# HOLLAND AND THE EUROPEAN UNION: A LOOK AT THE CONFLICTING SOCIAL POLICIES OF EUROPEAN NATIONS

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On June 1, 2005, the people of the Netherlands rejected the proposed Constitution for the European Union. This paper will examine how the national autonomy and identity of the Netherlands may be threatened by the passage of the European Union Constitution and how this threat may have led to the rejection of the Constitution referendum.

# INTRODUCTION

Europe's history shows constant battle between conflict and unification: borders have been disputed and beliefs have been questioned. From the kings and kingdoms of the past to the countries of today, the different religions, languages, politics, economies, and social beliefs of European nation states have been at the root of many disagreements and disputes. From alliances such as the Austro-Hungarian Empire, to wars that tore the continent apart, there has been an ongoing power struggle throughout Europe.

One of the most recent developments that changed the face of Europe was the collapse of communism and the U.S.S.R. When the Iron Curtain fell, a new Europe emerged, one centered around the economy rather than the state (Delanty 142). However, while we like to think of Europe as unified, it is far from it. Europe is as much about creating moats as it is about building bridges (Delanty 135). In fact, the idea of a unified Europe has become a political football, which groups use to distinguish themselves from others (Delanty 135). Even within countries, there are individual groups that claim an identity based on their religion or language rather than their geographical location. In Northern Italy, for example, many of the Germanspeaking Italians consider themselves more Swiss than Italian. Similarly, in the Netherlands, those that reside in Friesland consider themselves to first be Frisian and second Dutch.

In theory, a unified Europe seems like a good idea; however, with the recent rejection of the European Union Constitution by key member states, the reality of a unified Europe appears increasingly distant. In fact, according to the European Commission's *Eurobarometer 63: Public Opinion in the European Union,* European unity has become less popular the more imminent it actually becomes, particularly in Sweden, the United Kingdom, and Austria in which the approval ratings are 28, 27, and 23 percent respectively (95). Throughout

Law and Society Journal at UCSB. Volume V (2006).

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Europe's past, there has hardly been a time when all the nations could agree on something, so what makes the present so different? What makes us think that after hundreds of years of conflict, Europe will now be able to settle down and agree? Moreover, how can nations that are so culturally different agree on a constitution to rule them all? The idea of an integrated Europe has met not only with opposition from the extreme right in the name of national identity, but also with reservations that are rooted in economic and social realities (Delanty 142). I plan to take a close look at several policies of the Netherlands and how those policies conflict with those of other member states of the European Union. After studying abroad in the Netherlands last year, I can see a real possibility of them losing their national identity as a result of the unification of Europe under one constitution. The particulars of each nation and region would be difficult to combine into one "mega-state."

In the Netherlands, where a significant part of the nation's identity is often associated with its liberal social policies, it is relevant to ask in what way a constitution might threaten the autonomy of member states and their national identity. The Dutch policies towards drug use, gay marriage, and prostitution vary dramatically with those of other, more religious countries of southern Europe. For example, the Dutch are in favor of providing homosexual couples the same rights as heterosexual couples, while Italians grant no legal recognition to same-sex partners. Similarly, the possession of small amounts of marijuana for personal use has been decriminalized in the Netherlands, whereas in the bordering nations of Belgium and Germany, marijuana possession is still considered unlawful. In this paper, I will discuss the liberal policies of the Netherlands on drugs, gay marriage, and prostitution, as well as contrast the Netherlands' policies with those of other European Union member states. Ultimately, I will explore how the national autonomy of the Netherlands may be threatened by the passage of the European Union Constitution and how this threat may have led to the rejection of the Constitution referendum.

# THE CONSTITUTION OF THE EUROPEAN UNION

The Constitution of the European Union is based on two previously existing treaties, the Treaty of Rome (1957) and the Maastricht Treaty (1992). In 2001, after the Laeken debate, which aimed to set goals to expand both the size and influence of the European Union (E.U.), the European Convention was established to draft the Constitution. The final text of the Constitution was proposed in June 2004 ("Treaty Establishing a Constitution for Europe").

In November 2004, Lithuania became the first member state to ratify the constitution. Ten other member states followed suit until May 29, 2005, when France became the first to reject it. On June 1, 2005, the Dutch people, in the first national referendum in modern Dutch history, also voted against ratification of the Constitution of the European Union. Although a majority of E.U. countries have approved the treaty, unanimity is required before it can become law. Thus, the rejections by France and the Netherlands have, in effect, put the process of ratification on hold indefinitely ("Treaty Establishing a Constitution for Europe"). But why did the Dutch reject the referendum?

## THE DUTCH REJECTION OF THE CONSTITUTION OF THE EUROPEAN UNION

According to the study entitled "European Constitution: Post-Referendum on The Netherlands," published by the European Commission in the days after the election, 67% of both voters and non-voters were satisfied with the victory of the "No" vote. In addition, the same study found that while 82% of Dutch citizens support the Netherlands membership in the European Union , 50% of the population does not feel that a Constitution is essential for European construction ("The European Constitution: Post Referendum Survey in the Netherlands").

Some of the main reasons behind the rejection of the referendum deal with provisions that are not directly connected to the Constitution. For example, there is much dissent about the increase in immigration from Turkey and Eastern Europe, as well as fears of outsourcing of jobs to new member states ("Treaty Establishing a Constitution for Europe"). Furthermore, the euro was introduced into the Netherlands without the say of the people, so the rejection of the Constitution may have been an opportunity for them to voice their anger and frustration. It also may be that many of the Dutch had problems with the Consitution itself, fearing that it would accelerate the already diminishing influence of the Kingdom of the Netherlands, and would allow Germany, the United Kingdom, and France to dominate the rest of Europe. This idea follows that of philosopher Georg Wilhelm Friedrich Hegel who believed that Europe could be unified as one state. According to him, Europe is too large to apply particulars to universal values. It is more like a civil society than a state, with little patriotism for Europe as a whole. Rather, the patriotism lies in the people's love for their own country, and they pride themselves on their national identity: their language, religion, and culture.

Not only would Dutch power be threatened in the wake of the larger powers of Europe, but the fundamental values that define the society would be threatened as well. The people of the Netherlands may feel that the Constitution of the European Union threatens the liberal social laws that, in a sense, define the Dutch. For example, Marjan Tokkens, a 31-year-old voluntary worker at the community centre, was afraid that a "yes" vote would enable the European Union to overturn liberal Dutch social laws, closing coffee shops, restricting the use of drugs, and limiting abortion (Adam Sage, Discontented Dutch seize on chance to deliver protest vote, *The Times Online*) According to *The European Constitution: post-referendum survey in the Netherlands*, a clear majority of Dutch respondents (65%) agrees that the rejection of the Constitution provides an opportunity to renegotiate its content in order to place greater emphasis on social issues (see chart on next page) ("The European Constitution"). Two-thirds of the Dutch citizens believe, that the

"No" victory will lead to a Constitution that will better defend Dutch interests ("The European Constitution").

Oftentimes, the Netherlands and its people are associated with lenient drug policies, prostitution, and gay marriage, and while many of the perceptions may be misconstrude, they are in a sense the Dutch's claim to fame, and one of the main aspects that distinguishes it from the other countries of Europe. It is part of the Dutch identity. But what makes Holland so different from that of the rest of Europe? To understand this better, I will examine the specific social laws that distinguish it from other member-states. Furthermore, I will discuss how a European constitution would jeopardoize such laws.

# DRUGS

## DUTCH DRUG POLICY

The present drug policy of the Netherlands first began during the 1970s, at the height of the heroin market. This policy is known as the Baan Commission ("Drug Policy Around the World"). The core features of the Dutch system as established by the Baan Commission focus on the concept of harm reduction ("Drug Policy around the World"). That is, rather than trying to suppress all drugs, the policy is directed at the minimization of the risks and hazards of drug use. Unlike many other policies, the Dutch drug policy gives priority to health care and prevention, while simultaneously and aggressively pursuing the enforcement of organized crime ("Drug Policy around the World").

The Netherlands was one of the first countries to implement a wide range of harm reduction interventions, such as providing methadone on demand. In the 1980s, syringe exchange programs were introduced to help prevent the spread of HIV/AIDS and other infectious disease. Currently there are 130 of these programs operating in 60 Dutch cities and towns ("Drug Policy Around the World").

With respect to the supply side of the drug market, Dutch drug policy reflects the international norm of repression. However, they take a unique approach when dealing with the demand for drugs. The Dutch policy recognizes that in many cases drug use is often just part of youthful recklessness, but emphasizes compassion and treatment for those who develop serious drug use problems ("Drug Policy Around the World"). Using this pragmatic approach, the government sets clear priorities based on the perceived risks of particular drugs. Public health is the overriding concern. According to the Netherlands Ministry of Foreign Affairs, the key elements of Dutch drug policy include:

- prevention or alleviation of social and individual risks caused by drug use
- a rational relationship between those risks and policy measures

- a differentiation of policy measures that take into account the risks of legal recreational and medical drugs
- repressive measures against drug trafficking (other than trafficking of cannabis)
- a recognition of the inadequacy of criminal law with respect to aspects of the drug problem apart from drug trafficking

A unique and key aspect of Dutch drug policy is the notion of market separation. Drugs are classified according to the risks posed and then policies are implemented that serve to isolate each market ("Drug Policy Around the World"). The idea behind this is that if users of soft drugs are less likely to come into contact with hard drug users, they are less likely to try hard drugs. Accordingly, the possession of small amounts of cannabis for personal use has been decriminalized in the Netherlands. While the sale of cannabis is technically an offence under the Opium Act, prosecutorial guidelines provide that proceedings will only be instituted in certain situations. For example, according to the Netherlands Ministry of Foreign Affairs an operator or owner of a coffee shop will avoid prosecution if he or she meets the following criteria:

- no more than 5 grams per person may be sold in any one transaction
- no hard drugs may be sold
- drugs may not be advertised
- the coffee shop must not cause any nuisance
- no drugs can be sold to minors (under age 18), nor may minors enter the premises
- the municipality has not ordered the establishment closed.

The separation of markets is intended to create a social barrier that prevents people experimenting with drugs like heroin, cocaine, and methamphetamine that are deemed an "unacceptable risk," by allowing people to purchase soft drugs in a criminal free environment ("Drug Policy Around the World"). Decriminalizing the possession of soft drugs for personal use and the toleration of sales in controlled circumstances has not resulted in an increase of consumption among young people. In fact, the extent and nature of the use of soft drugs does not differ from the pattern in other Western countries ("Drug Policy Around the World"). As for hard drugs, the numbers of addicts in the Netherlands is low compared with the rest of Europe and considerably lower than that in France, the United Kingdom, Italy, Spain, and Switzerland. Perhaps the greatest testament to the Dutch drug policy is that the rates of drug use are lower than U.S. rates in every category, despite the country's infamous "war on drugs" ("Drug Policy Around the World").

The following are graphs from the 2005 country data profiles of the European Monitoring Center on Drugs and Drug Addiction take from the *Annual Report 2005: Focus on Crime and Prison.* The graphs help to show the relatively low use of drugs in the Netherlands as compared with the member states of Spain and the United Kingdom, despite the more lax policies of the Netherlands. According to the graphs, cocaine, amphetamines, and cannabis use in Spain and the UK are considerably higher than in the more 'lenient' Netherlands.

#### POLICY OF OTHER EUROPEAN UNION MEMBER STATES

There are vast differences between the member states of the EU in both drug policy and practice. In most EU Member States, drug use or possession (for personal use) account for the largest proportion of drug law offenses; ranging from 39% in Poland to 87% in Austria and the UK ("Annual Report 2005: Focus on Crime and Prison"). Yet, in a few countries, drug dealing or trafficking represent the largest share: 46% in Luxembourg and 91% in the Czech Republic ("Annual Report 2005").

The proportion of drug law offences involving cocaine increased in the period 1998–2003, according to available data. This increase varies considerably from country to country, ranging from 1% in the Czech Republic and Lithuania to 32% in Italy (drug trafficking offenses only) ("Annual Report 2005").

Cannabis remains the drug most often cited in drug law offences in most EU member states and the proportion of drug law offenses involving the substance has increased since 1998 in Germany, Spain, France, Ireland, Lithuania, Luxembourg, Malta, and Portugal. However, the figure has remained stable in Belgium, the Czech Republic, the Netherlands, Slovenia, Sweden, and the UK, and has fallen in Italy and Austria ("Annual Report 2005").

Heroin-related offences fell in all reporting countries in the period 1998–2003, except Austria and the UK, where they rose ("Annual Report 2005").

### THE EUROPEAN UNION AND DRUG POLICY

One obvious problem with the Dutch drug policy and the policy of the European Union is that drugs that are legal in the Netherlands can be easily transported into member states where they are illegal. Furthermore, the formation of the European Union has allowed for quicker and easier transport of goods across borders, with fewer custom regulations. The Netherlands is firmly against drug trafficking and has intensified its collaboration with other European countries in the fight against drug trafficking through the organization of a European Cocaine Conference in The Hague in June 2004 (The Netherlands Drug Situation). It has also implemented the "Plan for Action of Drug Trafficking at Schipol," which is designed to prevent the transport of cocaine into the Netherlands from the Antilles, Aruba, and Suriname. A majority of Dutch ecstasy is exported to the USA, the UK, Belgium, and Germany, but recent reports indicate a decrease in the seizure of assumed Dutch ecstasy pills ("The Netherlands Drug Situation"). According to the European Monitoring Center for Drugs and Drug Addition, pragmatic cooperation against drug tourism with the neighboring countries of the Netherlands has been going on for years (The Netherlands Drug Situation). In counteracting drug tourism, judicial authorities of Belgium, France, and the Netherlands cooperate in a structural way, with the exchange of police officers between investigation departments. Similarly, along the Dutch-German borders a comparable approach is being used ("The Netherlands Drug Situation").

# GAY MARRIAGE

There are three forms of legal recognition of gay marriage. The first form is unregistered cohabitation. This allows for couples to automatically acquire certain rights and responsibilities after a specific amount of time ("Same-sex Marriage and Partnership: Country-by-Country"). The second form of recognition is registered partnerships or registered cohabitation, which allows specific rights, responsibilities, and legal acknowledgment. In some cases, these benefits can be virtually identical to those in heterosexual marriages, while in other countries there are clear restrictions ("Same-sex Marriage and Partnership"). The recognition of homosexual marriage is the ultimate form of legal acceptance. Marriage allows gay couples to be protected under the same rights, responsibilities, and legal recognition as heterosexual married couples ("Same-sex Marriage and Partnership").

## DUTCH POLICY OF GAY MARRIAGE

In 1979, the Netherlands took the first step in recognizing same sex marriage. In that year, it became possible for gay couples to be eligible for unregistered cohabitation. This allowed for an increase in legal rights in such areas as rent law, social security, income tax, immigration rules, state pension, and death duties ("Same-sex Marriage and Partnership"). In 1998, the Netherlands allowed registered partnerships both for heterosexual and homosexual partners. This provided all of the same rights and responsibilities as heterosexual married couples, except the registered (female or male) partner of a woman who gave birth was not recognized to be the second parent of the child ("Same-sex Marriage and Partnership"). Finally, in 2001, the Netherlands became the first European Union member state to legalize gay marriage, thus awarding homosexual couples the same rights, responsibilities, and legal recognition as heterosexual married partners, with the exception of prohibiting couple to adopt children from abroad ("Same-sex Marriage and Partnership").

# THE GAY MARRIAGE POLICY OF THE EUROPEAN UNION AND OTHER MEMBER STATES

In February 2003, the European Union Parliament called for recognition of gay marriage throughout Europe, and for the legal acceptance of partnership unions by those gay couples wanting recognition without actually having a marriage (Asher 1). At that time, Belgium was the only other E.U. state besides the Netherlands to fully legalize homosexual marriage. While there were limited civil union rights in France, Germany and some Scandinavian countries; Italy, Spain, Greece, Ireland, Luxemburg, and Austria did not recognize any form of gay civil union (Asher 1). However, since the decision by the EU Parliament, member states are required to adopt the same position as the Parliament. It is expected to be a lengthy process, but will start with member states harmonizing existing laws.

Since that 2003 decision by the EU Parliament, a few things have changed. In June 2005, Spain passed the Marriage Act, which allows homosexual partners to be eligible for all the rights and responsibilities of heterosexual married couples, including entitlement for joint adoption ("Samesex Marriage and Partnership"). Just this past year, Ireland enacted the Civil Partnership Bill ("Same-sex Marriage and Partnership"). Prior to that, in May 2004, Luxembourg legalized registered partnerships, which are applicable to both homosexual and heterosexual couples. This granted the same rights as married couples in relation to access to welfare benefits, as well as the same fiscal status ("Same-sex Marriage and Partnership"). In 2003, Austria began to allow unregistered cohabitation, following the decision of the European Court of Human Rights in the case of Karner v Austria ("Same-sex Marriage and Partnership"). Unregistered cohabitation allows same-sex partners the same rights as unmarried cohabiting opposite-sex partners ("Same-sex Marriage and Partnership"). At present, both Italy and Greece, as well as many Eastern European countries, grant no legal recognition to same-sex partners.

## PROSTITUTION

The great majority of the EU countries have adopted abolitionist ideals of prostitution, while less than a third have regulationist or neo-regulationist policies. Regulationism views prostitution as a necessary evil that needs to be limited and managed. Regulationist counties also believe in monitoring prostitutes and preventing those with venereal disease from continuing to work (Danna 2). An even more liberal stance is neo-regulationism, in which the country regulates prostitution without morally condemning the prostitute in its legislative texts (Danna 2). Abolitionism seeks to remove the legal regulations of prostitution. It is somewhat ambiguous and is based on the moral refusal of prostitution because of its degradation of women. While abolitionist countries favor liberalizing the act of prostitution, they believe in criminalizing 'pimping' and the international trade in women (Danna 2).

## **DUTCH PROSTITUTION POLICY**

Abolitionism is openly rejected by the Netherlands. It has instead adopted a neo-regulationist approach (Danna 4). The Netherlands does not wish to stigmatize the prostitute and has chosen against the moral condemnation of prostitution. The profession of prostitution became an official legal profession in 1988, and in that same year prostitutes joined the Service Sector Union ("Factbook on Global Sexual Exploitation: The Netherlands"). They have been required to pay income taxes since 1996. However, it is not required that prostitutes be registered and get regular health checks. The Brothel Act of 1911 outlaws pimping and facilitating prostitution to protect prostitutes from exploitation ("Dutch Policy of Prostitution"). This technically applies also to maintaining a brothel, however, this law is not enforced as brothels advertise openly ("The Situation in the Netherlands"). Furthermore, Dutch cities have the option to regulate prostitution as they see fit. In practice, they often confine street prostitution to certain parts of town and impose conditions on brothels.

### **PROSTITUTION POLICY OF OTHER EUROPEAN UNION MEMBER STATES**

Since 1949 ten countries have either signed the United Nations Convention for the Suppression of Trafficking in Women and the Exploitation of Prostitution (these countries included Belgium, Finland, France, Italy, Portugal, Spain) or have adopted similar laws of the convention allowing for the closing down of brothels and the criminalization of aiding and abetting (Denmark, Ireland, Sweden and the United Kingdom) (Danna 2). After the United Nations Convention for the Suppression of Trafficking in Women and the Exploitation of Prostitution, France, Belgium, Italy and Spain all ended systems for the regulation of prostitution and adopted a strict form of abolitionism (Danna 3). This effectively excluded the possibility that prostitution could be organized without coercion or exploitation, and thus illegalized prostitution. However, in 1995, Spain's new Penal Code allowed for the implementation of a more liberal version of abolitionism that does not restrict or criminalize activities related to prostitution, thus making organized prostitution legal (Danna 3). It has instead opted to focus its efforts and stopping the exploitation of women. France has also amended its position on prostitution. While prostitution is now legal, the money earned by the prostitute cannot be spent on any one else but her self. If she is married and buys food for the family, her husband can be prosecuted as a customer (Hayes 3). Therefore, even though prostitution in France is legal, it is not respected as a formal occupation.

Besides the Netherlands, abolitionism is rejected by Austria and Greece, which have regulations that require licenses and compulsory health checks, and Germany, which holds the same approach as the Netherlands (Danna 4). While German prostitutes have to pay taxes, prostitution does not have the status of a regular profession yet, such as healthcare and unemployment benefits (Hayes 3).

Ireland and Great Britain, both abolitionist counties, allow the prostitution of a woman, if she is indoors and does not advertise (Danna 4). In 1999, Denmark, also an abolitionist country, decriminalized prostitution as primary source of income, but failed to recognize it as legitimate profession (Danna 4). Sweden has adopted more of a form of prohibition. It opted to criminalize the act of offering money in exchange for sex, and while the prostitute is not subject to prosecution, prostitution is made impossible by law (Danna 4). Finland decriminalized prostitutes under police surveillance (Danna 4). While Belgium may be considered in the abolitionist camp, it has adopted laws similar to Spain and has chosen to focus on limiting exploitation (Danna 4).

### **PROSTITUTION POLICY OF EUROPEAN UNION**

In 1999, the European Council met in Tampere, Finland. There, they signed the Amsterdam Treaty, which called for "an efficient and comprehensive approach in the fight against all forms of all (transnational) crime" (Hayes 2). This fight against cross-border crime within the European Union is focused, among other things, on prostitution. The EU is particularly interested in human trafficking from Eastern Europe and the organized crime circles connected with prostitution. However, a serious problem with the EU's anti-trafficking crusade is that it fails to acknowledge that many women from Eastern Europe come to Western Europe voluntarily and willingly; they are not tricked or kidnapped and forced into prostitution (Hayes 7). There is simply more money to be earned in Western Europe. The anti-prostitution views of the EU compel many women to claim that they were forced into prostitution in order to gain asylum (Haves 7). A more effective way of improving the harmful effects of prostitution would simply be to introduce legalized and sanitized brothels in all EU member states, thereby reducing the market and scope for criminal gangs to make profits in the trafficking and pimping of prostitutes in Europe (Hayes 7). This would be a far more effective way of protecting the rights of the prostitute, ensuring her pay, and protecting her from diseases than current practices.

# CONCLUSION

The European Union is comprised of 25 countries, each with its own ideals and standards. Some are religiously dominated, while others are more secular. These differences in beliefs and opinions lead to conflicting policies throughout the union.

As described earlier, the Netherlands has a considerably lenient drug

policy when compared to that of other member states. However, it is anything but lenient in its efforts to regulate the transportation and exportation of drugs across its borders. The Netherlands is working with the policies of the European Union to prevent the movement of drugs to bordering countries, but 'dissolution' of borders and the lack of customs regulation makes this task difficult. However, the Dutch are uncompromising when it comes to their drug policy; it is something they highly value and it sets them apart from other nations.

Similarly, the Dutch policy of gay marriage is unique and embedded in the values of the society. When compared to other policies, the lack of uniformity in gay marriage laws makes it impossible for spousal rights to be carried from one member state to another. Thus, if one partner were transferred by his employer to Italy for example, the marriage would not be recognized by the Italian government. This could create problems for the other partner in obtaining a residence permit (Asher 1). The differences between the policies of the member states are another example of how different the states can be. It is little surprise that the liberal Netherlands would have conflicting policies with Catholic Italy or Orthodox Greece. With these opposing views, it is no wonder that goods can cross borders easier than same-sex couples can.

Another one of the main discrepancies between the Netherlands and other European Union states is prostitution. The debate on the legality of prostitution, as with most social issues, will not be easily solved. Most countries recognize there are significant problems with the regulation and enforcement of prostitution. With the new addition of many Eastern European countries into the EU, hopefully fewer people will be forced into prostitution and the standards established by the Netherlands will be replicated. However, it seems as if many of the more conservative nations, particularly the religious ones, will be less likely to adopt the liberal policies of the Dutch.

After examining the social polices of different European Union member states, it is easy to understand why some of these countries would reject the European Union Constitution. Not only do the policies and values of the countries vary greatly, but how those policies influence the national identity also vary. The predominantly Catholic countries of Italy and Spain are known for being more socially conservative, while the more secular Netherlands is infamous for its liberal and tolerant policies. From drug laws to gay marriage to prostitution, there seems to be little middle ground between the ideals of the left and the right. With that said, it is no wonder that the Dutch would feel threatened by the implementation of a European Union Constitution, especially one in which their social values were undermined or not ensured. As pointed out by Gerard Delanty, in *Inventing Europe: Idea, Identity, Reality,* the idea of a unified Europe seems appealing, but the reality of it is quite the opposite. Perhaps Europe and Europeans have far less in common than what one would think at first glance. Only time will tell if the Dutch, and all Europeans, will accept the Constitution. Until then, differences between the social polices will have to be accepted.

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