

***The youth justice system in England and Wales: History, current developments  
and key issues in policy and practice with young offenders***

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This article addresses features of the English and Welsh youth justice system, and sets out the main areas of history, current developments and key issues in policy and practice with young offenders, within a review of relevant evidence in the different areas covered.

The following areas will be addressed in the article, based upon a review of relevant evidence in these different areas.

- 1) *Health, safety and well-being (including mental health)*
- 2) *Interprofessional and interagency working/sharing of information*
- 3) *Restorative approaches*
- 4) *Restorative justice*
- 5) *Young people who have sexually abused*
- 6) *Young people held in police custody*
- 7) *Risk assessment in Youth Justice*
- 8) *Ethnicity issues in work with young offenders*

**Article: (5985 words)**

This article addresses key features of the English and Welsh youth justice system, and sets out the main areas of history, current developments and key issues in policy and practice with young offenders in these countries, within a review of relevant evidence in the different areas covered. Scotland and Northern Ireland, also parts of the UK, have very different systems, and are not included in this discussion.

The following areas are addressed in the article.

- I. *Health, safety and well-being (including mental health)*

- II. *Interprofessional and interagency working/sharing of information*
- III. *Restorative approaches*
- IV. *Restorative justice*
- V. *Young people who have sexually abused*
- VI. *Young people held in police custody*
- VII. *Risk assessment in Youth Justice*
- VIII. *Ethnicity issues in work with young offenders*

The above points will be examined within an examination of the legal and policy structure which is acknowledged to be generally determined to a great extent by central government, and operationalised through Youth Offending Teams. These teams were set up by the UK government, with an executive body, the Youth Justice Board, being influential in directing policy at local levels, and in setting the National Standards (Youth Justice Board, 2004a) according to which Youth Justice Services within local areas have to set out their plans, and review the progress of them. The youth justice system in England and Wales is characterised by close control and inspection by central government of local agencies' practice and policies against the National Standards set by the Youth Justice Board. A full exposition of the policies and practices, including case studies, can be found in the chapter on Social Work with young offenders by Littlechild and Smith (2008) and also in Balahur, Littlechild and Smith (2007).

### **Background**

'Juvenile delinquency' has been a feature of criminological inquiry for a considerable period of time. The early to mid-19<sup>th</sup> century saw the emergence of a strand of thinking which acknowledged the distinctive concept of the 'young offender'. Thus, even from this early stage in the development of methods of dealing with youth crime, the demand for punishment was allied to a concern to reform wayward children in their formative years. Debates at that time - and now - centred on the child's capacity as a developing moral and intellectual being, and the ability to distinguish between right and wrong.

The Parkhurst Act 1838 was enacted in order to divert young people who offended from being kept with adult prisoners and the brutalising effects of adult prisons and

to prevent their deportation, aims which were furthered in the Reformatory Schools (youthful offenders) Act 1854. The Children Act 1908 legislated for a separate juvenile court. The Children Acts of 1933, 1963 and 1969 followed the trend in relation to welfare approaches to young people who offend, in conjunction with provisions for children in need or at risk. Whilst elements of punishment were still present within these developments, they were not the dominant ideology. One key development arising from these legislative changes was e.g. section 44 of the 1933 Children and Young Persons Act, which stated that juvenile courts had to take the welfare of the child into account in sentencing, if not actually having to make this a paramount consideration, as had been suggested. Whilst welfare promised a focus on meeting needs and rehabilitation, it has always been compromised by neo-conservative frameworks to have moral culpability and punishment, and whilst justice implies a commitment to individual rights and due process, this has constantly been transformed by neo-liberal responsabilisation and neo-conservative retributive strategies.

Two key elements in the development of the youth justice system in England and Wales have often been termed as:

- 1) *Welfare models of intervention*, consisting of assessment and intervention strategies deriving to a large extent from psychodynamic approaches, ecological and systems-based approaches of understanding and treating offending by young people. There have been various formulations of welfare approaches, including a concentration on deficits of families in raising their children and socialising them, leading to intervention strategies which looked at treatment both within and outside of the family. This approach often took the view that interventions should happen outside the judicial system, for example cautioning young people, residential care and supervision in the community.
- 2) *The Justice model*: in contrast to welfarism, 'Justice' approaches include the view that young people should be subject to formal judicial processes, where their rights before the law can be maintained, but can also lead to punishment-based outcomes. The 'Justice' model assumes that punishment is the primary rationale for the youth justice system, and that sentences should be based on a 'tariff' of increasing severity, dependent on the seriousness of the offence and the perpetrator's offending history.

The 1969 Children and Young Persons Act would have been the pinnacle of the welfare approach's achievements if it had been fully enacted by the incoming Conservative government – including elements such as decriminalisation and cautioning. One of the few elements that were enacted was the 7/7 care order that was of indeterminate length and could be made in criminal proceedings, which led to many young people for very minor offences being away from their home and in institutions for many of their childhood years for much longer periods than adults could be sentenced for, this breaching ideas of proportionality (Sections A5; A9; C44.1 ). Successive Criminal Justice Acts in 1982, 1988 and 1991 introduced measures which were intended to prevent courts using custody except in the most serious cases. Concern to divert young people away from contact with adult criminals has long been a concern of the English and Welsh system (Section A10). However, this trend has now in effect been reversed; young offenders are more likely to be sentenced to custodial sentences in England and Wales than in comparable European countries.

The Crime and Disorder Act 1998 made the main principle for the youth justice system the prevention of offending. It also made available a raft of new orders such as child safety orders, local child curfews, parenting orders, anti-social behaviour orders and sex offender orders. The new Intensive Supervision and Surveillance programmes are targeted at persistent offenders, and are intended to provide a tough alternative to custody for young people placed on such orders, subjecting them to surveillance in the community, sometimes for 24 hours a day. Electronic tagging and voice verification with supervision by dedicated police in youth offending team staff were intended to characterise such programmes. It is also intended that those placed on such programmes will be subject to reparation, training and education programmes.

‘Net-widening’ refers to the way in which policies have drawn more young people into the criminal justice system in the last few decades, by including pre-criminal behaviour as a trigger for intervention (for example in Youth Inclusion and Support Panels); and using ‘finer mesh’, processing more young people within the formal youth justice system by reducing the use of informal measures such as cautioning,

for instance. The cumulative result is that more young people are drawn into the formal justice system, and are then subjected to increasingly intensive forms of intervention, as occurred in the late 20<sup>th</sup> century and early 21<sup>st</sup> century. A number of commentators have referred to government policies as encouraging more punitive responses, leading eventually to the increasing use of custody for young people within the youth justice system.

### **Health, safety and well-being (including mental health)**

The UK government Prison Inspectorate's report on an unannounced inspection at Eastwood Park, which takes females, including 15 to 17 year-olds, carried out in October 2001, drew the comment from the then Her Majesty's Chief Inspector of Prisons that *"this is a very troubling report of an establishment in crisis and, at the time of inspection, unable to provide a safe, decent and constructive environment for many of the women and girls within it"*. The report made reference to bullying, self-harm and suicide. Many other reports have concluded the same concerns, and the high level of self-harm and suicide in young offender institutions is acknowledged within the UK (Goldson, 2002) Until very recently, Children's Safeguarding procedures (HM Government, 2006), intended to protect children and young people from abuse as required under legislation, were held by government not to apply to such young people in custody, until a challenge in the courts from a pressure group led to a change in policy on this.

The extensive and serious criticisms of the welfare of young people in prison department custody demonstrates that such custody can be argued to be contrary to young people's human rights under article 3 of the European Convention on Human Rights, which provides that no one shall be subject to inhuman or degrading treatment. The bullying, intimidation and high number of incidents of self-harm and suicide also can be argued to contravene several articles of the United Nations conventions and the rights of the child including:

Article 3: it shall be the duty of governments to consider the best interests of a child.

Article 19: the right of children to protection from all forms of violence, abuse and neglect.

Article 24, which provides for the highest attainable standards of health for children and young people - this must also include mental health and emotional health.

A report from the Prison Reform Trust (2001) states that many young people with mental health problems are sent to prison due to the inadequacy of existing support services for children and young people with mental health problems (section E56.1). A Mental Health Foundation report, *The mental health needs of young people with emotional and behavioural difficulties: Bright Futures: Working with vulnerable young people* (2002), found that young offenders in custody have 3 times the rate of mental health problems as their counterparts. The report quotes research which suggests that nine out of 10 offenders have a mental health problem of some type; more than half the young men on remand have a psychiatric disorder; and that conditions such as schizophrenia and manic depression are 50 times more common among sentenced male prisoners than among the 16-19 year-old population as a whole. In relation to suicide prevention, the report argues that systems of assessment of troubled young people must be greatly improved to prevent so many from being present in the prison system. The director of the Prison Reform Trust stated that *"Troubled children and young people need secure care and treatment, not punishment and neglect."* The report stated that the Department of Health and the Home Office must act to respond to the largely unmet mental health needs of disturbed young people in Young Offenders' Institutions and transfer mentally disturbed young people from prison settings.

There are problems in the crossover points of the mental health and custody systems for young people with mental health needs; with problems within each system and between the systems, in terms of recognition and diagnosis, and then transfer to appropriate institutions to meet assessed mental health needs.

In relation to the mental health system, neither the Mental Health Act 1983, nor its successor, the Mental Health Act 2007, have lower age limits. There are many provisions within mental health legislation which have been criticised in relation to human rights (e.g. the Tribunal process to challenge professional decisions concerning detention under mental health legislation), and which can be seen as particularly problematic in relation to young people, and even more so in relation to

young people who offend becoming embroiled in the mental health system, as their special needs as developing human beings are not well provided for within the mental health system. There are few specialist units for young people with mental health problems to be placed within; they are in fact very frequently held in institutions for offenders with no specialist provision for mental health problems.

A report on Psychiatric Morbidity among young offenders in England and Wales, London, Office for National Statistics, analysing data on psychiatric morbidity among prisoners aged 16 to 20 years, prepared in 1998 on behalf of the Department of Health, relates to young offenders aged 16 to 20 years.

The Mental Health Act 2007 has no lower age limits. There are many provisions within mental health legislation which have been criticised in relation to human rights, and which can be seen as particularly problematic in relation to young people, and even more so in relation to young people who offend and then become embroiled in the mental health system, as their special needs as developing human beings - which is one of the components of a rights-based approach - are not examined in detail in policies or in practice. Key issues in relating to the rights of such young people relate to proper screening by professionals prior to and/or entry into the custodial institution and regular monitoring of the mental health state of the young person whilst incarcerated, and an action plan with detailed measures for their support for each young person recognised as being at risk; access to support and counselling within the institution; and liaison with Youth Offending Teams and their associated health professionals to meet their needs on release.

### **Interprofessional and interagency working/sharing of information**

The Youth Offending Teams (YOTs) mentioned previously are multi-professional, multi-agency teams, and include representatives from local authority children's social care services, police, probation, health workers, and depending upon local arrangements, mental health workers, drug and alcohol workers, victims' workers, as well as Connexions workers, who provide education, training, careers and work advice and support, and youth workers. Any one of the professionals involved in the YOT may undertake preparation of reports or supervised orders. This does raise

some issues of sharing of information, for example between the police and social workers and probation officers. There can be a great variation in the professional training received for each of these different professionals, raising issues - for example in relation to knowledge of mental health issues, human growth and development factors, children and young people's rights, or risk factors in offending in the United Kingdom - as to how such interprofessional teams can ensure training of a high and consistent level.

### **Restorative justice**

Restorative justice has been an area of great interest within the youth and wider criminal justice systems for some 30 years, although the approach has been present within various social systems for centuries. Restorative interventions or conferences have become major areas of interest in mental health, social services, youth justice, domestic violence, and educational areas (Mirsky, 2003a). In addition, restorative justice is seen as a cost-effective and accountable way of dealing with crime (Shaw and Jane, 1999).

In contrast to the conventional models of justice, restorative justice has been put forward as a just way to deal with child welfare issues and criminal behaviour, and is seen as a new method of administering justice (Graef, 2000; Family Rights Group, 2003).

It has been argued that such restorative approaches have the potential to provide a new approach to youth justice which cuts through the tensions between justice and welfare approaches, and may provide for a partial return to welfare approaches (Gelsthorpe and Morris, 2002). They encourage pro-social behaviour, and learning about and respecting the needs of others. Such approaches are used within the youth offender referral orders, which account for some 40% of all disposals from youth courts in England and Wales.

However, the idea of restorative justice contains some problems in relation to the Justice model. One of the criticisms of the new youth offender referral panels which administer the referral orders relates to the fact that legal representation is not



present. A counter argument to this concerns the fact that if solicitors take part in these processes, the young person can have the solicitor argue their case for them, and the young person does not have to engage with the members of the Panel who set and administer the details of the contract under the order, and discuss the young person's responsibilities within any offences, and the risk factors which can be dealt with in the elements of such a referral order. In addition, Caroline Ball (2000) in *Criminal Law Review*, 211-222, expresses concern at the potential for disproportionate sentences given for minor offences, and more severe punishments for those unable to maintain contracts. The Home Office Research and Policy Unit in its extensive research on *Restorative Justice - An Exploratory Evaluation of Restorative Justice Schemes, Crime reduction series, Paper 19, 2001*, which includes schemes for young people, provides no mention/analysis of how UN Convention/Human Rights Act requirements have been kept in place. They also found that there is little direct victim involvement, which raises questions about the rights of victims, and the rights of offenders. In Youth Justice Board research, it was found that there is about 11% of participation by victims in youth offender referral panels.

### **Young people who have sexually abused**

Research suggests that the characteristics of young male sexual abusers may not be hugely different from those of other young people who offend. However, the sexual nature of their behaviour seems to arouse particular anxieties, together with concerns that, if unmanaged and 'untreated', they are highly likely to grow up into the adult sex offenders of the future. What research has been conducted into this last aspect seems to suggest that only a proportion of youngsters present a high risk of re-offending and there is increasing professional emphasis on trying to identify these individuals, with a view to targeting resources on them. Research studies also indicate that between 25% - 60% of young people who have sexually abused may themselves be the victims of sexual or other forms of abuse. In summary, therefore, young male sexual abusers often face a number of socio-emotional problems which make them both a potential risk to others, as well as a risk to themselves, and hence vulnerable (Masson, 1997/1998).

Young people over the age of criminal responsibility who have sexually abused do not fit neatly into the respective provisions of either youth justice or child welfare systems. Moreover, these systems' underpinning aims and philosophies differ, the former system being geared to deal with "depraved" young people who are increasingly perceived to be in need of firm control and punishment, the latter with "innocent" youngsters who need 'rescuing' and care. Young sexual abusers, however, are a good example of a category of children who can be conceptualised as having 'dual status', that is needing both control and care.

During the 1990s, such 'joined-up' thinking and responses were not in evidence, either at the strategic or local level (Masson, 1997/1998). This sometimes led to over-reaction towards a young abuser's potential for harm and re-offending, linked often to moral panics about adult sex offenders, and hence punitive responses which did not meet their developmental needs and rights. At other times, there was an under-reaction to the risk they presented to themselves and hence a lack of recognition of the right of others to be protected from their behaviour, such as in foster care and residential care provision, introducing the concept of the right of *potential* victims.

One resource aspect which has to be addressed urgently is that of residential or placement provision for young sexual abusers. A proportion of young people suspected of having sexually abused others are assessed as needing to be removed from their home and/or community because of the risk they pose to themselves or others. Also, there may also be consideration given to issues of staff respecting the individual young person, taking account of the rights and needs of the young person, as well as of victims and communities, as juvenile sex offenders are an example of groups of young people who present risks to themselves, but also to others.

### **Young people held in police custody**

Appropriate adults (AAs) are required under legal Codes of Practice to be in attendance with young people of age 10 or above - the age of criminal responsibility in England and Wales - who have been detained by police and suspected of having committed an offence, where a young person over the age of 10 is detained by the

police and the parent/s are unwilling or unable to attend. This can be a parent, or a professional such as a social worker.

The role was formally instituted by the Police and Criminal Evidence Act 1984 Codes of Practice, which set out the role of the AA as follows:

*“If an appropriate adult is present at interview, they shall be informed they are not expected to act simply as an observer; and the purpose of their presence is to: advise the person being interviewed; observe whether the interviews being conducted properly and fairly; facilitate communication with the person being interviewed”* (Home Office, 2006, Code C, paragraph 11.17).

When it is considered how the role was debated in the development of the Codes, and in subsequent case law, it is clear that the role is meant to be an active one, and not a passive one, although there are indications from the available research that AAs who are social workers or parents often do not intervene, or do not intervene effectively, when they have the right, and duty, so to do in protecting the rights of young people who are detained; indeed, some parents have been observed to physically abuse their children in such situations, and there are no safeguards used to protect their interests here in either safeguarding them or in protecting their rights to have proper AA representation in such situations (Littlechild, 2001; Evans, 1993). It is expected by the courts that Appropriate Adults intervene if they believe procedures are not being carried out correctly, or the questioning is such that it can be seen as “oppressive” (Home Office, 2006, paragraph 11.5). These are procedures which have been produced because of miscarriages of justice in relation to young people who are seen to be vulnerable before police questioning techniques. There is little mention of this area of the youth justice system in the protocol, and this may be an area for consideration within it. Of particular note is research in England and Wales which has demonstrated that quite often there is abuse and threats by parents of young people who are so detained, which is against safeguarding policies (sections A13), but also has been shown to be problematic in young people being properly represented by a parent in the Appropriate Adult role, and this is not dealt with within the current Codes (Evans, 1993).

### **Risk assessment in Youth Justice**

Risk assessment is a key feature in government policy in England and Wales. ASSET is the key tool, developed by the Youth Justice Board, used in youth justice risk assessment at all its different stages, in all Youth Offending teams across England and Wales.

Some of the factors which evidence suggests are associated with youth offending are incorporated into the ASSET framework. A recent review of the research literature for the Youth Justice Board (2001) has indicated that intervention programmes can be effective in reducing the risk of youth offending if targeted at high-risk children and young people, at the appropriate stage, and if they take into account the specific needs of different economic, racial and cultural groups which, whilst being integrated into a comprehensive prevention package, should include issues of family, community and personal and individual factors. The research also acknowledged that such factors are clustered together in the lives of the most disadvantaged children. It claimed that the chances of such young people becoming antisocial and criminally active increases exponentially as the number of risk factors increases. The research review also indicated that the wide variety of risk factors identified meant that preventing crime requires the active involvement of agencies outside the justice system including education and health services. The review found that according to evidence from the UK and the United States of America, the interventions most likely to reduce reoffending programmes are those that are designed to improve personal social skills, and also focus on changing behaviour, combining a number of different approaches. The issues for assessment and intervention on the basis of such risk approaches are in using such approaches, whilst acknowledging and taking account of other issues of disadvantage such as poverty, unfair discrimination because of ethnicity, culture, gender, and disability, which have an effect on the individual person's potential for greater social inclusion and presence. One of the key issues in this process is for young people to have an awareness of their risk assessments, and being able to comment upon them, in terms of sharing of information, and their knowledge of what professionals are saying about them in order to be able to discuss any differences in opinion.

*Risk assessments in custodial establishments*

Goldson (2002) notes how there has been an absence of systematic assessment of young offenders, a deficiency also acknowledged by the Youth Justice Board, which sees ASSET as an important tool in assessing the risks for young people on secure remand or serving custodial sentences. However, Goldson (2002: 72) points out that it is not used effectively in this respect. This risk assessment needs to be carefully judged and then follow the young person through the different elements of the custodial process, to ensure that relevant staff are all aware of any risks of harm identified and that these are managed properly. At the point in the system where we know that young people are at greatest risk of self-harm, suicide and abuse, the risk assessment system does not work well within England and Wales.

### **Ethnicity issues in work with young offenders**

Section 95 of the Criminal Justice Act 1991 includes a 'duty to avoid discrimination against any person on the grounds of race or sex or any other improper grounds'.

However, there is clear evidence from a number of research studies and official statistics that young people from Black and Minority Ethnic (BME groups), especially of African-Caribbean origin and mixed heritage, have different and worse experiences of the youth justice system from their white counterparts (Sender, Littlechild and Smith, 2006). In the police and prison systems, official reports have determined that there are forms of discrimination which act against the rights and interests of young BME groups (MacPherson, 1999; Keith, 2006; The Guardian, 2006).

Smith (2003: 120): states that:

*'the evidence of overrepresentation of young black people each stage of the youth justice system....produces an overall picture of progressively intensified discriminatory practices'.*

The MacPherson report, set up by the UK government concerning the murder of a young Black man, Stephen Lawrence, found the police inquiry was hampered by their racist prejudices, leading them to doubt whether Stephen was the innocent victim that he was later proven to be. The report concluded that the Metropolitan

Police were “institutionally racist”, and heavily criticised their investigation into his death. The report defined institutional racism as:

*‘the collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people’* (MacPherson, 1999, para 6.34).

This has been found to be an issue not only for the police, but also in custodial settings. Goldson refers to ‘endemic racism’ in prisons (2002: 55), as noted by Her Majesty’s Chief Inspector of Prisons (2001:16).

The Youth Justice Board has also carried out a study examining the treatment of BME groups in the youth justice system, which found that young black men were considerably overrepresented on the caseloads of the Youth Offending Teams studied, and similar problems were encountered for both males and females from mixed heritage backgrounds. The study also found that the YOTs failed to record ethnicity in ways which allowed effective ethnic monitoring to occur (Youth Justice Board, 2004b). The YJB has acknowledged that public authorities need to become more active in preventing discrimination, including monitoring the impact of policies and practice on race equality both internally and in relation to the services delivered (Youth Justice Board, 2004b). The Youth Justice Board’s Race audit and action planning toolkit for Youth Offending Teams (YOTs) states that BME

*‘children and young people continue to be disproportionately represented throughout the youth justice system. In some respects, the gap has increased in recent years’* (YJB, 2004b: 4).

In response, it requires YOTs

*‘to have an action plan in place to ensure that any difference between the ethnic compositions of offenders in all pre-court and post-court disposals and the ethnic composition of the local community is reduced year on year’* (Youth Justice Board, 2004b: 3).

The different treatment of BME groups has been linked to racism in the CJS, defined in general by the Stephen Lawrence Inquiry as

*‘conduct or words or practices which disadvantage or advantage people because of their colour, culture, or ethnic origin. In its more subtle form it is as damaging as in its overt form’* (6.4),

and in institutional terms as:

*The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture, or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people* (6.34)

A study conducted by Wilson and Moore (2003) on the experiences of young black men in custody found that few people who had made a complaint regarding racism had experienced a positive response, or were aware of any resulting action. There need to be effective and safe procedures for young people to make complaints against racist or faith-based discrimination. However, it is not just ethnicity which is the issue; faith groups can also be discriminated against. One young person in a research study reported discrimination on the basis of being Moslem (Sender, Littlechild and Smith, 2006) (sections P92.2; U116.1; U116.2).

The amount of further work needed on this area has been emphasised by a number of reports. One study, *Just Justice*, explored young black people’s experience of the youth justice system (Lovell, 2006) in various parts of England.

The report highlighted the experiences of racism that young people believed that they had suffered. These types of racism ranged from name-calling to physical attack. However, as noted in the Zahid Mubarek report (Keith, 2006), where a young Asian man was murdered by his white racist cellmate in a custodial establishment, the inquiry found many experiences of lack of response from professionals, where racism from other professionals, young people and community members was known of, but ignored. These included race hate graffiti in custodial settings and the police speaking differently to young black people from their white friends. Most young

people affected were reluctant to use official complaints procedures - either because they did not know about them, or because they did not trust them.

Given the evidence of these issues in relation to ethnic minority and faith groups, there may be issues which could be raised in Protocol in relation to these.

### **Conclusion**

This article has put forward a number of relevant areas from legislation, policies, and research in relation to a number of the areas, addressing key features of the English and Welsh youth justice system, and set out the main areas of history, current developments and key issues in policy and practice with young offenders in these countries. Key issues for consideration in this system include issues of placements for young people who have sexually abused others in relation to their needs and risk to others, in relation to issues of police detention, in relation to issues of ethnicity and how this may affect young people's experiences of equality and fairness in the youth justice system, interprofessional working in relation to information sharing and training, and a number of areas in relation to young people who offend and also have mental health problems.

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