Assessing How Far Democracy in South Africa is Liberal or Illiberal

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Introduction

The history of South Africa includes a difficult path and a constant struggle of racism and inequality, of which remnants can be seen in present-day society. A territorial struggle involving trade posts, diamonds, gold, and societal expansion among different groups vying for control of what would become the Union of South Africa in 1910 eventually led to the establishment of the Republic of South Africa. This history involves complex relationships between "the Khoisan peoples, African pastoralists and farmers, 'Boer' European-descended settlers, and British imperialists" (Butler, 2003: 5). These economic and political struggles developed further in the mid-20th century as segregation laws were passed and the Afrikaner 'Nationalist Party' won power under the banner of 'apartheid,' meaning separation or apartness (ibid: 15).

Under this slogan of apartheid, laws such as the Population Registration Act, Immorality Act, Group Areas Act, and Reservation of Separate Amenities Act further institutionalised the separation of White, Coloured, Indian, and African people (ibid: 17). In spite of these separatist laws, "the stagnation of the economy, the collapse of labour control, and urbanisation" led to collaboration between the African National Congress and the Nationalist Party (ibid: 23). In 1990, President F W de Klerk of the Nationalist Party lifted the State of Emergency and allowed exiles and opposition organisation to reenter the political scene. This led to the formation of the Convention for a Democratic South Africa in 1991 involving "18 political groups which each agreed to the goals of an 'undivided' South Africa, a bill of rights, a multi-party system, constitutional government, a separation of powers, civil liberties, and specific freedoms to be enjoyed by all citizens" (ibid: 25). Nelson Mandela was active in reconciliation efforts as the first black African president of South Africa elected in 1994 and in promoting the new constitution that came into effect in 1997. The goals pursued by the Convention for a Democratic South Africa and incorporated into the constitution are the foundations of the liberal democracy present in South Africa today (Mattes, 2003).

The concept of liberal democracy is a contested form of government in Africa and around the world (Leon, 2010). This contestation of liberalism can be attributed to the rise of electoral democracies that have been limited in their adoption of liberal tendencies as promoted by the West (Zakaria, 1997). For the purpose of this essay, liberal democracy will be defined using the ideas described by Fareed Zakaria (1997) in an article published in *Foreign Affairs*. The importance of this article lays in the acknowledgement that the concepts of democracy and liberalism need to be examined and assessed separately. This separation of democracy and constitutional liberalism is important for the assessment of liberalism in a democracy because the terms have only been joined in the West and because the terms describe different types of governance. As Zakaria (1997) writes, "the two strands of liberal democracy, interwoven in the Western political fabric, are coming apart in the rest of the world." This minimalist definition of democracy of free and fair elections, in contrast with constitutional liberalism, which consists of "the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property," is the foundation for this essay's assessment of liberalism present in South Africa's government (ibid).

Another important concept employed throughout this essay is the idea of liberalism and illiberalism being assessed on a continuum or a scale. This essay will use Freedom House and the Polity Project as tools for assessing the

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extent to which liberalism and illiberalism prevail in South Africa. Both of these surveys use scales in their assessment of democracy, which allows for an analysis of South Africa's government that includes traits of both liberalism and illiberalism.

In order to assess the extent to which South Africa's government is liberal or illiberal, the body of this essay will be divided into three sections. The first section of this essay will examine democracy in South Africa. The second section will evaluate the role of liberalism in South Africa's government. The third section will examine the obstacles and illiberal elements present in South Africa today that present concern for the consolidation of liberal democracy. This essay concludes by contending that the nation of South Africa faces a hurdle in its problems of development and in achieving the high standards prescribed in the constitution, but that essential attributes of a liberal democracy, as described by Zakaria, are currently being met in South Africa.

Democracy in South Africa

Democracy is an abstract concept with a range of meanings and interpretations (Arblaster, 1987). It is precisely this reason Zakaria (1997) distinguished between democracy and constitutional liberalism. The importance of this distinction indicates a need to establish South Africa as a democracy before assessing the liberal and illiberal tendencies present in society and the government. This essay will use the assessments of the Polity Project and Freedom House in the examination of the degree of liberalism and illiberalism in South Africa because they examine indicators of liberalism and illiberalism using a scale and because they employ a minimalist definition of democracy, which supports Zakaria's distinction between democracy and constitutional liberalism.

In the post-apartheid era, South Africa has become a dominant-party system with the African National Congress controlling large majorities of the government. The bicameral parliament consists of the 400-seat National Assembly, elected by party-list proportional representation, and the 90-seat National Council of Provinces, selected by provincial legislatures (Freedom House, 2013). In the most recent national election in 2009, the African National Congress won 65.9% of the vote or 264 out of the 400 seats for the National Assembly, followed by the Democratic Alliance with 16.7% or 67 seats, and the new Congress of the People party with 7.4% or 30 seats. In total, the National Assembly consists of 13 political parties, but the African National Congress retains the clear majority (Election Resources, 2009).

Freedom House publishes the report *Freedom in the World* (Freedom House, 2013) annually as an "evaluation of the state of global freedom as experienced by individuals." In addition to the evaluation of civil and political liberties in 195 countries, Freedom House designates countries as electoral democracies if they meet minimum criteria. This evaluation examines the most recent national election in which states must have met the following criteria:

"a competitive, multiparty system; universal adult suffrage for all citizens; regularly contested elections conducted in conditions of ballot secrecy, reasonable ballot security, and in the absence of massive voter fraud, and that yield results that are representative of the public will; significant public access of major political parties to the electorate through the media and through generally open political campaigning" (ibid).

Freedom House designates countries as electoral democracies when they reach a numerical benchmark of 7 or more on the electoral process under political rights and an overall political rights score of 20 or more. The political rights score consists of three subsections: the electoral process; political pluralism and participation; and functioning of government. South Africa scored a perfect 12 for the electoral process, a 14 for political pluralism and participation, and 8 for the functioning of government. South Africa meets the criteria that Freedom House uses for designating countries electoral democracies, having scored 34 out of 40 for the political rights section (Freedom House Scores, 2013).

The role of managing and ensuring free and fair elections is assigned to the Independent Electoral Commission (IEC) of South Africa. According to the IEC (2013), the 2004 and 2009 elections both had voter turnouts of approximately 77%. In a series of correspondence between The Institute for Accountability in Southern Africa (IFASA) and the South African IEC, questions were raised concerning the designation of elections as free and fair. In response, the

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IEC wrote, "All these elections were declared free and fair and reflective of the will of the people" (IFASA, 2013). Freedom House echoed this claim by writing, "All polls—including those in 2009—were declared free and fair by a slew of domestic and international observers" (Rosenberg, 2012). An article in the South African Government News Agency claimed that 97% of voters surveyed by the South African Human Research Council after voting in the 2011 municipal elections considered the elections to have been free and fair (Bathembu, 2011).

The Polity IV Project supports the designation by Freedom House that South Africa is a democracy. The Polity Project examines the democratic and autocratic tendencies of states around the world by examining executive recruitment, constraints on executive authority, and political competition (Center for Systemic Peace, 2013). This assessment uses a 21-point scale ranging from -10 as a full autocracy and +10 as a full democracy. Since 1994, the Polity Project has evaluated South Africa as a full democracy, receiving a score of +9 each year. In terms of executive recruitment, the majority party or coalition in the National Assembly, which is elected through competitive, multiparty elections, selects the president. The Polity Project claims that "…the type of presidential system found in South Africa place(s) significant constraints on the political autonomy of the chief executive" (Center for Systemic Peace, 2010: 2). However, due to the dominance of the African National Congress in government, the parliament has had little influence over executive branch. The most significant form of constraint stems from the judiciary, which stands largely autonomous from and withstands much influence from the executive branch (ibid).

As for political participation, the South African political field consists of a variety of political parties with many defined by their ethnic, region, or linguistic identities (Center for Systemic Peace, 2010). Despite dominating South African politics since 1994, the African National Congress is a part of a tripartite alliance that includes the Congress of South African Trade Unions and the South African Communist Party (COSATU, n.d.). In an effort to challenge the African National Congress and its tripartite coalition, a rival coalition of five parties has formed for the 2014 election. The African Christian Democratic, Congress of the People, Freedom Front Plus, Inkatha Freedom Party, and United Christian Democratic Party have joined together in the Collective for Democracy. The Collective for Democracy will "work to advance democracy and contest the general election with a view to securing enough representation to form a new government" (News24, 2013). The assignment of +9 by Polity IV's assessment of South Africa's government means that South Africa is considered a democracy, but that it "may have weaker checks on executive power, some restrictions on political participation, or shortcomings in the application of the rule of law to, or by, opposition groups" (Marshall, 2011: 9).

Liberalism in South Africa's Democracy

The ideals and characteristics of liberalism are described in and protected by the South African Constitution with the Bill of Rights, considered "one of the most progressive constitutional documents in the world" (BBC, n.d.). The Constitution (CCSA, 2013: 2) claims to "establish a society based on democratic values, social justice and fundamental human rights." The founding values of South Africa are human dignity, achievement of equality, non-racialism and non-sexism, supremacy of the constitution, universal adult suffrage, and the advancement of human rights and freedoms (ibid: 9). The Bill of Rights is "a cornerstone of democracy in South Africa" that "enshrines the rights of all people in our country and affirms the democratic values of human dignity, equality and freedom" and requires the state to "respect, protect, promote and fulfil the rights in the Bill of Rights" (ibid: 11). The Bill of Rights of the South African Constitution includes freedoms and rights such as the right to life; the freedom of conscious, religion, thought, belief, and opinion; the freedom of expression including the freedom of the press and media; the right to an environment not harmful to their health; the right to have access to adequate housing; and the right to have access to healthcare, food, and water (ibid). The South African Constitution not only meets the criteria for liberal democracy described by Zakaria but extends beyond this definition of constitutional liberalism to include rights to housing, food, water, healthcare, and more.

Although the constitution can be classified as prescribing a liberal democracy, it is important to examine the South African government's implementation of these liberal ideals. This section will assess the prevalence of authentic liberalism employed in South Africa's democracy. As in the previous section, the reports by Freedom House will be used as an assessment tool because of its real-world assessment of liberalism. According to the *Freedom in the World* (Freedom House, 2013) report methodology, the report rates "the real-world rights and freedoms enjoyed by

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individuals" and "places a greater emphasis on whether these rights are implemented in practice."

The *Freedom in the World* report by Freedom House evaluates the state of global freedom by examining civil liberties and political rights in a state. Freedom is "the opportunity to act spontaneously in a variety of fields outside the control of the government and other centres of potential domination" (Freedom House, 2013). The characteristics described by Zakaria (1997) of "the rule of law, a separation of powers, and the protection of basic liberties of speech, assembly, religion, and property" are addressed in the Freedom House assessment of political rights and civil liberties. Political rights enable people to participate in the political process. These rights include voting for alternatives in legitimate elections; joining political organisations; running for office; and electing representatives who can impact governmental policies. Civil liberties are "freedoms of expression and belief, associational and organisation rights, rule of law, and personal autonomy without interference from the state" (Freedom House, 2013). It is important to note that the Freedom House evaluation of the state of global freedom "does not equate constitutional or other legal guarantees of rights with the on-the-ground fulfilment of these rights" (ibid). Countries are assessed on a scale from 1 to 7, with 1 being the most free and 7 being the least free (ibid).

According to the *Freedom in the World 2013* evaluation, South Africa is designated as a free society and was assigned a 2 in the evaluation of political rights. Freedom House describes a rating of 1 for political rights as enjoying a wide range of political rights; having elected officials actually rule; having competitive political parties; competing opposition parties with real power; and minority participation. In comparison to the score of 1, which is considered most free, the score of 2 has slightly weaker political rights due to "some political corruption, limits on the functioning of political parties and opposition groups, and foreign or military influence on politics" (ibid). The score of 2 is likely due to political corruption in South Africa, which is ranked 72nd in the world by Transparency International (2013) in their Corruption Perceptions Index. Current South African President Jacob Zuma faced corruption charges over an arms deal in 1999, in which his financial advisor was convicted in 2005 (BBC, 2012). However, three weeks before the 2009 elections that led to Zuma being chosen as South Africa's president, the 16 counts of corruption, bribery, money laundering and racketeering were dropped.

The *Freedom in the World 2013* report also declared the status of South Africa with regard to civil liberties as free with a score of 2. A country assigned the score of 1 for civil liberties enjoys a wide range of civil liberties that includes freedom of expression, assembly, association, education, and religion, while also having an "established and generally fair system of the rule of law (including an independent judiciary), allow free economic activity, and tend to strive for equality of opportunity for everyone, including women and minority group" (Freedom House, 2013). South Africa was assessed a score of 2 for civil liberties because of "limits on media independence, restrictions on trade union activities, and discrimination against minority groups and women" (ibid). Freedoms of expression and of the press are constitutionally guaranteed but have gradually been encroached upon, as the South African government has exerted influence of companies such as the South African Broadcasting Corporation, which is a noteworthy actor in radio and television broadcasting.

Freedoms of association and peaceful assembly are secured by the constitution. According to the Department of Social Development in South Africa (2013), there were 102,297 nonprofit organisations registered in South Africa, which includes nongovernmental organisations and community based organisations. In regard to these nonprofit organisations, the International Centre for Not-for-Profit Law (2013) claims, "…there are no legal barriers limiting their establishment or operational activity." The Multi-Level Government Initiative of the University of Western Cape monitors the number of service delivery protests for South Africa. In the first eight months of 2012, the Initiative observed 226 protests, or 28.25 protests per month, of which 79.20% turned violent (De Visser, 2012). The number of observed protests by the Initiative has had a growth rate of over 100% annually since 2008 (ibid). Similarly, South Africans' freedom to create, to join and to participate in independent trade unions is also protected with strike activity frequent.

Freedom of religion and academic freedom are also constitutionally guaranteed, and the South African government has protected these rights without interference. The government of South Africa professes no official religion and does not require religious organisations to register with the government. Schools are not permitted to teach a curriculum of a specific faith, but they are allowed to include general religious education (Rosenberg, 2009).

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Another element of Zakaria's criteria for liberal democracy is private property rights (Zakaria, 1997). While the government of South Africa protects the right to private property, land rights in South Africa remains a controversial issue that is rooted in the apartheid era and the Natives Land Act (Smith, 2013). Freedom House reports, "80 percent of farmland is owned by white South Africans, who make up 14 percent of the population" (Rosenberg, 2012). The African National Congress has introduced a program that is often described as a "willing buyer, willing seller" program, but it has been ineffective with 50 percent fail rate (The Economist, 2013). The South African government aims to redistribute 30 percent of the land by 2014 but has only redistributed 8 percent thus far. Officials are saying that they are abiding by the constitution, which means that they cannot just grab land and that they have redistributed more land since 2009 than the period between 1994 and 1999 (Smith, 2013).

The judicial branch operates with substantial autonomy (Rosenberg, 2012), which is supported by the Superior Courts Bill (Minister of Justice, 2011: 6) that makes the Chief Justice of the Constitutional Court "the head of the judiciary." In August 2013, President Zuma signed into law the 'Superior Courts Act,' which "affirms the Government's commitment to the independence of the Judiciary" (The Presidency, 2013). The Constitutional Court "is the highest court in the country when it comes to the interpretation, protection and enforcement of the Constitution. It deals exclusively with constitutional matters – those cases that raise questions about the application or interpretation of the Constitution" (CCSA, n.d.). The importance of an independent judiciary in South Africa is observed in important recent cases, such as declaring parts of the 'Film and Publications Amendment Act' unconstitutional and confirming Zuma's appointment of an ally to the National Prosecuting Authority as invalid (Freedom House, 2013).

The rights and freedoms prescribed by the South African Constitution have not been achieved to perfection by the South African government in the years since it took effect in 1997. However, according to the *Freedom in the World* (Freedom House, 2012) methodology, "all Free countries qualify as both electoral and liberal democracies." Therefore, despite falling short of achievement in some spheres, Freedom House assesses South Africa as meeting the criteria for being designated a liberal democracy. In addition to the designation of South Africa as a liberal democracy by Freedom House, South Africa's democracy also meets the criteria for a liberal democracy as described by Zakaria. The South African Constitution and government protect the basic liberties of speech, assembly, religion, and property as well as employ an independent judiciary that assists in the separation of powers and the rule of law.

Development and Governance Hurdles

The government of South Africa set high standards with the creation of its constitution in 1996 and has struggled in the post-apartheid era to meet the guarantees listed in the constitution's Bill of Rights. South Africa is confronted with many pressing issues with regard to development and governance as it seeks to consolidate its democracy and address the number of problems facing South African. The problems such as poverty, corruption, inequality, and violence persist in South Africa and pose a threat to liberal democracy (Beck, 2012). In order to better examine liberalism in South Africa, this section reviews these issues as well as governance and development indicators in order to further assess the landscape in South Africa.

Poverty and unemployment remain serious issues in South Africa in the post-apartheid era. According to UNICEF, 14% of the South African population lives below the international poverty line of $1.25 per day. The United Nations Development Programme (UNDP) reports that 56.8% of the population is impoverished according to the national poverty lines, which uses a food poverty line that refers to the "amount of money that an individual will need to consume the required energy intake" (Lehohla, 2012: 5). The poverty pandemic has been exacerbated by an unemployment rate of 25.6% in 2013 (SSA). The fight against poverty is severely affecting children, as more than half of South African children live in poverty (Laing, 2012). Another dilemma facing many South Africans is the prevalence of HIV/AIDS. In 2011, the percentage of adults aged 15 to 49 living with HIV/AIDS reached 17.3% (UNICEF).

Alongside the prevalence of poverty in South Africa is the level of inequality. The GINI index "measures the extent to which the distribution of income among individuals or households within an economy deviates from a perfectly equal

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distribution" (World Bank GINI, 2013). The GINI index ranges from 0 as perfect equality to 100 as perfect inequality. The GINI index for South Africa in 2009 was 63.9. In 1993, the year before South Africa held its first non-racial elections, South Africa's GINI index was 59.3 (ibid). South Africa ranks as the most unequal society in the world when examining the GINI index from the 21st century (CIA). Although the government has implemented free and fair elections and has written one of the most progressive constitutions in the world, it has failed in solving the persistent problem of inequality.

Instances of political corruption have been cited often in South Africa. As written previously in this essay, South Africa ranks 72nd out of 177 counties in the world by the Corruption Perceptions Index (Transparency International, 2013). The Index scores range from 0 for highly corrupt to 100 for very clean. South Africa scored a 42 which is closer to having corruption. Freedom House (2013) reported that there are several South African agencies assigned to combat corruption, but that enforcement is inadequate. President Zuma, who was charged with corruption three times between 2005 and 2009, is currently facing scrutiny over state funds being used for luxury upgrades on a personal residence (Mokone, 2013). The Anti-Corruption Centre at the University of Stellenbosch reported that a fifth of government spending is estimated to be lost due to corruption and other financial irregularities (Fin24, 2013).

Violence has been prevalent in South Africa since the apartheid era. Images such as that of Hector Peterson being carried away after being shot during the Soweto uprising have been published internationally and used as a symbol of the violence during apartheid. In the 21st century, apartheid has been abolished and the government has changed, but violence continues in South Africa. In 2012, South African police opened fire, killing 34 miners and injuring almost 80 who were part striking outside the mine (Crawford, 2013). Freedom House (Rosenberg, 2012) reported that South Africa "has one of the highest violent-crime rates in the world" and also "has one of the world's highest rates of sexual abuse." The murder rate for 2012/2013 is at 31.3 per 100,000, which is "about four and a half times higher than the global average" (Africa Check, 2013). A government survey in 2009 reported that one in four men in South Africa admit to committing rape, and half of those men admit to raping more than once (Carter, 2013). The majority of murders in South Africa stems from arguments, and "most victims are killed by acquaintances, friends or family members during disputes overwhelmingly fuelled by alcohol and in some occasions, drug abuse" (Lancaster, 2013). Political assassinations add to the violence found in South Africa. An internal African National Congress report claimed that 38 of its members had been killed since 2011 in KwaZulu-Natal, Zuma's home province (Van Onselen, 2013). Eight ANC officials in KwaZulu-Natal said that politicians and officials are "dying in battles for council positions that give access to lucrative government contracts" (Govender, 2012).

The Worldwide Governance Indicators dataset published by The World Bank Group (2013) aggregates data covering voice and accountability, political stability and absence of violence, government effectiveness, regulatory quality, rule of law, and control of corruption. This dataset examines these issues for 200 countries from 1996 to 2012 by aggregating several individual indicators from surveys, assessments, and databases. The report shows an overall decline from 1996 to 2012 for the voice and accountability, government effectiveness, and control of corruption indicators for South Africa. The indicators for political stability and absence of violence have improved since 1996, while the rule of law indicator has fluctuated slightly but has remained consistent (ibid). This report displays an overall negative trend in South Africa that could affect its classification as a liberal democracy in the coming years. In addition, The World Bank (n.d.) collects data for a variety of indicators including GNI per capita, life expectancy at birth, and primary school enrolment. South Africa's GNI per capita based on purchasing power parity has increased from $7,840 in 2004 to $11,190 in 2012. South Africa's primary school enrolment, which includes under-aged and over-aged students, remains above 100%. The life expectancy at birth of South Africans has risen slightly since 2004, increasing from 51.9 to 55.3 years. According to the World Bank (ibid), South Africa's annual GDP growth rate has remained at 3% since 2010. The data for GNI per capita, life expectancy, and primary school enrolment presents glimmers of optimism in combating the negative trend presented by the Worldwide Governance dataset.

South Africa faces many hurdles as it seeks to consolidate its democracy. The high rates of poverty among the population, particularly the black population, are related to the violence. Individuals in low-income areas are more likely to experience violence in South Africa (Lancaster, 2013). However, the South African government's response to high crime rates has been an influx of police officers. The government hired almost 70,000 additional police

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officials in the past ten years, but there remains a "shortage of over 50,000 social workers" (ibid).

Conclusion

The nation of South Africa endured decades of racial separation as apartheid policies were embraced by the Nationalist Party. South Africa's troubling history laid the foundation for a difficult transition to an inclusive, liberal democracy. The difficulties faced by South Africa, outlined in the previous section, include poverty; corruption; violence; and inequality which pose a threat to South Africa's stability. However, despite having extensive shortcomings in governance and development, South Africa's democracy is liberal. This essay has employed Zakaria's concept of separating democracy from constitutional liberalism in order to better assess the liberal and illiberal tendencies of South Africa's government. In the short time, since the end of apartheid, the African National Congress has dominated the political scene in South Africa. However, the landscape is beginning to change, as political parties are joining together in alliances in order to have a better chance of representing their followers. South Africa has continued to meet the minimalist conditions for democracy of Freedom House and the Polity project.

The South African Constitution is one of the most progressive in the world, and its freedoms and rights extend well beyond Zakaria's criteria of liberalism, which includes the rule of law; separation of powers; and the basic protections of speech; assembly; religion; and property. The second section of this essay indicated that South Africa met each component of Zakaria's criteria. The judiciary at the highest levels has remained independent and continues to challenge the African National Congress. Despite remaining at elevated levels, violence levels have declined, and the rule of law is corrupt in some regions but remains efficient. The South African Constitution protects all the basic liberties of speech, assembly, religion, and property, and the government has supported these rights in practice.

The liberal democracy in South Africa has and will continue to experience illiberal traits. However, as highlighted by the assessments of Freedom House and the Polity Project, the state of liberalism in a democracy is assessed using a scale or a continuum. This continuum allows the consideration of illiberal elements of a democracy while also recognising its liberal achievements. In 1964, at the beginning of the Rivonia trial that would result in Nelson Mandela spending almost 28 years in prison, Mandela said:

"During my lifetime I have dedicated myself to this struggle of the African people. I have fought against white domination, and I have fought against black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony with equal opportunities."

The ideal of a democratic and free society still exists in South Africa, and the death of Nelson Mandela on December 5, 2013 may assist in reminding South Africans of the apartheid struggle and reconciliation that followed it. There exist many imperfections and illiberal elements in South Africa's democracy, but liberalism prevails in its constitution and in its practice.

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