Abstract

Are the opportunities to perform morally impermissible actions valuable? And, if so, has their value any role to play in normative arguments? In this essay I examine the personal value of opportunities to perform morally impermissible actions: the value that such opportunities have in virtue of contributing to someone’s autonomy and wellbeing. In particular, I discuss the relevance of the value of opportunities to perform morally impermissible actions for assessing moralised definitions of freedom in the context of an ethical system that appeals to axiological considerations, and I examine Raz’s account of the relationships between freedom and autonomy. Moralised definitions of freedom can be understood as claiming that only unobstructed opportunities to perform morally permissible actions should count as freedoms: I show that considerations concerning the personal value of the opportunities to perform morally impermissible actions underpin traditional critiques of moralised definitions and that emphasising this aspect allows to extend such critiques with new lines of argument. Furthermore, I discuss whether an argument recently advanced by Kramer can be framed as an internal critique of Raz’s account of the relationships between freedom and autonomy.

Keywords: opportunity, moralised freedom, autonomy, Raz, personal value

1 Opportunities, Personal Value, and Morally Impermissible Actions.

Opportunities are possibilities to perform actions. A specific opportunity is the opportunity to do a specific action, and the overall amount of opportunities enjoyed by someone is obtained by somehow aggregating over the individual’s specific opportunities (Carter 1999). Specific opportunities (and opportunity sets) can be distinguished in virtue of their content: i.e. as opportunities to perform specific actions [X, Y, etc.]. The focus of this article is on opportunities to perform morally impermissible actions: especially, I want to examine their value and disvalue in the context of normative theorising. In order to do so, let me introduce a few remarks on the value of opportunities in general. Opportunities can be valuable or disvaluable for different reasons, and some have to do with the opportunities’ content. Following Kramer, I call such reasons content-dependent and the value (or disvalue) that they ground content-dependent value (or disvalue) (Kramer 2003, 240-245). One reason why opportunities can have content-dependent value is because performing what they allow one to do is valuable: for instance, the opportunity to eat vegetables has content-dependent value because eating vegetables is valuable. Let’s apply this framework to opportunities to perform morally impermissible actions. As I fully clarify in the next paragraph, depending on which kind of value/disvalue is attributed to such opportunities, they...
can be in one respect disvaluable, and in another respect valuable. Indeed, on the one hand an opportunity to perform a morally impermissible action has content-dependent disvalue, since *performing* the corresponding action is disvaluable: stealing, for example, is disvaluable because morally wrong, and hence also the opportunity to steal partakes of that disvalue. Yet, an opportunity to perform a morally impermissible action may also be (content-dependently) valuable: for example, it can be good for someone to have the opportunity to steal, because stealing can be beneficial for her.\(^1\) So, an opportunity to perform a morally impermissible action may be in one respect disvaluable and in another respect valuable.

The possibility of attributing value and disvalue to opportunities to perform morally impermissible actions is best explained by appealing to the distinction between personal and impersonal value. Performing a morally impermissible action is disvaluable for *impersonal* reasons: it is disvaluable because it contravenes to a moral requirement, rather than because it makes the wrongdoer’s life going badly. Hence, also the opportunities to perform morally impermissible actions partake of such an impersonal disvalue. At the same time, an opportunity to perform a morally impermissible action can be (content-dependently) *valuable*: for example, it can be valuable for *personal* reasons. Something has personal value when it is *good for* persons to have it and *people benefit* from it: that is, when the thing in question contributes to make people’s life going well (i.e. to people’s wellbeing).\(^2\) Now, in so far as acting wrongly can be beneficial for someone, also having the opportunity to perform the relevant morally impermissible action can be good for the individual: it can have personal value\(^3\). One corollary of attributing personal value is that, in so far as having an opportunity is beneficial and positively contributes to wellbeing, in this respect the removal of such an opportunity constitutes a *harm*.

Why should we be concerned with the personal value of opportunities to perform morally impermissible actions? Does such a value play any role in normative theorising? In this essay I discuss the relevance of the personal value of opportunities to perform morally impermissible actions for assessing the

\(^1\) Unless one is committed to the view that committing a wrong is also *bad* for the wrongdoer. Moreover, there can be other reasons why opportunities can have content-dependent value: in this context, I leave them aside.

\(^2\) On this technical use of ‘*good for*’, see Zimmerman (2015). I am non-committal on whether well-being should be interpreted subjectively (as desires satisfaction) or objectively (as the achievement of specific valuable goods). Moreover, although the definition of personal value in terms of wellbeing is common among philosophers (see e.g. Elford 2017, e84; Temkin 2003, 777-778), the recent literature has also focused on a more specific sense of personal value attributable to objects of special significance for an individual (e.g. a daughter’s drawing for the mother). Further, the identification of personal value with wellbeing can be questioned: for example, achieving excellence in musical performances can be of great value for a pianist, though this can put the pianist under stress and negatively affect the pianist’s life.

\(^3\) Of course, it is not always the case that acting wrongly is beneficial.
moralised definition of freedom in the context of an ethical system that appeals to axiological considerations (i.e. to wellbeing), and I critically examine Joseph Raz’s account of the relationships between freedom and autonomy. Take moralised definitions of freedom (Bader 2018a; Dworkin 1987, 2002; Nozick 1974; Raz 1986).\(^4\) One way of interpreting freedom as a moralised ideal is to claim that certain opportunities – the opportunities to perform morally impermissible actions – should not count as freedoms (see §2). As Ronald Dworkin puts it, as a “normative” ideal, freedom describes “the ways in which we believe people ought to be free” (Dworkin 1987, 5, emphasis added). Arguably what can motivate moralising freedom is the assumption that the opportunities to perform morally impermissible actions do not matter or matter little in the context of normative theorising. After introducing the debate about moralised definitions in §2, in §3 I show that well-known critiques of moralised freedom (Carter 1999, 69-74; Cohen 2006 [1979], 166-172; 1988: Chap.14; 1995: 60-65; Kramer 2003, 100-103; Olsaretti 2004, chap. 5) are premised on considerations concerning the personal value of opportunities to perform morally impermissible actions, and that emphasising this point makes it possible to extend such critiques with new lines of argument. Consider then Raz’s understanding of the relationships between freedom and autonomy. According to Raz, a liberal state is morally permitted and required to promote the conditions for individual autonomy (Raz 1986). Raz also thinks that, while people should be able to choose from a plurality of valuable options, certain ways of life and courses of action are disvaluable, and that, since “[a]utonomy is valuable only if exercised in pursuit of the good,” “[t]he ideal of autonomy requires only the availability of morally acceptable options” (Raz 1986, 381). After introducing the essential features of Raz’s theory in §4, in §5 I reconstruct Kramer’s recent critique of Raz (Kramer 2017, 228-250) and I discuss whether it can be framed as an internal critique: i.e. whether, on purely Razian assumptions about the relationships between freedom and autonomy, it is possible to argue that there is value in having opportunities to perform morally impermissible actions. §6 concludes.

2 Moralised Definitions of Freedom.

A widely debated question in the freedom literature concerns whether the concept of freedom should be moralised. On one side, there are authors like Matthew Kramer and Hillel Steiner who interpret the task of judging whether someone is free or unfree to perform a specific action as a strictly non-evaluative enterprise: according to such authors, considerations concerning the moral permissibility of

\(^4\) Moralised definitions interpret freedom in opportunity terms. Taylor famously distinguishes between understanding freedom as an opportunity-concept and as an exercise-concept, where as an exercise-concept freedom is equated with performing actions that contribute to the attainment of valuable ideals (e.g. self-mastery) or with exercising valuable capacities (e.g. the ability to choose) in determinate ways (e.g. autonomously) (Taylor 1979).
doing an action \( X \), or the moral permissibility of relevantly interfering with the opportunity to \( X \), are irrelevant for judging whether \( A \) should be considered free or unfree to \( X \) (Kramer 2003; Steiner 1994, chap. 2). For instance, \( A \) should be considered free to steal as long as \( A \) would not be relevantly interfered with by others (if she attempted to steal). On the other hand, consider moralised approaches (e.g. Bader 2018a; Dworkin 1987; 2002; Nozick 1974; Rothbard 2006 [1973]). As commentators have observed (Cohen 1995, 60-61; Kramer 2003, 100; Bader 2018b), there are two ways in which it is possible to moralise freedom. First, one can appeal to moral considerations in the definition of the obstacles that can generate unfreedom: to wit, one can claim that the imposition of an obstacle (or its non-removal) generates unfreedom only when such an imposition (or omission to remove it) is morally impermissible. For example, the fact that my friend steals a pencil from me renders me unfree to use the pencil (assuming that it is wrong to steal pencils), but my friend’s action of taking the pencil from me does not render me unfree if she takes the pencil to give it back to someone else from which I stole it (assuming that it is morally permissible to redress this past wrong). Since this moralised account pertains to the definition of the obstacles, it moralises the concept of freedom by appealing to moral considerations in the definition of unfreedom. In the paper I shall not discuss further this first way of moralising freedom: when I use the label ‘moralised definition of freedom’ or similar phrasings, I shall

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5 And (only for Kramer) if \( A \) would be able to steal in the absence of the relevant constraints. Kramer and Steiner disagree on whether the absence of constraints imposed by others is sufficient for ascriptions of freedom: for Kramer having the ability to \( X \) (i.e. being likely to succeed in doing \( X \), if \( A \) attempted to \( X \)) in the absence of the relevant human constraint(s) is also necessary for being free to \( X \) (Kramer 2003).

6 Although it can be morally permissible or required to bring about an obstacle in order to redress a past wrong, the obstacle can be brought about in a morally wrongful way: for example, my friend can exercise an excess of violence when she takes the pencil. And there remains an open question about whether on a moralised definition the obstacle renders unfree.

7 One may question whether the so-called ‘moral responsibility view’ adopted by Miller (1983), Kristjánsson (1996), and Shnayderman (2013) can be considered a moralised approach of this type. The claim that different versions of the moral responsibility view share is that an obstacle is unfreedom-generating if someone is morally responsible for its existence (or non-removal). However, the moral responsibility view does not imply moralising freedom, in that considering someone morally responsible for an action (or an omission) does not necessarily imply judging the person blameworthy (Shnayderman 2013, p. 726). As Miller explains, “[t]o be responsible for something is to be answerable for it; it is not necessarily to be blamable. [...] Responsibility, one might say, opens the door to questions of praise and blame without deciding them. In the same way, showing that an obstacle is a constraint on someone's freedom raises the question of its justifiability but does not resolve it” (Miller 1985, 313). For example, if my friend takes the pencil I stole to someone else and redresses the wrong by giving it to the legitimate owner, on the moral responsibility view she is making me unfree (to use the pencil), because she is responsible for taking the pencil (i.e. she needs to offer a justification for doing so), though she is not blameworthy (she has a valid justification). So, it is not the case that on the moral responsibility view only wrongful interferences make unfree, and hence such a view does not amount to a moralised account of freedom.
refer to a second way of moralising freedom. This second way moralises freedom by introducing moral considerations with respect to the actions that one can be considered free or unfree to do: i.e. it claims that considerations concerning the moral permissibility of \( X \) are relevant for judging whether \( A \) is free or unfree to \( X \).

A moralised definition of this (second) type is put forward by Ralf Bader, and makes the definition of ‘freedom’ and ‘unfreedom’ dependent on that of rights (Bader 2018a). As far as freedom is concerned, on such a definition \( A \) should be considered free to \( X \) only if \( X \) is an action that \( A \) has the right to do and no relevant obstacles interfere with \( A \)’s doing \( X \) (or would interfere, if \( A \) attempted to \( X \)) (Bader 2018a: 142-144). Following Bader, I interpret ‘what \( A \) has the right to do’ as ranging over the domain of moral permissibility: i.e. as covering both the opportunities to which \( A \) is entitled as a matter of (claim) right – the opportunities with respect to which others have duties of non-interference –\(^8\) as well as the opportunities to perform actions that are morally permissible but with respect to which others have no duties of non-interference (Bader 2018a: 141, fn. 1).\(^9\) A paradigmatic example of a moralised understanding of freedom is Dworkin’s assertion that “liberty means the freedom to use what is properly or morally your property as you wish provided you respect the rights of others” (Dworkin 2002, 1667, fn. 14).\(^{10}\) From this Dworkin also infers that “liberty is not infringed by just taxation” (Dworkin 2002, 1667, fn. 14). The latter quotation exemplifies how the moralised definition understands unfreedom: i.e. by describing \( A \) as unfree to \( X \) only if \( X \) is an action that \( A \) has the right to do and there are relevant obstacles that interfere with \( A \)’s doing of \( X \) (or that would interfere if \( A \) attempted to \( X \)) (Bader 2018a, 142-144).\(^{11}\) It is evident that on the moralised definition there is a group of opportunities – the opportunities to perform the actions that one has no right to do – which remains excluded from ascriptions of freedom or unfreedom: i.e. to which ascriptions of freedom or unfreedom do not pertain. To such opportunities pertain ascriptions of not-freedom (Bader 2018a). For example, take the opportunity to steal: on the moralised definition, I should be considered not-free (neither free nor unfree) to steal (both in the case in which there is an obstacle that would relevantly interfere with my stealing attempts, and in the case in which there is no such obstacle). How should we interpret the category of not-freedom? And how can this contribute to understanding the role that the personal value of

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\(^8\) For example, the opportunity to ride one’s own bicycle.

\(^9\) For example, the opportunity to pick an apple from an apple tree owned by no one.

\(^{10}\) See also (Dworkin 1987, 5). More generally, Dworkin interprets freedom in light of the value of equality, understanding freedom as ranging over those opportunities to which people would be entitled under an egalitarian distribution of resources (Dworkin 1987; Dworkin 2000, chap. 3).

\(^{11}\) The adoption of a moralised definition has also been detected in libertarian thinkers who equate freedom with the opportunity to exercise one’s own property rights in a market society and who interpret only right-infringing interferences as unfreedom-generating (Nozick 1974; Rothbard 2006 [1973], 50).
opportunities to perform morally impermissible actions can play in normative arguments? Before addressing these questions, in the rest of this Section I reconstruct the main objections that have been raised against moralised definitions of freedom.

Two Objections Against Moralised Freedom

It is possible to identify two kinds of objections against moralised definitions of freedom. The Conceptual Objection challenges moralised definitions on conceptual grounds. Consider Prisoner:

Prisoner: A moralised definition “entails that a properly convicted murderer is not rendered unfree when he is justifiably imprisoned.” (Cohen 1988, 295)

According to critics, examples like Prisoner show that moralising unfreedom is at odds with pre-theoretical intuitions, since being imprisoned should count as a paradigmatic case of unfreedom. In other words, Prisoner aims to show that also obstacles that relevantly interfere with something that one has no right to do can be unfreedom-generating. However, recall that on the moralised definition the justly convicted prisoner would be considered as not-free (rather than unfree): can appealing to the not-freedom category contribute to meet The Conceptual Objection? I discuss this possibility below (§3).

Consider then the problematic implications of moralising freedom:

Fugitive: On a moralised definition, a justly convicted prisoner who escapes from prison does not gain new freedoms (and therefore does not become more free), since he has no right to take advantage of those opportunities that he (illegitimately) acquires by escaping from prison.14

12 Bader does not interpret the value of (moralised) freedom in axiological terms but in deontic terms: i.e. to explain the significance of freedom, Bader does not appeal to wellbeing, but to a status-based pro tanto reason to refrain from interfering with people’s freedom (Bader 2018a, §4). So, my critical assessment of moralised definitions in §3 does not directly affect Bader’s arguments, though it is relevant if someone endorses moralised freedom on axiological grounds and in order to assess the role of moralised freedom in the broader context of an ethical system that appeals (also) to axiological considerations. Dworkin is a theorist who endorses a moralised definition on axiological grounds: Dworkin claims that “lives led under circumstances of liberty are better lives just for that reason” (Dworkin 1987, 2).

13 There is a considerable secondary literature on moralised definitions, and these objections have been widely discussed (Carter 1999, 69-74; Cohen 2006 [1979], 166-172; 1988, chap. 14; 1995, 60-65; Kramer 2003, 100-103; Olsaretti, 2004, chap. 5).

14 On the moralised definition, the fugitive criminal would be considered not-free.
Since leaving prison intuitively counts as a paradigmatic example of (regained) freedom, examples like *Fugitive* can be pressed against the moralised definition to show that holding that \( A \) can be free to \( X \) only if \( X \) is a morally permissible action (and there are no relevant constraints) is counterintuitive.

A second type of objection – I shall call it *The Normative Objection* – challenges moralised definitions on normative grounds, putting into question the move of moralising the concept of freedom in the context of normative theorising (e.g. in a theory of justice). The thrust of this objection is that, in so far as freedom is defined in terms of rights – i.e. “in terms of what has already been labelled as just” (Carter 1999, 71) or at least morally permissible – an appeal to freedom can do little independent justificatory work in normative arguments (Carter 1999, 69-74; Cohen 1988, 294-296; Kramer 2003, 102-103; Waldron 1993, 320-322). Indeed, if morality is built into the concept of freedom, a certain distribution of freedom between different individuals will be by definition just (or at least not morally objectionable); instead, if freedom were to do some independent normative work, we would first look at how freedom is distributed (e.g. whether someone has more freedom than others), and then on grounds of freedom-based considerations draw the conclusion that the distribution is just (or not morally objectionable).\(^{15}\) What is missing in the literature is a discussion of how axiological considerations concerning the personal value of having opportunities can contribute to a critical assessment of moralised definitions of freedom in the context of normative theorising, which is what I offer in the following section. In particular, I wish to show (1) that on a plausible interpretation *The Conceptual Objection* implicitly rests on considerations concerning the personal value of opportunities to perform morally impermissible actions, and (2) that elaborating on such considerations allows to extend traditional critiques of moralised definitions with new lines of argument.

3 Personal Value and Moralised Definitions.

I wish to start my critical assessment of moralised definitions by showing how considerations concerning the personal value of opportunities to perform morally impermissible actions can motivate *The Conceptual Objection*. For example, in introducing the discussion (and critique) of the moralised definition, G. A. Cohen gives an example that is infused with axiological considerations.\(^{16}\) Here is Cohen’s example:

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\(^{15}\) Bader replies to this critique in Bader (2018a: §4). Since Bader assumes that freedom has significance in deontic terms (whereas here my focus is on the personal value of freedom – i.e. I assume an axiological perspective), in this context I leave aside the discussion of Bader’s reply.

\(^{16}\) Cohen’s specific target here is Antony Flew’s definition of liberal regimes as involving absolute absence of restrictions on freedom.
“[…] if the state prevents me from doing something I want to do, it evidently places a constraint on my freedom. Suppose, then, that I want to perform an action which involves a legally prohibited use of your property. I want, let us say, to pitch a tent in your large back garden, perhaps just in order to annoy you, or perhaps for the more substantial reason that I have nowhere to live and no land of my own, but I have got hold of a tent, legitimately or otherwise. If I now try to do this thing I want to do, the chances are that the state will intervene on your behalf. If it does, I shall suffer a constraint on my freedom.” (Cohen 1988, 293, emphases mine).

On a plausible interpretation – especially, if the example is read in conjunction with Cohen’s subsequent critique of moralised definitions (Cohen 1988, 294-296) – the point implicit in Cohen’s reasoning is that, on a moralised definition, restrictions on people’s opportunities to perform morally impermissible actions (“an action which involves a legally prohibited use of your property”) do not count as unfreedom. Hence, moralised definitions do not recognise in their language that one is harmed in freedom-terms when one is deprived of such opportunities (they cannot say that “I shall suffer a constraint on my freedom”). However, on intuitive grounds this appears problematic, especially when the opportunities to perform morally impermissible actions pertain to something we want to do (when they concern actions that contribute to subjective wellbeing). Cohen suggests that we would want a theory of freedom to reflect the badness involved in being deprived of such opportunities, by calling them unfreedoms.¹⁷ Hence, in my view Cohen motivates The Conceptual Objection by implicitly appealing to considerations concerning the personal value of opportunities to perform morally impermissible actions.

Let us now consider Cohen’s objection in light of the moralised definition introduced in §2. Recall that such a definition involves a not-freedom domain that applies to opportunities to perform morally impermissible actions, including when such opportunities are obstructed by the relevant obstacles (which is the case under consideration in Cohen’s example).¹⁸ Now, could calling the (obstructed)

¹⁷ We should not take to imply that Cohen endorses a desire-dependent definition of unfreedom, one according to which one should be described as unfree only when one is interfered with the opportunities to perform actions that one desires to do: instead, we should take Cohen to be exposing the counterintuitive implications of moralised definitions by building on an example that involves opportunities to perform morally impermissible actions that one desires to do. And ultimately Cohen defends a non-moralised definition of freedom that is also not desire-dependent. This is evident, for example, when Cohen says that “I am unfree whenever someone interferes […] with my actions” (Cohen 1988, 295). I am grateful to an anonymous reviewer for asking to clarify this point.

¹⁸ Note that on the moralised definition, the not-freedom domain applies also to unobstructed opportunities to perform actions one has no right to do.
opportunities to perform morally impermissible actions not-freeds help meeting The Conceptual Objection? We can distinguish between two ways of interpreting the not-freedom domain: the first one involves considering ascriptions of not-freedom (when one is interfered with opportunities to perform morally impermissible actions) as indicating that an individual suffers a constraint on freedom, albeit of a different type than those that generate unfreedom. On this interpretation being interfered with the opportunity to perform a morally impermissible action is bad in freedom-terms, but it is less bad than suffering unfreedom: hence, instead of generating unfreedom, it generates not-freedom. On one hand, this strategy allows one to recognise the badness involved in being interfered with what one has no right to do through the establishment of a sort of ranking within the constraints: some generate unfreedom, others merely not-freedom. However, on the other hand, it also amounts to abandoning the moralised definition, since the constraints that generate not-freedom are understood as constraints on freedom (i.e. as problematic in freedom-terms), and therefore this strategy implies acknowledging that the unobstructed opportunities to perform morally impermissible actions should count as freedoms. So, the first strategy responds to The Conceptual Objection by abandoning the moralised definition of freedom (and unfreedom), nonetheless maintaining a moralised element in distinguishing between unfreedom-generating and not-freedom-generating constraints.

Let us then consider a second strategy, which is more in line with the reasoning put forward by Bader (2018a). On Bader’s account, not-freedom does not indicate a constraint on freedom; instead, it captures a domain of opportunities to which ascriptions of freedom and unfreedom do not pertain: the not-freedom domain demarcates what lies beyond, or is excluded from, the area of application of freedom/unfreedom. Hence, an obstacle that obstructs an opportunity to perform a morally impermissible action “will not be a constraint on freedom” (Bader 2018a: 143). How can this approach address the issue concerning the personal value of opportunities to perform morally impermissible

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19 This strategy can be attributed to Philip Pettit, who distinguishes between “factors that compromise liberty and factors that condition it” (Pettit 1997, 75): the former generate unfreedom, whereas the latter generate not-freedom. On Pettit’s account only domination (subjection to someone who has the capacity to interfere arbitrarily (Pettit 1997)) compromises liberty and generates unfreedom. Yet, if one lacks the ability to take advantage of a certain opportunity without also being dominated (e.g. if one suffers from a disability that prevents her from walking), her freedom is conditioned. As Pettit claims, “[a]s we may say that someone is unfree so far as their freedom is compromised by domination, so we may say that they are not free in this or that respect—they are non-free, though not strictly unfree […] —insofar as their freedom is subject to certain conditioning factors” (Pettit 1997, 76).

20 This strategy is also characterised by a non-moralised account of unfreedom that distinguishes between different constraints on freedom on moralised grounds: indeed, since one suffers a constraint on freedom irrespective of the moral permissibility of the action interfered with, unfreedom is not moralised; but the criterion for distinguishing between unfreedom and not-freedom is moralised.
actions highlighted by Cohen’s example? Now, though on this way of moralising freedom we cannot claim that someone who is interfered with the opportunities to perform morally impermissible actions suffers from constraints on freedom (as Cohen would have it), it can be argued that the moralised definition has the conceptual resources to recognise the badness of lacking freedom in Prisoner (and in the example used by Cohen). Indeed, first, in Prisoner the prisoner would be described as lacking the freedom to perform what incarceration prevents him from doing: having the prisoner no right to do what incarceration prevents him from doing, on a moralised definition the corresponding opportunities would be classified as not-freedoms (i.e. not as freedoms) (Bader 2018a).\(^{21}\) Second, as Bader argues, the moralised definition would also recognise that the prisoner’s freedom is severely restricted: indeed, “[s]ince there are very few things that a prisoner has a right to do, there is not much that he is free to do” (Bader 2018a: 155). That is, in so far as imprisonment is justified, the prisoner has fewer rights, and hence also the number of opportunities to perform morally permissible actions – over which range ascriptions of freedom/unfreedom – shrinks: i.e. the moralised definition can recognise that the prisoner is less free (than before committing the crime). Hence, even though the prisoner does not suffer a constraint on freedom, the moralised definition seems to be able to capture the freedom-related badness involved in imprisonment, and more generally in lacking freedom that does not result in unfreedom.

In my view, although Bader’s reasoning goes towards defusing The Conceptual Objection, there remain some problems with this strategy.\(^{22}\) One concerns how the language of a moralised definition reflects the badness of having one’s freedom restricted. To recall, on a moralised definition one can say that the justly convicted prisoner suffers a freedom-related harm (i.e. that there is something bad in freedom-terms for the prisoner), in that the number of things that the prisoner is free and therefore has the right to do is restricted, though the prisoner cannot be considered unfree. However, note that within this framework what justifies holding that there is something bad for the prisoner is the restriction in the freedom domain – i.e. the variation and reduction of things that the prisoner has the right to do – not the existence of physical obstacles. And I find this problematic. Foremost, because it has the counterintuitive implication that, if by magic the prison walls disappear – i.e. if the physical obstacles to the performance of morally impermissible actions are removed – the situation of the prisoner remains equally bad in freedom-terms, in that the number of things that the prisoner has the right to do does not change.\(^{23}\) Second, this problem runs deeper: it affects the plausibility of adopting a moralised definition in the context of normative theorising, as I show below.

\(^{21}\) Analogously, in Cohen’s example one would be described as not-free to invade someone else’s property.

\(^{22}\) Though, as I say in fn. 12 my arguments do not affect directly Bader’s account, since he understands the value of freedom by appealing to deontic considerations.

\(^{23}\) Indeed, also the situation of the fugitive in Fugitive is equally bad, since, other things being equal, the fugitive has the same amount of freedom of prisoner in Prisoner.
Freedom-based considerations can be used for justifying/criticising certain practices: for example, we can appeal to the fact that certain forms of punishment involve a freedom-related harm in order to justify (or criticize) them. But, if we adopt a moralised definition, we cannot appeal to freedom-based considerations for justifying (criticizing) the constraints (i.e. the physical obstacles) that such practices involve. Take imprisonment: if we adopt a moralised definition, we can say that imprisonment is justified on grounds of involving a freedom-related harm that certain criminals deserve to suffer. But, crucially, on a moralised definition what we mean is that there should be a change in the normative situation of the criminal: i.e. that the criminal deserves having fewer rights – that there should be fewer things that the criminal should have the right to do – and that this results in a reduction in the number of opportunities to which ascriptions of freedom/unfreedom apply. This certainly implies that, if a convicted criminal who deserves to be imprisoned is interfered with the opportunity to perform an action that is morally impermissible (say, go to the shopping mall or to walk in the neighbourhood) no infringement of his or her freedom would obtain. Indeed, assuming that the criminal has no right to perform the actions in question (on grounds of deserving to be imprisoned), there is also no reason to protect the corresponding opportunities. But, crucially, one cannot appeal to a moralised definition to justify the existence of a physical obstacle on such opportunities – i.e. one cannot derive from the moralised definition a reason to create or bring about such an obstacles on grounds that someone deserves to suffer a freedom-related harm – since on the moralised definition such a harm pertains exclusively to the normative situation of the criminal (what he or she has the right to do) and not also his or her physical condition (i.e. whether there should be any obstacles in place). Indeed, assuming a change in the normative situation of the criminal (i.e. that the criminal has fewer rights), the criminal situation with respect to freedom is equally worsened irrespective of whether there are physical obstacles that obstruct the criminal’s opportunities to perform morally impermissible actions: for example, on a moralised definition it is (counterintuitively) equally bad in freedom terms for a criminal to be incarcerated in a high security prison from which it is physically impossible to escape and in a prison from which it is very easy to escape. So, the language of moralised freedom cannot be used to justify the opportunities-related harm involved in certain punishments, if such a harm is understood in terms of the imposition of obstacles.

There is a further problematic implication of moralising freedom. Whereas in the previous paragraphs I have considered the plausibility of moralising freedom with respect to issues concerning freedom-related harms, we should also discuss the fact that on the moralised definition it is not possible to describe illegitimately or unjustly acquiring new opportunities as involving a freedom-related benefit. Indeed, since one has no right to the opportunities to perform morally impermissible actions, acquiring them does not count as an advantage in freedom terms. For instance, imagine that two individuals (A and B) earn the same annual income before tax. And suppose that, assuming that justice requires that
both $A$ and $B$ should be subject to the same level of taxation, as a matter of fact $B$ ends up having a net annual income superior to $A$, in virtue of enjoying an illegitimate tax reduction. Now, adopting a moralised definition precludes the possibility of claiming that $B$ is (unfairly) advantaged in freedom-terms vis-à-vis $A$, since, in so far as $B$ is not entitled to the opportunities made available by having more money, acquiring such opportunities does not count as receiving a freedom-related benefit. Hence, a moralised definition counterintuitively implies that a tax-payer who receives an illegitimate tax reduction should not be described as enjoying a freedom-related benefit.\textsuperscript{24} And the thought that moralised definitions have counterintuitive implications as far as freedom-related benefits are concerned can be considered what motivates the charge of counterintuitiveness expressed by The Conceptual Objection with Fugitive (§2). Furthermore, as a result of disallowing the possibility of appealing to a freedom-related benefit in the context of illegitimate increases of one’s opportunities, the moralised definition also precludes the possibility of appealing to such a (freedom-related) benefit in a normative argument: for example, on a moralised definition one cannot argue that $B$ should disgorge the money illegitimately acquired on grounds that failing to do so would amount to enjoying an unfair freedom-related advantage over $A$.

So, the two problems with moralising freedom discussed above can be summarised as follows: (1) on a moralised definition it is possible to recognise that one suffers a freedom-related harm when one’s opportunities are justly or legitimately restricted. But such a harm is understood in terms of a change in the normative situation of the individual (a restriction of his or her rights), and so it is not possible to appeal to the moralised definition to justify (or criticize) the existence of physical constraints on opportunities to perform morally impermissible actions. And (2) on a moralised definition one cannot describe illegitimately or unjustly acquiring new opportunities as involving a freedom-related benefit. In my view, (1) and (2) are problematic not just because they have counterintuitive implications – which underpin The Conceptual Objection – but also because they show the limits of employing a moralised definition in the context of normative theorising.\textsuperscript{25}

Of course, one can rightly emphasise that the problems indicated above can be solved by supplementing the language of the moralised definition with considerations concerning opportunity-related (rather than freedom-related) benefits and harms. That is, with respect to (2), one can claim that, albeit not enjoying a freedom-related benefit, one enjoys an opportunity-related benefit. And, with respect to (1), one can

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\textsuperscript{24} I assume that a tax reduction can be described as a benefit in freedom-terms: following G. A. Cohen’s analysis of the relationship between freedom and money (Cohen 2011), in market societies having (more) money standardly increases people’s opportunities to act, since, as a means of exchange, money has the social function of removing others’ dispositions to interfere with people’s attempts to access goods and services.

\textsuperscript{25} Hence, my critique can be seen as a version of The Normative Objection.
justify (or criticize) the existence of a constraint by emphasising the opportunity-related harm involved. But this reiterates the diagnosis that the moralised definition alone is insufficient to perform all the functions that we would expect should be attributed to an opportunity concept in the context of normative theorising. Hence, if we adopt a moralised definition, we need to supplement considerations of freedom/unfreedom with considerations about opportunities (being restricted or increased). And this tells also that, if we understand the value of opportunities in axiological terms – if we value opportunities because it is good/bad for persons to have them – we cannot do away with the value of opportunities to perform morally impermissible actions in the context of normative theorising: in an ethical system, such a value has an important role to play. Hence, we should draw the conclusion that in an ethical system that appeals to axiological considerations concerning the goodness/badness of having opportunities it is plausible to appeal to a moralised definition of freedom only if such a definition is inserted in a pluralist framework that acknowledges not just the value of (moralised) freedom but also the value of opportunities to perform morally impermissible actions.26

4 Raz on Autonomy and the Value of Freedom.

So far we have assumed that one can benefit from the opportunities to perform morally impermissible actions because performing what such opportunities allow one to do can make a positive contribution to wellbeing: for example, an individual benefits from the opportunity to steal as long as stealing is beneficial for her (§1).27 Now, there are also ways of arguing that people benefit from the opportunities to perform morally impermissible actions that do not appeal to the benefits that people can derive from acting wrongly: for example, having such opportunities can be good for persons because deciding to refrain from acting wrongly contributes to autonomy, when one also has the opportunity to act wrongly. In this and the next Section (§§4-5) I discuss the relationship between the personal value to opportunities to perform morally impermissible actions and autonomy, contrasting it with Raz’s views on this matter. I proceed by introducing the essential features of Raz’s theory in §4. Then in §5 I examine whether it is possible to frame a recent argument put forward by Kramer (2017) as an internal critique of Raz’s account of the relationships between freedom and autonomy.

Raz on Autonomy and the Value of Freedom

26 That is, in such a system moralising freedom is plausible only if one acknowledges the relevance of non-moralised opportunities and their value. Moreover, one cannot exclude that considerations concerning (moralised) freedom can conflict with considerations concerning non-moralised opportunities, and that therefore a solution for such conflicts is needed.

27 While obviously also having impersonal disvalue.
In general terms, Raz interprets autonomy as an ideal of self-creation:

“The ruling idea behind the ideal of personal autonomy is that people should make their own lives. The autonomous person is a (part) author of his own life. The ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny, fashioning it through successive decisions throughout their lives.” (Raz 1986, 369).

Raz’s theory of autonomy is complex and comprises many lines of argument; the essential features in this context are the following. First, for Raz autonomy is primarily an attribute of people’s lives (rather than of single choices). Second, Raz interprets autonomy also as a capacity constituted by the following conditions: “appropriate mental abilities, an adequate range of options, and independence” (Raz 1986, 372). Third, Raz interprets autonomy as having personal value: for Raz attaining autonomy is good for persons, it is “a constituent element of the good life” (Raz 1986, 408). Fourth, Raz offers a distinctive interpretation of the relationships between freedom and autonomy. Raz acknowledges that there are a great number of valuable choices and lifestyles that exemplify different values and virtues (Raz endorses value pluralism: Raz (1986, chap. 14, §4)). But he also thinks that certain lifestyles and choices are disvaluable (degrading, worthless, or, more generally, detrimental to wellbeing). And this leads him to claim that, since “autonomy is valuable only if exercised in pursuit of the good” (Raz 1986, 381) – i.e. only if the ends chosen are themselves valuable – only options that have content-dependent value contribute to autonomy. As Raz puts it:

“The ideal of the autonomous person […] gives substance to the notion of worthwhile freedom. It allows discrimination between valuable and worthless or even detrimental freedoms, according to their contribution to the ideal of personal autonomy.” (Raz 1986, 246)

In the following Section I critically discuss this aspect of Raz’s theory, elaborating on an argument recently advanced by Kramer (2017, 227-250) which purports to show that there is value also in having

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28 Even when Raz speaks of choices made under conditions of autonomy, he frames his reasoning in terms of autonomy as an attribute of people’s lives: see Raz (1986, 371).
29 These involve being able to make (long-term) plans and to reason about the value of different options (appropriate mental abilities), having a range of options that are sufficiently good and varied (e.g. the options must not all be trivial or morally horrendous), and being able to make choices that are not dictated by coercion and manipulation (independence) (Raz 1986, 372-378).
opportunities to perform disvaluable actions, since such opportunities contribute to the control aspect of autonomy.31

5 A Discussion of Kramer’s Critique of Raz on Autonomy and Freedom.

According to Kramer, having opportunities (freedom)32 has constitutive value as “a key ingredient of individual autonomy” (Kramer 2017, 207). Kramer argues that:

“An autonomous person attains and preserves her status as such not only by arriving at most of her decisions in a reasonably reflective manner that bespeaks her self-determination, but also by having been free to behave in any number of ways that would have been significantly different from the ways in which she actually behaves.” (Kramer 2017, 207)

So, for Kramer autonomy requires deliberating about which options are best against the background of many alternatives.33 I should emphasise that I am interested in those aspects of Kramer’s argument that pertain to control and the “declinatory aspect” of autonomy (Kramer 2017, 207). Control comes into play because steering one’s own life in accordance with one’s own choices – rather than letting the course of the events determine the direction of such a life – is the defining feature of autonomy. And control can be undermined not just by factors that adversely affect the deliberative process (e.g. manipulation), but also by a very limited range of options. This is because, as Kramer argues, in such a case an agent:

“has not been in a position to decide against following many contrary paths. She has not enjoyed a substantial set of opportunities to exert herself as a choosing agent with an ample degree of control over what she does and what happens to her.” (Kramer 2017, 207)

By contrast, having (more) options allows one to refuse to act in certain ways, while also having the opportunity to do so (hence, the declinatory component). And, as Kramer argues, this increases the causal impact that an individual’s decisions have on the course of her life: by deciding to act in certain

31 Kramer’s critique of Raz has many strands, and here I shall focus only on those relevant to a discussion of the relationships between freedom and autonomy. For Kramer’s overall critique, see Kramer 2017, 227-249.
32 Kramer frames his argument in terms of ‘freedom’ (rather than ‘opportunity’), because he adopts a non-moralised definition of freedom (Kramer 2017, chap. 5).
33 As Kramer himself acknowledges, his argument draws on Carter’s discussion of the value of freedom (Carter 1999, Chap. 2, especially at pp. 41-43 and 54-60).
ways against the background of many alternatives, the individual also refuses to take one’s own life in all the other directions that would have been possible had the individual decided otherwise (Kramer 2017, 204-205, 207). There are two aspects of this argument that matter in this context. First, for Kramer having (more) opportunities as such – irrespective of the opportunities’ content (of what the opportunities allow one to do) – contributes to autonomy. Indeed, for Kramer also the opportunities to perform actions that are disvaluable – especially, in virtue of being detrimental to wellbeing – contribute to autonomy: by refusing to act in disvaluable ways one increases the causal impact of one’s decision (to act in valuable ways). And, hence, for Kramer freedom has content-independent (constitutive) value for the achievement of autonomy (Kramer 2017, Chap. 5): freedom is valuable as such, irrespective of its content.34

Second, Kramer can therefore claim that Raz is mistaken to believe that options that are detrimental to wellbeing (and disvaluable options more generally) do not contribute to autonomy: as has been shown in the previous paragraph, such options partake of the content-independent value that opportunities have in virtue of contributing to the control and declinatory aspect of autonomy.35 Moreover, although Kramer’s focus is especially on opportunities that are disvaluable in self-regarding terms in virtue of having a negative effect on wellbeing, and Kramer is of course keen on stressing that the opportunities to perform other-regarding morally impermissible actions – especially, those that would cause serious harm to others – should be adequately constrained by the state (Kramer 2017, 237), in principle Kramer’s argument can be extended to cover also the value of opportunities to perform (other-regarding) morally impermissible actions. Indeed, qua opportunities, they partake of freedom’s content-independent value: they contribute in a content-independent fashion to autonomy and people benefit from them. Further support to this extension comes from two aspects of Raz’s own theory: first, from

34 Hence, for Kramer (1) opportunities have both content-dependent value/disvalue and content-independent value (qua opportunities) (Kramer 2003, 240-245; Kramer 2017, Chap. 5). Moreover, (2) Kramer follows Carter in allowing for the possibility that beyond a certain (high) point having more opportunities has decreasing content-independent value – or that such a value is counterbalanced by content-independent disvalue (e.g. by the possible disvalue associated with having too many opportunities) (Kramer 2017, 204; Carter 1999, Chap. 2). For example, Carter’s and Kramer’s arguments are compatible with claiming that having too many options does not further contribute to autonomy and instead has content-independent disvalue because one cannot properly assess and compare all the relevant information. Furthermore, (3) Carter’s and Kramer’s argument do not deny that some freedoms (e.g. the freedom to kill one’s brother) have great content-dependent disvalue, and that this may well offset their content-independent value (See Carter’s remarks at pp. 64-65 of Carter 1999).

35 Kramer makes this argument especially in the context of challenging Raz’s perfectionism on grounds that, given that also the opportunities to perform self-regarding harmful actions – i.e. actions that harm oneself – partake of the content-independent value of opportunities, this grounds a reason for the state to refrain from relevantly interfering with such opportunities (Kramer 2017, 228-250).
Raz’s claim that wellbeing considerations are intertwined with morality, rather than separate from it. In particular, for Raz in reasonably just societies people will develop conceptions of wellbeing that integrate moral considerations into the personal inquiry of which goals are worth pursuing in life. For example, in thinking about which career to pursue, people will draw on the standards of moral acceptability of the society in which they live, and if such standards are themselves morally adequate, people’s conceptions of wellbeing will be informed by moral considerations (Raz 1986, Chap. 12, esp. 313-320). Hence, one cannot really keep the discussion of the value/disvalue of opportunities to perform morally impermissible actions separate from a discussion of the relationships between freedom and autonomy. Second, one can also draw on Raz’s claim that “[t]he autonomous person has or is gradually developing a conception of himself, and his actions are sensitive to his past” (Raz 1986, 385), and that autonomy consists in a process of self-creation of value (Raz 1986, 385-390). More specifically, one can claim that gradually developing a conception of oneself as a decent moral person is a goal that contributes to autonomy and to the formation of one’s identity through time. And hence, given that forming a *moral* identity has personal value and contributes to autonomy, also the opportunities to perform morally impermissible actions have personal value (in virtue of being constitutive conditions of autonomy).

*An Internal Critique?*

Kramer’s argument works very well as an external critique: Kramer shows that there are good reasons to believe that freedom has content-independent value, and hence that Raz should acknowledge that also the freedom to perform disvaluable (e.g. morally impermissible) actions contribute to autonomy. I now want to examine whether it is possible to frame Kramer’s argument as an internal critique: in other words, could one claim that there is value in the opportunities to perform disvaluable (e.g. morally impermissible) actions, *even starting from purely Razian assumptions*? I shall present, first, the case for thinking that Kramer’s arguments work as an internal critique, and I shall then introduce a plausible Razian rejoinder that shows a shortcoming of interpreting Kramer’s argument as an internal critique. To begin with, Raz’s references to control as constitutive of autonomy are pervasive.\(^{36}\) For example, Raz claims that “the ideal of personal autonomy is the vision of people controlling, to some degree, their own destiny” (Raz 1986, 369; also at p. 408). And one possible way of understanding control applied to the moral domain is as follows. Acting in a morally permissible way is an *act-type* – an intensional category that groups together act-tokens of the same type (i.e. all morally permissible

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\(^{36}\) One can go as far as to say that control is an additional “conditions of autonomy” (Raz 1986, p. 372) in that a range of options is adequate when, among other things, it allows the individual to exercise control over which direction one’s life should take (adequacy of options is one of Raz’s conditions of autonomy, see Raz 1986, 372-373).
actions) – and its contrary is ‘acting in a morally impermissible way’ (i.e. acting immorally). Now, it is plausible to assume that one of the necessary conditions for being fully in control of whether to $X$ (where $X$ is an action of a certain type), is that one has the opportunity to do otherwise: i.e. that one has the opportunity to not-$X$. Indeed, by having the opportunity to not-$X$ the decision of whether to $X$ (or not-$X$) is fully in the hands of the agent, rather than being pre-emptively constrained by external factors (such as the lack of opportunity either to $X$ or to not-$X$). So, it seems promising to rely on an argument of this type to establish the value of opportunities to perform disvaluable actions: even assuming with Raz that an exercise of autonomy is valuable only if the ends chosen are themselves valuable, Raz should acknowledge that, in order to control whether to perform a morally permissible or otherwise valuable action, an individual also needs the opportunity to perform a morally impermissible or otherwise disvaluable action.

I want to emphasise two aspects of the argument introduced above. First, as I presented it, the argument is conducive to Kramer’s conclusion that freedom has content-independent value in an interesting way: indeed, since both the opportunities to perform morally permissible actions (and, more generally, valuable actions) and the opportunities to perform morally impermissible actions (and, more generally disvaluable actions) contribute to the control aspect of autonomy, opportunities have value independently of their content. Note that, if we take into account that Raz’s understanding of autonomy (and of value more generally) has an objectivist component – i.e. that autonomy aims “at the good” and therefore that people are autonomous when they choose objectively valuable ends (Raz 1986, 378-381) – the value of the opportunities to perform morally impermissible actions is context-dependent: it is conditional on the presence of opportunities to perform morally permissible actions. In other words,

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37 Intensional descriptions of actions “are couched in terms of the purpose or meaning attached by the actor (or others) to what he does: my attending Richard III, my running for a bus, my throwing a ball and so on” (Steiner 1994, 36).

38 This seems implied by Kramer’s statement that autonomy is attained “[…] also by having been free to behave in any number of ways that would have been significantly different from the ways in which she actually behaves.” (Kramer 2017, 207).

39 This point emerges vividly if one considers the somehow fanciful scenario in which opportunities to act immorally are completely removed (for example, through some sophisticated neural control technology) (Kramer 2017, 234-236): under such circumstances an individual would lack control of whether to act in a morally permissible way, since control also requires the opportunity to act in morally impermissible ways.

40 And so one arrives at the conclusion that freedom has content-independent value by way of generalising from the content-dependent values attributed to the two types of opportunities: since the opportunities to perform valuable (e.g. morally permissible) actions have content-dependent value and the opportunities to perform disvaluable (e.g. morally impermissible) actions have (content-dependent) value in virtue of contributing to the control aspect of autonomy, any opportunity is valuable irrespective of content.
if one assumes with Raz that autonomy – and value more generally – should be interpreted at least partially in objectivist terms (as aiming at objectively valuable ends), then it can matter to have opportunities to perform disvaluable (e.g. morally impermissible) actions only if one already has an adequate range of opportunities to perform valuable (e.g. morally permissible) actions.\textsuperscript{41}

Second, Kramer’s argument faces a problem as an internal critique. A Razian reply would consist in emphasising that autonomy requires simply \textit{some degree} of control, rather than full control. Raz often stresses this point: for example, he claims that autonomy “[…] is the vision of people controlling, \textit{to some degree}, their own destiny, […]” (Raz 1986, 369 emphasis added; see also Kramer’s remarks on control at p. 373). Hence, if we interpret Kramer’s argument as an internal critique, it can only establish that, provided that one has adequate opportunities to perform valuable (e.g. morally permissible) actions, there is value in having \textit{some} opportunities to perform disvaluable (e.g. morally impermissible) actions, since this is sufficient to satisfy the (weaker) control condition of autonomy. From this follows that, if we take Kramer’s argument as an internal critique, (1) Raz cannot maintain that “[t]he ideal of autonomy requires only the availability of morally acceptable options” (Raz 1986, 381), since, even on purely Razian grounds, autonomy requires also the availability of \textit{some} disvaluable options. At the same time, (2) it does not follow that \textit{any} opportunity is valuable within the Razian framework, since Raz can maintain that, given that only some opportunities to perform disvaluable actions are necessary to satisfy the control condition, all remaining opportunities lack of value.\textsuperscript{42}

6 Conclusion.

The personal value of the opportunities to perform morally impermissible actions plays an important role in normative arguments. The recognition of this contributes to shed light on the plausibility of adopting a moralised definition of freedom in the context of an ethical system that appeals to axiological considerations. In particular, I have examined the problematic implications of adopting the moralised definition of freedom with respect to the impossibility of claiming that one enjoys a freedom-related benefit when one’s opportunities are illegitimately or unjustly increased, and with respect to how the moralised definition can account for the fact that one suffers a freedom-related harm when one’s opportunities are legitimately or justly restricted. Second, Kramer’s argument against Raz’s interpretation of the relationships between freedom and autonomy has a limited reach as an internal

\textsuperscript{41} On grounds that the opportunities to perform disvaluable actions contribute to fulfil the control condition of autonomy.

\textsuperscript{42} I owe this Razian reply to an anonymous reviewer. If Kramer’s statement that freedom has content-independent value can also be interpreted as implying that any opportunity has some value (merely qua opportunity), this Razian reply also entails that freedom does not have content-independent value on purely Razian grounds.
critique, in that it can only establish that there is value in having some opportunities to perform morally impermissible (or otherwise disvaluable) actions.

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