

Comment on the articles by Bernstein, Gcabashe and Mabin, and Bennett

Revisiting unresolved questions: land, food and agriculture

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Introduction

In the first years of *Transformation*, three papers dealt with intersecting rural questions: Makhosazane Gcabashe and Alan Mabin's 'Preparing to negotiate the land question' (*Transformation* 11), Tom Bennett's 'Human rights and the African cultural tradition' (*Transformation* 22) and Henry Bernstein's 'Food security in a democratic South Africa' (*Transformation* 24). These three papers all ask, from different vantage points, what the future of land, food and agriculture will be in a new, liberated South Africa. They deal with the thinking behind moves in the early 1990s towards enshrining land and customary rights in law; towards agricultural deregulation; and towards the redistribution of commercial farmland. Reading them collectively, they suggest a variety of land questions and point out that agrarian change is not all about land.

Bennett (1993) grapples with the contradiction between human rights frameworks, with their universalising logic, and tendencies towards cultural relativism. His concern is to expose the tensions underpinning debates at the time, in the context of political transition, about the place of customary law and traditional authority in a constitutional democracy. He explores the possible implications of a proposed gender equality clause in the Constitution and how this might be reconciled in law and practice with a future for customary laws, practices and institutions.

Bernstein (1994) presents a perspective that weaves together issues of land, food and agriculture – which was unusual at the time, when these policy debates were highly segmented, taking place in disparate fora and involving

different networks of actors. He bases his piece on Sen's (1981) view that adequate and secure 'entitlements' are preconditions for 'food security', which cannot be assured through increased aggregate production. It doesn't help to say that poverty causes hunger – the essentially tautological message of the World Bank – and so to wait for a generalised increase in affluence. Rather, hunger arises from a loss of entitlements. This suggests that rural food security should involve securing entitlements to land and other resources, as well as restructuring agricultural markets.

Gcabashe and Mabin (1990) ask the profound question of 'what it would mean to end apartheid in rural South Africa'. They note that, like the transition itself, the land issue would likely not see an 'abrupt disjuncture'. Their paper provides a useful delineation of key dimensions of land and agrarian debates at the time – with the exception of the question of restoring lost rights, or providing a 'right to return', through restitution. Historical land claims and a wider initiative towards redistribution were not clearly distinct at the time; indeed, the emergence of restitution as a discrete programme (and with its own law, policy framework and implementing institution) emerged in the context of the failure of radical options for redistributive reform in the early 1990s. They urge substantial research to support the development of policy options, and warn against economic reductionism in dealing with land and agrarian issues.

This article explores these three articles from the perspective of 2011, focusing on four themes: the politics of negotiations; the location of 'rights' in land and to custom; the political economy of agrarian change; and the multiple facets of the 'land question'. In conclusion, it draws attention to enduring questions about how to confront agrarian dualism, dynamics of changing and deepening inequality in the countryside, tensions between the logic underpinning land and agricultural policies, and the need to recast agrarian change in a wider frame, in recognition of the profound ways in which what happens in South Africa's rural areas are part of regional and global dynamics.

Negotiating the land question

Gcabashe and Mabin, writing in 1990, expressed the realistic concern that 'ill-prepared participants in negotiations can witness results – even agreements – which may contradict their intentions' (1990:60). Yet in hindsight, I am not convinced that ill-preparedness explains the African National Congress' (ANC) position and eventual compromise around property rights in

negotiations, either in 1993 at the Convention for a Democratic South Africa (CODESA) or in the debates at the Constitutional Assembly in 1995 leading up to the adoption of the final constitution in 1996. Indeed, most parties were poorly prepared on matters of both land and agriculture as the era of negotiations commenced. Gcabashe and Mabin correctly note the significance of the emerging field of policy studies, and identify the various institutes and think tanks backing up negotiators.

First, they discuss the mainstream economists: those associated with the Development Bank of Southern Africa and the University of Pretoria who were concerned with commercial agriculture and who envisaged and advocated the expansion of approaches to commercialisation of ‘black agriculture’ piloted since the late 1980s in their own experiments with farmer support programmes in the Bantustans. These actors would later author a new pro-capitalist land reform policy, ‘Land Redistribution for Agricultural Development’ and, in alliance with the National African Farmers’ Union, exert substantial influence over both land and agricultural policy under Mbeki, as key actors in his Presidential Working Group on Agriculture.

Second, they observe that ‘the left’ was rather thin on the ground, with little technical capacity in the areas of land and agriculture with which to galvanise information and analysis – recognition of which was part of the motivation for the establishment in 1995 of the Programme for Land and Agrarian Studies (PLAAS, now the Institute for Poverty, Land and Agrarian Studies) at the University of the Western Cape. They characterise the intellectual factions ranged around these policy debates within the ‘agrarian left’ as including Marxist academics and non-governmental organisation activists, many of whom went on to constitute the formidable team that worked with the Land and Agriculture Policy Centre (LAPC), and some of whom became the new bureaucrats of the Department of Land Affairs after 1994. To Gcabashe and Mabin’s cast of characters, though, I would add that, by the end of the 1980s, there were networks between key thinkers inside and outside the country. A small group of ANC exiles formed an informal reading group based in Lusaka, but working with those elsewhere, and with local activists and scholars – a network of several key figures who later, on return from exile, established the ANC Land Commission and led its work of generating policy informed by research and analysis.

Deficiencies in ‘the left’s’ policy proposals is not sufficient explanation for what happened; in fact, key elements of the compromise around property rights predated the CODESA discussion. In the period these three articles

appeared in *Transformation*, the discourse of nationalisation lived on in political rhetoric, but had always been the subject of contestation within the ANC, and had been abandoned in its own proposals for a new dispensation several years before. The rather moderate ANC Constitutional Guidelines from 1989, adopted in Harare, envisaged a mixed agrarian economy comprised of ‘a public sector, a private sector, a cooperative sector and a small-scale family sector’ (ANC 1989: 132). The Guidelines implied that corporate and commercial property may be subject to public regulation and committed a future ANC-led government to:

- i) Abolition of all racial restrictions on ownership and use of land;
- ii) Implementation of land reforms in conformity with the principle of Affirmative Action, taking into account the status of the victims of forced removals. (ANC 1989: 132)

Rights for the propertied and the propertyless

The 1995 Constitutional Assembly process saw disagreement about whether to have a property clause. ANC lawyers paved the way for the concession that property rights would be constitutionally protected, with the aim of using this clause to entrench land reform and natural resource transformation – in other words, to balance the property rights of property owners and those of the dispossessed. As explained by Geoff Budlender, a key legal advisor at the time, the constitutional entrenchment of property rights in a Bill of Rights would create ‘a constitutional package [which] would place the landless and homeless in the position where they could make a claim of right rather than a petition for largesse’ (Budlender 1992: 299, 203).

South Africa developed a lawyer-dominated land reform framework, underpinned by strong presumptions about the ability of the law to change society. This gave way, in less than a decade, to widespread scepticism about a ‘rights-based approach’ to development. Now the question of the application of rights, with which Bennett was concerned, is perhaps less pressing than the question of the relationship between rights (as enshrined in law) and social and economic change. We have a justiciable bill of rights, but the ability to use this to change society has proved limited, provoking questions about the role of the law in changing society, and the degree to which a ‘rights’ framework provides adequate avenues to challenge power and institutions.

While some emphasise the role of politics in constraining the realising of

rights, others argue that changes in livelihoods and locality mean that land does not occupy the centrally important economic role it once did (Walker 2006). These wider, non-programmatic, constraints on land reform have since been amply itemised by Walker (2008), who talks of a ‘master narrative of loss and restoration’, which elides the transformations wrought in land and in family and community and economy *after* dispossession – and the impossibility of a simple ‘turning back the clock’. Land represents not only a means of production, but is constitutive of identity: which is why the debates on land reform – its significance, how it should be done and who it should be for – so often involve people talking at cross purposes, invoking competing paradigms of economic efficiency and rights.

From ‘cultural rights’ to ‘living customary law’

Bennett is concerned with the blanket application of ‘rights’ in a context of cultural diversity, noting that: ‘Most propagandists of the rights culture would, in their more reflective moments, concede that human rights cannot be successfully implemented without some regard being paid to local conditions’. Bennett pointed out that ‘The ANC says nothing about cultural rights’ but is also sceptical about the articulation of ‘African culture’ as a distinctive tradition: ‘Safely distant from any possibility of empirical verification, this primordial state has taken on a utopian quality’ (1993:31).

At the same time, Bennett talks about culture being reclaimed by ‘Africans’ from the domain of western scholarship, and being ‘rehabilitated’, an intriguing choice of word, since it suggests both revival and reform. He was writing of course in the context of the early 1990s CODESA negotiations; here, in the context of attempts by the National Party and others towards securing a minority veto, ‘group rights’ was code for resistance to democratisation, and the entrenchment of vested interests. Ultimately, our fudging of the issue of how the right to culture is to be reconciled with universal rights has allowed the continuation of patriarchal institutions – even though society might be transforming them gradually.

Bennett points to the ways in which family, kinship and lineage were undergoing profound transformations wrought through demographic change and migration. Research since, by Aninka Claassens and Sindiso Mnisi (2009) among others, shows how a marked decline in marriage, increased female urban migration, generational succession, HIV/Aids, social grants, have resulted in changes in household formation, notably the emergence of single woman-headed households with children and other dependants as

the dominant household form in communal areas. Although in uneven, gradual and ambiguous ways, this in turn has prompted shifts in ‘tradition’ – such as the documented increase in allocation of land by chiefs to unmarried women with children (Claassens and Mnisi 2009). Bennett’s (2008) later work draws attention to this growing dilemma regarding the gap between ‘official’ customary law, as codified in statute, and ‘living’ customary law as differentially practised through re-constituting and embedding social relations.

The Nhlapo Commission on African Customary Law has encountered precisely such tensions – for instance in a claim from within the Shangaan royal family which challenged the tradition that women could not inherit the chieftaincy. In this case the Commission ruled that the principles regarding inheritance of this role, if consistent with the principle of gender equality, would allow women to become chiefs, showing how constitutional rights can co-exist with, but also transform, traditional institutions. This is in contrast to the Traditional Courts Bill of 2009, which proposed to entrench the legislative, executive and judicial functions of traditional authorities, without provision for recourse to institutions available to other citizens. In the areas of property law, succession and the status of women and children, important strides have been made in law – even if not in practice – such as through the Recognition of African Customary Marriages Act (120 of 1999). While important strides have been made in law and in jurisprudence, much more modest headway has been made in enforcing these laws, and addressing the deeply-ingrained structural and institutional obstacles to transformation.

The political economy of agrarian change

The articles deal with the current and projected politics of ownership, production, distribution and accumulation, and therefore not only questions of land but of agrarian change, power and control in the food system as a whole. In this context, Bernstein’s use of Sen’s framing helps us to identify several of the important ways in which this terrain has shifted, largely in ways antithetical to the approach he proposes:

Sen’s conception of development proposes the protection (or restoration) of the entitlements of the most vulnerable and insecure groups as an immediate amelioration measure, and the promotion of adequate and secure entitlements for all as the strategic objective. (1994:5)

Losing entitlements

A striking example of a loss of entitlement over the past decade and a half is the large-scale loss of livelihood resources among farm workers, as the commercial farming sector restructured in response to market deregulation, trade liberalisation, and the introduction of labour and tenure regulation. Tenure reform (on farms, in communal areas, and to a degree also in informal peri-urban settings) has been the poor relation of land reform. The astonishing result is that, as a national evictions survey showed, between 1994 and 2003 (in the first decade of democracy), more black South Africans had lost their tenuous hold on land on commercial farms through eviction than had expanded and secured land access through redistribution and restitution – and farm workers did not feature significantly among those getting land (Wegerif et al 2005). Those evicted lost not only their jobs and homes, but also livestock, access to cropping fields and standing crops, vegetable gardens, household furniture and implements – and found themselves unable to access free water and firewood.

Value chains: a 'filières vivries' perspective

Restructuring has implications beyond employment, to the control of the food system as a whole, and the patterns of capital accumulation and food (in)security it produced. Bernstein notes the importance of analysing ownership and control of food commodity chains 'from farmers' field to consumer's plate'. Over the past few years, the Competition Commission has initiated investigations into many of the major agricultural subsectors, as well as industries supplying key inputs into agriculture (Sasol fertilizer scandal) and food processing (notably bread). The well-justified attention to collusion and price fixing nevertheless obscures questions of wider political economy of food; rather, it is located within the neo-classical view that inequitable market outcomes are the result of 'distortions', and so that the remedy required is one of removing these to bring actors into conformity with an abstract and idealised market characterised by perfect competition. This has also been the approach of the Food Price Monitoring Committee (2003) which, reporting after dramatic rises in the cost of staple foods, concluded that inflation in foods that peaked at 23 per cent for poor households had been due in part to hoarding, trader behaviour on the agricultural futures exchange, and other collusive actions – all of which were 'imperfections' which would 'correct' themselves. In 1994, Bernstein's prophetic (and overly polite) conclusion was that:

It seems unlikely that competition policy alone will dislodge the entrenched market concentration of corporate capital in the food industries. (1994:14)

He has been vindicated. He distinguished two meanings of market regulation, pointing out that ‘deregulation’ refers to the removal of exogenous public regulation through law, policy and institutions, while another form of regulation is endogenous private regulation in a political economy sense, which is about power and control within the system and how this shapes opportunities and behaviour. Two years after he wrote, the Agricultural Marketing Act (47 of 1996) dealt the final blow to the former, dismantling most of what was left of public regulation through marketing boards, ending the raft of price controls, marketing quotas and levies, and removing the state as the key arbiter of agricultural marketing. As a result, concentration not only of farms but also of associated industry seems to have moved in the direction he describes as interlocking and vertically integrated industries. The reasons? First, public deregulation has given way to private re-regulation, made possible by market dominance; and, second, agricultural policy has focused on supply-side efficiency rather than demand-side capabilities or entitlements in support of food security. Sen would not be pleased.

Social grants

In contrast, social grants represent one way in which there has been targeted intervention to support food security, and with very substantial reach. These transfers have been crucial in temporarily backing up food entitlements – with which to buy food that is (mostly) industrially farmed, and is stored, transported, processed, and retailed by a concentrated and shrinking number of market actors. In these ways, the transformative potential of this injection of purchasing power into marginal rural economies – to drive accumulation ‘from below’ by stimulating rural production – has therefore been stunted.

A litany of land questions

Gcabashe and Mabin’s itemisation of dimensions of the ‘land debate’ sets out tensions that were evident in 1990; reflecting on these, one is struck by the degree to which, just over 20 years later, many remain unresolved.

- *Large or small farms?* The authors advance the standard World Bank view that, in the absence of subsidies, large farms will not make it – because there is an inverse size-productivity relationship in agriculture. This was based on neo-classical assumptions about the nature of markets,

and in South Africa has turned out to be wholly wrong – in part because of the nature of markets, but also because of the failure of the state to take any measure to promote subdivision of farms, even where these are redistributed through land reform – a remarkable failure that demonstrates the tenacity of the ideological attachment to large-scale models of agriculture in the minds of agricultural officials. The result is that a land reform programme intended to create a class of smallholders has not altered the structure of landholding, even while to a very modest degree, changing the owners. Meanwhile, the re-regulation Bernstein predicted has spurred concentration in ownership, a trend wholly antithetical to land reform: the number of commercial farming units dropped from about 60,000 in 1996 to 45,000 by 2002 and by 2009 to just under 40,000 (NDA 2010). There are now eight agribusinesses involved in this agro-food system with a turnover above R1 billion a year.

- *Ownership or tenancy?* Land reform has attempted to address competing interests in land – notably between claimants and tenants – through separate legal and policy frameworks. These have conflicted on the ground, especially in northern KwaZulu-Natal and Mpumalanga – the sites of the emergence of the Landless People’s Movement, consisting initially of tenants demanding tenure upgrading and resisting both threats of eviction and loss of grazing but also restoration of ownership to former owners through restitution. More generally, policy has had no adequate answer to these different positionalities. The *White Paper on South African Land Policy* of 1997, and the RDP before it, fudged the key question of who should benefit from land reform and so what transformation of social relations was being pursued, by presenting long and undifferentiated and overlapping lists of target groups: the rural poor, emerging farmers, farm workers, labour tenants, women, youth. The later removal in 2001 of a means test for access to land reform grants finally ended any pretence of pro-poor targeting.
- *State delivery or people-driven development?* Gcabashe and Mabin (1990) note the tendency on the left to want a new democratic state to ‘deliver’ (and perhaps quite unrealistic expectations of the institutional strength of a new government to do so) versus a popular, people-driven process, more in tune with the mass democratic politics of the time. This tension has endured up to and beyond the National Land Summit of 2005 which called for a people-driven, state-supported land reform. In rejecting the willing buyer, willing seller approach with its reliance on land markets,

social movements and NGOs called for the state to play a more central role, and indeed it has done so, by acquiring and holding land itself, through a Proactive Land Acquisition Strategy. But, in the absence of any method for consultation or participatory planning at local level, state purchase of land has run ahead of any clear notion of who the land is being acquired for, with the result that caretakers have had to be employed to maintain farms while the state searches for appropriate ‘beneficiaries’ to which it can lease these properties. Indeed, this is a state delivering, but it is far from ‘people-driven’.

- *Traditional or freehold tenure?* With titling, the communal areas have gone, uncertainly, full circle: from an approach of recognising de facto rights (proposed in the 1990s and shelved by Thoko Didiza in 1999); to privatising the communal areas by transferring title to ‘traditional communities’, thereby shoring up the powers of chiefs, apparently as part of a deal between the ANC and the amaKhosi brokered on the eve of the first local government elections of 2000; and then the overthrow in 2010 by the Constitutional Court of the Communal Land Rights Act (11 of 2004) which embodied this model. The Act was struck down as unconstitutional after the High Court had found that, among other flaws, the Act violated the right to gender equality, and failed to meet the requirements of Section 25(7) of the Bill of Rights to security of tenure for those whose tenure was rendered insecure as a result of racially discriminatory laws and practices. In short, privatising communal land through title, to be controlled by tribal authorities augmented by a few elected members, would not wish away the fundamental insecurity of tenure experienced by people living in communal areas.
- *Farm dwellers:* The predicted expansion of labour tenancy was misread, the key reason being the introduction of laws intended to secure the tenure rights of farm workers and dwellers, including particularly the Land Reform (Labour Tenants) Act (3 of 1996) and the Extension of Security of Tenure Act (63 of 1997) – which are under threat now of being diluted through their proposed replacement by the euphemistically titled Land Tenure Security Bill of 2010. This Bill shifts the focus from securing tenure on farms to removing farm dwellers to agrivillages where they may be provided with low-cost housing and basic services on municipally controlled land while remaining available as labour for surrounding farms – but without any personal connection or ability to make use of land on farms where some have lived for generations. This is a model that makes more sense in the labour-intensive and more proletarianised horticultural

– fruit and wine – sector of, for instance, the Western Cape, than it does elsewhere in the country. The Bill repeats almost to perfection the basic tenets of the AgriSA land reform policy of 2000: avoid the expansion of settlement in the farming (read: former RSA) areas; concentrate the settlement of workers off-farm; make tenure contingent on employment so as to avoid people being entitled to remain on farms where their labour is not longer required, or across generations; and finally, aim to transfer responsibility for some of the social costs of reproduction of a rural labour force to the state.

I disagree with Alan Mabin’s reflection that the core reason for the failure of land reform in South Africa is that it flies in the face of a global inexorable logic, of primitive accumulation and urbanisation – essentially of agrarian transition. One of the basic problems with land redistribution has been the tendency towards what Jeremy Cronin has called ‘representative redistribution’: where attempts to move towards parity between groups overrides questions of class and economic structure, locality and specificity. In the quest for hectares, for percentage targets, and in the interests of tapping into growing public funds for market-based acquisition of land for private use, class has been almost wholly elided in the current policy approach to land reform in South Africa. I agree with Alan that the purpose of land reform must be rethought and this must be about geography and space that have new social meanings; and with Henry that this rethinking must be about not only land but restructured commodity chains – the agrofood system.

Reflections

In my view, these papers raise three enduring questions which are still of relevance – perhaps even more so now, given the window of opportunity that has been in large part missed to challenge societal norms around the distribution, tenure regime, and land use system.

First, how to confront **agrarian dualism**? Gcabashe and Mabin asked in 1990 what the end of apartheid would mean for the Bantustans; we still don’t know. Now less of a labour reservoir to subsidise capital accumulation in the cities, as argued by Wolpe (1972), they continue to provide a base, however economically tenuous, for those who have migrated, temporarily or permanently (if that distinction is real) to towns and cities. The decline of wage remittances and the rise of social grants in these economies have done little to alter the structural problem: not the degree to which but the way in

which they are integrated into urban industrialised South Africa. The Bantustans have been dismantled, institutionally and politically, but is the economic structure unchanged? Not quite, rather the shift has been from a remittance to a social transfer economy. Meanwhile, there have been few inroads into the commercial farming areas. The long-term exigency to stop the ‘beswarming van die platteland’ that informed policy through most of the twentieth century endured into the democratic era, with farmers and policy makers reminding themselves and others of the need to avoid the ‘Bantustanisation’ of the former ‘RSA’ – with all the associations of unproductive land use and unplanned settlement that the term has come to imply.

Second, how to confront **inequality**, and the growing social differentiation in rural areas? This is not merely the unfortunate byproduct of economic growth, but a core assumption underpinning policy. The flagship Massive Food Production Programme in the Eastern Cape, like the FSPs before, aims to create a small-to-middle commercial farmer class through state subsidy and private credit, conglomeration of contiguous fields, chemical and capital intensive production. Marginalisation of other producers is a necessary part of this process of development. What these transformations mean for farm employment in the communal areas, and whether some process of dispossession and proletarianisation is underway, has not really been explored – perhaps a blind spot that falls outside our dualistic thinking. Yet obscuring social differentiation has endured in policy thinking, at the same time that it has up to now in fact been highly dualistic, with many rural development interventions – in land and agriculture – being based on a bifurcation of provisions which, on the one hand support household food production (welfare) for the poor, or a subset of them, through start-up packages, school and community gardens, and empowerment or ‘ladders-up’ into the ‘first economy’ for the few with the evident potential to invest in and succeed in commercial production.

Third, how to confront the contradictions between **agricultural and land policy**? Bernstein was writing after the report of the World Bank mission which proposed agricultural deregulation combined with market-based land reform; when Gcabashe and Mabin were writing, this mission had not yet been conceived – except possibly in the mind of Bank economist Hans Binswanger who, in his own words, had a mission to save South Africa from itself. The tensions are still being felt between these dual frameworks. Agricultural policy saw the dismantling of the (public) regulatory architecture

in agriculture that could have been reoriented towards a new clientele: a class of accumulating black petty commodity producers. This explains in part the failure of redistribution of land to translate into improved livelihoods and new patterns of production and social relations, let alone create a new dynamic class of successful smallholders. Although the two departments responsible for agriculture and land were joined in one ministry with the end of the Government of National Unity in 1996, their policies remained fundamentally at odds with one another. The introduction of a pro-commercial farmer from 2000 onwards under Mbeki and Didiza was more in tune with the liberalising logic of the new agrarian path – but itself was held hostage to the very limited public support for land use, and led to the patterns of indebtedness reminiscent of the DBSA’s experiments with FSPs in the Bantustans in the 1980s.

With the benefit of hindsight I would add a perspective on a trend not fully evident in the early 1990s: the **regionalisation and globalisation of the agrarian question**. Discussion of the papers in this special issue of *Transformation* was held in old sugar-cane country on the KwaZulu-Natal north coast. This was Hulett land, later part of Tongaat-Hulett, which is now producing in six southern African countries, having acquired large concessions and leases to communal land and to former state farms. Producing in and exporting from Mozambique, for instance, enables Tongaat-Hulett to take advantage of advantageous terms for tariff-free importation of sugar from less developed countries into the European Union. Its major business in South Africa now appears to be property development along this coastline (KwaZulu-Natal), a far more profitable business than growing cane; and, getting in on this lucrative action is British Sugar, which now owns 50 per cent of Tongaat-Hulett. This is just one example of a much wider phenomenon of large-scale acquisition by South African companies in the region; as of 2010, commercial farmers organised under Agri South Africa were in negotiation with 22 African countries for allocations of land on long-term leases (AgriSA 2010). The regionalisation extends of course well beyond primary production to processing, distribution and retail; suddenly South Africa is not so ‘exceptional’.

To my mind, this is emblematic of one way in which ‘the agrarian question’ has shifted since the early 1990s: it is not to be understood at a national level. Increasingly, the land is local; the labour is regional; and the capital is globalised. Prescriptions, then, for land and agrarian reforms in South Africa ought to be rethought and recast in this wider frame.

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