

BEST OF THE BEST OF THE BEST? HOW INTERNATIONAL ARE TOP INTERNATIONAL LAW JOURNALS REALLY?

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Abstract. This paper reports a pilot study on publication patterns in the twelve top international, single-subject law journals. It has been found that these journals almost exclusively publish US law school-affiliated authors, with foreign-based lawyers authoring less than 5% of all the papers published in these journals. This outcome contrasts heavily with the outcomes for the control group of multidisciplinary science journals, where authorship distribution conformed with the number of scientists working in three macro-regions (US, EU, and China). The results of this study indicate that law journals are most probably jurisdiction-focused, and the number of citations relies more on the size of a jurisdiction covered by the journal than on the international appreciation of the texts. Furthermore, it may indicate that bibliometric factors used to measure scientific output cannot be applied 1:1 to measure the quality of legal research.

Keywords: SCOPUS, bibliometry, research evaluation

INTRODUCTION

We live in a world of metrics [Muller 2018]. Everything should have its value, price, and performance indicators. The same goes for academic research. Governments want to have their money well-spent, and to achieve this, governments introduce various research performance valuations based either on peer review or an elaborate set of metrics. Despite the well-known danger of transforming metrics into objectives, this is still one of the simplest and most cost-effective methods of checking if public money is used for a good purpose [Hicks 2012; Jonkers and Zacharewicz 2018; Zacharewicz, Lepori, and Reale 2018]. It has been suggested by Harzing that an analysis of research quality of British universities conducted with Google Scholar leads to almost identical results as costly and burdensome peer review done within the framework of the Research Excellence Framework [Harzing 2018]. So, the use of metrics and automated methods of performance measurements is a quite attractive choice if we look at it from the government perspective. Universities are held accountable, and the government can prove that the taxpayer's money is not wasted. So, we will all be numbered, weighed, and divided at the end of the day.

Mene, mene, tekel, upharsin.

This pilot study is a forerunner of a broader research project aimed at assessing the validity of current research assessment methods of law faculties. One of the main problems connected with existing ways of assessing law schools is the va-

lidity of bibliometric data for this purpose. Some legal systems base their research evaluation solely on peer review and expressly forbid the use of metrics in case of law,¹ or, as in earlier versions of the REF, allow panels not to use it [Mac Sithigh 2019, 31]. Some use a simplified method of calculating scores of particular journals [Letto–Vanamo 2018, 218–19], while other rely heavily on bibliometric data and metrics like Impact Factor, SNIP, or SCIMAGO Journal rank [Hojnik 2018, 341]. The Polish research evaluation system belongs to the latter. Each law journal on the government list of “scientific” journals has an assigned number of points calculated using the above-mentioned metrics. The assumption behind this method is that the sciences, social sciences, and humanities follow the same publication and citation patterns, and thus can be assessed with the same set of standard metrics [Fransen and Wouters 2019; Sivertsen 2009, 56–57; Verleyesen and Weeren 2019]. This position has been challenged by some authors who argue that in the humanities and some social sciences, including law, publication practices differ significantly from those used in hard sciences. In particular, law and humanities put more weight to publishing books than journal articles and that they tend to publish in languages other than English. Last but not least, the citation rates for law papers are significantly lower than, e.g. in physics, which makes bibliometric research evaluation systems prone to manipulation (e.g. lawyers start to publish outside their discipline or even act as courtesy coauthors with physicists or biologists) [Biagoli and Lippman 2020]. The fact that metrics for law journals are significantly lower than for hard sciences may also indicate different publication and citation practices. This particular fact has not yet been analysed to my knowledge. Proponents of the bibliometric system focus instead on proving that lawyers publish in non-native languages or that it is possible to publish humanities and social science research in English even for non-native English speakers etc. [Kulczycki, Engels, Pölönen, et al. 2018; Kulczycki 2019]. They use for this purpose data from Poland and some relatively small jurisdictions, e.g. Slovenia, Flanders, and the Czech Republic, that, due to their size, do not represent the whole of legal academia.

This study hypothesises that law differs significantly from other fields of research and has its distinctive authorship and publication patterns, which means that legal scholarship cannot be assessed with the use of the same metrics as other arts and sciences. The null hypothesis is that the Polish government is right and there are no significant differences between law and other arts and sciences, so the current research evaluation system is valid.

To test the validity of the hypothesis, I have analysed the authorship structure of top single-subject law journals worth 200 points a paper according to the government classification.

If the government assumption is correct, authorship distribution by country should be similar to that in top science journals or, at least, reflect all major legal

¹ *Index of revisions to the ‘Panel criteria and working methods’ (2019/02)*, https://www.ref.ac.uk/media/1450/ref-2019_02-panel-criteria-and-working-methods.pdf [accessed: 21.03.2021], p. 50–51.

families. If, on the other hand, legal sciences follow their own publication path, the data should show that and provide us with at least some information as to the authorship distribution and validity of SCOPUS-based metrics as a tool to evaluate research quality in law.

1. METHODS AND QUALITY OF THE DATASET

This is a descriptive statistical study using data from the SCOPUS database regarding affiliations of authors publishing in law journals. For this pilot study, I decided to limit the sample to top international single-subject law reviews. Journals belonging to this group have been identified using two basic criteria: inclusion in the Polish list of top-tier (200 points) law journals and identification of said journals as single-subject by SCOPUS. The Polish list, although SCOPUS-based, employs a somewhat strange system of ascribing journals to various research disciplines, so almost no law reviews are identified as single-subject, and many interdisciplinary hard science journals like *Nature*, *Science*, or *GigaScience* were, classed by the Polish Ministry of Education and Research as law reviews.² On the other hand, SCOPUS identifies quite a few of these journals as single-subject, and an inspection of the contents of these journals confirms that they publish solely texts written by lawyers and for lawyers. Both lists agree as to the identification of the top law reviews, so it was possible to identify a set of 12 top single-subject law reviews from this group.³ This has led to exclusion of the Harvard International Law Review from the set because SCOPUS classes it in two categories: law and political science. All journals included in this pilot study are US-based law schools' flagship reviews.

The study covers 10 years, from 2010 to 2019, so the results are pre-COVID-19 and free of any potential deformation by any eventual pandemic era changes in publication patterns. The data have been hand-picked from the SCOPUS analytics module covering many publications and institutional and national affiliations of the author. The sample is small enough to make this method of data collection feasible, yet large enough (all top-tier journals and publication data covering a decade) to be a good indicator of publication patterns. Two multidisciplinary journals, *Nature* and *Science*, which publish mostly hard- and natural science research, have been used as a control group.

Since SCOPUS is commonly considered a reliable source of data maintained by a respectable publisher, I assumed that no corrections will be necessary. However, while analysing the data I have noticed an unusually high number of texts

² God knows why, the nature and structure of this classification remains a mystery wrapped up in an enigma.

³ *California Law Review*, *Columbia Law Review*, *Georgetown Law Journal*, *Harvard Law Review*, *Michigan Law Review*, *Stanford Law Review*, *Texas Law Review*, *UCLA Law Review*, *University of Chicago Law Review*, *University of Pennsylvania Law Review*, *Virginia Law Review*, *Yale Law Review*.

with affiliations from several countries like Colombia, Georgia, and Israel. That has led to more detailed scrutiny of national and institutional affiliation and detection of some somewhat hilarious results. The Israeli affiliations were correct and reflected the level of US – Israeli research cooperation (see below). Some other national affiliations were incorrectly identified. Persons entering data to the SCOPUS database often identified the Columbia University Law School in New York as a Colombian entity, which is somewhat understandable given the similarity of names. Much to my surprise, however, two papers written by Columbia University lawyers published in the *Virginia Law Review* were identified as co-authored by Colombian and French (!) authors.

Another (un)usual suspect is Georgia, which is the name both of a country and a US state. Thus, papers from the University of Georgia, Georgia State University, and Emory University (GA) were classified as Georgian. Similar mistakes were made in the case of the University of New Mexico (identified as Mexican, why bother checking?), The University of Alabama located in Birmingham, USA (identified as a UK university), and University of California Hastings (well, it must be the UK, battle of Hastings, no?).

Another paper written by a Georgetown lawyer has been identified as Canadian (yes, there are four places named Georgetown there). The last misattributed place in this set was Moscow, Idaho, the hometown of the University of Idaho and its law school. It is somehow understandable that SCOPUS clerks decided that Idaho is probably a suburb of Moscow, Russia, and marked one of Idaho's papers as Russian. Surprisingly, all South American affiliations, including Colombian, in *Texas Law Review* were correct.

Other mistakes were less obvious. Berkeley, Lewis & Clark, Stanford, Yale, Duke, and Notre Dame universities were sometimes identified as French entities. Hamline University and Denver University appeared in two cases as Vietnamese institutions and the latter in one case was classed as a UK institution. The University of Chicago was in one case classed as a Japanese law school. In the case of two papers identified by SCOPUS as the UK and Australian respectively, all authors came from US law schools marked as such. One Chinese paper and one Taiwanese paper were erroneously identified as law papers published in the *Virginia Law Review*, although they were published in *Science Advances* and *Transportation Journal* respectively.

It should however be noted that SCOPUS corrects such errors on the go, although there is no register of changes available. That explains the mysterious disappearance of 13 papers from the Georgetown University Law Centre marked initially as originating in Guyana (its capital is by pure chance called Georgetown). Unfortunately, this practice makes the dataset less reliable and the results less reproducible. It should also be noted that though such errors and omissions are negligible in the case of multidisciplinary journals publishing hundreds of papers annually, they are nonetheless crucial in the case of law journals covered by this research, publishing on average 38 papers a year and with the number of non-

US texts not exceeding 20 in a decade. For instance, in the case of the *Harvard Law Review*, 4 out of 15 texts identified by SCOPUS as written by foreign authors were published by academics from first-tier US law schools. An error rate over 30% is quite a lot, so, in the case of journals publishing relatively low numbers of foreign texts, a manual verification of data on foreign affiliation was required. For the sake of clarity data presented in this study are in the corrected form.

2. RESULTS

I assumed that top international law journals should have a distinct and diverse portfolio of authors hailing from various parts of the world. Three major players in the science world are the US, EU, and China. In the time covered by the research, the UK was still in the EU, so I decided to include it in the EU section. If we consider the EU countries without the UK, the total number of EU texts drops from 41 to 16, i.e. to less than 0.5% of all texts published in top “international” journals. On average, a top international law journal publishes slightly more than one non-US affiliated paper per year.

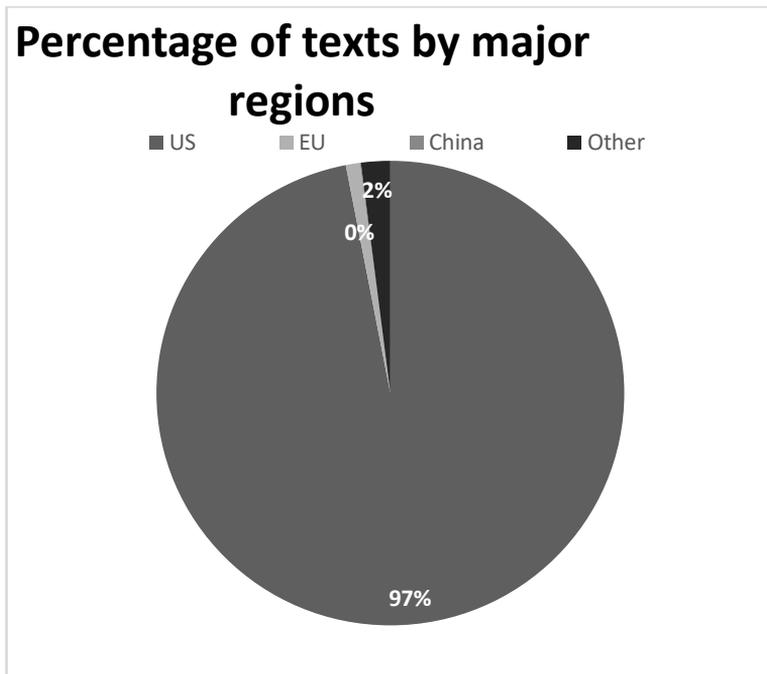


Fig. 1: percentage of texts affiliated by major regions based on SCOPUS data

Another way of looking at the distribution of foreign-affiliated texts is to group them by jurisdictions: Common Law, Civil Law, Mixed, and Other. This classical comparative classification is a standard one, and there will be no problem with identifying most of the countries in the study as belonging to one of

them. I decided to put together predominantly common law countries that have territories having their system based on the civil law (Quebec in Canada, Scotland in the UK) because the mixed component of these jurisdictions was not visible in SCOPUS. Classical mixed jurisdictions in the sample were South Africa [Van der Merwe, Du Plessis, De Waal, et al. 2012] and Israel [Rivlin 2012; Barak 2002]. In the case of the Philippines, I decided to class it as “Other” because in the modern literature it is defined as a “hybrid” legal system, not fitting in a classical common-civil-mixed divide [Mahy and Sale 2015]. China has its distinctive legal system, and legal identity of Taiwanese law is currently a part of a legal and political dispute [Lewis 2019].

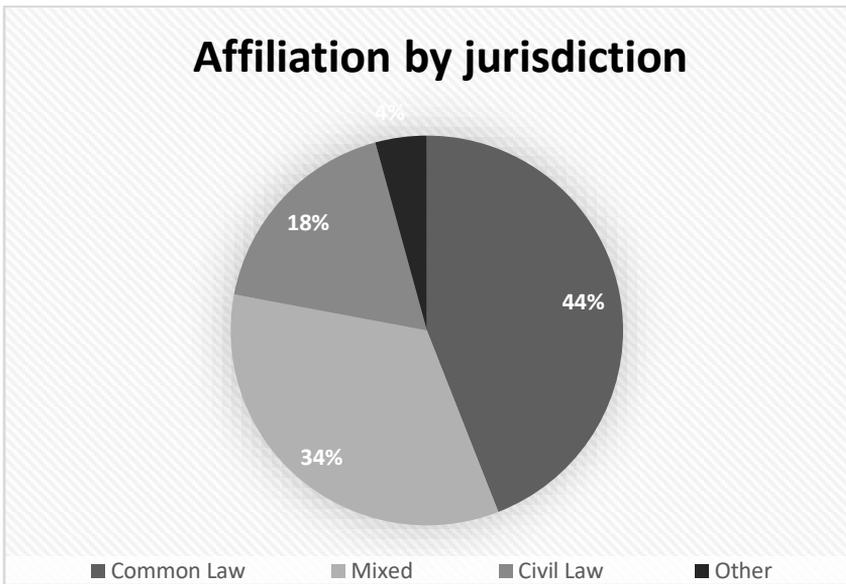


Fig. 2: Distribution of affiliations by major legal families (jurisdictions)

Foreign text authorship structure is also worth analyzing. Let us look at the number of papers co-authored with a US-scholar or authored by persons with dual, US and non-US affiliations compared with the number of texts authored solely by authors with non-US affiliation.⁴

Country	US and non-US affiliation	Non-US affiliation	Total
Argentina	0	3	3
Australia	5	0	5

⁴ Number of affiliations may not equal the number of texts due to multiple affiliations and co-authorship of some of the texts. Affiliations were hand-picked from SCOPUS.

Brasil	1	0	1
Canada	10	11	21
Chile	0	1	1
China	2	1	3
Colombia	0	2	2
Denmark	1	0	1
France	1	0	1
Germany	4	2	6
Israel	28	11	39
Netherlands	1	2	3
Philippines	0	1	1
South Africa	0	1	1
Spain	1	0	1
Switzerland	1	1	2
Taiwan	1	0	1
United Kingdom	11	15	26
TOTAL	67	51	118
% of papers	56.77	43.23	100

Table 1: distribution of authorship by country and by co-authorship or double affiliation

If we look at the distribution of institutional affiliations, we notice that in each of the twelve cases, a majority of texts come from “homies” or rather “inbred” authors connected with the law school that publishes any given journal. On average, c.a. 34.7% of texts published in these journals were inbred, but the actual number of such texts varied from 7.8% in the case of the *Texas Law Journal* up to 54% in the case of *Columbia Law Review*.

The data from our control group show a completely different authorship distribution system. Unlike in the case of law reviews, *Nature* and *Science* are truly international journals, both of them having published authors hailing from 159 countries compared with representatives of 19 countries publishing in “top international single-subject law reviews.”

The following table shows how well global players, i.e. the EU, the US, and China, representing respectively 22.2, 16.7, and 19.1 percent of the global pool

of scientists are represented in both *Nature* and *Science*.⁵ Since multiple affiliations are possible, the number of affiliations does not necessarily reflect the number of papers published in both journals.

Journal name	No. of papers	US affiliation	EU affiliation	CN affiliation	Other affiliation	Total number of affiliations
<i>Nature</i>	284-8	10881	12501	1228	8256	32866
<i>Science</i>	23748	10609	9903	1058	1257221	2178

Table 2. Authorship distribution in *Nature* and *Science* in the years 2010-2019 (source: SCOPUS)

The top number of papers (1064) in *Nature* comes from the Howard Hughes Medical Institute and in *Science* from the MIT (799). Both numbers of papers are not even remotely close to the number of top authors' affiliations represented in the law journal sample.

If we look at the distribution of authors compared to the share of each of the regions/countries in the global pool of scientific talents, the numbers are as follows:

Journal name	Total	US affiliation	EU affiliation	CN affiliation	Other affiliation
<i>Nature</i>	100	33.1	38.03	3.73	25.11
<i>Science</i>	100	44.67	41.7	4.45	9.17
<i>Percentage of the world pool of scientists</i>	100	16.7	22.24	19.1	42

Table 3. Authorship distribution as a percentage of the total number of national affiliations (SCOPUS)

As we can see, the US and the EU dominate the research scene with a similar number of publications both in the *Nature* and *Science*, with China being a strong runner-up. This contrasts with the number of US-affiliated texts published in top international law reviews presented above.

⁵ UNESCO Science Report (05.10.2020), <https://en.unesco.org/unescoscience-report> [accessed: 27.03.2021].

3. DISCUSSION

As we can see, this preliminary analysis shows that top international, single-subject law journals can hardly be called “international.” Contrary to the common belief shared both by many governments and by the general public, law reviews tend to follow publication patterns other than those in hard-science-based journals. This pilot study has proven that even top law journals are “local,” if not parochial, in the sense that they are jurisdiction-oriented and focus mostly on one legal system. This is reflected also by the distribution of authors, with most hailing from one jurisdiction with a minority of foreign authors, most of them having a connection with the dominant jurisdiction. So, the best chance to publish in a top international, single-subject law review is to be a US-based law professor, with being a Canadian, British, or Israeli scholar providing second best chance. Having a US-based co-author also helps, but not as much as one would assume. The number of texts with double affiliation or being co-authored with a US-based author in proportion to the number of foreign authorship-only texts is 6:4, so having a US-based co-author does not increase significantly the chance to have the research published.

This contrasts heavily with the affiliation structure of papers published both in *Science* and *Nature*. As we can see, both journals have a truly international pool of authors, with the number of texts coming from each of the major players, i.e. US, EU, and China, comparable with the proportion of scientists in each of the regions. Moreover, contrary to the top law reviews, no identifiable leading institutions are publishing 30% or more papers in any of the journals.

As far as a possible interpretation of these data goes, one may start with two of the most extravagant, if not preposterous ones: editor’s bias and bad, non-US science. It could be argued that student editors of top US law schools are simply biased against any non-US research, either considering US universities the only ones producing first-class legal scholarship or treating non-American lawyers as intellectually inferior and unable to produce publishable results. Nothing, however, suggests the existence of a systemic bias or an inclination towards cultural colonialism in law reviews’ editorial teams that are as diverse as the US population.

Another explanation, this time following the Polish government’s way of thinking, would be that only authors coming from the best universities of the world get the chance to be published by top international law journals. So, by the principle of “inherited prestige,” if you do not publish there, you are not worthy. This is the tricky one because by adopting this way of thinking we commit a *post hoc, ergo propter hoc* fallacy. It is hardly imaginable that only one research discipline is so underdeveloped all over the world and that, excepting the US, only a handful of foreigners passes high US law review standards. Furthermore, it is hardly imaginable that even “model” comparative jurisdictions like Germany and France have but a handful of law professors able to publish top-quality papers every ten

years or so. The same goes for the Chinese and Indian lawyers – 2 billion people, two nations with several thousand years of history, not able to educate law professors talented enough to publish a paper abroad, but able to produce hundreds of scientists publishing in *Nature* or *Science* – that is both improbable and impossible.

There is, however, third and in my opinion more plausible explanation of the results. Namely, that law is country, jurisdiction, and language-oriented, so, in a natural way, lawyers tend to publish in their national outlets and publish texts pertinent to their national jurisdiction. The fact that there are specialist law reviews focusing on legal theory, comparative or supranational law (e.g. international or European), or other law-in-context topics do not probably change much. And even if so, this study focuses on “top international journals” defined by citation metrics, and even well-known and respected *American Journal of Comparative Law* with 100 points does not even come close to the top. This view is supported by the data on the affiliation of non-US authors publishing in the journals covered by this study. They come from two common law jurisdictions (Canada and the UK) which have strong ties with the US and, more importantly, have their law based on the common core. The case of Israel is slightly more complicated – it shows both importance of US-Israeli relationships and an unusually high proportion (2:1) of texts written by the authors with double affiliation or written with a US-based co-author. In the case of two other major contributors, the proportion is close to 1:1.

So, how can we explain the unusually high position of parochial journals, publishing a high proportion of papers by authors coming from one law school both in SCOPUS and Polish government ranking? Well, I think that there are two possible answers to this question. One is based on the size of the jurisdiction, another one on Anglocentrism of SCOPUS.

Since all top “international” law journals are US-based and publish mostly US-relevant texts, their unusually high rank in SCOPUS may be also explained by the size of the jurisdiction itself. According to the data supplied by the American Bar Association (ABA), 1.33 million lawyers were practicing in the US⁶ and there are 199 ABA-Accredited law schools.⁷ In comparison, there are ca. 70,000 practicing lawyers in Poland (advocates, attorneys, and tax advisors)⁸ and only 58 law schools, according to the government portal studia.gov.pl. Thirty-five of them are ranked by the “Rzeczpospolita” daily ranking. The rest of these schools are either too young to be ranked (no graduates so far) or enrolling a homeopathic number of students. Even if we include notaries, judges, and public

⁶ See https://www.americanbar.org/content/dam/aba/administrative/market_research/total-national-lawyer-population-1878-2020.pdf [accessed: 27.03.2021].

⁷ See https://www.americanbar.org/groups/legal_education/resources/aba_approved_law_schools/ [accessed: 27.03.2021].

⁸ See <https://biznes.interia.pl/finanse/news-na-rynku-jest-coraz-wiecej-adwokatow-radcow-prawnych-i-dorad,nId,4339679> [accessed: 27.03.2021].

prosecutors, the number of lawyers qualified to practice law in Poland will be probably less than 10 percent of the number of practicing US-based lawyers. This sheer fact should raise suspicions as to the validity of citation-based metrics as a tool for assessing the quality and impact of law journals.

It should also be noted that SCOPUS indexes mostly, although not exclusively, English-medium journals, so anything that is not published in English easily drops off the radar. It is natural for French or German lawyers to publish in the vernacular, and when seeking an analysis of, say, a new Swiss law, you will look for it in the *Schweizerische Juristen-Zeitung* / *Revue Suisse de Jurisprudence* rather than in the *Harvard Law Review*. None these texts are included in the database, so we do not know if *Harvard Law Review* is one of the world's most-cited journals, one of the US most-cited journals, or simply one of the most cited English medium law reviews. Possibly the metrics are flawed because they are calculated with the use of the incomplete dataset.

CONCLUSIONS

It is hardly a surprise that “top international, single-subject law journals” are perhaps “top” by means of metrics, but hardly “international” in respect to author affiliations. This study has shown that law reviews tend to be parochial and connected with one particular jurisdiction. That explains the different distribution of authors' affiliations in law and science journals. Stern metrics achieved by US-based journals may be due to the size of the US jurisdiction, not to super quality or international relevance of published texts.

This paper contains data from a pilot study comprising top single-subject law journals, so further research as to authorship and citation practices in legal academia will be required before we decide if SCOPUS/WoS-based metrics should be abolished as the sole criterion of Polish research evaluation for law school further research. The fact that US-based journals do not publish international authors does not prove that the same will be true for law journals from other, smaller jurisdictions, thus the next step will be to analyze lower-tier journals and mixed (law and other disciplines) journals. And, even if the home boys-and-girls-first publishing pattern is true for other jurisdictions, it would still be possible to use citation metrics, provided that they will be normalized, e.g. by the size of the jurisdiction. So far, this research indicates that there is a minimal number of non-US lawyers publishing in top (200 pts) law journals, and that, contrary to a common belief, not all scientific disciplines follow the same publication patterns.

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