existence as a living being in question" (Foucault 1978: 143).

For life to be under question, the position in which decisions are made about who can live and who must die has to overlap with the place where configuration of community relations takes place. In this sense, there are two pillars who maintain the position of making decisions on life and death in the community, or the sovereign position: the right to kill and the state of war. Foucault's inversion of the logic of war as a continuation of politics but by other means as the Prussian General Carl von Clausewitz put it, or "politics is a continuation of the war by other means", aims to show that war is "a principle that allows us to understand the order, the state, its institutions, and its history" (Foucault 2003: 47). It means that "political power is perpetually to use a sort of silent war to re-inscribe that relationship of force, and to re-inscribe it in institutions, economic inequalities, language, and even the bodies of individuals" (Ibid: 16). Expanding the genealogical analysis of power relations and historical knowledge of war, Foucault notes that with the modern form of biologising, statis racism – the war as an uninterrupted pattern of history takes on a new shape, that is, as a race war. At this point, it is important to point out that the right to kill also undergoes a transformation: "the ancient right to *take* life or *let* live [*patria potestas*] was replaced by a power to *foster* a life or *disallow* it to the point of death" (Foucault 1967: 138). What does this mean? The right to kill significantly transforms politics, re-evaluates it in necropolitics and contains all the "contemporary forms of subjugation of life to the power of death" (Mbembe 2003: 39). Working with Foucault's categorical apparatus, Mbembe attempts to critically think the destructive power of the sovereign, using the state of exception and the state of siege. In the identification of the sovereign characteristics, starting with the sovereign decisions about life and death in the community, as well as the decisions about who matters and who does not, who is disposable and who is not, Mbembe includes the Other: "The perception of the existence of the Other as an attempt on my life, as a mortal threat or absolute danger whose biophysical elimination would strengthen my potential for life and security" (Ibid: 18). From perspective of the migration crisis, the definition of the right to kill is inevitably complicated, especially because the sovereign power is fragmented and occupies lower positions, the decision of death is multiplied and the chain of command is not necessarily followed. The death of those whose names will remain unknown, which the law will put in cold administrative lists as refugees, migrants, stateless persons, also comes as a decision made by border guards, special military units, medical personnel, even non legitimized actors like smugglers. Fortress Europe complicates the sovereign's necropolitical power, because the decision about death takes on an anarchic form and is open to actions of all who represent and reproduce the state form of racism in Foucauldian terms. In addition, the state of exception spills over its legal regulations and juridical implications into the regular life of politics, to the extent that the interior of the sovereign unit or nation-state becomes too narrow for the right to kill, and the strongest intensity of this deadly operation often runs along the edges of the sovereign unit, along its borders, and this again implies the European Fortress. The European borders represent the space in which, side by side, touching, Death and the Other move around. Where from one can see the horizon in which the interiority (norm) and exteriority (exception) of law meet; this space collides the *Right to Kill* with *Thou Shall Not Kill*.

The right to kill is closely related to the distribution of precarity in the community. This perspective, which contains all forms of violence as well as the exposure to them, the vulnerability and the injuries that reconfigure subjectivity, can be integrated into the outlook of the refugee crisis in two ways: through the death of the nameless and the faceless and through the existence of those whose lives cannot be recognized as such. Regarding the former or the death of the nameless and the faceless, the above-mentioned document – "The List" breaks down in part the long tradition of erasing the social ontology of those whose death is nameless and without cause, and the more horrifying part, whose death will go without any mourning, torn from the ties of inter-belonging and exchange with the living, and endangering previous social connections, which are forced out by the fact of a death which erases the name or the memory of existence that once represented a life. Even the data on the deaths of those whose life experiences are taken from them through the crisis, become precarious, often processed in such way that turns life into a nameless multitude of corpses, a number of deaths that are presented statistically, in excess. The forms of death, therefore, become different and the situation in which mourning does not take place or the person's name is lost, reveals another global fragmentation; or one that resembles fragmentation of the populations whose material destruction is already justified (e.g. through the so-called "war on terrorism"), individuals whose existence has already been accepted as a loss. This type of distribution and allocation of precarity, which makes a difference on a population level, through the value which derives from mourning, reduces the life of certain populations to the bearing of the burden of hunger, unemployment, legal disenfranchisement and other forms of violence, even to death. In this regard, Judith Butler emphasizes that the exposure of certain populations to greater violence (for nationalistic or racist reasons) necessarily makes a connection with the singularity of everyone who is or was at risk because the social ontology of the body occupies the place of one's own and mutual exposure, vulnerability and precarity. "Precisely because a living being may die, it is necessary to care for that being so that it can live. Only under conditions in which the loss would be relevant does the value of the life appear. Thus, grievability is a presupposition for the life that matters" (Butler 2009: 14).

The social and political circumstances in which it is possible for life to be unfolded, point to social networks of addiction, because, as Butler explains, life *per se* is always already woven in the living conditions or "life as something that requires conditions in order to become a living life and, indeed, in order to become grievable" (Ibid: 23). This perspective facilitates the understanding of how the crisis, such as the biggest migration crisis since World War II, is in fact a crisis of the subject. Or put another way: what happens when the dependence of life on the network of social and political circumstances enters a crisis?

Observing the dynamics of the constitution and signification of the subjects and the phenomena of modernity, Mbembe moves the crisis (war, genocide, high migration rate, instability, economic depression, various forms of extortion...) to a "structuring idiom", a "figure of rationality", and an "existential device". He insists that the crisis should not be presented only statistically but should be considered and understood as a lived experience, i.e. living immediate agonies. In such a constellation of relations, which have the crisis as their central point, human existence is dissolved down to the bare life that is interwoven in the physicality of the crisis. If we take into account the experiences of everyday life, the crisis is inscribed in the urban landscape, in the infrastructure, the living space, the bodies and the material life; so, contrary to the statistical approach and the linear perceptions of cause and effect, the crisis should be analyzed through reflective views on its processes and more importantly – on its effects.

Mbembe thinks that the crisis per se represents a context in which "specific regimes of subjectivity" are established or "shared ensemble of imaginary configurations of everyday life" is activated. Thus creating a link between the today's way of life, the experiences of the people coming from different stratums, the practices and the understanding of everyday life, and then it all settles in the mentality and language of historical time. Refusing to understand the crisis as a statistical system, liberates the revealing logic that life routines of the people affected by it, who are formed as subjects through it and which adopt the crisis markings in their own articulates as an intimate "crisis of the subject". Thus, the "registry of improvisations" for survival in conditions of crisis, the banality of lives against the obvious effects of the crisis is revealed, and finally, the various forms of violence in everyday life are revealed and actualized. In that regard, Mbembe concludes: "And so the physicality of the crisis reduces people to a precarious condition that affects the very way in which they define themselves" (Mbembe 1995: 330).

The way in which people define themselves forms discursive entities that are not independent of the power relations and the circulation of law through the social body, to that extent that those discursive entities represent the effects-products of the productive energy of power and law; or subjects and subjects of law as effects-products. In this sense, if the crisis represents the context of human self-understanding, it necessarily opens questions about the mechanisms whose validity coincides with the safe space of such understanding. This simply shatters the linear approaches to rights, to capabilities, to the political community and its internal mechanisms of exclusion and inclusion. The above-said is largely related to the anti-humanist critique of human rights, the legal maintenance of the gap between the body and the person, and the contamination of the political space with the techniques of power, law and domination. Although it is necessary to take into consideration the implicit importance of these topics, further in this text will be included the hermeneutic review of how the refugee crisis influences human existence as a singular existence, and not just as the existence of a subject inserted into the social body through the relations of power or as a subject of law, covered by mechanisms aimed at regulating life in the community. However it should be noted that the wholeness of human existence interweaves the meanings of life as a human being, a subject/subject of law and singularity. The intrusive governing technologies can cause damage that tends to spread and, in that way, affect all possible forms of life. The discussion necessarily begins with human rights, because law offers this concept as a reflexive one: through it is revealed the human appearance of the law that gives motion to the human self-understanding, and shows the traces of defining the ways of life. The historical marking with exclusion and different, even reversible legal treatment, the creation of disposable lives and vulnerable groups, still makes this legal entitlement just another point of control and force that can regulate the circumstances of human self-understanding, as well as the opportunities in the community. What reveals the exclusionary ontology of the concept of human rights or its western exclusionary practice is not in fact the migration crisis, but the so-called new European demography.[3] Once again, the beginning of the argumentation is related to Hannah Arendt's formula for "The Decline of Nation-State and End of Rights of Man" (Arendt 1958: 267–302).

The juridical views of this state, through which the end of human rights can be recorded, necessarily refer to the relational role of the law. We will further examine this role through the consequences that can be assembled in a single concept, that of desingularization. Although the

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[3] In the text titled "Europe and the refugees: a demographic enlargement", published on 24 September 2015, available here: https://bit.ly/1KTURSy, Étienne Balibar addressed the issue of "demographic enlargement". Not necessarily following the other views in this text, I borrowed the idea of "new European demography".

law involves human existence through the production of subjects of law, identities and individuals whose boundaries are marked with administrative characteristics (e.g. a refugee, an asylum seeker, a displaced person, a stateless person), the regulatory logic doesn't refer only to the previously stated, nor only in the legal field, but rather refers to life itself. In that sense, speaking of the auto-referential nature of law, Giorgio Agamben emphasizes that the law: "has a regulatory character and is a *rule* not because it commands and proscribes, but because it must first of all create the sphere of its own reference in real life and make that reference regular" (Agamben 1995: 26). The danger is greater for the lives of refugees or asylum seekers, who are now exposed to violence within the borders of the old continent. Because the alienation and the re-evaluation of their life is beginning to spread throughout the entire social body, the divisions and fragmentations that law creates through different legal treatment. Commenting on the exposure of refugees and asylum seekers, which is primarily exploited by law, such as the cases of *N v. UK (2008)* and *Saadi v. UK (2008),* Ayten Gündoğdu remarks: "They can be subjected to various forms of arbitrary treatment that would be unacceptable in the case of citizens; they can be detained, for example, simply for purposes of administrative expediency" (Gündoğdu 2015: 18). Involving refugees in its field as subjects of law, bureaucratizing them into identities, the law channels the decision on life and death in the community, affects the sovereign place from which these decisions are made and at the same time reproduces the political intensity that fills the ground of the sovereign position, that is, the intensity between the friend and the enemy. The latter becomes apparent with legal actions against the threats of terrorism or any act that can be reconstructed as an act of terrorism through the full force system (*plenitudo potestatis*). The case of *Ahmed H*, documented by Amnesty International[4], which in the court testimony of a police officer is boiled down to the danger shaped as a "typical Arab with a big nose and a beard," reveals in a horrifying manner the sovereign logic of exclusion. This is not just about the legal consequences that tailor the throwing of three stones into an incriminating act or an act of terrorism, when the court and cells turn into places of self-understanding, because the guilt develops a network of meanings that spill over from the field of law to overall existence and affect identity, individuality and singularity. The emotional registry, the skin on the face, the corporeal experience of the one who crosses the borders and the sea, the escape from war, the previously lived knowledge of life, the past possibilities and the multitudes of relations with other singularities (human beings, objects, environment) and the search for new ones, the openness to exchange, transformation and change of the whole experience is under attack of the power of law and the evasive movement of guilt, because it inhabits the entirety of human life and becomes inter-subjective. Hence, the relation between life and the position that contains in itself the sum of decisions (of the court, of the police officer, of the legislator) or the sovereign position, which simultaneously represents the primary relation of the order between two

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[4] The 42-years old Syrian Ahmed H, already a European citizen who lives in Cyprus with his wife and children, in 2015 left their home so he can help his parents and other relatives to flee the war in Syria. After arriving safely on a Greek island, and then also crossing the Macedonian and Serbian border, Ahmed H and his family were trapped at the Serbian-Hungarian on 16 September 2015, when the border was suddenly closed and clashes between the police and the refugees took place. Ahmed H was recorded while speaking with megaphone, in English, and saying among other things: "You must understand this: we come here in peace, just to pass. We will not do anything bad to you", and also threw three stones during the clashes when dozens of refugees were injured. Dozens were also arrested, including Ahmad H's parents, charged with "illegal entry" and spent eight months in jail. Ahmed H was violently arrested on a train station in Budapest. His European passport was used as part of the evidence to paint him as "terrorist". The video of him talking with a megaphone was not used as evidence. More on the case: https://bit.ly/2gImZO3, https://bit.ly/2w5LkZw, https://bit.ly/2rbWAPa.

symmetrically placed points – that of life and the one of the sovereign, intertwined with violence, must be broken down, fragmented and its complexity opened.

The lives of refugees or asylum seekers are reduced to figures whose fates are conceived when, from the legal circumstances of misfortune and guilt, Walter Benjamin executes the measure of the human and of his bare life (*das blosse Leben*[5]) as a marked barer of guilt: "all legal guilt is nothing but misfortune" (Benjamin 1996: 203). However, the primary relation of the order in itself does not only hide the legal mechanisms that are intertwined with the human misfortune; on the contrary, it insists on annulation of the position of the Other, makes a reduction of his face and replaces it with the description of the threat: "a typical Arab with a big nose and a beard". What is the meaning of all this? Reducing the Other to specific notions that distance him from his singular existence, blocking the possibility of an ethical attitude towards him, shows that the primary relation of the order is not and cannot be a social relation with the Other. Or as Emanuel Levinas remarks: "The best way of encountering the Other is not even to notice the color of his eyes! When one observes the color of the eyes, one is not in the social relationship with the Other. The relationship with the face can certainly be dominated by perception, but what is specifically the face is what cannot be reduced to that" (Levinas 1985: 85–86). The reducing of the Other, the seizure of his place of existence or the person as such, does not apply only to individual legal cases or to the production of the biopolitical body through the aforementioned primary (exclusionary) relation of the order. It refers much more to the community, to the possibility of belonging and exchanging with others, to the basic ethical assumption of the existence of the community or that of *Thou Shall Not Kill* because "the face is what one cannot kill, or at least it is that whose meaning consists in saying Thou shall not kill" (Ibid: 87). The refugee crisis or the biggest migration crisis after the Second World War does not tackle the human, and not only dehumanization occurs, nor it attacks the subject and only desubjectivation occurs, but what is attacked is the possibility that sets the positions of the Other and the I, namely, the possibility of changing the lived experience, the transformation of life and the exchange, the pursuit of happiness. Additionally, the long procedure of desingularization alienates the human being from other singularities in the sphere in which one can act and those actions can shape its life experience. The resources that serve as a reply to the *Thou Shall Not Kill* call are contaminated as a result of the ruling technology of annulation and the mediation of the legal mechanisms. Therefore the power of the I is lost, not just that of the Other, because "me, whoever I may be, but as a "first person" I am the one who finds the resources to respond to that call [*Thou Shall Not Kill*]" (Ibid: 89).

If legal status is the armature of happiness in the community, then it is important to determine the effects arising from the relational role of the law, how are forms of disposable lives produced, how are capabilities of others broken down, or how is the control on the margins maintained: the precarity of life through the modern logic of domination, among other things, is becoming an organized operation of the apparatus of power; which distributes the social and political circumstances in which life is maintained. In that way, reducing the distribution of social and political circumstances does not only endanger the rights, in the reflexive framework of human existence, on the contrary, the increased anxiety which the precarious lives of the

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[5] In 1996 Verlag's translation, "das blosse Leben" is translated as "life itself". Considering Renato Solmi's translation in Italian, from 2008, for *Walter Benjamin Opere Complete I: Scritti 1906-1922* (Torino: Einaudi), where "das blosse Leben" is translated as "nuda vita" or "bare life", but more significantly considering the acceptance of this translation by Giorgio Agamben who develops the paradigm of "nuda vita" in his project Homo Sacer, taking it from Walter Benjamin, I also decided to use the "bare life" translation.

others go through, stems from the threat against their capabilities. Such dynamics contributes to precarity being used to control groups and individuals, and, as Isabelle Lorey puts it, precarity is used as a "normalized political-economic instrument" for "positioning dangerous 'others' as the precarious ones at the margins" (Lorey 2015: 39). Furthermore, in relation to dissolving or jeopardizing the capabilities of others, Paul Ricœur accurately assesses the sphere to which capabilities (*capabilités*) belong, that is, the sphere of human action. What is important about human action is that it gives us a voice and a demand to be heard. Through it we are becoming, we are agents of events that circulate through our bodies, our language and our experiences, as a structure through which we reach ourselves and we understand ourselves. We answer with "I" or "I can" to the question "Who?" In this sense, capability is defined in the following way: "the power to cause something to happen" (Ricœur 2006: 18). In short, it is primarily about a sphere in which everyone takes up a place through the voice and the thought that moves us towards action, a sphere that is necessary relational, because our action, our face and our voice demand to be recognized, to form a relationship of belonging to the One World we live in. Thus the refugees' act of sewing up each other's mouths at the Greek-Macedonian border becomes comprehensible, after the decision to close the border. They stood bare and mute around the wired space, with signs in front of them: Are we not humans?[6] Hence, the right to have rights – as a necessary political organization of the community that is formed around the principle of equality, first of all, formulates the call for everyone's belonging to the common space of the One World, and that is the space of humanity.

> "It designates the kind of power that we claim to be able to exercise. In its turn this claim expresses the kind of recognition pertaining to the assertion of selfhood at the reflexive level. […] The question then is to proceed from self-recognition to mutual recognition. It is not enough to take advantage of the reference to the Other as implied by each modality of the 'I can', be it 'I can speak', 'I can do', 'I can tell', 'I can hold myself as accountable'. The idea of reciprocity was included in this consideration of alterity connected to the self-assertion of the subject of capabilities" (Ibid: 17, 21).

The latter has an ethical and political implication, especially since the community and belonging identify the points of recognition (*Ankernnung*). As Arendt points out, the horrifying experiences of refugees, migrants, asylum seekers, stateless persons are not made up of abandoning and fleeing the home; even worse – is not finding a new home, the blocking of the experience that tries to transform life, to put in motion the world and our relations in the world. And thus, with the loss of home and legal status, the human being is found in a situation equivalent to the expulsion from humanity. The organization through which the community is transformed into everyone's home, hence, in the words of Arendt – is a human organization guided by the principle of justice: "We are not born equal; we become equal as members of a group on the strength of our decision to guarantee ourselves mutually equal rights" (Arendt 1958: 301). This turn in the last pages of the chapter "The Decline of the Nation-State and End of the Rights of Man" complicates the attitude of Arendt towards human rights in a productive sense; her rigorous critique of the concept of human rights gives perhaps the best basis for contemporary

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[6] On 23 November 2015, the Macedonian authorities decided to close the borders due to "threats and risks to national security", and only refugees from war zones (Syria, Iraq, Afghanistan) were allowed the passage towards Europe. As a protest against this decision, some of the 1300 people trapped between the borders, started hunger strikes and sewed their mouths. More photo documentation of the event is available here: https://bit.ly/2w3ITqu.

thinking of this concept, but the return towards the introduction of rights through equality and the distribution of equal rights in the community implies that the struggle (for a "human organization") for our One World should begin again. The cross-interpreting of Arendt and Ricœur in the last few pages of this paper will conclude with the fact that re-introduction of rights in our struggle is necessarily related to the capabilities, that is: "In the same way as we ascribe rights to individuals, we ascribe to them the capacity to designate themselves as true authors of their deeds" (Ricœur 2006: 19).

The inhumane condition that arises on the shores of the Occident, which the others live through, interpellated in their new reality as outsiders, foreigners, criminalized, is not only filled with the effects of power relations, with the outcomes of the legal regulatory *écotechnique*, is not exhausted through the injuries based on identity (dehumanization, desubjectivation). In fact, the injuries are deeper and more transgress even the fields of law and power. The others that survived the necropolitical force of Fortress Europe still do not thrive to find their new ground, but remain as Donatella Di Cesare, poignantly describing the conditions in CIE Ponte Galeria, an Italian detention center for refugees without regular documentation, pointed out: "remnants of humanity, to which a livable life is negated". Evoking also Arendt's thoughts on totalitarian rule and Jews being treated and marked as "the scum" of the earth, pushed in the sphere of subhuman, "it could be shown that they were exactly *Untermenschen*, thus breaking the bond with humanity" (Di Cesare 2014: 37). The others that cannot arrive in the common space, they lose parts of their singularity, through which they belong to the world. "Regardless of treatment, independence of freedom or oppression, justice or injustice, they have lost all those parts of the world and all those aspects of human existence that are the result of our common labor, the outcome of human artifice" (Arendt 1958: 300). Hence, what is the meaning of desingularization? The answer to this question is open, and any attempt to give a final answer faces us with the danger of getting closer to a totalitarian rule. But the answer is needed in the between-space of the previous question and the warning from the previous sentence. Namely, it is important to have a firmly conceptual difference between all forms of the particular existence as as a subject of law and as a fixed identity on one hand, and on the other, a singular existence that contains in itself the potential for moving, transformation, connection within the community or ethical connection with the community; hence the potential that rejects the assumption that the life of human beings is a socio-biological "task to be done," and that they should "be this or that substance, this or that destiny" (Agamben 1993: 42). The existence of fixed identities is determined by the sovereign order of the nation-state (*nomos basileus*). But if we turn our attention to the aforementioned conceptual difference, it will be shown that singular existence in a sphere that still does not exist, the one beyond the nations, carries the ethical potential of a different human organization and community or *cosmos basileus*. If every human being is sacred and is not reduced to the legal signifiers that make up the person, but that being is sacred on its own. "Neither his person, nor the human personality in him, which is sacred to me It is he. The whole of him. The arms, the eyes, the thoughts, everything" (Weil 2005: 70, 71). What is sacred in human existence and must not be exposed to the crime of fixed identities and law operations, on the contrary, an open existence and where "[oneself] reintegrate[s] in the general cosmic order" (Vernant 2000: 204).

And he in his mercy left nothing of me that would die.
And I fled to him, rose weightless, blue,
forgiving – I would even say: apologizing –
smoke to omnipotent smoke
without image or likeness.
(*Testimony*, Dan Pagis, 1989)

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