UNIT 12 CURRENT DEBATES ON ABORIGINES

Structure

12.1 INTRODUCTION

Unit 2 gave a detailed account of the traditional aboriginal beliefs and customs and the kind of impact European colonial society had on them. This unit is a discussion of the current issues of concern regarding Aboriginal Australians. Today Aboriginal people in Australia have themselves taken initiative and are working hard to address their current social and economic issues of poverty, poor health and lack of education and other political and legal problems. But all this needs to be done in partnership with the Australian government. Aboriginal association with their traditional territories is the most important aspect of all debates. For indigenous claims to the right of self-determination, self-management and self government and their cultural, economic and political rights cannot be easily related to or be understood by the legal and political concepts of the modern nation state. Why are the indigenous populations clamouring for attention to their plight and demanding rights? The Australian Aboriginal population is for the most part urbanised, but a substantial number lives in settlements in what are often remote areas of rural Australia. They face enormous health and economic difficulties. For instance, life expectancy of Aboriginal people is 20 years shorter than the Australian population. Aboriginal people, particularly youths, are substantially more likely to be imprisoned than the general population and the rate of suicides in police custody remains quite high. Rates of unemployment, health problems and poverty are higher than the general population. School retention rate and university attendance is lower.

On almost every index of social well-being Aboriginals today score lower than other Australians: lower life expectancy, higher infant mortality, poor housing conditions, lower access to education and employment. A major issue is the high rates of Aboriginal arrests and imprisonment, and especially of Aboriginal deaths in custody.

The recent mushrooming of indigenous voices calling for a political settlement with the first inhabitants has led to awareness for the need for genuine reforms. While the indigenous peoples have their set of demands, the government has to recognise their demands in such a way so as to impart justice to all concerned. This has resulted in debates on a number of fronts regarding the indigenous peoples, some of which have been dealt with in this unit.

12.2 OBJECTIVES

After reading this unit, you should be able to:

- give a historical account of government policies towards the Aborigines;
- explain the importance of 'Native Title' giving examples;
- understand the concept of self-determination; and
- discuss the main points of the Reconciliation debate.

12.3 HISTORICAL BACKGROUND

Ever since the colonisation of Australia in 1788, Aboriginal problems were not considered to be of national concern. It was only in the 1940s that various organisations, including Aboriginal ones, started addressing the issue of poverty and status of the Aboriginal people in society. This change in perspective was evident after World War II. During and after the war, indigenous peoples the world over were treated as equals for the first time. In an effort to put an end to the problem of equal rights and integrate the Australian nation-state, the Australian government in 1951, implemented an official assimilationist policy to eliminate any sense of a separate Aboriginal identity.

By the 1960s the assimilation policy was already under heavy criticism for disregarding the aboriginal people's desire to preserve their culture and identity. Each state had its own policy lacking a national uniform approach. Land rights were first raised as an issue in 1966, when Aboriginal stockmen of the Gurindji tribe went on a strike against the multinational company Vestey. Their demands included an end to exploitation, self-determination and land rights. The late 1960s saw the acceleration of moves towards the universalisation of citizenship rights with the signing of international agreements on human rights in 1966. This led to the proposal of and passing of the 1967 referendum that gave the federal government the power to legislate on matters concerning Aboriginals. This also included the right to enact laws to protect Aboriginal people and to count them in popular censuses in which they had never been included. It also gave Aboriginals social and voting rights.

By the time Whitlam came to power in 1972, migration patterns were changing and introducing increasing cultural diversity into Australia. Whitlam set about re-defining the Australian nation through the implementation of a set of multicultural policies serving the needs of culturally diverse migrant groups. Multiculturalism was attacked by Aboriginals for its attempt to equalise the status of all Australians without taking into consideration the inherent rights which Aboriginals were claiming.

In 1972, the Aboriginal Land Right Commission was established to investigate how land could be returned to the Aboriginals. This was the first time that the Australian government acknowledged that land was taken away from the Aboriginals and that it was right to give it back. This research was limited to the Northern Territory, which directly fell under the Commonwealth Government. Also in 1972 the Aboriginal and Torres Strait Islander Commission (ATSIC) was created. This commission gave financial support to the Aboriginals in need.

In 1972, the Aboriginal Tent Embassy, a semi-permanent assemblage claiming to represent the political rights of Australian Aborigines, was established on the steps of Parliament House in Canberra, the Australian capital. In 1976 the Aboriginal Land Rights Bill handed over land in the

Northern Territory to be held in trust by three Aboriginal Land Councils. This provided a basis for the long-term security and economic development of the Aboriginal community there. In 1988, on the bicentennial of the colonisation of Australia, an unprecedented demonstration of 30,000 Aboriginals against the invasion of their land and the ill treatment of their people was held. Soon after the Royal Commission into Aboriginal Deaths in Custody investigating the deaths of 99 Aboriginal and Torres Strait Islander people in custody in 1992 found out that the most significant factor contributing to the over-representation of the Aboriginal people in custody is their disadvantaged and unequal position in Australian society- socially, economically and culturally. Furthermore, the Commission advised the government to move towards reconciliation in a public way. Around the same time, the Australian High Court handed down its decision in the Mabo Case, declaring the previous legal concept of "Terra Nullius" or that land belonged to no one at the time of conquest to be invalid. This meant that the land indeed had previous ownership of the Aborigines. The High Court ruled that the Miriam People of the Murray Islands, part of the Torres Strait Islands group, had retained ownership under common law. However, it was ruled that the concept of "native title" could only exist where the government had not extinguished such rights.

The decision was, however, regarded by the Aboriginal community as setting a whole new precedent for their people to have reasonable prospect of succeeding in land claims. They reasoned that the decision legally recognised the presence of all Indigenous Australians in Australia prior to the British Settlement. Legislation was subsequently enacted and later amended to recognise Native Title claims over land in Australia.

In 1995, six elderly victims of law that allowed children to be forcibly taken away from their Aboriginal parents for "assimilation" in Australia's white community began a High Court action for damages. From the 1920s to the 1960s, thousands of mostly half-caste children were taken by white authorities from their parents under the Northern Territory Aboriginal Ordinance and placed in the often brutal care of church-run institutions. They became known as the "Stolen Generation". Few ever saw their parents again.

In 1996 The United Church of Australia apologised to the Aboriginals suffering in the name of the church. The government, on the other hand, refused to officially apologise to the Aboriginals. In 1999 a referendum was held to change the Australian Constitution to include a preamble that, amongst other topics, recognised the occupation of Australia by Indigenous Australians prior to British Settlement. A huge majority defeated this referendum, though the recognition of indigenous Australians in the preamble was not a major issue in the preamble referendum discussion, and the preamble question attracted secondary attention compared to the question of becoming a republic.

In 2004, the Federal Government of Australia decided to abolish ATSIC as of 30 June 2005. It cited corruption and in particular, made allegations concerning the misuse of public funds, as the principal reason. In the period between the decision and the final abolishing, the functions of the ATSIC were gradually transferred to other agencies, indigenous specific programs being reintegrated with mainstream services as are provided for all other Australians.

12.4 DEBATES AND ISSUES IN AUSTRALIA

12.4.1 Land and Native Title

The most important and the most controversial issue in relation to the indigenous peoples relates to land. Acceptance of the rights of the indigenous peoples to land means giving recognition to the special relationship that they have with it-a basic right from which other rights may be derived.

A move towards this was made with the Aboriginal Land Rights Bill of 1976 which provided for assigning tracts of Commonwealth land to the aboriginal peoples.

In 1982 a group of Aboriginals (including Eddie Mabo) filed a case regarding the traditional land rights of the Meriam people in the Murray islands in Torres Strait. Murray islands had been annexed in 1879 by the state of Queensland. According to the complainants, while Queensland had assumed sovereignty of the islands it had not officially extinguished the traditional land rights of the Meriam people and Australia should legally recognise these rights. The hearings for this case went on for about 10 years at the Supreme and High Court of Australia. In 1992 the High Court passed a landmark judgement ruling that the lands of the Australian continent were not terra nullius (the belief that land belonged to no one, leading to Australian colonial settlement). The Court found that native title rights had survived settlement but were still subject to the sovereignty of the Commonwealth. By 1993, the Native Title Act was passed giving protection to native title (rights under traditional laws and customs of the Aboriginal and Torres Strait Islander peoples, recognised by the common law) to land.

Another important decision taken by the High Court was the Wik decision of 1993 involving the Wik and Thayorre people of Cape York Peninsula. The claim was made to the Federal Court over an area of land on the peninsula which has been covered by pastoral leases. The Court ruled that the claim could not be considered because native title had been extinguished as a result of the pastoral leases. The case was moved to the High Court which upheld that native title could be exercised along with the rights of pastoral leases. Since this had been taking place, native title continued except where there is a clash of pastoral and native title rights. In case of a clash, rights of the pastoralists override the rights of the native title holders. As a result of this, an amended Native Title Act was passed in 1998 providing for the extinguishment of certain native title rights.

However, despite the possibilities for extending the scope of recognition offered by Mabo's cases, the High Court has taken a restrictive view till date. With environmental degradation becoming an issue of concern, sustainable development- along with addressing the issue of indigenous land rights- are becoming persuasive. Indigenous expertise on management of land could be an invaluable resource for sustainable development policies. For example, Australia is said to have great scope for implementing co-management of land and marine resources on the best sustainable and environmental principles and provide an ideal opportunity for cooperation. However, 'co-management' is not always viewed as the best option and the political issue of management and ownership rights over territory is likely to continue.

What Mabo has established is that aboriginal ownership of land survived the acquisition of sovereignty by the British Crown in Australia and that Aboriginal law is a source of law and a basis for indigenous right to land. Thus the indigenous peoples of Australia now have the right to land; right to compensation and restitution; and jurisdictional rights including rights to self-determination and self-government.

12.4.2 Self-Determination and Identity

This brings us to the other dimension of the Aboriginal rights issue-the political and economic right of self-determination or self-government. This right is linked to the indigenous identity or to the way they represent themselves to others (as a distinct peoples with sovereign rights). The question is one of developing local and regional institutions for self-government within the boundaries of the Australian nation-state.

Self-determination came under the spotlight when the Whitlam government used as the key term in late 1972 replacing the earlier concept of assimilation with it taking into account the developments

in international law giving prime importance to the principle of self-determination (stated in United Nations Charter of 1945 and UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights of 1966). In terms of public policy in Australia it meant subsidising of indigenous organisations and affirming indigenous land rights, rejecting the earlier policy of assimilation (1950-1970). The Fraser Coalition government from 1975 retreated from the use of the term 'self-determination' to 'self-management', a term with which they felt more comfortable because it appeared to be more guarded and conservative. The Hawke and Keating governments from 1983 to 1996 used both the terms almost interchangeably making it difficult to find any distinction between the two. What is important is that internationally too, Australia in the UN Working Group on Indigenous Population, encouraged the use of the term in the Draft Declaration on the Rights of the Indigenous Peoples.

However, the Howard government too has been distancing itself from 'self-determination'. The argument is that it is better to focus on practical matters in areas like employment, housing and health, and avoid making any reference to self-determination or even self-management. Many of the institutions created for the Aborigines were scrutinised with great care. ATSIC established by the Aboriginal and Torres Strait Islander Commission Act 1989 replacing two administrative bodies-the Department of Aboriginal Affairs (DAA) and the National Aboriginal Conference (NAC). The DAA was created under Whitlam and restructured as Aboriginal Development Commission (ADC) by Fraser and the NAC too was again created under Whitlam but restructured later by Fraser.

ATSIC began operations on 5 March 1990 as a mechanism to involve Indigenous people in the processes of government. Its structure combined an elected arm of Indigenous representatives, consisting of 35 Regional Councils around Australia; a national Board of Commissioners led by an elected Chairperson; and an administration headed by a Chief Executive Officer (CEO). This organisation could be seen as bringing a number of indigenous representatives into the government's fold or delegating governance to the elected indigenous representatives. These mechanisms of control put in place by the government tried to translate aboriginal culture into mainstream administrative policy to ensure that it remained a problem of the Australian polity rather than one between the government and indigenous peoples. Under the Howard regime, ATSIC came under a lot of criticism on accountability issues and its budget was cut and more directed in 1996. Critics demanded that the Commonwealth government should remove service delivery from the ATSIC's control, restructure the organisation making it an advocacy and policy body, and return responsibility and funding for the delivery of basic services to the appropriate state or Commonwealth department. Apart from the lack of accountability, nepotism and corruption charges, the ATSIC was accused of failing to deliver for indigenous Australians and being an ineffective organization. On 16 March 2005, the Parliament passed the ATSIC Amendment Bill repealing provisions of the ATSIC Act, and in particular abolishing ATSIC.

The rise and fall of ATSIC itself brings several pertinent issues to the forefront. Most central to the problem was whether the emergence of an organised indigenous sector implies that it is not being given a chance to develop on its own? ATSIC was criticised in the early 1990s by Indigenous people for not being greatly linked with representatives of local Indigenous polities. Despite the innovation of regional councils, ATSIC was still seen by Indigenous people as primarily a Commonwealth government body operating at the national level. Many within ATSIC tried to change this image by developing the budgetary and planning roles of regional councils, by increasing ATSIC's levels of Indigenous staff, and by aligning ATSIC with regional Indigenous organisations in negotiations with government over important policy issues.

Internationally, in the early 1990s, the ATSIC tried to develop its image of independence from the Australian government by speaking separately at the UN Working Group on Indigenous Populations. In 2000, ATSIC also began to talk in terms of a treaty between Indigenous and non-Indigenous Australians despite John Howard's rejection of this idea. According to Howard, a treaty could be signed between two nation-states but a nation-state could not have a treaty with its own peoples. The fact that ATSIC was taking this kind of a stand was stated as proof that it was not a mere instrument of the Commonwealth Government and did have the interests of the indigenous peoples in mind and thus could be considered as realising indigenous self-determination to an extent. Was that enough? Evidently it was altogether too much as was proved with the dissolution of ATSIC. Since the judgment on Mabo in 1992 recognised native title to land, several scholars had been arguing that if the legal system in Australia can give recognition to some aspects of indigenous law and sovereignty, then recognition of rights to self-determination and self-government should be a logical fall-out.

Are there any genuine attempts being made to have an organisational structure for indigenous peoples' representation? Something more than governmental advisory bodies and societal pressure groups are required. It is time that recognition to other sources of law and authority is also given. This, in turn, implies that indigenous organisations should have an indigenous base and not be dependent on the Commonwealth government for their decisions or structure. While exercising their rights to self-determination or practicing self-government does not mean being independent from Australia, the question that is being asked is should the indigenous peoples be considered 'sovereign'? What is sovereignty? The Australian government has never recognised its Aborigines as sovereign. It is argued that recognising sovereignty and indeed even self-determination/ self-government could lead to secession, however improbable it may seem. But it seems very unlikely as has been pointed out by supporters of 'self-governance' for the aboriginal peoples. The idea of self-determination for Indigenous minorities in settler majority societies like Australia must, almost inevitably, be a largely internal; a search for domestic public policy arrangements which recognise the distinct minority nationalism of Indigenous people while also drawing them into a single larger nation state. But, for aborigines, the idea of their having a right to self-determination, as set down in international law, should not be surrendered to the larger nation-state.

12.4.3 Reconciliation

The Native Title Act 1993 and the Mabo judgement with regard to land, were part of the steps taken towards reconciliation taking place between the indigenous peoples and other Australians. Reconciliation as a terminology emerged in the late 1980s in relation to matters of concern to indigenous affairs. The idea was largely based on setting right the wrongs of the past. It has been argued that Reconciliation is not an acceptance by the present citizens of guilt but more a condemnation of the dispossession caused and a determination to deal justly in the future with the indigenous population. The 1967 referendum (removing negative references to aborigines from the Australian Constitution) and the question of apology to the 'stolen generations' assume major importance here.

The referendum had two main outcomes. The first was to alter the legal boundaries within which the Federal Government could act and make special laws for the benefit of the Aborigines (section 51 was repealed). The Australian Constitution now states that federal law prevails over state law; so the Federal Government could, if it so chose, enact legislation that would end discrimination against Aborigines by state governments. Secondly, the referendum was to provide Aborigines with a symbol of their political and moral rights-repealing section 127 ensured that aboriginals would get voting rights.

By 1980s, the government was struggling to build its relations with the aboriginal peoples and was considering very seriously a regionally-based national elected commission of Indigenous people, which would have executive power over Commonwealth Indigenous affairs programs. The indigenous peoples meanwhile were stressing on the idea of a treaty rather than a commission which, they were apprehensive, would turn out to be simply another arm of the government. A treaty, it was felt, would redress the wrongs of the past. Moving towards this goal, the aborigines formed the Aboriginal Treaty Committee in 1979 and in 1980 it published It's Coming Yet... An Aboriginal Treaty within Australia between Australians. The National Aboriginal Conference (NAC) was also proposing the negotiation of a treaty in 1979, to which the then Federal Government responded that a 'treaty', as between nations, could not be negotiated. In June 1988 President Bob Hawke signed the Barunga Agreement affirming that the government was committed to working towards a treaty. In 1990, after a long debate, the concept of reconciliation was promoted by the Federal Government. The Council for Aboriginal Reconciliation Act was passed in 1991 under which the Council was required to seek community views on whether any document or documents of reconciliation would benefit the Australian community as a whole.

Around the mid-1990s, a major question that came up was that of an apology which the nation owed the aboriginal children of the 'stolen generations'. The apology, as a part of the reconciliation, was considered to be a two-way process whereby the non-aboriginal population publicly admit to the wrongs done to the aboriginal people and the aboriginal people, in turn, accept the apology and agree to give up blaming the non-aboriginals for the sins of the past. The aboriginal children had been forcibly removed from their parents from 1900 to 1970s. The aim was one of assimilating, particularly the children of mixed descent, into the dominant European society ensuring that they would mix with Caucasians rather than with Aborigines. It was felt in the 1990s that the government should not close off options on the reconciliation agenda and that there should be genuine negotiation in order to address the struggle for indigenous rights. As a result of this legislation for a Council for Aboriginal Reconciliation (CAR) was passed through the Commonwealth parliament in August 1991. CAR was supposed to promote an understanding of the history and culture and the disadvantages faced by indigenous peoples and the need to address the disadvantages. By the time the John Howard government came to power, strains began to appear. John Howard was against offering an apology or any compensation to those belonging to the stolen generations, dealing a grave blow to the reconciliation process. After his re-election in 1998, Howard stressed that he would make an honest and genuine attempt to contribute to the reconciliation process. After prolonged efforts, CAR came up with a draft Reconciliation Bill 2001. However, in December 2000, when presented with the Bill, said that the government would "consider the propositions" but against its previous positions, implying thereby that a treaty or an apology to the stolen generations was likely to be rejected.

A similar blank has been drawn for proposals to have a treaty with the aboriginals. The earlier attempts of the British for the 'Aboriginal constitutional recognition' had failed and left Aboriginal people out at the time of Federation in 1901. But a treaty was seen as an opportunity to develop a new relationship with the Federation. Since occupation and colonisation had occurred without the consent of the Aborigines a modern treaty is considered an opportunity to formalise relations with the non-Indigenous Australians. It would mean recognition of and redress for past injustices; an opportunity to affirm and protect their rights; a way of settling unfinished business; and the necessary tools for self-determination and self-government.

12.4.4 Conclusion

Recent debate repeatedly questions whether Aboriginal Australians have benefited from the shift

from assimilation to self-determination and the move towards reconciliation. Sceptics of reconciliation either suggest a move back to assimilationist policies or talk in terms of a new set of policies which would empower the aborigines. Many scholars however, point out that the government's encouragement of 'self-determination' has resulted in the creation of an 'Indigenous Sector' and the institutions of this sector form part of the apparatus by which Aboriginal Australians are governed. The problem in the approach to issues of 'self-determination' and Reconciliation is that the terms take on different meanings and contrasting perspectives.

On the one hand, it implies that the differences between the indigenous and the non-indigenous Australians would fade away. In this perspective, there is no long term future for separate publicly subsidised indigenous institutions. Indeed it would become unnecessary once equality of welfare is reached. Then it would no longer be a responsibility of the government but a matter of private choice for the indigenous peoples to maintain their associations, councils and corporations. This view recognises that indigenous or aboriginal peoples are disadvantaged and to relieve this disadvantage some special programmes have been devised by the government and delivered by indigenous agencies. As and when the social indicators point to equality between the indigenous and non-indigenous sectors, this positive discrimination would no longer be essential and the special programmes would be phased out. The Howard Government, recognising the disadvantages of the indigenous peoples, called for reduction of the disadvantages faced by the indigenous peoples, also known as 'practical reconciliation'.

But when viewed from another perspective, it implies that the stress on difference is the fundamental principle on which reconciliation and self-determination is based even though it enshrines in different ways that both these sectors belong in their different ways to Australia. Therefore, critics of the Howard government point out that practical reconciliation is not enough because it does not give them the right to look after their own affairs, in other words, the right to remain distinct peoples and the right to self-determination. Thus indigenous structures should remain entrenched in government or become a part of them; indigenous authorities should be recognised and some kind of an agreement should be negotiated which covers land, public revenue, and other aspects of governance between indigenous representatives and government officials thereby recognising local indigenous authorities. This agreement has also been called a treaty. In this respect the judgements in the case of Mabo in 1992 and Wik in 1996 has been taken to imply that indigenous Australians retain some measure of un-extinguished sovereignty that could and should be acknowledged in a treaty.

There are some more basic difference between the two perspectives. The first perspective does not have a high regard for indigenous culture and considers it to be a hindrance to prosperity. The disadvantages and the inequalities suffered by the aboriginals are seen to be a result of their established beliefs and customs and based on that their behaviour. They should critically review their self-destructive beliefs and accept new ones and in the process be uplifted. Thus indigenous organisations would have no place in this kind of thinking. In the second perspective, the indigenous peoples have already got the basic capacity for self-government be it of traditional origin with ancient practices or recently acquired, adapting to modern requirements. The responsibility to maintain and work their organisations is on the indigenous peoples themselves. They should be able to experiment the design of their own institutions and be able to decide as to what constitutes their prosperity. It is for the non-indigenous peoples to change and accommodate their beliefs and practices relating to governance of the indigenous.

12.5 SUMMARY

Indigenous peoples claims to the right of self-determination, self-management and self government and their cultural, economic and political rights are of critical importance today. Why are the indigenous populations clamouring for attention to their plight and demanding rights? Aboriginal people are facing enormous health and economic difficulties. And their rates of unemployment and poverty are higher than the general population. A major issue is the high rates of Aboriginal arrests and imprisonment, and especially of Aboriginal deaths in custody.

From the 1970s, the Australian government has been giving serious attention to the problems of the aboriginal people. Since then there have been many important developments like the formation of Aboriginal and Torres Strait Highland Commission (ATSIC), the Mabo case High Court decision of 1992, the Native title Act of 1993, an apology by the Church to the children of the 'Stolen Generation', the 1999 referendum recognising indigenous occupation of Australia before British settlement and the abolition of ATSIC. These developments reflect the tumultuous debates in Australia regarding the Aboriginals. The more important of these issues are the right to land and native title. In spite of being recognised by the High Court, it is not an easy task to establish proof of title to a particular area by the aborigines. While Mabo has established that aboriginal ownership of land survived the acquisition of sovereignty by the British Crown in Australia and that Aboriginal law is a source of law and a basis for indigenous right to land, establishing and proving aboriginal ownership is an uphill task.

This brings us to the other dimension of the Aboriginal rights issue-the political and economic right of self-determination or self-government. The question is one of developing local and regional institutions for self-government within the boundaries of the Australian nation-state. However, the Howard government too has been distancing itself from 'self-determination'. ATSIC established by the Aboriginal and Torres Strait Islander Commission Act 1989 had evolved as a mechanism to involve Indigenous people in the processes of government- that indigenous organisations should have an indigenous base and not be dependent on the Commonwealth government for their decisions or structure. However ATSIC too has been abolished. Reconciliation emerged as an idea to set right the wrongs of the past and as a condemnation of the aboriginal dispossession caused by the settler population and a determination to deal justly in the future with the indigenous population. However, recent debate repeatedly questions whether Aboriginal Australians have benefited from the shift from assimilation to self-determination and the move towards reconciliation. The government has yet to apologise to the aborigines for the past injustices. Instead, the Howard government supports 'practical reconciliation' trying to put forward programmes designed to reduce disadvantages that the indigenous peoples face in society rather than any ideological recognition of their rights or an apology.

12.6 EXERCISES

1) Give a brief account of the Australian Government's policies towards its indigenous peoples from the 1970s.

2) What is the implication of the 1992 Mabo judgement taken by the Australian High Court?

3) What is the main thrust of the reconciliation debate? Explain.

4) Why is self-determination important for the indigenous peoples?

SUGGESTED READINGS

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