Criminal Law Tradition And Legal Order Crime And The Genius Of Scots Law 1747 To The Present

While much international attention has been focused on China's developing economy, dramatic changes are also taking place in its legal system. This book is a groundbreaking, comprehensive introduction to China's legal system, covering the major areas of both civil and criminal law. The authors present fascinating cases and balanced accounts of controversial issues, from copyright law to punishment. By letting Chinese lawyers and judges speak for themselves, the authors also allow readers a surprisingly candid insider's view of real life legal practice.

An essential text for anyone interested in crime, law and justice in Hong Kong, this book offers the only comprehensive survey of all the major parts of Hong Kong's criminal justice system. It also provides an introduction to some key areas of the Hong Kong legal system, including the judiciary, criminal law and legal assistance. The book will appeal not only to social and political science students but also those studying for a number of law courses.

In order to fully grasp criminal law concepts, students must go beyond mere rote memorization of the penal code and attempt to understand where the laws originate from and how they have developed. Criminal Law, Second Edition blends legal and moral reasoning in the examination of crimes and explores the history relating to jurisprudence and roots of criminal law. It fosters discussions of controversial issues and delivers abridged case law decisions that target the essence of appellate rulings. Grounded in the model penal code, making the text national in scope, this volume examines: Why the criminal codes originated, and the moral, religious, spiritual, and human influences that led to our present system How crimes are described in the modern criminal justice model The two essential elements necessary for criminal culpability: actus reus (the act committed or omitted) and mens rea (the mind and intent of the actor) Offenses against the body resulting in death, including murder, manslaughter, felony murder, and negligent homicide Nonterminal criminal conduct against the body, including robbery, kidnapping, false imprisonment, assault, and hate crimes Sexual assault, rape, necrophilia, incest, and child molestation Property offenses, such as larceny/theft, bribery, forgery, and embezzlement Crimes against the home, including burglary, trespass, arson, and vandalism

The book also examines controversial public morality issues such as prostitution, drug legalization, obscenity, and pornography. The final two chapters discuss inchoate offenses, where the criminal act has not been completed, and various criminal defenses such as legal insanity, entrapment, coercion, self-defense, and mistake of fact or law. Important keywords introduce each chapter, and discussion questions and suggested readings appear at the end of each chapter, prompting lively debate and further inquiry into a fascinating subject area that continues to evolve.

China's legal system is vast and complex, and robust scholarship on the subject is difficult to obtain. Inside China's Legal System provides readers with a comprehensive look at the system including how it works in practice, theoretical and historical underpinnings, and how it might evolve. The first section of the book explains the Communist Party's utilitarian approach to law: rule by law. The second section discusses Confucian and Legalist views on morality, law and punishment, and the influence such traditional Chinese thinking has on contemporary Chinese law. The third section focuses on the roles of key players (including judges, prosecutors, lawyers, and legal academics) in the Chinese legal system. The fourth section offers Chinese legal case studies in civil, criminal, administrative, and international law. The book concludes with a comparison of China's fundamental governing and legal principles with those of the United States, in such areas as checks and balances, separation of powers, and due process. Uses extensive legal materials and historical documents generally unavailable to Western based academics Gives insider knowledge, including first-hand experience teaching law, and close involvement with judges, attorneys, and law professors in China Analyses legal issues from historical and cultural perspectives holistically

What place, if any, ought cultural considerations have when we blame and punish in the criminal law? In general, to hold someone criminally responsible is to hold them blameworthy and deserving of their punishment. Background cultural factors seem to threaten this: for example, a person may be ignorant of the way things are done
This handbook explores criminal law systems from around the world, with the express aim of stimulating comparison and discussion. General principles of criminal liability receive prominent coverage in each essay—including discussions of rationales for punishment, the role and design of criminal codes, the general structure of criminal liability, accounts of mens rea, and the rights that criminal law is designed to protect—before the authors turn to more specific offenses like homicide, theft, sexual offenses, victimless crimes, and terrorism. This key reference covers all of the world's major legal systems—common, civil, Asian, and Islamic law traditions—with essays on sixteen countries on six different continents. The introduction places each country within traditional distinctions among legal systems and explores noteworthy similarities and differences among the countries covered, providing an ideal entry into the fascinating range of criminal law systems in use the world over.

Contents include history, culture, and distribution of the civil law; legal structures in civil law nations; legal actors in the civil law tradition; procedure in civil law system; sources of law and the judicial process in civil law systems; fields of substantive law in civil law systems with regard to economic aspects of divorce, and the role of courts in policing contracts for unfairness; European law and institutions; the rise and fall of the socialist legal tradition; the common-law tradition; history, culture, and distribution of the common-law tradition; legal structures in England; legal actors in England; procedure in England; legal rules in England; and divisions of English law. The third book in the Criminalization series examines the constitutionalization of criminal law. It considers how the criminal law is constituted through the political processes of the state; how the agents of the criminal law can be answerable to it themselves; and finally, how the criminal law can be constituted as part of the international order. Addressing the ways in which and the grounds on which types of conduct can be justifiably criminalized, the first four chapters of this volume focus on the questions that arise from a consideration of the political constitution of the criminal law. The contributors then turn their attention to the role of the state, its institutions and officials, and their role not only as creators, enactors, interpreters, and enforcers of the criminal law, but also as subjects of it. How can the agents of the criminal law also be answerable to it? Finally discussion turns to how the criminal law can be constituted as part of an international order. Examining the relationships between domestic laws of different nation-states, and between domestic criminal law and international or transnational law, the chapters also look at the authority and jurisdiction of international criminal law itself, and its relationship to other dimensions of the international order. A vital examination of one of the most important topics in modern criminal legal theory, this volume raises new questions central to the study of the criminal law and offers new suggestions for addressing them.

*A crusading legal scholar exposes the powerful psychological forces that undermine our criminal justice system--and affect us all Our nation is founded on the notion that the law is impartial, that legal cases are won or lost on the basis of evidence, careful reasoning and nuanced argument. But they may, in fact, turn on the temperature of the courtroom, the camera angle of a defendant's taped confession, or a simple word choice or gesture during a cross-examination. In Unfair, law professor Adam Benforado shines a light on this troubling new research, showing, for example, that people with certain facial features receive longer sentences and that judges are far more likely to grant parole first thing in the morning. In fact, over the last two decades, psychologists and neuroscientists have uncovered many cognitive forces that operate beyond our conscious awareness--and Benforado argues that until we address these hidden biases head-on, the social inequality we see now will only widen, as powerful
players and institutions find ways to exploit the weaknesses in our legal system. Weaving together historical examples, scientific studies, and compelling court cases—from the border collie put on trial in Kentucky to the five teenagers who falsely confessed in the Central Park Jogger case—Benforado shows how our judicial processes fail to uphold our values and protect society's weakest members, convicting the innocent while letting dangerous criminals go free. With clarity and passion, he lays out the scope of the problem and proposes a wealth of reforms that could prevent injustice and help us achieve true fairness and equality before the law."


This book examines the relationship between legal tradition and national identity to offer a critical and historical perspective on the study of criminal law. It develops a radically different approach to questions of responsibility and subjectivity, and was among the first studies to combine appreciation of the institutional and historical context in which criminal law is practised with a critical understanding of the law itself. Applying contemporary social theory to the particular case of nineteenth-century Scottish law, Lindsay Farmer is able to develop a critique of modern criminal law theory in general. He traces the development of the modern characteristics of criminal law and legal order, tracing the relationship between legal practice and national culture, and showing how contemporary criminal law theory fundamentally misrepresents the character of modern criminal justice.

This volume deals with law-making as a cultural enterprise in which the colonial state had to draw upon existing normative codes of rank, status and gender, and re-order them to a new and more exclusive definition of the state's sovereign right. Criminalization is a new series arising from an interdisciplinary investigation into the issue of criminalization, focussing on the principles and goals that should guide decisions about what kinds of conduct are to be criminalized, and the forms that criminalization should take. Developing a normative theory of criminalization, the six volumes will tackle the key questions at the heart of issue: By reference to what principles and goals should legislations decide what to criminalize? How should criminal wrongs be classified and differentiated? And how should law enforcement officials apply the law's specification of offences? The second volume in the series concerns itself with the structures of criminal law in three different senses. The first examines the internal structure of the criminal law itself and the questions posed by familiar distinctions between which offences are typically analysed. These questions of classification include discussion of the growing range of crimes and the problems posed by this broadening of definition. Should traditional ideas and conceptions of the criminal law be reshaped in light of recent developments or should these developments be criticized and refuted? Structures of criminal law also refer to the place of the criminal law within the larger structure of the law. Here the book examines the relationships with and between the criminal law and other aspects of law, particularly private law and public law. It also looks at how the criminal law is made, and by whom. Finally the third sense of structure is outlined - the relationships between legal structures and social and political structures. What place does the criminal law have within the existing political and social landscapes? What are the influences, both political and social, upon the criminal law, and should they be allowed to influence the law in this fashion? What is its proper role? Focussing not only on the questions about the criminal law's proper scope, but also on crucial questions about how crimes should be structured, defined, and classified, this book provides a deeper understanding of criminalization.

This book examines the rapid development of the fundamental concept of a crime in international criminal law from a comparative law perspective. In this context, particular thought has been given to the catalyzing impact of the criminal law theory that has developed in major world legal systems upon the crystallization of the substantive part of international criminal law. This study offers a critical overview of international and domestic jurisprudence with regard to the construal of the concept of a crime (actus reus, mens rea, defences, modes of liability) and exposes roots of confusion in international criminal law through a comprehensive comparative analysis of substantive criminal laws in selected legal jurisdictions.

This book is a detailed treatment of the Russian legal system written especially for English-speaking law students and lawyers. While it is designed primarily as a casebook, extended discussions of the law, numerous citations to original Russian sources, and detailed suggestions for finding these sources on the Internet also make it useful as a reference for scholars specializing in Russian studies and for lawyers who know Russian but not Russian law. The authors have decades of experience following the Russian legal system, with one concentrating on human rights, court procedure, and criminal law and procedure, the other on civil, commercial, and tax law. Chapters cover key aspects of the Russian legal system, including sources of law, the judicial system, the legal profession, constitutional law, individual rights, civil and commercial law, civil procedure, private international law, foreign investment law, criminal procedure, administrative law, and tax law. The book covers major changes in Russian law since the previous edition was published, including more reliance on judicial precedent, increasing the independence of criminal investigators from prosecutors, dealing with abuse of the legal system by corrupt officials to steal businesses from their rightful owners, and closing loopholes in the tax system. The new edition also continues the chronicling struggle of the European Court of Human Rights and activist Russian lawyers to push Russian law toward international standards.

This book is exceptional in the sense that it provides an introduction to law in general rather than the law of one specific jurisdiction, and it presents a unique way of looking at legal education. It is crucial for lawyers to be aware of the different ways in which societal problems can be solved and to be able to discuss the advantages and disadvantages of different legal solutions. In this respect, being a lawyer involves being able to reason like a lawyer, even more than having detailed knowledge of particular sets of rules. Introduction to Law reflects this view by focusing on the functions of rules and on ways of arguing the relative qualities of alternative legal solutions. Where 'positive' law is discussed, the emphasis is on the legal questions that must be addressed by a field of law and on the different solutions which have been adopted by, for instance, the common law and civil law tradition. The law of specific jurisdictions is discussed to illustrate possible answers to questions such as when the existence of a valid contract is assumed.

“"This thesis critically examines the origins and development of international criminal law to identify the defining features of this emerging legal tradition. It critically evaluates the experimental approach taken in Article 21 of the Rome Statute of the International Criminal Court, which attempts to codify an untested normative super-structure to guide this legal tradition."" --

In A Question of Intent, Jennifer M. Neighbors unpacks the complicated late imperial homicide continuum and its Republican-era counterpart, revealing a Chinese justice system, both before and after 1911, that defies assignment to binary categories of modern and pre-modern law. American Criminal Courts: Legal Process and Social Context provides a complete picture of both the theory and day-to-day reality of criminal courts in the United States. The book begins by exploring how democratic processes affect criminal law, the documents that define law, the organizational structure of courts at the federal and state levels, the overlapping authority of the appeals process, and the effect of legal
processes such as precedent, jurisdiction, and the underlying philosophies of various types of courts. In practice, criminal courts are staffed by people who represent different perspectives, occupational pressures, and organizational goals. Thus, this book includes chapters on actors in the traditional courtroom workgroup (judges, prosecutors, and defense attorneys, etc.) as well as those outside the court who seek to influence it, including advocacy groups, the media, and politicians. It is the interplay between the court's legal processes and the social actors in the courtroom that makes the application of criminal law fascinating. By focusing on the tension between the law and the actors inside of it, American Criminal Courts: Legal Process and Social Context demonstrates how the courts are a product of "law in action" and presents content in a way that enables you to understand not only the "how" of the U.S. criminal court system, but also the "why." Clearly explains both the principles underlying the development of criminal law and the practical reality of the court system in action A complete picture of the criminal justice continuum, including prosecution, defense, judges, juries, sentencing, and pre-trial and appeals processes Feature boxes look at how courts are portrayed in the media; identify landmark due-process cases; illustrate the pros and cons of the courts' discretionary decision-making; examine procedures and the goals of justice; and highlight the various types of careers available within the criminal courts This is a concise history and analysis of the civil law tradition, which is dominant in most of Europe, all of Latin America, and many parts of Asia, Africa, and the Middle East. This new edition deals with recent significant events - such as the fall of the Soviet empire and the resulting precipitous decline of the socialist legal tradition - and their significance for the civil law tradition. After decades of nihilistic rule under Mao Zedong, can legal order be restored in China? How successful is Deng Xiaoping's initiative in developing a socialist legal system? Where is China on its road to the 'rule of law'? This book illustrates - through the analysis of more than two hundred criminal cases selected from Minzhu yu fazhi (Democracy and the Legal System) in the period 1979-89 - that the establishment of a formal criminal justice system and the development of an embryonic socialist theory of law in China reflect a genuine and widespread legal awakening. A rudimentary legal culture has taken hold among Party leaders, cadres, judicial personnel, intellectuals and the general public. Nevertheless, the contradiction between legal order and Party supremacy remains, as demonstrated by the June Fourth incident in Beijing and the ensuing trials of the 1989 dissidents. This unique publication offers a complete history of Roman law, from its early beginnings through to its resurgence in Europe where it was widely applied until the eighteenth century. Besides a detailed overview of the sources of Roman law, the book also includes sections on private and criminal law and procedure, with special attention given to those aspects of Roman law that have particular importance to today's lawyer. The last three chapters of the book offer an overview of the history of Roman law from the early Middle Ages to modern times and illustrate the way in which Roman law furnished the basis of contemporary civil law systems. In this part, special attention is given to the factors that warranted the revival and subsequent reception of Roman law as the 'common law' of Continental Europe. Combining the perspectives of legal history with those of social and political history, the book can be profitably read by students and scholars, as well as by general readers with an interest in ancient and early European legal history. The civil law tradition is the oldest legal tradition in the world and an influential legal system currently in force in Continental Europe, Latin America, and other parts of the world. Despite the considerable differences in the substantive laws of civil law countries, a fundamental unity exists between them. The most obvious element of unity is the fact that the civil law systems are all derived from the same sources and their legal institutions are classified in accordance with a commonly accepted scheme existing prior to their own development, which they adopted and adapted at some stage in their history. Roman law is both in point of time and range of influence the first catalyst in the evolution of the civil law tradition. International crime and justice is an emerging field that covers international and transnational crimes that have not been the focus of mainstream criminology or criminal justice. This book examines the field from a global perspective. It provides an introduction to the nature of international and transnational crimes and the theoretical perspectives that assist in understanding the relationship between social change and the waxing and waning of the crime opportunities resulting from globalization, migration, and culture conflicts. Written by a team of world experts, it examines the central role of victim rights in the development of legal frameworks for the prevention and control of transnational and international crimes. It also discusses the challenges to delivering justice and obtaining international cooperation in efforts to deter, detect, and respond to these crimes. With a special place among the world's important trading countries, Taiwan presents the international practitioner with its own particular legal issues and problems. Among the world's most many-sourced legal systems, the law of Taiwan sustains major elements from Chinese and Japanese sources as well as its own indigenous and traditional rules and strong influences from both civil and common law traditions. This convenient guide, written by a scholar-practitioner who is both Dean of Law at the National Taiwan University and a panelist in the World Trade Organization's Dispute Settlement Body, is an ideal introduction and practical handbook for anyone involved in a transaction that raises issues in Taiwanese law. After detailed summaries of Taiwan's system of government, its court system, sources of law, and administrative law and procedure, the author covers practice and procedure in such fields of legal activity as the following: contracts; torts; consumer protection; property rights; family law; law of succession; alternative dispute resolution; intellectual property law; trade; government procurement; labor law; and criminal law and procedure. International lawyers will find all the legal situations most likely to arise in the course of transactions connected to Taiwan covered expertly and knowledgeably in this very useful book. It is also valuable to students and scholars for its special insights into issues of comparative law. Exploring the changing roles played by judicial officials as well as the evolution of Florentine government, Stern shows how these developments reflected broad-based change in society at large. From such primary documents as legal statutes and actual trial records, she provides a step-by-step explanation of trial procedure to offer a rare glimpse of inquisition methods in the secular world - from public fame initiation, through the weighing of various levels of proof, to the complex process of sentencing. 'International Criminal Procedure, edited by two insiders to international criminal proceedings, Professor Linda Carter and Professor Fausto Pocar, a judge at the ICTY and a former President of this Tribunal, is a coherently organized, well-researched, very informative and not the least elegantly-written contribution to a young and rapidly developing legal sub-discipline. The book provides its reader with a highly accessible and up-to-date introduction into key elements of international criminal procedure as well as with critical commentary and rich inspiration for improvements of current practices.' – Claus Kreß LL.M. (Cantab.), University of Cologne, Germany and Institute for International Peace and Security Law 'This book addresses compelling issues that have come before international criminal tribunals. They include the self-representation of accused persons, plea bargaining and victim participation. It usefully approaches all of the issues and problems from a comparative law perspective. This excellent and accessible work is essential reading for practitioners, faculty and students of international criminal law.' – Richard Goldstone, Retired Justice of the Constitutional Court of South Africa and for Chief Prosecutor of the United Nations International Criminal Tribunals for the former Yugoslavia and Rwanda The emergence of international criminal courts, beginning with the International Criminal Tribunal for the former Yugoslavia and including the International Criminal Court, has also brought an evolving international criminal procedure. In this book, the authors examine selected issues that reflect a blending of, or choice between, civil law and common law models of procedure. The issues include background on civil law and common law legal systems; plea bargaining; witness proofing; written and oral evidence; self-representation and the use of assigned, standby, and amicus counsel;
the role of victims; and the right to appeal. International Criminal Procedure will appeal to academics, students, researchers, lawyers and judges working in the field of international criminal law.

The Criminalization series arose from an interdisciplinary investigation into criminalization, focussing on the principles that might guide decisions about what kinds of conduct should be criminalized, and the forms that criminalization should take. Developing a normative theory of criminalization, the series tackles the key questions at the heart of the issue: what principles and goals should guide legislators in deciding what to criminalize? How should criminal wrongs be classified and differentiated? How should law enforcement officials apply the law's specifications of offences? This, the fifth book in the series, offers a historical and conceptual account of the development of the modern criminal law in England and as it has spread to common law jurisdictions around the world. The book offers a historical perspective on the development of theories of criminalization. It shows how the emergence of theories of criminalization is inextricably linked to modern understandings of the criminal law as a conceptually distinct body of rules, and how this in turn has been shaped by the changing functions of criminal law as an instrument of government in the modern state. The book is structured in two main parts. The first traces the development of the modern law as a distinct, and conceptually distinct body of rules, looking in particular at ideas of jurisdiction, codification and responsibility. The second part then engages in detailed analysis of specific areas of criminal law, focusing on patterns of criminalization in relation to property, the person, and sexual conduct.

If an innocent person is sent to prison or if a killer walks free, we are outraged. The legal system assures us, and we expect and demand, that it will seek to "do justice" in criminal cases. So why, for some cases, does the criminal law deliberately and routinely sacrifice justice? In this unflinching look at American criminal law, Paul Robinson and Michael Cahill demonstrate that cases with unjust outcomes are not always irregular or unpredictable. Rather, the criminal law sometimes chooses not to give defendants what they deserve: that is, unsatisfying results occur even when the system works as it is designed to work. The authors find that while some justice-sacrificing doctrines serve their intended purpose, many others do not, or could be replaced by other, better rules that would serve the purpose without abandoning a just result. With a panoramic view of the overlapping and often competing goals that our legal institutions must balance on a daily basis, Law without Justice challenges us to restore justice to the criminal justice system.

Criminal Law, Tradition and Legal OrderCrime and the Genius Of Scots Law, 1747 to the PresentCambridge University Press

Rule of law has vanished in America’s criminal justice system. Prosecutors decide whom to punish; most accused never face a jury; policing is inconsistent; plea bargaining is rampant; and draconian sentencing fills prisons with mostly minority defendants. A leading criminal law scholar looks to history for the roots of these problems—and solutions.

The Courts in Our Criminal Justice System presents a unique historical context on the development, functions, and controversies in the courts system that is lacking in other courts books, while simultaneously presenting the most current theory, research, and examples on the topic. This broad, temporally inclusive approach to the study of the courts will help provide the "big picture" framework necessary for readers to understand the modern American criminal courts process.

A Society Designs Laws; A Crime is Committed; After Arrest: Law, the Court, and Post-Arrest Procedures; The Courts Get Involved (The History of Courts and the Arrangement of Modern Courts; A Prosecutor Considers the Charges; A Defense Lawyer is Selected: The Defense Role; A Judge Is Assigned to Hear the Case; Jurors and Other Key Participants in the Courtroom Play Their Roles; Some Cases Don’t Make It to Court; “You Ring, We Spring”: The Role of Bail in the Court System; Plea Bargaining; Your Day in Court: The Trial Begins; The Punishment Dilemma; $30 or 30 Days: Setting the Penalty; Appeals; Juvenile Courts.

A profound challenge to our society’s normalization of the caging of human beings, and the role of the legal profession in perpetuating it Alec Karakatsanis is interested in what we choose to punish. For example, it is a crime in most of America for poor people to wager in the streets over dice; dice-wagers can be seized, searched, have their assets forfeited, and be locked in cages. It’s perfectly fine, by contrast, for people to wager over international currencies, mortgages, or the global supply of wheat; wheat-wagers become names on the wings of hospitals and museums. He is also troubled by how the legal system works when it is trying to punish people. The bail system, for example, is meant to ensure that people return for court dates. But it has morphed into a way to lock up poor people who have not been convicted of anything. He’s so concerned about this that he has personally sued court systems across the country, resulting in literally tens of thousands of people being released from jail when their money bail was found to be unconstitutional. Karakatsanis doesn’t think people who have gone to law school, passed the bar, and sworn to uphold the Constitution should be complicit in the mass caging of human beings—an everyday brutality inflicted disproportionately on the bodies and minds of poor people and people of color and for which the legal system has never offered sufficient justification. Usual Cruelty is a profoundly radical reconsideration of the American “injustice system” by someone who is actively, wildly successfully, challenging it.

The Oxford Handbook of Criminal Process surveys the topics and issues in the field of criminal process, including the laws, institutions, and practices of the criminal justice administration. The process begins with arrests or with crime investigation such as searches for evidence. It continues through trial or some alternative form of adjudication such as plea bargaining that may lead to conviction and punishment, and it includes post-conviction events such as appeals and various procedures for addressing miscarriages of justice. Across more than 40 chapters, this Handbook provides a descriptive overview of the subject sufficient to serve as a durable reference source, and more importantly to offer contemporary critical or analytical perspectives on those subjects by leading scholars in the field. Topics covered include history, procedure, investigation, prosecution, evidence, adjudication, and appeal.

The legal processes are also explored, along with a consideration of Spain's relationship with the ECU and how EC law has affected the Spanish national laws.

Offers an introduction to constitutional law, litigation, tort law, contract law, property law, and criminal law, and includes case studies.

Written from a legal and institutional perspective, this text provides students with an overview of the American legal system. Broad coverage, flexible organization, and inclusion of up-to-date, teachable cases make Introduction to Law suitable for a variety of departments (business, political science, government and criminal justice departments, and paralegal and pre-law) and courses (Survey of Law, Introduction to Law and the Legal System, Law and Society, Legal
This book examines the relationship between legal tradition and national identity to offer a critical and historical perspective on the study of criminal law. Developing a radically different approach to questions of responsibility and subjectivity, it combines appreciation of the institutional and historical context in which criminal law is practiced with an informed understanding of the law itself. Drawing on original research into the development of Scottish criminal justice, it offers the first full-length critique of modern criminal law theory. This book considers the problem of law's physical control of persons and it illuminates competing visions of the law: as both a tool of regulation and as an instrument of coercion or punishment.

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