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The Case for Reparations

Robert K. Fullinwider

Because of its visibility, Randall Robinson's new book, *The Debt: What America Owes to Blacks*, may rekindle a broad public debate on reparations. The issue is not new, nor is public debate about it. In 1969, the civil rights leader James Forman presented the *Black Manifesto* to American churches, demanding that they pay blacks five hundred million dollars in reparations. The *Manifesto* argued that for three and a half centuries blacks in America had been "exploited and degraded, brutalized, killed and persecuted" by whites. This treatment was part of a persistent institutional pattern of, first, legal slavery and, later, legal discrimination and forced segregation. Through slavery and discrimination, the *Manifesto* went on to contend, whites have extracted enormous wealth from black labor with little return to blacks themselves. These facts constitute grounds for reparations on a massive scale. American churches were but the first institutions asked by Forman to discharge this great debt.

The *Manifesto* achieved immediate notoriety and stimulated debate in newspapers and magazines. Within a short period, however, public excitement died away.

The issue of reparations has always found favor within the African American community itself, taking root not long after the freeing of the slaves during the Civil War. It flourished around World War I with the Marcus Garvey movement and later found voice in Forman's *Black Manifesto*. It has recently regained vitality, given new life by a recent precedent, the Civil Liberties Act of 1988, in which Congress authorized payment of reparations to Japanese American citizens who had been interned during World War II. In each

session of Congress since 1989, Representative John Conyers has introduced a bill to create a commission to study reparations for slavery and segregation. Although the bill has made no legislative headway, the publication now of Randall Robinson's new book reflects the growing sense among many African

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Americans that the time is right to push reparations back onto the public agenda.

If public debate is to prove fruitful, however, both proponents and opponents of reparations will have to sidestep certain common but toxic confusions. In a long article in *The Washington Post* last December, these confusions were much on display. The article's lead questions—"Should the U.S. pay reparations to the descendants of slaves?" and "[W]hy shouldn't the great grandchildren of those who worked for free and were deprived of education and were kept in bondage be compensated?"—were countered by another—"Why should Americans who never owned slaves pay for the sins of ancestors they don't even know?" The article quoted Congressman Henry Hyde's firm answer to the last question: "The notion of collective guilt for what people did [200-plus] years ago, that this generation should pay a debt for that generation, is an idea whose time has gone. I never owned a slave. I never oppressed anybody. I don't know that I should have to pay for someone who did [own slaves] generations before I was born." His response didn't satisfy at least one African American, whose letter-to-the-editor noted, "Henry Hyde, like many whites, is quick to say, 'I never owned a slave' Why should I pay . . . for something my ancestors did? . . . Well, because some people are descendants of slave owners and have profited from the labor of blacks who were never paid for their labor."

Personal versus Civil Liability

The demand for reparations to African Americans cannot be casually dismissed. It is grounded in a basic moral norm, a norm presupposed, for example, in the Biblical injunction at Exodus 22: "If a man steal an ox, or a sheep, and kill it, or sell it; he shall restore five oxen for an ox, and four sheep for a sheep." *You must make good the wrongs you do.* This principle in one form or another underlies every mature moral and legal system in the world. At the same time, however, Henry Hyde's distaste for collective guilt seems equally well-founded: "The father shall not be put to death for the children, neither shall the children be put to death for the fathers: every man shall be put to death for his own sin" (Deuteronomy 24:16). *We must not penalize one person for another's misdeeds.* Does, then, the demand for reparations pose a conflict between two distinct and equally basic moral principles? Not if the demand is properly understood.

Henry Hyde echoes a common but confused sentiment. If *personal* liability for slavery or past racial oppression were being imputed to him, then the Congressman's response would be appropriate. He denies personal responsibility for the wrongs to be made good. But personal responsibility and liability are not at stake. The real issues are *corporate* responsi-

bility—the responsibility of the nation as a whole—and *civic* responsibility—the responsibility of each citizen to do his fair part in honoring the nation's obligations. When Congress passed the Civil Liberties Act of 1988, no one assumed that individual Americans were being held accountable for personal wrongdoing. The internment of Japanese Americans was an act of the United States government and its agents. At the time, the government acted for putatively good reasons. Following the Japanese attack on Pearl Harbor, American officials were concerned about the security of the West Coast from similar attack or sabotage. Whether the government actually acted for honorable motives or not, the point remains that with the passage of time thoughtful Americans—and the government itself—have come to view the internment as an unjustified response to the war with Japan, and one that wronged its victims. The Civil Liberties Act, and

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the token reparations it paid (\$20,000 to each interned Japanese American or to his or her surviving spouse or children), represented an official apology and a small step toward making whole the material losses incurred by the internees. The reparations were appropriated out of general revenues. Consequently, Henry Hyde, as taxpayer, contributed a small portion, not because he had any *personal* responsibility for the internment but because as a *citizen* he is required to bear his share of the government's necessary expenditures.

One can make a parallel argument for reparations to African Americans. Although countless individual Americans throughout our history exploited their power or standing to oppress African Americans, that power and standing itself derived from law—first from the latitude of the English Crown, then from the Constitution of 1787 (which accepted slavery in the states where it was established), and finally from the tissue of post-Civil War "Jim Crow" laws, rules, and social conventions that enforced *de jure* and *de facto* racial segregation. The chief wrongs done to African Americans, thus, were not simply the sum of many individual oppressions added together but were the corporate acts of a nation that imposed or tolerated regimes of slavery, apartheid, peonage, and disenfranchisement. Just as it was the nation that owed Japanese Americans reparations, so it is the nation that owes reparations to African Americans. And so it is that Americans not as *individuals* but as *citizens* owe support for the nation's debt.



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Confusions about Liability

The foregoing seems simple and plain enough. Why then do so many opponents of reparations confuse the matter? We might content ourselves to speculate unflatteringly about their motives, were it not for the fact that the proponents of reparations often fall into the same and worse confusions. A recent spate of articles in law reviews demonstrates that the distinctions among corporate, civic, and personal liability prove elusive. These

We need to give up the assumption...that all liability is personal.

articles try to make the case for reparations and answer objections to it. To accept the reasonableness of reparations, they contend, we have to abandon the "individualistic" models characteristic of American law and think in terms of group rights and group wrongs. "The guiding paradigm of traditional remedies law," writes Rhonda Magee in the *Virginia Law Review*, "is the one plaintiff, one defendant lawsuit in which the plaintiff seeks the position she would have occupied 'but for' the wrong committed by the defendant." Within this paradigm, the demand by blacks for reparations seems unsustainable, since we can no longer identify individual successors to slave owners or state agents who promulgated legal oppression of blacks, nor separate out the respective harms to the successors of those who lived under slavery and Jim Crow.

However, at least with respect to the matter of liability, it is not the "individualism" of American law that we need to give up but the assumption, implicitly at

work here, that all liability is personal. The argument for reparations fits comfortably enough within the traditional paradigm when we make sure the focus is on corporate liability, for the corporate actor in question, the United States, is an "individual" under law. Indeed, precisely because it is an "individual" that doesn't die, it can acquire and retain debts over many generations, though individual Americans come and go. That is why Henry Hyde can indeed owe something as a result of his ancestors' actions.

Nevertheless, Magee and others insist on the indispensability of "group" conceptions of victims and wrongdoers. In the words of Mari Matsuda, victims of racial oppression "necessarily think of themselves as a group, because they are treated and survive as a group. [Even] [t]he wealthy Black person still comes up against the color line." The "group damage engendered by past wrongs ties victim group members together, satisfying the horizontal unity sought by the legal mind." Similarly, a "horizontal connection exists as well within the perpetrator group." Members of the latter—whites—continue to benefit from past wrongs and from the contemporary privilege their skin-color confers upon them. Finally, a horizontal relation of moral causality obtains between the two groups. The relationship might be represented in this way:

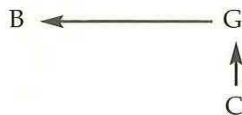


where the arrow represents liability, indicating that W owes reparations to B, and where the respective entitlements and liabilities *distribute* within each group to its *individual* members, who are all tied to one another by the "victim"/"victimizer" attributes.

Magee, Matsuda, and other defenders of reparations labor to establish that the harms of slavery and dis-

crimination affect *each and every* African American (even the wealthy black runs up against the color line) and the culpability for the harms extends to *each and every* white (every white unjustly benefits from white-skin privilege). This picture, in fact, does not represent some new “group” paradigm at all, but an individualism run rampant, the product of failing to keep distinct personal and civic liability.

The real lines of liability, I contend, run this way:



where it is G (the government) that owes B (the victims) and where members of C (citizens) are duty-bound to underwrite government debts. The connection of citizens to the creditor “group” B is indirect and vertical, not direct and horizontal. Thus Henry Hyde owes something not because he is white or a member of the perpetrator “group” but because he is a citizen. The various “horizontal” connections among citizens are irrelevant. Indeed, included in the citizen “group” are African Americans themselves. They too will contribute in support of the government’s reparations.

This outcome strikes the writers I am discussing here as an anomaly that needs explaining. In fact, it is no anomaly at all once we appreciate that blacks are citizens as well as victims and that their equal citizenship is reflected in their *civic* obligation to support government reparations—whether those reparations are paid to Japanese Americans or even to themselves in their capacity as wronged individuals.

Unfortunately, the ghost of personal responsibility is not so easily exorcised from these legal essays. This is especially true in the case of Vincene Verdun, writing in the *Tulane Law Review*. Although self-consciously rejecting “individualistic” thinking in favor of “group” thinking, she nevertheless edges close to the proper conclusion when she observes that the “wrongdoer” owing reparations is American “society.” However, her failure fully to grasp the *corporate* nature of “society” is betrayed by her next move. “Treating society as the wrongdoer,” she observes, “necessarily includes the injured parties in the classification of wrongdoer. If society pays, it will do so at least in part with tax dollars, and African Americans pay taxes.” Nevertheless, “[t]here is a ring of propriety in having African Americans share in the . . . burdens,” observes Verdun. Why? Here we expect Verdun to note that African Americans are citizens like everyone else. Instead, she locates the propriety in their own guilt!

Opponents of reparations are quick to point out that Africans participated in the slave trade and [some] African Americans owned slaves. The truth in these statements cannot be rebutted. Vincent Verdun [the author’s father, introduced in a

prologue], is an injured party, because he was deprived of his rightful inheritance because his great-great-grandmother was a slave. On the other hand, his great-great-grandfather [the offspring of a French plantation owner and his black slave, and who was later emancipated and given land] was a slave owner.

Now, aside from the fact that the situation Verdun describes was fairly rare, what possible connection could there exist between Vincent Verdun, who lived his life as a black man, and his slave-owning great-great-great-grandfather that would visit on him the sins of his ancestor? Indeed, what connection between this ancestor and Vincene Verdun herself could lead her to confess, as she later does, that her “heritage,”

In making the case for reparations, it is a mistake to go looking for personal complicity on the part of those who must pay.

deriving from both “master and slave,” makes her not only a victim but one of the “wrongdoers,” the group that owes reparations? No connection exists between these two Verduns and their long-ago ancestor except one, blood. Evidently, guilt travels through blood, since neither Vincene nor her father derived any lasting benefit or privilege from the their ancestor—indeed, their only significant inheritance was the color of their skin.

The racist assumption embedded in Verdun’s “confession” speaks for itself. What would prompt a level-headed legal scholar to step into such a malodorous swamp? The explanation lies in Verdun’s failure, despite her ostensible attachment to “group” thinking over “individualistic” thinking, fully to appreciate the various ontologies of groups and the difference between collective and corporate liability, a failure Magee and Matsuda share with her. She seems to assume that any property that characterizes “society” must characterize each of its members. If “society” is a “wrongdoer,” then each member of society must be a wrongdoer. It is easy enough for her to view every white as a “wrongdoer” but she is forced to stretch to include blacks themselves as part of the “wrongdoers” since they, too, are part of “society”: they are taxpayers.

When “society” is understood *corporately*, however, the “wrongdoing” of society does not distribute to each of its members. Individual citizens may be blameless for the wrongs of their nation. That the burden of payment for national wrongdoing falls on them simply reflects their *civic* roles and not anything about their *persons*. In making the case for reparations, it is a mistake to go looking for *personal complicity* on the part of those who must pay. And worse yet, it is a mistake to turn the putative personal complicity into guilt-by-blood.

Randall Robinson himself is less than careful in this regard. Sometimes in his book it is "white society" that must pay reparations, sometimes the "whole society." At one place, the debtors are characterized as those—"nations, individuals, whites as a racial entity"—who benefited from slavery and segregation. Finally,

Basing reparations on slavery and the great benefits accrued to whites invites complication and controversy.

Robinson, too, appeals to blood: the value of the labor stolen from slaves, he says, has been compounding "through the blood lines" of slave owners. Just how blood transmits and compounds debt he does not say.

The imprecision and neo-racialist overtones in *The Debt* evidently caused Robinson some second thoughts. He recently wrote in *The Nation* that "individual Americans need not feel defensive or under attack" as a result of the call for reparations. "No one holds any living person responsible" for slavery or its successor regime of Jim Crow. We must all, "as a nation," address reparations, he writes. That is the right focus.

Making the Case for Reparations

Avoiding the confusion about corporate, civic, and personal liability clears the way to explore more fruitfully the positive case for reparations. How should that case go? The argument mounted by Robinson, Verdun, Magee, and other African Americans bases reparations on the great wrong of slavery as well as the more recent wrongs of legally sanctioned discrimination. Further, the argument stresses the purported benefits that whites over the centuries have extracted from slavery, Jim Crow, and a general social system of white supremacy.

However, basing reparations on slavery and on the great benefits accrued to whites invites complication and controversy. I suggest the case is actually strengthened by dropping both slavery and the benefits reaped by whites as grounds for reparations. Let me explain.

First, although the proposition that whites as a whole have benefited enormously from past racial oppression might seem self-evident, and remains an article of faith among the reparationists, whether slavery and segregation in fact yielded *net* positive economic benefits to this country and to whom those *net* benefits flowed (to all or only some whites) are difficult questions to answer. More importantly, trying to answer them is diversionary and unnecessary. A sufficient basis for reparations lies in the *wrong* done

African Americans by the nation, whether or not anyone really benefited from it. After all, the basis of the Civil Liberties Act of 1988 was not some putative benefit Americans had extracted from the internment of Japanese Americans in 1942–45. The basis was the *wrong* done to the internees.

What wrong to African Americans, then, should current reparations address? Making slavery the basis for reparations is unwise for two reasons. First, doing so invites the retort that America has already paid for the wrong of slavery, not with money but with the blood shed in the Civil War. The attempt successfully to parry this retort leads to complications, since whether to reckon the blood sacrifice of the Civil War as expiation for the sins of the past and how to weigh that sacrifice against any unpaid debt to the newly liberated slaves are questions that invite calculations prone to sophisticated quibbling on either side.

A second reason it is unwise to base reparations on the fact of slavery is that the passage of time since abolition has now itself become a morally significant factor. Whatever condition they find themselves in, people have the responsibility to make the best of their circumstances, to provide for themselves even if they start with the most meager resources. For example, between 1865 and 1965, millions of immigrants came

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to America penniless and with little to offer but their physical labor. By dint of hard work, they and their successor generations eventually blended into the larger American fabric.

Over time one might have expected a similar process to play itself out for the newly liberated slaves, especially since their numbers would have allowed them to possess considerable political power in several states. Yet this process didn't occur. Why not? Because, after having made the newly freed slaves citizens, the federal government abandoned them. It allowed southern whites, through terror and law, to recapture control of state governments, disenfranchise African Americans, and, through the apparatus of Jim Crow, reduce them to virtual peonage. Indeed, America's highest court put its official stamp on state apartheid in its 1896 ruling, *Plessy v. Ferguson*, a ruling that Justice Harlan, in dissent, accurately predicted would one day be viewed by Americans as no less pernicious than the Court's fateful decision in *Dred Scott*.

In sum, governments—state and federal—made no effort to vindicate the rights to full and equal citizen-

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and Civic Renewal**

Robert K. Fullinwider, editor

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ship the Civil War Amendments extended to blacks, a failure that prevented African Americans from successfully following the immigrant model. That failure persisted into recent times. The U. S. began to expend real effort toward defending the basic rights of blacks only after the 1954 Supreme Court ruling in *Brown v. Board of Education*, an effort far from complete today.

Had the federal government done nothing after 1865 except vigorously protect the civil and voting rights of blacks, the legacy of slavery would have faded consid-

erably if not wholly by now through the industry of blacks themselves. That the legacy still persists owes much, if not all, to the post-Civil War oppression of African Americans and it is *this* wrong that offers the most direct and salient basis for reparations.

Answering Objections

Some may object that the post-Civil War oppression of African Americans still leaves the case for reparations unpersuasive. They might insist that reparations are not possible or, alternatively, that they are not necessary.

Consider the first, that reparations are not possible because we can't now really identify who should get what. I argued earlier that the individualist legal paradigm creates no real difficulties in dealing with liability for reparations. However, doesn't it generate problems about *entitlement* to reparations? To whom should reparations be paid? Should *every* individual black person receive reparations? Quite obviously, different blacks have fared very differently under past segregation. Most of those affected worst are long dead. How was the legacy of their wrongful deprivations diffused to their descendants down to the present moment? How do we trace the damages?

Most living African Americans have incurred their own indignities and damages under discrimination, but how do we match reparations to losses? Do we pay the same to the child of middle class blacks who immigrated to the United States from the West Indies twenty years ago that we pay to an elderly retiree who spent half his life as a field hand in Mississippi? Mari Matsudi says that even the wealthy black person comes up against the color line. True enough. But the damage to him has not been the same as the damage to others. A scheme of reparations like the program for Japanese American internees that pays a flat sum to every black, whatever his background and economic condition, does not seem very attractive. So might the opponent of reparations argue.

This objection would carry more force if justice forbade paying reparations unless we could identify the exact victims and the exact degree of their victimization. However, while justice requires that we take special care to identify the proper "wrongdoers" from whom to extract compensation, it is less insistent that we scrupulously avoid compensating "victims" who weren't real victims, especially if such avoidance would mean not compensating anyone at all. Because the effects of a hundred years of racial oppression have been dispersed so widely throughout the African American community, it makes sense to adopt some scheme of reparations that *morally approximates* rather than actually effects the restoration of victims to their "rightful places"—the positions they would have occupied but

for the past history of oppression. Congress could follow the precedent of post-World War II Germany. Apart from paying compensation to some identifiable individual victims of its war crimes, Germany made reparation payments to organizations that represented European and world Jewry, including to the State of Israel, on the reasonable assumption that these organizations in the course of their efforts to resettle displaced Jews would benefit many of the victims of the Nazi regime. Similarly, Congress could fashion a reparations plan to fund specially designated organizations who would act on behalf of the African American community. A reparations program need not involve government indiscriminately writing checks to individual African Americans.

Even if the first objection is not telling, what about the second? Are reparations actually necessary? The opponent of reparations might argue that the country did enough when it passed the civil rights laws of the

A reparations program need not involve government indiscriminately writing checks to individual African Americans.

1960s. In the words of Jonathan Yardley, these laws "are concrete, purposeful and immensely significant attempts to eliminate the vestiges of slavery, to make the country equally free to all its citizens." Moreover, their "effect has been incalculable." Actually, it might be better to say that their effect is quite calculable. We can easily measure, for example, the growth of the black middle class since 1960, the near-parity between black and white high school graduation rates, and the upsurge in black public officials and legislators. We can also count the growth of African Americans on campus over the last forty years, and calculate the narrowed gap in earnings between similarly skilled black and white workers. Surely, then, we can extrapolate from these improvements to even further progress for African Americans in the near future. What would reparations add?

The answer is that reparations would add something quite important. Although the gains from the civil rights laws of the 1960s are undeniable, they should not be overstated. In particular, the narrowing income gap between whites and blacks masks a tremendous *wealth* gap. As Dalton Conley points out in an important new study, "At all income, occupational, and education levels, black families on average have drastically lower levels of wealth than similar white families." Moreover, he argues, it is the wealth rather than income of parents that proves pivotal to a child's ascending the academic and economic ladders to the middle class and beyond.

The black-white wealth gap is large, enduring, and damaging. Moreover, it is for the most part a direct legacy of official and unofficial discrimination lasting into the 1960s. Consequently, reparations at this late date would not be gratuitous; there is real work for them to do. A properly structured reparations program enacted by Congress could funnel substantial resources over three or four decades into organizations specifically designed and monitored to *create wealth* among African Americans—organizations that would assist development of neighborhoods, ownership of homes, creation of businesses, and expansion of human capital. These organizations could direct their energies and investments toward local and small-scale interventions to interrupt the cycle of poverty and hopelessness that traps the black underclass and toward broad-based efforts to secure the growing middle class in its economic purchase on the American dream. Such investments in infrastructure and wealth-creation would go some distance toward repairing for African Americans as a whole the damages occasioned by a hundred years of legal oppression.

The Limits of Reparations

The foregoing represents barely the sketch of a case for reparations. But it does suggest the contours of a specific, "lean" strategy: reparations (i) based on the wrongs done African Americans by the legal regime of racial discrimination that lasted until thirty-some years ago, and (ii) designed to stimulate creation of wealth, broadly conceived, in the African American community. It is "lean" because it omits elements many African Americans embrace, particularly the argument about slavery and the wealth that was purportedly extracted from it. Thirty years ago, in discussing a proposal put forward by Yale law professor Boris Bittker that the "post-Civil War wrongs are more than sufficient to support" a claim for reparations, the African American legal scholar Derrick Bell conceded that "the legal argument for reparations improves with the exclusion of the slavery period." Nevertheless, such exclusion, he thought, represents a "tactical loss." It "sacrifices much of the emotional component that provides moral leverage for black reparations demands." To the contrary, excluding slavery not only improves the legal case for reparations, it strengthens both the tactical and the moral cases as well by stripping them of diversionary complications.

It is true, however, that excluding slavery may sacrifice for African Americans some of the *emotional* resonance of the reparations argument, and this aspect may turn out, in the eyes of some, to be the most vital part of all. Although Randall Robinson's *The Debt* seems on its face to be addressed to a larger public, its real audience is other African Americans. It is a book

less about the details of reparations (they receive little more than a nod in the next-to-last chapter) than about Robinson's unrequited anger at slavery and the "staggering breadth of America's crime" against blacks. The real crime of slavery for Robinson? It has "maliciously shorn" African Americans of their "natural identity" and destroyed their self-esteem, leaving a people riven by self-hatred, self-doubt, and self-rejection. The real and continuing injury has been psychic. (Similarly for Vincene Verdun: "It is emotional injury, stemming from the badge of inferiority and from the stigma attached to race which marks every African American, that composes the most significant injury of slavery.")

Thus, for Robinson the emotional resonance of slavery for African Americans is not some unnecessary complicating factor to be trimmed away from a clean argument for reparations, it is the centerpiece for an aggressive, collective demand for redress. By pressuring "white society" to confess its sin of slavery and by "implacably demand[ing]" their full due, African Americans will "find" their own "voice." Fighting the fight for reparations on the basis of slavery will bring "catharsis." African Americans will rediscover their identity and know themselves to be a worthy people, win or lose.

Robinson's vision starkly poses a crucial question: what do African Americans take to be the real stakes in a reparations argument? Is the goal to succeed (with as many allies as possible) against high odds in achieving a reparations enactment by Congress that will bring some limited but vital wealth-creation to African American communities? Or is the goal of reparations to force a debate on their terms, as a vehicle of self-discovery and emotional self-renewal, however socially divisive it becomes and however remote it makes actual enactment of reparations? Readers of *The Debt* will not find a clear rendering of the trade-offs between these goals that Robinson is willing to countenance; but they cannot fail to see his passion for staking out the "sin" of slavery as the field on which to do battle. If this passion is unyielding, however, the debate about reparations may never really engage Americans at large. This would be too bad. A real public debate, stripped of disabling confusions while sharply focused on manageable grounds and practical results, could do every citizen a service.

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Sources: Randall Robinson, *The Debt: What America Owes to Blacks* (Dutton, 1999); Randall Robinson, "America's Debt to

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