

Negotiating Post-Colonial Legacies: Conflicting Justice Notions in the Belgian Case

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Abstract

Do parties handle conflicting justice notions when they negotiate about the legacy of a colonial past? This question is at the core of an increasing number of judicial and non-judicial processes around the world. In settler-colonial societies, this debate is far from new. The objective of this article is neither to consider the general debate about reparations nor to study theoretically how communities can digest “a past that is hard to swallow.” It is to detect the conflicting justice notions mobilized in the negotiation process when seeking to come to an agreement or other kind of conclusion to the process. Do the parties explicitly refer to these conflicting justice notions or do they avoid them? To address this question, the article focuses on one in-depth empirical case study, namely the Belgian case.

Keywords

justice – negotiation – post-colonial legacy

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The colonization was in many ways coproduced by colonialists and colonized people. Together, placed in different positions, they shaped a past. However, having a common past does not necessarily mean having a shared past.

ACHILLE MBEMBE²



Do parties handle conflicting justice notions when they negotiate about their past colonial legacy? This question is at the core of an increasing number of judicial and non-judicial processes around the world. From Paris to Canberra, London, Ottawa, Berlin, Washington and Wellington, official representatives face divergent, if not incompatible, expectations regarding the most appropriate ways to cope with historical grievances. In settler-colonial societies, this debate is far from new. In 1975, the New Zealand government established a commission of inquiry to investigate actions or omissions of the British Crown that breach the promises made to Maori in the Treaty of Waitangi (New Zealand founding document). In 1991, the Australian government instigated a reconciliation process between indigenous and non-indigenous people. Between 2007 and 2015, the Truth and Reconciliation Commission of Canada heard from more than 6,500 witnesses to create a historical record of the residential school system, and a rapprochement between Canadians and indigenous peoples. Since then, the number of committees in charge of writing reports about colonial legacies has increased steadily.

Coming to Terms with the Past

In Western Europe, the ongoing debates concerning Belgian colonization in the African Great Lakes, French colonization and the independence war in Algeria, and mass violence at the end of the Dutch colonial empire in Indonesia illustrate a common trend. Most victims' descendants living in the three countries denounce long-lasting stereotypes and share common expectations, that is, for public apologies and reparations. Even opponents to reparations emphasize

² "La colonisation fut, à bien des égards, une coproduction des colons et des colonisés. Ensemble, mais à des positions différentes, ils forgèrent un passé. Mais avoir un passé en commun ne signifie pas nécessairement l'avoir en partage" (Mbembe 2013: 13).

similar arguments in Brussels, Paris, and Berlin. As for official authorities, they all commissioned reports on the return of looted art to their former colonies. In France, the Sarr-Savoy Report (2018) on the restitution of African cultural heritage was presented to French President Emmanuel Macron in November 2018. Two years later, a report written by experts from the *Raad voor cultuur* for the Dutch Ministry of Culture (2020) recommended that the Netherlands return looted artifacts to the countries from which they were stolen. In Belgium, the “restitution policy” of the Royal Museum for Central Africa (2020) recognized that its collections were acquired in the context of a policy of legal inequality.³ Thus, in the three countries, official representatives are gradually acknowledging their historical responsibility vis-à-vis the colonial past. This development has been reinforced by the progressive opening of the archives, and the arrival of a new generation of historians and descendants in the respective diasporas.

The objective of this article is neither to consider the general debate about reparations pro and con (Brophy 2006), nor to study theoretically how communities can digest “a past that is hard to swallow” (Conan & Rousso 1994). Rather, it is to detect the conflicting justice notions mobilized in the negotiation process when seeking to come to an agreement or other kind of conclusion to the process. Do the parties explicitly refer to these conflicting justice notions or do they avoid them? To address this question, the article focuses on one in-depth empirical case study, namely the Belgian case.

In-Depth Empirical Case

This case is emblematic in three regards. First, the Belgian colonial period is often depicted as a kind of “model in the history of colonization” because of the degree of brutalization reached (M'Bokolo 2003: 577). More recently, this was underlined again when the colonization of the Congo was described as “one of the most sordid eras in the history of European colonialism” (Pronczuk & Zaveri 2020). Since Conrad's *Heart of Darkness*, King Leopold II has become one of the symbols of colonial brutality. Unsurprisingly, his statues were systematically targeted by recent protests against racism. Besides the extent of colonial violence, the Belgian case is particularly significant for a second reason: the ambition of the negotiation process that is supposed to lead to decolonization. The mandate of most commissions put in place to come to terms with a colonial past is typically related to a particular aspect of this past. In

3 In 2020, the Federation Wallonia-Brussels commissioned an expert report by the Belgian Royal Academy on the same issue.

the Belgian case, the mandate of the Parliamentary Commission established in 2020 is extremely broad. It does not only concern past injustices (that is, the crimes committed in Congo from 1885 to 1960, and in Burundi and Rwanda from 1919 to 1962), but also contemporary injustices (that is, current discrimination against Afro-descendants in Belgium). This twofold ambition allows us to observe the scope and limits of a maximalist approach.

Third, Belgium is a deeply divided country where there are frequent doubts as to how long the country will survive. This case is therefore of particular interest for studying the potential impact of institutional vulnerability on the negotiation process. Interestingly, the negotiation process related to Belgium's colonial past coincides with the negotiation process about state and constitutional reform. In other words, the same political parties (including separatist political parties) sit at the negotiation table to reach an agreement on both the country's past and future, which makes it almost a textbook case.

To understand how conflicting justice notions are mobilized in the negotiation process about the colonial legacy, various approaches can be adopted. From a political theory perspective, a series of theoretical problems result from backward-looking accounts of distributive justice (Rawls 1958, 1971; Thompson 2002; Torpey 2006; Bull 2008). From a cultural studies perspective, the case study contributes to a better understanding of the notion of "postcolonial justice" (Spencer & Valassopoulos 2021). From a historical perspective, this case illustrates the long-term transformation of relationships between former colonial powers and their former colonies (Féron & Rosoux 2014; Owensby & Ross 2018). From a transitional justice perspective, the case exemplifies the dynamics to rectify established democracies (De Greiff 2006; Maddison & Shepherd 2013; Aertsen & Pali 2017). Beyond these specific viewpoints, the goal of this article is to examine conflicting justice notions within international negotiation practices (Adler & Pouliot 2011; Albin 1993, 2001, 2003, 2015; Albin & Druckman 2014; Zartman & Kremenjuk 2005).

The observed negotiation dynamics can be presented as a set of Russian dolls – a collection of wooden dolls of decreasing size placed one inside another. The smallest doll refers to the negotiation process taking place within the Commission established in 2020 by the Belgian Parliament. It is composed of 19 Belgian MPs who represent all the elected political parties from the far-right to the far-left. Some are strongly in favor of the work being done by the Commission, while others are entirely opposed to it. Members of the Commission rapidly selected a panel of ten experts to write a report that would set the guidelines for the Commission. This panel – which constitutes the second Russian doll – included academics and civil society representatives. The selection of this reporting committee provoked a series of reactions at the

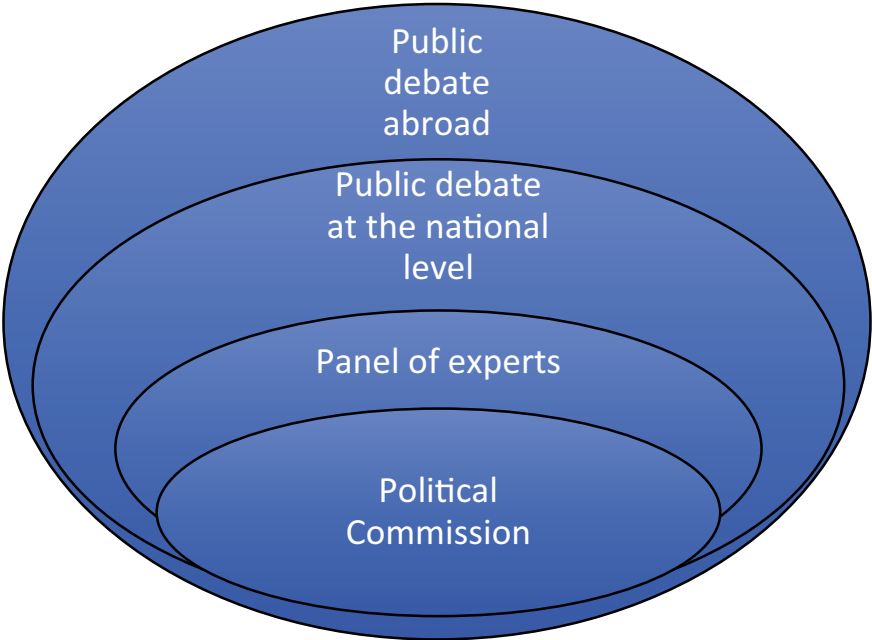


FIGURE 1 Negotiations in Russian dolls

national level (in academia and civil society associations) and at the international level (in Burundi, Congo, and Rwanda). These two broader circles form the largest Russian dolls in which informal negotiations take place. This study focuses, in particular, on the negotiations within the panel of experts from August 2020 to July 2021.

Research Posture: Walking the Tightrope

The analysis is divided into three parts. The first underlines the historical context. It focuses on the evolution of official references – or the lack thereof – made to the colonization of the Congo. The second describes the embedded processes of negotiation within the Commission and the panel of experts. The third concentrates on the conflicting notions of justice and shows how they are empirically mobilized. From a methodological perspective, the analysis combines three main approaches. The first is an open, complete, and internal participant observation within the panel of experts (Platt 1983). The second is a survey launched as an initial consultation process by the panel of experts, and based on open questions related to history, reconciliation, reparations, the link between colonialism and racism, and participation in the decolonization

process. Within a period of six weeks during the Fall of 2020, 498 individuals chosen by the experts participated in the survey. The third approach results from the analysis of official speeches, parliamentary documents, news articles, and commemorative monuments related to Belgian colonization.

For two decades, I have carried out research on the political uses of the past in various post-conflict settings. I typically consider myself a third party, trying to understand the interactions between the main protagonists. In all cases, I examine my own beliefs, judgments, and practices during the research process to be as aware as possible of their potential influence on my analysis. My personal involvement in the experts panel implied an even more systematic reflexivity. This experience paradoxically led to two distinct postures. On the one hand, my position as a white Belgian scholar did impact the negotiations between experts. The tensions and sometimes contradictions that we faced within the panel forced me to question my own, taken for granted, assumptions.⁴ On the other hand, the succession of meetings with Belgian Afro-descendants' associations, former colonials' associations, and Burundian, Congolese and Rwandan scholars and practitioners made me feel like I was a third-party again, in a situation similar to a peacekeeper in a post-conflict setting. The vast majority of these meetings (inside and outside the experts panel) share common characteristics: the distributive dimension of the processes, the highly emotional character of the dynamics, and the pervasiveness of justice claims.

4 One anecdote is particularly revealing in this regard. The variety of approaches adopted by all of us explains why we eventually opted for writing individual sections rather than one joint report that all would have signed. While I was writing my piece of the report, I quoted the following sentence from Victor Hugo: "The dead are invisible, but they are not absent" (Hugo 1985). At the end of the writing process, we all shared our respective sections. A couple of minutes after sending my text, I received a message from one of the experts alerting me that Victor Hugo was racist and, therefore, that I should not quote him. My first reaction was to be surprised since it seemed to me that the words of Hugo were particularly appropriate to depict the long-term consequences of any political violence. Moreover, they were pronounced in 1865, on the grave of the young fiancée of Hugo's son, in a context that had nothing to do with colonialism. Yet, after reading Hugo's *Discours sur l'Afrique* (from 1879 and reflecting the racism that made colonialism possible), I understood why some of the experts felt offended and asked me not to refer to him in the report. I was simply not aware of this particular facet of Hugo. Other remarks on "Whites" depicted as "proud descendants of colonists" did not seem to be particularly constructive. However, I considered them as eye-opening, and therefore significant.

Historical Context

The aim of this section is not to present a thorough history of Belgian colonialization. Instead, it focuses on the ways in which this episode has been represented, and how these portrayals have evolved over time. A few facts merit to be made regarding the specificities of Belgian colonization. First, unlike French, Dutch, or British colonization, the creation of the Congo was “one man’s personal adventure” (Stengers 2007: 45). Between 1885 and 1908, the *Etat Indépendant du Congo* (EIC – Congo Free State) was in fact the personal property of King Leopold II. Whereas in Belgium, his constitutional role prevented him from taking any public action without a minister’s approval, in the colony, the King enjoyed power often described as absolute. Only in 1908, mainly due to international pressure, did the Congo officially become a Belgian colony. Second, the territory of Ruanda-Urundi was administered by Belgium from 1922 to 1962 without being a colony in the strict sense of the term. From 1916 to 1922, it was under military occupation and later became a Belgian-controlled Mandate under the League of Nations. After World War II, it became a United Nations trust territory.

Throughout the first half of the 20th century, Belgian authorities represented the colonial past in such a way as to glorify the country’s achievements. Belgian school textbooks were remarkably similar to the equally uncritical *Petit Lavis* schoolbook used by schoolchildren in France. All emphasis was placed on the benefits of colonization, since the concept of national identity made it inconceivable for crimes to be committed on behalf of the State. In the view of Belgian authorities, Belgium’s administration of a territory 80 times its size gave the impression to the outside world of the workings of a “model colony.”

Following independence and the shedding of some illusions, Belgium’s colonial history was scarcely referred to officially. State representatives systematically erased the bitter criticisms that had been leveled for decades against colonization. This concealment policy was excused either by the need to ‘normalize’ relations with the former colony or by the slogan “Africa for the Africans.” Far from the *Belgium caput mundi* approach (Demoulin 2000: 14), the Belgian authorities tried to avoid even the slightest accusation of neo-colonialism. Within just a few decades, aspirations had changed completely. As former Belgium’s prime minister, Jean-Luc Dehaene, explained in May 1999, “the colonial past is completely past.” “There is really no strong emotional link anymore. It does not move the people. It’s part of the past. It’s history” (quoted by Bates 1999).

Three months later, the new government of Guy Verhofstadt would radically change this approach and encourage a critical acceptance of the country’s

colonial heritage. The aim of the new Minister of Foreign Affairs, Louis Michel, was clear: to promote adult relations with the African Great Lakes Region. To do so, he would acknowledge that “former colonial powers, such as Belgium, owe a large part of their development to their former colonies,” and “it was thanks to ‘these colonies’ that we were able, in part, to create the country we are today, the twelfth richest country in the world – the fourth, if we follow the UN classification system” (Michel 2003: 77–94). This kind of acknowledgment became one of the spearheads of the “ethical diplomacy” policy advocated by the minister. In 2000, Belgian representatives launched a Parliamentary Commission to determine the exact circumstances of the murder of Patrice Lumumba, and the possible implications for Belgian political responsibility.⁵ The Commission report led to official apologies by the Foreign Affairs Minister who acknowledged the “apathy” and “cold indifference” of the Belgian government at the time. Beyond this specific event, Michel explicitly referred to the existence of historical “injustices.” In presenting the “new Partnership for Africa’s Development” as a way to free Africa “from an unjust destiny that has not ceased to inflict humiliation and misfortune upon it,” he insisted on the need “to put an end to the injustices of your history” (United Nations 2002).

This approach was again overturned in July 2004 with the appointment of a new Foreign Minister, Karel De Gucht. His attitude was far from apologetic and he took an admonishing tone in his speeches. During his official visits to Central Africa, De Gucht stirred up intense controversies by referring explicitly to the devastating effects of corruption, impunity, and violence in the Democratic Republic of Congo (DRC). Rather than stressing Belgium’s “responsibility” towards its former colony, the talk was now of the need to stop being “indulgent” (2008 quote in Rosoux 2014: 33–34). De Gucht wished to put aside any “misplaced” feelings of guilt. By way of response to accusations of paternalism, he recalled in 2005 that colonization also involved mass literacy campaigns, the setting up of an educational system, and generalized health coverage (Rosoux 2014: 35).

Almost 15 years later, this uncritical attitude was considered inappropriate. In 2019, former Belgian Prime Minister Charles Michel apologized for the kidnapping, segregation, and forced adoption of thousands of mixed-race children throughout Belgian colonial Africa. One year later, the murder of George Floyd in Minneapolis and the subsequent “Black Lives Matter” movement impacted the Belgian political scene. On 7 June 2020, a demonstration brought together more than 10,000 protestors in Brussels despite pandemic

5 Patrice Lumumba was the first Prime Minister of the independent DRC. He was assassinated on 17 January 1961.

proscriptions. Three weeks later, King Philippe marked the 60th anniversary of DRC's independence, expressing his "deepest regrets" for acts of violence and brutality inflicted during his country's rule over the Congo. At approximately the same time, the Belgian Parliament established the special Commission to confront its colonial past.

An Embedded Negotiation Process

In his seminal article on turning points, Druckman (2001; 2004) defined a concept that is instrumental in describing the negotiation process launched at the beginning of Summer 2020. As already mentioned, the largest anti-racist demonstration in Belgian history precipitated a turning point that catalyzed the decolonization movement. For decades, the small size of the Congolese, Rwandan and Burundian diasporic groups in Belgium explains the marginal influence they had on the public debate. However, the progressive arrival of refugees coming from the African Great Lakes put into question the predominance of a white, Eurocentric perspective on the colonial past (Bentrovato & Van Nieuwenhuyse 2020). In 2004, a group of activists cut off the hand of a "grateful Congolese" kneeling before Leopold II in a famous monument in Ostend. From 2010 onwards, with the renovation of the Royal Museum of Central Africa, African diasporic groups in Belgium tried to take a leading role in society's exploration of the colonial legacy.⁶ Their voices were amplified in 2019 by the final report of the UN Working Group of Experts on People of African Descent.⁷ This report urged Belgium to recognize the injustice of its colonial past and to tackle the root causes of present day racism (see below). A couple of months later, during the protest of June 2020, colonial monuments were vandalized. The frequency of those incidents rose after the demonstration. The pressure – both internal and external – was such that official representatives decided to undertake active agenda-setting for a critical colonial memory culture. Besides the King's letter to the Congolese Prime Minister, several colonial monuments were removed from public spaces in various cities and university campuses. For decolonization advocates, this succession of events created momentum to raise the issue of past and enduring injustices.

6 On the work of local activist groups, see the websites of Collectif Memoire Coloniale, Bamako, Change (ASBL), Black Speaks Back (BSB), Decolonize Belgium, and Hand in Hand Against Racism.

7 On the report, see <https://digitallibrary.un.org/record/568010?ln=en#record-files-collapse-header>.

Turning Point

The pace of decisions that followed was very fast. Ten days after the 7 June demonstration, the speaker of the federal Parliament announced that the House of Representatives had decided to hold hearings on the troubled history of Belgium in the Congo. The proposal obtained the support of all political parties except the Flemish nationalist *Vlaams Belang*. At this initial stage, the notion of justice did not seem to be predominant. To Parliament chair Patrick Dewael (Open VLD), what Belgium needed was truth and reconciliation. He therefore presented the South African Truth and Reconciliation Commission (TRC) as a model (quoted in Hope 2020a). This reference can be surprising if we consider the numerous contrasts between the Belgian and South African cases (regarding the nature of past violence, the political regime, and above all, the timing, most of the South African witnesses being still alive at the moment of the TRC). Five days later, the same spokesperson underlined justice as a goal in considering reparations: “Anyone who makes a mistake, says our legal code, must compensate for the damage” (quoted in Hope 2020b).

At this stage, three main procedural issues were discussed in the Federal Chamber. First, the precise terms of reference for the Commission: should it be the responsibility of an existing parliamentary committee or a new one set up for the occasion? Second, the mandate: should the agenda be restricted to the first colonial period (when the Congo was the personal property of Leopold II), or related to the Belgium’s entire colonial past? Third, the role of experts: should they come from academia and/or from civil society militant groups? Besides these procedural issues, one substantial question was raised by all voices: are official apologies appropriate? If so, would it be enough? On this precise question, there was no consensus at all between the political parties. What seemed to be an obvious goal for most political parties located on the left of the political spectrum was considered as indecent for others.

To address these questions, the members of the Commission found themselves facing all the tensions that undermine Belgian national identity: Catholics versus secularists, French-speakers versus Dutch-speakers, opponents versus defenders of the Royal institution, and left-wing versus right-wing political parties. To prioritize their main objectives, the parliamentarians appointed a panel of ten experts in August. Their task was to prepare the work of the Commission in writing a report on historical issues (what was the historical consensus on colonization, the grey areas and the historical gaps?) and reconciliation mechanisms (what are the lessons learned from other countries that tried to deal with their colonial past?). Their mandate covered past and enduring injustices. Admittedly, the mission was ambitious. Yet, the main challenge to initiate the work did not lie in the magnitude of the task, but in the polemic related to the experts’ legitimacy.

Experts' Legitimacy

The experts who were appointed came not only from academia, with backgrounds in history, political science, law, and theology, but from advocacy and practitioner groups as well. Six members came from academia (from Belgium and the United States). The four other members were representatives of civil society associations (NGOs, diasporic associations, and the church in Burundi).⁸ These selections made by parliamentarians were immediately questioned and criticized in the national and international media. The first point came from civil society associations which blamed the Commission for the political nature of its selection. Their main question can be summarized as, "Why them and not us?" The point in this criticism did not only result from a potential competition between representatives of diasporic groups; it also revealed the gap between academic expertise and experience. As one young representative of a diasporic group said, "We are the real experts! What is at stake is not an academic issue. It is our life."⁹

Besides this significant argument, the main polemic came from Kigali where major concerns were expressed about two points. The first relates to the absence of Rwandan representatives on the panel. The second regards the impartiality and moral integrity of one of the experts. To the Rwandan authorities, the appointment of one representative of *Jambo* association was not done independently, but was overtly political. Arguing that some members of *Jambo* deny the genocide of the Tutsi in Rwanda, they considered that the presence of a representative from this association within the experts' panel discredited the whole Commission. The tone of the criticisms expressed in the Rwandan media was sharp, as suggested by the terms used: "outrage," "disgrace to the Commission," "usurpation of the expert title," and "rubbing salt in a wound of a genocide survivor" (Ntirenganya 2020). Following this polemic, *Ibuka*, the association of survivors of the Tutsi genocide in Rwanda and the Burundian collective, refused to collaborate with the experts. As this initial tension reminds, the challenge of reconciliation in the Great Lakes, and in Rwanda in particular, was directly reflected in the preparatory work of the Commission.

8 The members of the panel were Zana Mathieu Etambala (historian at Leuven University), Gillian Mathys (historian at Ghent University), Elikia M'Bokolo (historian at the EHESS in Paris and professor at Kinshasa University), Anne Wetsi Mpoma (art historian and member of the anti-racist association *BAMKO*), Bishop Jean-Louis Nahimana, former president of the Burundian Truth Commission, Pierre-Luc Plasman (historian from the University of Louvain), Valérie Rosoux (philosopher and political scientist, professor at UCLouvain – FNRS), Martien Schotsmans (lawyer, former director of the NGO *RCN Justice et Démocratie*, mainly active in the African Great Lakes), Laure Uwase (lawyer and member of the Rwandan diasporic association *Jambo*), and Sarah Van Beurden (historian and professor at Ohio State University).

9 Survey, Brussels, 16 February 2021.

A second criticism came from a group of sixty historians, lawyers, colonial experts, and representatives of diasporic groups who expressed their skepticism about the presence of militant representatives among the experts and called for an independent report (Balace et al. 2020). They said that the Commission took the risk of instrumentalizing historical research for political goals. According to them, the aim of “militants” or “activists” is not to search for historical truth, but to remain loyal to their own group and to gain power. Along the same line, members of the Commission were also criticized for not including Rwandan and Burundian historians who could have contributed to avoid any partial research posture. Lastly, some French historians explained that foreign historians should have been selected as well to help Belgian and Congolese experts step back and consider Belgian national history with impartiality. In brief, the experts’ legitimacy was systematically questioned and often disqualified as political appointments (Sarkin & Bandari 2020).

Taming Process

Beyond these polemics, the variety of profiles chosen by the Commission impacted the concrete work of the expert panel. The plurality of backgrounds and generations was undeniably a source of richness and reflexivity. Yet, it implied a “taming process” between us. All of us were positioned on a continuum between two extreme points. For some, the main objective was to share research findings and to clarify the potential options from which the Commission members were to make decisions. For others, the aim was to change the asymmetry of power and to convince the Commission members. This group adjustment required some flexibility on all sides in order to learn how to communicate among us, establish our methodology and ethics, and create sub-groups (history, reconciliation, links with diaspora). This initial phase led to a second phase of consultations conceived as a preliminary step to the consultations and hearings organized by the Commission. One of the objectives of the consultations (based on interviews and surveys) was to cope with the under-representation of historians of Congolese, Burundian and Rwandan origin in the group of experts. The message sent to the Commission was that experts from the Great Lakes could not be reduced to the role of local advisors or informants, and needed to be on an equal footing with Belgian colleagues.

The analysis of answers and narratives collected through the consultations led to the writing phase. After numerous discussions about the level of integration of our work, we decided that each expert would write a personal section of the report. This decision did not prevent us from collaborating or even co-signing some contributions. However, the guarantee that we could each share our findings without making any compromise appeased the level

of tensions within the group. At first glance, this decision may give the impression that there was ultimately no negotiation process between us. Yet, some particular issues were so fundamental that some experts threatened to leave if these points were not accepted. This attitude, based on a kind of informal veto, restricted the possibility to express radically divergent views in various sections of the report. Months of debate allowed us to clarify our respective security points on most significant issues. A phase of adjustment, characterized by concessions and counter-concessions was therefore necessary before writing a report with a common introduction and conclusion.¹⁰

The most significant lesson learned from the consultations regards the significance of the (in)justice theme in most narratives collected in Belgium, Burundi, Congo, and Rwanda. All parties explained that they experienced a “sense of injustice” (Welch 2023). Afro-descendants living, and often born, in Belgium insisted on focusing on structural racism that directly results from colonialism. Congolese, Rwandan, Burundian participants in the consultation emphasized the brutality of the colonial oppression. Former colonists and their descendants reminded that they did not deserve moral disapprobation and that they “also have victims on [their] side.” Defenders of the royal institution argue that Leopold II was not a genocidist, and that it was unfair to ruin his entire reputation by reducing a complex episode into a Manichean story. Representatives of the Catholic Church highlighted the “positive aspects of colonization” and considered that missionaries could not be blamed in a collective way. Representatives of Belgian companies that were active during the colonial period underlined that their actions “were perfectly fair at that time.” As this all suggests, most positions were framed in terms of injustices.

These conflicting views on the colonial past explain the impossibility of any consensual narrative. The contradictions between causal stories related to specific solutions remind us of the importance of the historical perspective to avoid manipulation and denial. Nonetheless, the work carried out by historians, as necessary as it can be, does not constitute a panacea. Their findings allow us to disqualify abusive readings of the past, but they do not give access to *the* truth. In this respect, it would be naïve or totalitarian to impose the “right” narrative of the past that would magically homogenize the representations and emotions of all citizens. Accordingly, commissions established to deal with the past do not embody “a kind of supra-political ‘common good’ that benefits all citizens” (Bakiner 2016: 229). The question is then: should the Commission accommodate all groups in the same way? Should it make

10 To read the full report in French or Dutch, see <https://www.dekamer.be/FLWB/PDF/55/1462/55K1462002.pdf>.

trade-offs between incompatible expectations? On the basis of which criteria should it decide what the “right” compromise is? These interrogations are all but theoretical, since the answers that are given to them constitute the indispensable premises to construct the problem, set the agenda and design the process (Gusfield 1981).

Conflicting Notions of Justice

The core of this article concerns the notions of justice that were mobilized, and the way they were handled in the earliest phases of the Commission. As was suggested, most parties referred to justice as one of the main goals of the Commission. Similarly, external observers frequently presented the Parliamentary initiative as “Belgium’s opportunity of addressing the injustices caused by its colonial past.”¹¹ So, justice and fairness issues were decisive in structuring the talks in the Parliament where there is still no agreement on the allocation of duties, rights, benefits and costs which everyone can accept as legitimate.

It is striking that all parties presented their positions in terms of justice even though the official mandate of the Commission does not even refer to this notion. The main objective which is explicitly highlighted in the mandate adopted by the Parliament is reconciliation – not justice. This discrepancy suggests that the emphasis upon justice results from other major frames than the structure of the Commission itself. As was already mentioned, one of these frames is the massive call for justice and reparation that followed the murder of George Floyd. Similarly, most former colonists and their descendants who expressed their views described themselves as being unfairly treated.

If we consider the opinions collected during the exploratory consultations, we can distinguish between two main attitudes towards colonialism. Interestingly, both attitudes define their position in terms of justice (Butt 2008: 75). The first attitude insists on the lasting effects of historical injustices. It considers that past wrongdoings undermine the legitimacy of contemporary resource holdings, which justifies the need for reparations. The second attitude puts the emphasis on the inappropriateness of the use of current moral standards to judge the past. For Belgians who came back from Congo in 1960

11 See, for instance, the policy brief of *Avocats Sans frontières*: <https://www.asf.be/blog/2020/07/07/truth-and-reconciliation-commission-belgium-faced-with-the-opportunity-of-addressing-the-injustices-caused-by-its-colonial-past/>, 7 July 2020.

and for most of their descendants, it would be unfair to be judged on the basis of moral standards that they were not familiar with.

The gap between these two attitudes explains the lack of consensus on both substantive and procedural principles. Regarding substantive principles, the consultations indicate the absence of any agreement about potential outcomes. On the one hand, some anti-racist militants call for an equitable redistribution of resources. On the other, a vast majority of actors implicated in the colonial episode (first and second generations) categorically refuse the idea of retrospective responsibility. Procedural principles might seem more consensual at first glance. However, the negotiations that took place within the Commission and the experts' panel indicate that the parties do not share the same view on organizing public hearings. To grasp what looks like a jungle of tensions, it is useful to better understand how principles of justice determined agenda-setting, parties, and rules in this particular case study (Albin 2003: 365–385).

Agenda-Setting: No Zone of Potential Agreement

The debates provoked by the announcement of the creation of the Parliamentary Commission showed that the issues to be placed on the agenda were highly controversial. The dissensus about the critical goals of the Commission explains the highly distributive dimension of the process. Most parties identify three main issues, namely truth, reconciliation, and justice. Regarding truth, two distinct opinions coexist. For some, the truth about colonialism is already largely known, “the past is past,” and it is therefore far more essential to concentrate on current and future national challenges. They emphasize the need to look forward, not backward. Conversely, other parties consider that the past is still “haunting” the present. They do not deny that most historians agree on the main aspects of the Belgian colonial past. Nonetheless, they argue that this academic knowledge is not sufficiently diffused and known within society. To them, it is crucial to adjust school textbooks and launch a national debate on the topic.

As for reconciliation, the opinions are once again radically divergent. Some participants in the survey explain that there is no need for reconciliation since there was no conflict: “The Congolese are not angry at us. Not at all.”¹² This position is obviously not shared by the vast majority of individuals who were part of the consultation. In the Great Lakes, Congolese, Burundians and Rwandans call for reconciliation based on acknowledgement of the somber aspects of the colonization, reminding some of particularly painful events such as the

12 Survey, Brussels, 7 October 2020.

forced transfer of populations or the denigration and progressive destruction of their ancestors' religious beliefs. Besides this position, Afro-descendants' associations in Belgium systematically link past and present discriminations. For them, reconciliation is not on the agenda if there are no structural changes that concretely impact their life. What they want is "truth and justice."¹³

Of the triptych 'truth, reconciliation, justice,' justice is the most divisive issue for two main reasons. First, as already mentioned, there is no consensus on an overarching standard which defines what justice means. Even if all parties use of the language of justice (from far-right to far-left parties), there is no zone of potential agreement between those who associate justice with redress and reparations, and those who do not even accept the appropriateness of apologies. The same comment can be made regarding restitutions. Presented as a *sine qua non* condition of genuine decolonization by some, they are not even tolerated as a potential option by others. Second, justice as an issue triggers intense emotions on all sides. These attitudes represent two extreme points of a long continuum where all affected groups position themselves. On the one hand, representatives of former colonialists' associations feel blamed and disrespected. They do not accept to play "a tricky game" that would ultimately lead to an "unfair and indecent" transfer of money. To the spokespersons of Afro-descendants' associations, on the other hand, this attitude demonstrates that nothing has changed since colonial times. To them, official apologies are necessary, but not sufficient. They can correct a public record and assign responsibility. However, they may seem insincere and even obsequious if they are not accompanied by direct and immediate actions to stop current discriminations.

The disagreement between these two positions does not take the form of a rational debate, but of a deadlock characterized by anger, rage, resentment, shame, and guilt. The ultimate bone of contention that all parties seem to keep in mind, even though it is rarely made explicit, is money. At this stage, the respective perceptions are incompatible. Leaders of large companies that were active during the colonial period see any reference to compensation with suspicion. In contrast, Afro-descendants' representatives underline the need for compensatory justice. To them, the notion of compensation is not based on money, but on dignity. Current discrimination, they insist, are directly related to the colonial past and should be seriously taken into account. One of their strongest arguments result from the report of the UN Working Group of Experts on People of African Descent (2019). To the experts, "Belgium must recognize the true scope of the violence and injustice of its colonial past in

13 Brussels, discussion with representatives of *Change* on 16 February 2021.

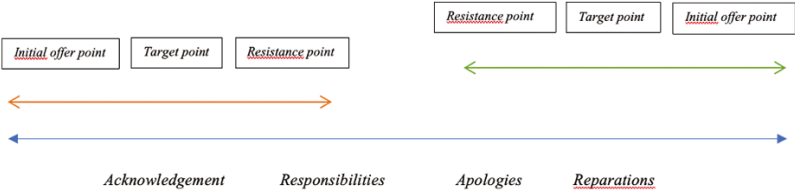


FIGURE 2 Dealing with the past

order to tackle the root causes of present-day racism faced by people of African descent.”¹⁴ This report led to an internal debate, within diasporic groups, about calculating the costs of past exploitation. According to the compensatory principle, resources should be “distributed to indemnify undue costs” inflicted during the colonial past (Albin 2003: 371). The question is then: whose resources and how much?

From this perspective, agenda-setting at the level of the Commission is likely to lead to an impasse. If we consider agenda-setting within the experts’ panel, the gap was not as wide as the continuum previously described suggests (see Figure 2). The decision not to write one joint report signed by all experts from the introduction to the conclusion, but to write individual sections of the report allowed us to handle conflicting notions of justice. Rather than prioritizing them, we presented them as various options that merit to be taken seriously by the Commission before making a decision, or more likely, a compromise.

Parties: Not on an Equal Footing

Besides agenda-setting, a second central interrogation concerns the parties to the negotiations. For most negotiation scholars, fairness implies bringing all parties to the negotiation table (Albin 2003: 369). Such ethics of equal participation favors inclusivity (Fraser 1998; Bakiner 2016). It also enhances the outcome’s legitimacy and facilitates its implementation (Albin 2003: 376). Nonetheless, the debates surrounding the setting up of the Commission show that all parties do not accept this principle of equal participation. Some

14 “We found clear evidence that racial discrimination is endemic in institutions in Belgium. People of African descent face discrimination in the enjoyment of economic, social and cultural rights, including diversion from mainstream education into vocational schooling, ‘downgrading’ in employment opportunities and discrimination in the housing market.” See the full statement to the media by the United Nations Working Group of Experts on People of African Descent, on the conclusion of its official visit to Belgium, 4–11 February 2019, at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24153&LangID=E>.

diasporic groups, in particular, do not agree to consider all parties on an equal footing because it is time, they say, to listen to the voices of those who have remained unheard for so long.¹⁵ To them, the inclusion of former colonists' associations in future public hearings would lead to the repetition of a narrative that has been dominant in Belgium and the Great Lakes for more than a century and a half.

The radically asymmetrical relations that characterized colonialism raise difficult questions about what fair representation of "the absent" entails. Who can legitimately represent the colonized communities? Congolese, Burundian and Rwandan official authorities consider themselves to be the legitimate spokespersons of all descendants of the colonized people. Their legitimacy seems to be recognized by their Belgian counterparts as shown by the secret talks that were organized at the highest level regarding the restitution of archives, artistic or sacred pieces. However, their credibility is questioned by the descendants of the "Congolese dynastic monarchs" who present themselves as the "genuine owners of the Congolese territory" for centuries.¹⁶ Their argument is particularly interesting regarding the notion of justice and more precisely historical injustice. As they explain, their ancestors were manipulated to sign treaties that they could neither read nor write. They were not even invited to participate in the conferences of Berlin in February 1885, and Brussels in November 1908 (at the time of the transfer of the rights of the State of the independent Congo by King Leopold II to Belgium). This argument is completed by three layers of victimhood (Chaumont 2002). To them, "the holders of ancestral power in the Congo constitute undeniably the cohort of the only victims" of the territorial conquests launched by Henry Morton Stanley from 1876 until 1879. They are also presented as "the only victims" of the transfer of the Independent State of the Congo to Belgium. And, for the third time, were "the only victims of the independence" on 30 June 1960. Their conclusion is sharp: the Congolese monarchs should be "the first, if not the only ones," to negotiate justice based on the principles of restitution and rehabilitation.¹⁷

A third group has been formally recognized by the Parliamentary Commission to represent the colonized people at the negotiating table: the Afro-descendant associations based in Belgium. The mandate of the experts' panel explicitly required a close collaboration between experts and civil society associations. As already evoked, their posture is based on the enduring discrimination that they face in their everyday life and that are directly linked to

15 Letter signed by 33 associations of Afro-descendants in Belgium, 8 July 2020.

16 Letter signed by Marilyn Yav, S.A.I. Mwant-a-MWAD, Princess of the Mwant-a-YHWH dynasty, Lunda Empire LUNDA (DRCongo, Angola, Zambia), 10 August 2020.

17 *Ibid.*

colonial ideology. Contrary to the descendants of the Congolese dynastic monarchs who seem to consider justice as “a fit between entitlements and benefits” (Welch 2023), anti-racist associations conceive of justice in terms of compensation and need. They insist on “racial justice” and ask for concrete changes.

In this regard, the example of a square dedicated to Patrice Lumumba in Brussels is emblematic. In 2018, a city square was inaugurated on the edge of Matonge (the heart of the African diaspora in Brussels). Anti-racist associations expressed their satisfaction since a figure like Lumumba allows all Afro-descendants to stand up and be worthy. As Mireille-Tsheusi Robert, president of Bamko, explains: “To do justice to him is also to do justice to all the Afro-descendants of Congo” (quoted by AFP 2021). This sentence reminds us that robust thinking about compensatory justice is indispensable to draw a line between the past and the present.

The question of representativeness is closely linked to the problem of effectiveness. To avoid paralysis, the process cannot have too many actors and demands, but it must be broad enough to win general respect and approval (Albin 2003). The Belgian case shows how difficult it is to find the right balance between both tendencies. One of the peculiarities of this process is the systematic disqualification of parties. In terms of legitimacy, academics are criticized by diasporic groups (“it is about us, and not about them”), Afro-descendant militants by former colonialists (“they want money and nothing else”), transitional justice experts by historians (“experts cannot get involved in politics”), Belgian experts by foreign ones (“they are not impartial”), and white Belgian experts by some anti-racist militants (“they take our place”). This list could be extended. It indicates how problematic the effectiveness of the process is likely to be.

Rules: To Find Its Rightful Place

During the months of discussion within and outside the experts’ panel, many voices expressed their desire for a rightful place at the table. One of the requirements emphasized by Afro-descendants’ representatives is that, this time, they want a *place* at the negotiating table. In contrast to the Berlin Conference of 1885, which was monopolized by white leaders, and in contrast to the Belgo-Congolese Round Table conference of 1960 (that led to Congolese independence) where Congolese voices were not heard, they want to be part of the process. As one Afro-descendant explained: “It is because my father was not respected at the economic Round Table that we fight now.”¹⁸

Thus, the weight of precedent negotiation processes explains to a large extent why Afro-descendants involved in the decolonization process do not

¹⁸ Survey, Brussels, 10 October 2020.

agree on the principle of ‘equality’ according to which parties should receive identical or comparable treatment. To them, the inclusivity argument according to which “every party should have a chance to participate actively in and influence the negotiation process” (Albin 2003: 382) would maintain the persistent power of former colonists. In the same vein, the principle of ‘reciprocity’ does not appear particularly appropriate. To Afro-descendants militants, mutual responsiveness to each other’s concessions (Albin 2003: 370) does not make sense since their primary objective is neither to reach a balanced settlement of conflicting claims, nor to achieve cooperation, but to redress what needs to be. Similarly, they do not stress the principle of ‘impartiality’ since the purpose is precisely to compensate decades of injustice. From this perspective, calling for impartiality would be interpreted as a symbolic act of complicity with past wrongdoers. Rather than insisting on impartiality, anti-racists underline the necessity for all parties to assume their positionality, considering that they are all “partial and biased.”¹⁹ Accordingly, justice can hardly be seen as the balanced settlement of conflicting claims (Albin 374).

In reaction, former colonists’ associations refer to principles of “fair behavior”. To them, fair hearings would mean that each party has a chance “to put forward its case and have an input into the process,” from the initial stage to the final one (Albin 2003: 377). They also mention the notion of rightful *place*. They do not deny the radical asymmetry that characterized colonial relationships. However, they do not accept being rejected from the negotiation table. In addition to fair hearings, they call for “fair play” and complain of being systematically disqualified. They would like to be “equally well-placed” to participate in the process rather than being on the front line (Barry 1995: 51). To them, the process cannot lead to the protection of one set of interests at the expense of others.

To break the deadlock, it is probably helpful to reframe the problem. Rather than making a choice regarding the parties (some would be welcomed, others not), it might be interesting to focus on procedures and timing, in particular. From this new perspective, the question is not anymore “who is invited to sit at the negotiation table and who is not?,” but “when shall we listen to each party?” Sequencing might be acceptable to all sides. Designing consultation practices in various waves would allow giving a place to all. We could conceive of giving primary attention to descendants of colonized people. The hearings would aim to listen to their testimonies without interruption and immediate reactions. This active listening exercise would require time to hear people and integrate their experiences and emotions.

19 Brussels, 25 September 2020.

After this stage only, the Commission could organize other waves of testimonies. Such sequencing could pay attention to the principles of ‘equity’ and ‘need.’ According to the principle of ‘need,’ “resources should be allocated relative to strength of need, so that those in most need receive the greatest share” (Albin 2003: 371). A sequenced process of hearings would favor such adjusted allocation of resources in the broad sense, that is, not only material resources but also time and attention. The highly emotional dimension of the process is such that ensuring primacy as a signal of respect, tribute, and recognition might be far more critical than it might appear at first glance. At the time of writing, this kind of sequencing has not occurred. Yet, the process is still ongoing and this specific proceeding is probably only the first step of a long series of initiatives (judicial and non-judicial). At some point, sequencing of issues will probably be indispensable for appeasing explosive emotions, searching for common ground, and moving forward.

Conclusion: Justice as the Cornerstone

The initial question addressed in this study was if explicit references to justice determine the scope and limits of negotiations about post-colonial legacies. The answer is yes. The genesis of the Belgian Parliamentary Commission shows that justice is actually the cornerstone of the process. At this stage, it is too early to elaborate on the justice and fairness of the outcome and implementation. However, the empirical analysis of the first stages of the process reveals how challenging the process will be. In the coming months, the Commission will have to make decisions regarding consultation practices with parties inside and outside the negotiating room. Knowing that the setting up of the Commission was – and still is – highly distributive, the members of the Commission will face two main obstacles.

First, the negotiation posture of all parties will likely not be characterized by only “good faith.” It should not come as a surprise since one of the features of the Belgian case is the intrinsic political nature of the Commission. The members of the Commission come from all elected political parties. Some were instrumental in setting up the Commission, while others remain fiercely opposed to it. The former will do all they can to reach an agreement, and the latter will likely try to prevent it from happening. Yet, there is one commonality between them: they are all influenced by their constituencies. In this regard, the plurality of reactions expressed in the public debate (social media included) since the launching of the Commission shows that the Belgian population is deeply divided regarding justice. Certain voices emphasize the

notion of individual responsibility. Repeating that they have nothing to do with the colonization, they do not accept the idea of compensation and repeat that they do not have to apologize for others' wrongdoings. Their arguments are regularly repeated: "My family had nothing to do with the Congo," "My generation cannot be responsible for the previous one," "Collective guilt does not exist." Sometimes, the arguments' aim is not simply to resist acknowledgement and reparation. It can also be to blame those who were really at the origin of the injustices: "The exploitation of the Congo is not the fault of Flemish citizens, but of the French-speaking elite," and "The royal family owes its fortune to the Congo" (the argument is often underlined by Flemish nationalists who systematically target the Belgian monarchy) (Rosoux 2014). Conversely, other voices underline the existence of a collective responsibility and a duty to honor past and current victims of injustice. Their main argument concerns the lasting effects of injustice: "As Belgians, we all benefited from the colonial exploitation. It is therefore fair to compensate these benefits today."

The incompatibility of arguments made on all sides is not the only obstacle to the signature of an agreement. The second difficulty is emotional. It can be summarized by two terms: mistrust and loyalty. A certain form of visceral mistrust is palpable in any discussion related to post-colonial legacies. In most cases, the racial divide corresponds to the socio-economic divide as well. As for loyalty, most representatives of civil society associations protect their ancestors' dignity. This last notion of 'dignity' is invariably used to speak on behalf of those who were violently treated during the colonial time, and those who came back to Belgium after the former colonies' independence. As a former colonist – who was himself the son of a highly ranked colonist – explained, "they want to destroy the narrative of my life."²⁰

At this stage, the interactions among the parties do not lead to any shared understanding. The absence of movement in the parties' positions results mainly from the procedure itself since the parties do not talk to each other. They instead attempt to convince the Commission members who will ultimately formulate recommendations for the Belgian government. In this respect, parties do not need to negotiate. What they want is to be influential in persuading public opinion and the Commission. From this perspective, the process undeniably polarized the debate – at least in the initial phases.

This polarization does not mean that the deadlock is inevitable. The absence of a best alternative to a negotiated agreement (BATNA) for those who call for compensatory justice might influence them towards a more flexible attitude.

20 Survey, Brussels, 10 May 2021.

Knowing that lawsuits and class actions are complex and risky, advocates of reparation might revise their initial maximalist expectations. Vice versa, the recent multiplication of testimonies related to colonial injustice and enduring stigmatization might help all Belgian citizens to develop some reflexivity.

The empirical analysis of this single case does not allow us to draw up general lessons for theory and practice. However, it raises at least three questions that might be relevant in other case studies. The first one concerns the main variables that explain why parties refer to divergent and often conflicting notions of justice. The Belgian case shows that the choice of a particular justice notion does not only depend on the interests/positions of the actors (for instance, the binary distinction between former colonials/former colonized). It also depends on the geographical context (Congolese in Congo and Afro-descendants do not adopt the same posture towards the negotiation) and on the generations. Interestingly, it is the second, and even more, the third, generation of Afro-descendants who describe the issue in terms of enduring justice (Spinner-Halev 2012). This evolution is confirmed by research carried out on Congolese immigrants living in Belgium. While older participants (grandparents) tend to evoke more positive memories of colonialism, younger generations (grandchildren) think more negatively of Belgian colonialism. As for the intermediate generation (parents), they present this past in a rather ambivalent way (Figueiredo et al. 2018).

A second question merits to be further explored. It regards the potential reframing of the entire process. As was suggested, the existence of a linkage between past and present is highly divisive (Butt 2008: 102). Those who insist on this linkage evoke the ideas of benefit (at the origin of a compensation) and/or entitlement (often linked to restitution). Yet other voices deny the reality of this linkage. A way to favor a progressive rapprochement between these incompatible positions is to reframe the issue by using different labels. Reducing colonialism to the familiar categories of victims, perpetrators, and bystanders triggers polarizing emotions such as shame, guilt, anger or fear. An alternative frame could be to conceive of Belgian citizens as potential “implicated subjects” (Rothberg 2019). Such a perspective could probably be more effective in stimulating a sense of prospective responsibility rather than a set of justifications or even denials. Such reframing is probably critical in the long term. All case studies show that the stigmatization of parties, in the framework of the negotiation process, reduces the chances of an effective and durable agreement.

A third question might stimulate better design for future bodies in charge of dealing with the colonial past. It concerns timing and duration. The mandate

of the Belgian Commission is paradoxically maximalist in terms of goals and minimalist in terms of time. The planned mission implies the analysis of both past and current injustices related to the colonial past in Congo, Burundi, and Rwanda, a scenario to deal with the past fruitfully, and the promotion of a shared society that favors reconciliation. To attain these ambitious objectives, the Commission has one year (renewable). One of the main lessons of the initial phases of the Commission is that the process requires many adjustments. Changing beliefs, representations, and emotions take time. Acknowledgment of the violence that was inflicted does not happen overnight. The ability to actively listen, understand, digest, and adapt, implies self-awareness (Trezise, 2013). Implementing a scenario based on equity (first wave of the hearings) and equality (second wave of hearings) will likely not take months but years. The work of memory related to the negotiation of post-colonial legacies is like a mountain walk. It implies long and slow efforts, but allows for widening the horizon to reach incredible views – from which one can observe not one, but several, valleys.

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