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Regulating 'university' and degree-granting authority: changing of the guard

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This paper describes the changes in the recognition of universities made or proposed in England, Australia and the US since 2004 and posits a broad shift from the permanent designation of institutional types to the periodic recognition of qualification-granting authority. This is associated with increased private funding and operation of universities, which in turn is associated with a shift from elite to mass higher education.

Introduction

The official recognition of universities is not a modern phenomenon. Towards the middle of the 13th century European universities began seeking recognition by the Pope or Holy Roman Emperor as a *studium generale*, a school with formal facilities for advanced study in at least two of the senior faculties of theology, law and medicine (Haskins, 1941, p. 282). While these papal and imperial bulls initially did little more than confer the privileges of a specified university such as Bologna or Paris, by the end of the 13th century universities sought a papal bull conferring on them *ius ubique docendi*, the privilege of granting to masters licences to teach in all universities without further examination (Haskins, 1941, p. 282). While the Catholic Church's role in recognising universities has long since become ceremonial, the state has become increasingly involved in regulating universities. External quality assurance and accreditation systems have been established in all regions of the world during the last quarter of a century (OECD, 2004, p. 28) and recently the OECD (2004, p. 29) found that almost every member country now has arrangements for the external evaluation of institutions and/or programs, sometimes leading to formal accreditation or recognition systems.

The recognition of universities has changed substantially in England, has been modified in Australia, and the US Secretary of Education's commission on the future of higher education has proposed a significant reorientation of accreditation in the US. This paper describes the recognition of universities in these and other wealthy English-speaking countries until 2004 when England introduced the first of the major changes considered. The paper describes the changes made or proposed in these countries after 2004, notes UNESCO's adoption of *Guidelines for quality provision in cross-border higher education* in 2005, and posits a broad shift from the permanent designation of institutional types to the periodic recognition of qualification-granting authority.

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Position until 2004

England

UK institutions are granted authority to award their own degrees by either a Royal Charter, a private Act of Parliament or pursuant to the *Further and Higher Education Act 1992*. Section 76 of the Act empowers the Privy Council to designate institutions that provide higher education as competent to award 'taught' or coursework degrees and/or research degrees. In considering applications for these powers the Privy Council seeks advice from the appropriate minister with higher education responsibilities. The minister in turn seeks advice from the Quality Assurance Agency, which assesses the institution against a set of criteria determined by the Secretary of State for Education and Skills (DfES, 2003, pp. 2-3). Until 2004 the university title was reserved for institutions with both taught and research degree awarding powers that had a higher education enrolment of at least 4,000 full-time equivalent students of whom at least 3,000 full-time equivalent students were enrolled in degree level programs in 5 of 11 broad subject areas, which had at least 60 current research degree registrations and had conferred more than 30 PhDs or equivalent (QAA, 1999). An institution's designation as a university was permanent.

Australia

In Australia as in other federations such as Canada, Germany and the US, education is the constitutional responsibility of state governments. Nonetheless, unlike other federations there is considerable pressure in Australia to establish national consistency if not conformity in education as in other areas of state responsibility. This resulted in the state and federal Ministerial Council on Education, Employment, Training and Youth Affairs adopting national protocols for higher education approval processes on 31 March 2000. The protocols were implemented by complementary but not identical legislation passed by State, Territory and federal parliaments. The protocols state that an Australian university would demonstrate these features:

- authorisation by law to award higher education qualifications across a range of fields and to set standards for those qualifications which are equivalent to Australian and international standards;
- teaching and learning that engage with advanced knowledge and inquiry;
- a culture of sustained scholarship extending from that which informs inquiry and basic teaching and learning, to the creation of new knowledge through research, and original creative endeavour;
- commitment of teachers, researchers, course designers and assessors to free inquiry and the systematic advancement of knowledge;
- governance, procedural rules, organisation, admission policies, financial arrangements and quality assurance processes, which are underpinned by the values and goals outlined above, and which are sufficient to ensure the integrity of the institution's academic programs, and
- sufficient financial and other resources to enable the institution's program to be delivered and sustained into the future (MCEETYA, no date, protocol 1.14).

As in the UK, an Australian institution's designation as a university is permanent.

USA

Accreditation in the USA started over a century ago as a means for colleges assuring that high school graduates met acceptable standards for admission (Schray, 2006, p. 1). Later colleges started to participate in accreditation to ensure that their students' credits would be accepted for transfer to other colleges (Schray, 2006, p. 1). In 1885 institutions established the New

England Association of Schools and Colleges to assure institutional quality and by 1919 institutions in other regions established the other 5 regional accrediting agencies (Dickeson, 2006, p. 3) which continue to be responsible for most 4-year colleges' quality assurance and accreditation. The US federal government greatly expanded its involvement in higher education after World War II with the passage of the G.I. Bill which provided returned military personnel with financial support to study in accredited institutions. States adopted similar measures which made the accreditation system the key gatekeeper for both federal and state funding (Schray, 2006, p. 2).

As the US federal government broadened its student grants and loans programs and increased its special purpose grants to institutions it increased its reliance on institutional accreditation for determining institutions' eligibility to receive federal funds. The federal government therefore established a process for recognising and registering national and regional accreditation agencies (Schray, 2006, p. 2). To be recognised an agency must demonstrate that its accreditation standards effectively assess the quality of an institution or program in these areas:

- 1 student program completion, students' success in State licensing examinations and job placement rates;
- 2 curricula;
- 3 academic staff;
- 4 facilities, equipment, and supplies;
- 5 fiscal and administrative capacity;
- 6 student support services;
- 7 recruiting and admissions practices, academic calendars, catalogues, publications, grading, and advertising;
- 8 measures of program length and the objectives of the degrees or credentials offered;
- 9 record of student complaints received by or available to the agency; and
- 10 record of compliance with the institution's program responsibilities under Title IV of the Higher Education Act of 1965 based on the most recent student loan default rate data provided by the Secretary of Education, the results of financial or compliance audits, program reviews, and any other information that the Secretary may provide to the agency (US Department of Education, 2006, para. 602.16).

It will be noted that the US federal government's recognition of accreditation agencies is based on their assessing program standards and performance – there is no federal oversight of the use of institutional titles. Massachusetts and some other state governments regulate tightly the use of the 'university' title (Guthrie, Johnston & King, 2004, p. 34). To be licensed as a university in Massachusetts an institution:

must provide a wide range of programs leading to the baccalaureate degree, must provide graduate programs in two or more professional fields, and must provide programs leading to the doctoral degree in two or more fields of study. A university must clearly identify graduate studies as a distinct element within its organization, and must provide the additional faculty, facilities, and resources necessary to support sound graduate programs (Regulation 610 CMR: Degree-Granting Regulations For Independent Institutions of HE, cited in Guthrie, Johnston & King, 2004, pp. 39-40).

But generally US state governments tend to follow the federal government's lead in accrediting private institutions by concentrating on their programs rather than on their institutional title. However, State governments tend to call their higher education institutions colleges if their highest award is a 2-year associate degree and universities if they offer

coursework masters and above. States vary in their designation of their institutions whose highest award is the 4-year bachelor degree, but many designate these as colleges.

There are currently 3 types of accreditation agencies in the US: regional, national, and specialised or programmatic. There are 6 regional accrediting agencies which review whole institutions. Of the 2,963 regionally accredited institutions, 97% are traditional, non-profit, degree-granting colleges and universities. National accrediting agencies operate throughout the country and review whole institutions. Of the 3,458 nationally accredited institutions 64% are non-degree granting and 36% are degree granting, 79% are for-profit and 21% are non-profit. Many of the nationally accredited institutions offer only one discipline such as information technology. Specialised accrediting agencies operate throughout the US and assess programs, departments, or schools in specific fields such as business and law. Some specialised accrediting agencies are state government agencies responsible for regulating professions such as in healthcare. There are 18,713 accredited programs and single purpose institutions (Schray, 2006, p. 2). Institutions are accredited for a fixed period ranging from 3 to 10 years.

Canada

Higher education is the responsibility of provincial and territory governments in Canada: there is no federal department of education. Canadian higher education is dominated by public institutions established by provincial government legislation which designate institutions' titles. Canada's largest province of Ontario specifies that to be designated as a university an institution must have authority to grant undergraduate and graduate degrees in a 'comprehensive' range of disciplines; appropriate procedures for student admission, progress and graduation and for academic staff recruitment, development, promotion and termination; provide access to appropriate libraries and laboratories; have a self-critical academic community committed to quality assurance and a governance system to determine academic standards which is committed to academic freedom (Guthrie, Johnston & King, 2004, pp. 40-1). In addition a university is an institution:

3. whose mission and practice includes the creation of knowledge through research and/or scholarly activity and the dissemination of knowledge through teaching, publication, and presentation (Guthrie, Johnston & King, 2004, p. 40);

That is, Ontario's requirement for designation as a university is for research 'and/or scholarly activity'. Similarly in Alberta, Canada's 4th largest province, the criteria for the use of the university title are:

- a) the college offers more than a single accredited degree program, including at least one four-year liberal arts degree with a major;
- b) the college offers a breadth of transferable university level courses;
- c) the college's mission includes scholarly pursuit by faculty;
- d) basic policies to support conduct of such scholarship by faculty are in place; and
- e) the faculty demonstrates evidence of scholarly pursuit relevant to the degree programs being offered (Guthrie, Johnston & King, 2004, pp. 41-2).

New Zealand

The New Zealand Parliament has legislated a much more restricted designation of universities. Sub section 162(4) of the *Education Act 1989* provides that an institution must have all these characteristics for designation as a university:

- (i) they are primarily concerned with more advanced learning, the principal aim being to develop intellectual independence;

- (ii) their research and teaching are closely interdependent and most of their teaching is done by people who are active in advancing knowledge;
 - (iii) they meet international standards of research and teaching;
 - (iv) they are a repository of knowledge and expertise;
 - (v) they accept a role as critic and conscience of society
- (New Zealand Parliamentary Counsel Office, no date).

Changes after 2004

England

In its White Paper on the future of higher education of 2003 the UK Government noted –

4.31 At present, the ‘University’ title is reserved for institutions that have the power to award both taught degrees, and research degrees. The right to award research degrees requires that the institution demonstrate its strength in research. This situation is at odds with our belief that institutions should play to diverse strengths, and that excellent teaching is, in itself, a core mission for a university . . . It is clear that good scholarship, in the sense of remaining aware of the latest research and thinking within a subject, is essential for good teaching, but not that it is necessary to be active in cutting-edge research to be an excellent teacher (Secretary of State for Education and Skills, 2003, p. 54).

In September 2003 the Government issued a *Consultation on proposed new criteria for degree awarding powers and university title*. Predictably, most universities opposed and most non-university higher education institutions supported the Government’s proposal to award the university title to institutions that are authorised to offer coursework or taught but not research degrees. The Government adopted the proposed criteria with minor modifications on 16 March 2004 and from 1 September 2004 an organisation wishing to apply for approval to use the title ‘university’ in England must:

- have been granted powers to award taught degrees;
- normally have at least 4,000 full time equivalent higher education students, of whom at least 3,000 are registered on degree level courses (including foundation degree programs); and,
- be able to demonstrate that it has regard to the principles of good governance as are relevant to its sector (DfES, 2004, p. 20).

Most respondents to the consultation opposed the Government’s proposal to grant degree awarding powers for 6 year terms renewable subject to a satisfactory audit, and the Standing Committee of Principals and Directors of the colleges and institutions of higher education cited legal difficulties with this proposal. The Government therefore deferred this part of the proposal and plans to publish a discussion paper on the issue (Minister of State for Lifelong Learning, Further and Higher Education, 2004).

Australia

Recent Australian ministers for education, science and training have argued that the national protocols for higher education approval processes are too restrictive in excluding universities without a research role, known locally as ‘teaching-only universities’. In December 2003 the Australian Department of Education, Science and Training commissioned a report on *Further development of the national protocols for higher education approval processes*. The report reviewed the Australian experience with its national protocols and their implementation in each jurisdiction and reported on overseas approaches to accreditation. The report made 27 recommendations on clarifying some of the protocols, considering their liberalisation and increasing the consistency of their implementation (Guthrie, Johnston & King, 2004).

In March 2005 the then Australian minister for education, science and training published his department's issues paper on *Building university diversity: future approval and accreditation processes for Australian higher education*. The paper raised 5 issues: how critical is research?, specialist institutions, private for profit institutions, non university self accrediting institutions and institutional types (DEST, 2005). Throughout the issues paper the Government also suggested that institutions should not be designated universities or other higher education providers permanently but should be required to seek re-accreditation every 6 years or so.

The Ministerial Council on Education, Employment, Training and Youth Affairs' joint committee on higher education held a broadly consultative workshop on the national protocols in August 2005. The workshop considered an issues paper which focused the discussion over the previous 2 years and responses to the government's issues paper, asked questions for debate and put alternative models for regulating higher education (Wilson, 2005). There was broad agreement in the workshop to allow institutions which conduct research and offer doctorates in only 1 field to have a modified university title such as the notional Sydney University of Performing Arts or the Western Australian University of Minerals and Resources. While this position was subsequently accepted more generally, some fear that it will encourage parts of institutions that had been strongly encouraged to amalgamate in 1987 to fragment to establish themselves as separate universities. Otherwise the workshop agreed to retain the initial restriction of the university title to institutions that conduct research and offer doctorates in 3 broad fields of education (MCEETYA, 2006, para. D6, p. 10). The workshop also agreed that an overseas institution should be allowed to use the university title in Australia if it 'is recognised as a university by an overseas accreditation authority, the standing and standards of which are acceptable in Australia' (MCEETYA, 2006, para 6.11, p. 14). It is unclear whether a UK or US university would satisfy this criterion since they are recognised as universities without any involvement in research.

On 7 July 2006 the ministerial council adopted the revised protocols proposed by the national workshop and drafted by officials of the joint committee on higher education. The revised protocols will be given effect by amendments to the legislation in each of the 9 jurisdictions, so their implementation was delayed until December 2007 to allow time for the legislatures to draft and enact implementing legislation. The ministerial council is also seeking to promote greater national consistency in each jurisdiction's application of the protocols by developing accompanying guidelines, which it expects to complete by June 2007. The ministerial council plans to review the national protocols again no later than 2012 (MCEETYA, no date).

On Tuesday 14 November 2006 the High Court of Australia handed down its judgement in *New South Wales v Commonwealth of Australia; Western Australia v Commonwealth of Australia*¹, the decision which upholds the validity of the *Workplace Relations Amendment (Work Choices) Act 2005* (Cth). The majority of the High Court extends the Commonwealth's power to legislate on almost all matters concerning 'Foreign corporations, and trading or financial corporations'. A corporation includes any body established by or pursuant to an Act of Parliament even if it is established by a State Act of Parliament such as all but 1 Australian universities. Universities charge student tuition fees, manage student colleges and residences and operate cafeterias and bookshops and are therefore trading corporations for the purposes of the constitution, which the Federal Court recently confirmed about the University of Western Australia in *Quickenden v O'Connor*².

¹ [2006] HCA 52 (14 November 2006)

² (2001) FCA 303

The Commonwealth therefore now has power to legislate directly and generally on universities – to introduce teaching-only universities, grant university status to private colleges, further reduce the size and determine the composition of university councils, further regulate universities' industrial relations, require the monitoring of standards and change quality assurance, require credit transfer, restrict universities' research role, and almost any other change the Government may seek. The Commonwealth may therefore legislate directly to change the national protocols on higher education approval processes, to change the Australian universities quality agency and to change universities' quality assurance from its current co-operative arrangement through the ministerial council to one done subject to Commonwealth legislation. Australian universities may therefore expect major changes to the regulation of the use of the term 'university' and of degree-granting authority.

USA

The US Secretary of Education's commission on the future of higher education critically reviewed accreditation amongst several other issues in US higher education. The commission argued –

Accreditation, the large and complex public-private system of federal, state and private regulators, has significant shortcomings. Accreditation agencies play a gatekeeper role in determining the eligibility of institutions and programs to receive federal and state grants and loans. However, despite increased attention by accreditors to learning assessments, they continue to play largely an internal role. Accreditation reviews are typically kept private, and those that are made public still focus on process reviews more than bottom-line results for learning or costs. The growing public demand for increased accountability, quality and transparency coupled with the changing structure and globalization of higher education requires a transformation of accreditation (Secretary of Education's Commission on the Future of Higher Education, 2006, p. 14).

The commission recommended a significant reorientation of accreditation –

Accreditation agencies should make performance outcomes, including completion rates and student learning, the core of their assessment as a priority over inputs or processes. A framework that aligns and expands existing accreditation standards should be established to (i) allow comparisons among institutions regarding learning outcomes and other performance measures, (ii) encourage innovation and continuous improvement, and (iii) require institutions and programs to move toward world-class quality relative to specific missions and report measurable progress in relationship to their national and international peers. In addition, this framework should require that the accreditation process be more open and accessible by making the findings of final reviews easily accessible to the public and increasing public and private sector representation in the governance of accrediting organizations and on review teams. Accreditation, once primarily a private relationship between an agency and an institution, now has such important public policy implications that accreditors must continue and speed up their efforts towards transparency as this affects public ends (Secretary of Education's Commission on the Future of Higher Education, 2006, p 24).

It will be noted that the commission is proposing that accreditation incorporate accountability to the (federal) government as proposed by one of the critics of current US accreditation arrangements in an issues paper published by the commission (Dickeson, 2006, p. 6). If the federal government adopts this proposal it will make institutions' eligibility for federal government loans and grants conditional upon being accredited by a recognised accrediting body and it will make recognition of accrediting bodies conditional upon the body assessing institutions' relative performance on learning outcomes and other measures. It is perhaps an indication of the relative weakness of the US federal government in higher education that it doesn't make institutions' eligibility for federal government loans and grants directly conditional upon their participating in the government's accountability measures, as the

national governments of Australia and the UK require of all public and private higher education institutions that receive government grants and loans.

The very considerable increase in the number of students studying in overseas institutions since the 1980s has drawn attention to 'transnational' education and has raised questions about the adequacy of their protection in some jurisdictions. The OECD and UNESCO have recently started considering the issue.

UNESCO

In 2005 UNESCO (2005) adopted *Guidelines for quality provision in cross-border higher education*. This followed the OECD's (2004) comprehensive report on *Quality and recognition in higher education: the cross-border challenge*. UNESCO's (2005, pp. 12-3) *Guidelines for quality provision in cross-border higher education* recommend that governments establish processes for registering institutions as well as accrediting higher education provision:

- (a) Establish, or encourage the establishment of a comprehensive, fair and transparent system of registration or licensing for cross-border higher education providers wishing to operate in their territory;
- (b) Establish, or encourage the establishment of a comprehensive capacity for reliable quality assurance and accreditation of cross-border higher education provision, recognizing that quality assurance and accreditation of cross-border higher education provision involves both sending and receiving countries; (UNESCO, 2005, pp. 12-3)

However, while UNESCO's guidelines recommend desirable processes for recognition and accreditation, it makes no observation on the standards that governments should implement.

Discussion

Research as a marker of university distinctiveness

Guthrie, Johnston & King (2004, p. 34) argue that there are 2 main reasons for a government to regulate the use of the university title. The first is to protect students against enrolling in an institution that doesn't meet the minimum standards for a university, which protects the reputation of a jurisdiction's universities.

A second reason is to protect the exclusiveness of universities against some notion, not always spelt out, of the defining characteristics of a university. For example, in a number of countries universities are defined by the co-location of teaching and research, with the latter informing the former. . . In some cases a spread of subjects is a further defining characteristic (Guthrie, Johnston & King 2004, p. 35).

Research as we understand it was a product of the 18th century Enlightenment, but was only incidentally conducted in universities. It was a personal activity of some intellectuals, some of whom taught at universities. Research's emergence as an institutional role of universities is commonly understood to have originated with Wilhelm von Humboldt's foundation of the *Universität zu Berlin* in 1810. One of the 4 principles said to inform the 'German' university model was *Einheit von Lehre und Forschung*, the unity of teaching and research. Ash (2006) questions the accuracy of this understanding of Humboldt's role and the accuracy and influence of the so-called German model, but even on Ash's account research emerged as an institutional role of universities from the early 19th century (Ash, 2006, p. 247). Even so, a research role for universities was resisted by Cardinal Newman (1959) in his *The idea of a university* as late as 1853. So research has been an institutional role of universities for only about a fifth of their history since the establishment of the first European universities in the 11th and 12th centuries.

Research is also a significant role of only a minority of modern universities. Leaving aside the US which may be considered anomalous and ignoring the recent changes in England, a majority of the remaining universities in the world conduct little if any research. Many universities in Africa, Asia, Mexico and Latin America have no substantial research role. Even in continental Europe the research role of universities is overshadowed in France by the *Centre National de la Recherche Scientifique* (CNRS, National Centre for Scientific Research) and the *Institut National de la Santé et de la Recherche Médicale* (Inserm, Institute of Health and Medical Research) (Guthrie, Johnston & King 2004, p. 34); in Germany by the *Max-Planck-Gesellschaft zur Förderung der Wissenschaften e. V.* (MPG, Max Planck Society for the Advancement of Science); and in the Russian Federation by the Russian Academy of Sciences.

So the suggestion that universities are distinctive amongst higher education institutions in conducting research may be an appropriate statement of a norm or ideal, but it is not an accurate description of most institutions that are commonly accepted as universities now, and it is not even an accurate description for most of their histories of many of the most prestigious research universities such as Harvard, Cambridge and Oxford.

Decoupling characteristics of institutional types

In some jurisdictions there has been an alignment of these characteristics of universities:

- established by the government as a university;
- having university status permanently;
- being almost exclusively funded by the government;
- being part of a relatively homogenous university sector;
- being the only type of higher education institution funded to conduct research and authorised to award PhDs;
- having the authority to accredit its own qualifications;
- having a role in offering general or academic education, which is often distinguished from offering 'applied' or 'vocational' education.

In some jurisdictions this alignment goes further, such as the coupling of institutional types with types of undergraduate awards offered by universities and other types of tertiary educational institutions in Australia (Moodie, 2002, 2003), Austria, Germany, the Netherlands (Witte, 2006, p.173) and many other countries.

This alignment of characteristics of institutional types has been progressively eroded by the establishment and increasing standing of non university higher education institutions to accommodate a shift from elite to mass higher education (Trow, 1974), the reduction in the proportion of higher education funding from government, and in Europe, by the Bologna process. Van Damme, Van der Hijden & Campbell (2004, p. 80) point out that the Bologna process is undermining the linking of institutional types to qualifications since 'Programs and degrees in the non-university sector in one country are found in universities in another, causing confusion among students and employers, and also leading to some resentment among institutions'. They claim that the academic drift of non-universities is complemented by universities' vocational drift to expand their market share (Van Damme, Van der Hijden & Campbell, 2004, p. 80). This in turn is likely to reduce further the salience of designation as a university and shift from a hierarchical segmentation of institutional types to a stratification of institutions within a broader range of institutions.

Conclusion

Guthrie, Johnston & King (2004, p. 5) note that governments currently take two main approaches to regulating universities. One is to regulate closely the designation of universities which are then granted authority to accredit their own qualifications. The second approach is to allow relative freedom in the adoption of the university title but to accredit strictly and to re-accredit regularly the institutions and their qualifications, particularly degrees. The first approach seems to be associated with strong government involvement in establishing and funding universities. It therefore seems vulnerable to erosion as increasing proportions of university funds are obtained from non government sources, mainly students, and as increasing numbers of private institutions including universities are established. This may compromise the first reason Guthrie, Johnston & King (2004, p. 34) gave for regulating the use of the university title, to protect students against enrolling in an institution that doesn't meet the minimum standards for a university and the consequent protection of universities' reputation. On the other hand, Van Damme, Van der Hijden & Campbell (2004, p. 80) claim that maintaining controls over the designation of universities and their privileges is 'a somewhat protectionist stance on academic prestige on the part of established universities'.

Of the recent changes to university recognition considered in this paper, England has changed most, from focusing on the permanent designation of institutional types to moving closer to the US federal system of the periodic recognition of qualification-granting authority. Australia has made modest changes and remains within the first approach of permanently designating institutional types, and indeed has expanded the range of institutional types that it recognises. UNESCO's guidelines recommend that governments maintain regulations of both institutions and programs. The US is not considering changes along this continuum, but to introduce into federal government accreditation arrangements institutional accountability measures that other countries impose as conditions for the receipt of government grants and loans. Notwithstanding the considerable variation in jurisdictions' arrangements, it seems that universities are losing their special place as higher education institutions exclusively established and funded by government to conduct research in addition to offering bachelor and higher degrees.

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