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"Vigilante Violence vs. Freedom of Choice in Marriage: The Foray/Zajazd in the Polish-Lithuanian Commonwealth of the 18th Century"

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Abstract

The most famous poem in the Polish language, "Pan Tadeusz" by Adam Mickiewicz, tells of the foray - an institution where "the gentry, as the way of rebels is, were wild and quick to hang their enemies." If noble families felt that justice was not being done within the courts, they would seek vengeance through violent collective action. In some cases, the reason why estates were being raided and their inhabitants attacked was that noble families claimed to be defending the family honor. They might say that a lady's honor had been insulted if she were jilted at the altar or if she had been seduced into sexual activity when she was betrothed. The nobles might, on the other hand, feel that a widow who had freely chosen her new husband out of love had contracted a misalliance and that they - whether they were fathers, brothers or other relatives or interested parties - were determined to imprison the widow, to coerce her, and even to torture her to enforce their judgment on her. The foray or *zajazd* is a prism through which to glimpse the use of domestic violence in conflict over freedom of choice in marriage.

The most famous poem in the Polish language, "Pan Tadeusz" by Mickiewicz, is subtitled "the Last Foray in Lithuania." The foray in question is an institution where "the gentry, as the way of rebels is, were wild and quick to hang their enemies." If the *szlachta* (nobility) felt that justice was not being done within the courts, they could seek vengeance through violent collective action. Due to the weakness of central government, this was one method by which noblemen exacted vengeance in the Polish-Lithuanian Commonwealth of the 18th century. The period from 1697-1763 is the era when the Polish-Lithuanian Commonwealth collapsed as a result of bad government and foreign intervention, which finally led to its loss of sovereignty and the partition of the country. Some historians known as the "Krakow School" blamed the decline and fall of Poland-Lithuania on "noble anarchy," and have pointed to the foray or *zajazd* as emblematic of the decline of the nation. (Szujski, p. 377) Over the last thirty years, this period in history has been thoroughly re-evaluated as a result of work done in Russian, German, and other national archives. This work calls into question the idea that this was a period of "noble anarchy" and focuses less on the exceptional and more on the normal functioning of the state. (Markiewicz, p.172)) But even as it is acknowledged that the foray was an exceptional practice in the 18th century, and that it co-existed side by side with a system of justice including functioning formal courts of law that enforced laws executed by state authorities, it is still important to analyze it, since it was part of a system of infrajudicial conflict resolution functioning below the level of state justice which existed throughout Europe. This system has been more fully analyzed for early modern Western Europe, where Julius Ruff has found that "throughout early modern western Europe infrajudicial modes of resolving disputes represented widely used alternatives to state justice when the latter was unavailable, its costs prohibitively high, or simply when individuals in the community believed that non-judicial action could better resolve disputes (and) recourse to such means of conflict resolution did not preclude later appeal to formal tribunals of state and local authorities." Ruff further found that infrajudicial modes of conflict were often brought into play in defense of female honor, when a woman's husband, father, or brothers were required to defend the female's honor. (Ruff, 75) A similar pattern seems to exist with the foray in eastern Europe.

In analyzing the foray in 18th century Lithuania, I have found that noblemen made use of the foray when other methods of justice had failed or were unavailable, and I assert here that in many cases, the reason why estates were raided and their inhabitants attacked was that noblemen claimed to be defending a lady's honor. They might say that a woman's honor had been insulted if she were jilted at the altar or if she had been seduced into sexual activity when she was betrothed, or for many other reasons. The nobles might, on the other hand, feel that a widow who had freely chosen her new husband out of love had contracted a misalliance and that they - whether they were fathers, brothers or other relatives or interested parties - were determined to imprison the widow, to coerce her, and even to torture her to enforce their judgment on her. The foray is a prism through which to glimpse conflict over freedom of choice in marriage.

The cases here come from research on the Radziwiłł family in the Polish Lithuanian Commonwealth of the 18th century. (Lubamersky) The Radziwiłł family is a natural subject for study because Poland-Lithuania did not have a national archive and since this family was so wealthy and powerful, many of its leading members held the highest public offices. Their private papers dealing with public matters provide a window into the history – both domestic and foreign policy – of that state. My study focuses for the most part on one woman in that family, Barbara Radziwiłłowa, and her political influence over the family as a whole. Here I shall examine legal cases from the archives of that family, and discuss how they illustrate the function of the foray.

Marriage Choice Case I: Revenge for a Family Dishonored?

The first case involves Barbara Radziwiłłowa's father, Krzysztof Zawisza, and his sister-in-law, Maryanna Tekla Naruszewiczówna. Naruszewiczówna was married twice before, first to Jerzy Karol Chodkiewicz (who was *Oboźny Wielki Litewski* or Grand Camp Leader, a high military office in Lithuania and died 1691) and second to Piotr Michał Pac, the Starost of Samogitia, (who died 1696). (Wolff) She was therefore the widow of one of the former Vice Chancellors of Lithuania, which was one of the most important offices in the Grand Duchy of Lithuania. She outlived both of her husbands, but she made an unusual choice for her third husband, a petty nobleman who held the office of Starost of Daugieliszki, Jan Kazimierz Kaczanowski, who had formerly served as one of her agents.

The reaction to her plan to marry Kaczanowski was immediate. It was considered a great scandal among the nobility in general and by her family in particular. Krzysztof Zawisza interpreted her choice to marry freely as evidence that she was bewitched:

She suffered from confusion of mind - something that Kaczanowski, her agent, took advantage of, and he conducted himself so skillfully that she offered him her hand... (Zawisza, XIX.)

Zawisza and his wife were angered at the arrogance of this petty nobleman who was bold enough to set his sights on the widow of a Vice Chancellor. According to Zawisza, his sister-in-law must have been crazy to contemplate such a marriage and Kaczanowski was a gold-digger who was only after her property.

There is no evidence other than Zawisza's statement that "she suffered from confusion of mind" to substantiate the possibility that Naruszewiczówna was mentally ill. Mental illness was one of the principle and fundamental reasons that dissolution of marriage was granted in the late 17th and 18th century, especially if the divorcing spouse could prove that the obligations of marriage could not be fulfilled or if one had threatened the life of the other. (Kulesza-Woroniecka I, 183).

Zawisza could not prevent Kaczanowski from marrying his sister-in-law, but he did oppose their union, and so he engaged in several unsuccessful legal actions against him. In one suit, he accused Kaczanowski of various crimes in order to try to end the marriage. In another legal attempt to end the marriage, the accusations included theft – since Kaczanowski was her agent, he was stealing funds from Naruszewiczówna -- and finally of sorcery -- when Kaczanowski induced her to marry him it was through sorcery; and finally dissimulation -- of posing as, but of not being, a member of the noble estate, and on this basis alone the marriage of unequals could and should be ended. (Zielińska *Magnateria*, p. 146) There is some evidence that Zawisza appealed to the papal nuncio in order for an annulment to the marriage on the grounds that there should have been impediments, but the Vatican archives have not been consulted to see if this is the case.

The most concrete evidence we have that both Zawisza and his wife Teresa Tyszkiewiczówna Zawiszyna attempted to use formal channels to resolve the conflict comes from the records of the Nowogródek Tribunal of September 17, 1701 where they filed suit against Kaczanowski for 6,000 Polish złoty to pay for their damages and legal expenses. (Zawisza, p. 105) Zawisza's animosity came to a head in the dispute over a village, Możejków, a village which had "always" been the property of the Zawisza family.

In late 1701, Zawisza, together with his kinsmen, descended upon the village with overwhelming force, took his sister-in-law captive, and then fled to Zawisza's own land, Rohotna, across the Niemen River. The flight from the village was so dramatic that Zawisza's own children almost drowned as they were taken over the Niemen river near Bielica. (Zawisza, p. 105) On Epiphany, 1702 a friend of Zawisza's came to warn him that Kaczanowski planned a counter-attack upon him the following day, to demand that his wife be returned to him. Forewarned, Zawisza was prepared. Zawisza eventually served as judge, jury, and executioner as he captured Kaczanowski in the cellar of a church and sentenced him to death. (Zawisza p. 106)

Zawisza had no remorse whatsoever for his foray, writing later that "Such is the end for those who marry above themselves, and quarrel with their superiors." (Zawisza, p. XXI) While this incident was taking place, there were two Crown Tribunals meeting which might have judged Zawisza: one in Minsk which represented the Saxon King, and one in Wilno representing the Swedish king. Both Tribunals could not prevail, and both were limited in their scope by the political and military situation. King Frederick Augustus I of Saxony was elected king of the Polish Lithuanian Commonwealth in 1697 and he foolishly launched the Great Northern War to attempt to conquer Swedish Livonia by invading it in November of 1700, using Saxon troops stationed in Lithuania. After Sweden's Charles XII crushed the Russian army in November of 1700, he then went to war against Poland-Lithuania and in 1704 he even engineered a rival election of his own puppet king, Stanisław Leszczyński, to the throne. (Łukowski, & Zawadzki) In such an environment of rival confederations and civil war, there was little impetus to punish Zawisza, and it appears that he walked away from the murder unscathed.

How could this incident be interpreted? Zawisza's biographer, Julian Bartoszewicz, viewed this as a situation in which a nobleman, dishonored, killed another nobleman because of the disrespect that the less powerful noble showed by daring to take advantage of a deranged woman, marrying her for her money. According to his view, the incident was scandalous because of the barbarism Zawisza showed by assaulting Kaczanowski in a church, thereby profaning that church and acting in an un-Christian manner. (Zawisza p. XXI) Paweł Jasienica, a popular author of historical essays, interpreted Zawisza's behavior as indicative of the general decadence of the Republic of the Nobles, and especially of the Lithuanian nobility. (Jasienica, p. 5) Perhaps there might be another way of interpreting this incident.

In examining the character of Zawisza, one would have to conclude that he was a man in a socially insecure position. He married an heiress himself. His wife inherited the fortune of the Tyszkiewicz family – and she was a woman who also had great social connections. The fact that he gained his own wealth and prestige through marrying an heiress makes his anger at another man's ambitions to do the same thing so ironic. The violence with which he dealt with this anger is also significant. The fact that this account takes up such space in Zawisza's memoirs and is mentioned in other historical accounts means that this conduct was viewed as remarkable on the one hand, outrageous on the other hand, and atypical of the conduct of the nobility in the 18th century.

A better focus on this event can be gained if it is viewed from the point of view of the widow, who has been pushed to the side for much of this discussion. This incident shows that a noblewoman who married beneath herself could be considered mentally imbalanced, and therefore a person without legal capacity. She could be and was imprisoned during the conflict. A noblewoman who married a man of lower status was deemed guilty of such scandalous behavior that such an affront could be avenged by death with impunity. This incident also made it clear to a woman that her rights under the law could be completely disregarded. According to the First Lithuanian Statute a noblewoman could marry anyone she pleased:

We also promise and establish by our sovereign grace and generosity, that we ourselves and our descendants shall protect princesses (*kniaginy*), lords' widows, princesses (*kniazheny*), maidens and girls in their freedoms, [and] will not force them to marry anyone without their consent. But each of them [may] freely marry anyone [she] pleases with the counsel of her friends. (von Loewe, p. 145)

Since lords' widows had the right to marry freely, Maryanna Naruszewiczówna's legal right to choose her husband was taken from her by her brother-in-law. The penalty that he exacted was also completely out of line with the letter of the law. There could be a penalty that a woman might pay for engaging in a misalliance, but it was not as severe as imprisonment and murder of the chosen spouse. If she married without her parents' consent, she might forfeit her dowry and her claim on property from her mother's line of the family:

...if a daughter marries without the consent of her father or mother, such a woman forfeits the patrimonial and matrimonial dowry and the matrimonial estate. (von Loewe, p. 145)

Therefore the gravest penalty a woman could incur for marrying beneath her, or formed a misalliance, was the loss of her inheritance.

Other laws were violated in the course of this incident. The most obvious crime seems to be that a man was murdered, and that the murderer went unpunished. We cannot know how or even whether the case was tried, since nobles in Lithuania had the privilege of being judged by the Council of Lords, which was considered to be an extension of the judicial authority of the Grand Prince. No records were kept of these proceedings, so we cannot know what went on in them. (von Loewe, p. 149) But there is a loophole in the law through which Zawisza might have slipped. The law protects nobles who commit acts of violence against other nobles:

If Someone Kills a Peacebreaker and His Accomplices in His Home or at the Time of the Attack... then he must pay neither for the killing (*golovshchina*) [*wergeld*] nor for the injury... However the fact of the attack [he] must confirm by his personal oath, the oath of his wife and grown children together with two co-swearers. (von Loewe, p. 72)

The crime that seems most obvious to modern eyes is the one that could be the most legal in this case. If Kaczanowski could be deemed a peacebreaker by trying to make a misalliance, then his killer could be held blameless.

Finally, we should examine how this might have been viewed by Barbara Radziwiłłowa, Zawisza's daughter. At age twelve, she would reach the age of majority soon and could look forward to her own marriage in eight years. (Zawisza, p. 149, 151) She was certainly old enough to be aware that she was almost drowned in the Niemen River, and would probably remember the experience. She might have gathered from this incident that a widow could be prevented from freely choosing her husband, even though the letter of the law allowed free choice.

According to the description in his memoirs, the conflict between Kaczanowski and Zawisza was witnessed by at least ten people and at most by more than hundreds of people, so the killing of Kaczanowski can be viewed as a form of prescriptive and integrative violence. We know that the nobility valued dramatic gesture and grand oratory at every important function, (Bogucka, p.40) and we know about this event only because it was couched in a grand narrative of justification that Zawisza wove in order to legitimate his violent practices and frame them as recognizable in the eyes of the community. The self-aggrandizing stories that the members of the foray told about themselves functioned as an elaborate ritual of gestures to save the nobility from any encroachment and to strengthen their self-confidence and pride for the noblemen to take part in such a show of strength. But for noblewomen who were also among the onlookers, we have no corresponding reflection about what it must have been like to watch the foray taking place.

When Barbara Radziwiłłowa became a widow in 1746 she never remarried - living twenty-four years as a widow. Perhaps this formative experience of growing up in the violent period of the Great Northern War and witnessing the act of communal violence that was the foray might have affected her decision not to re-marry. This incident was surely a stark example of the grave consequences of defying the wishes of one's family regarding freedom in marriage choice.

Barbara Zawiszanka did not defy her father's wishes when choosing a husband and married with her father's blessings. Zawisza wrote her a tender memorial on the occasion of her engagement, on July 16, 1710, and gave his marriage blessing to her. (Radziwiłł Archive of Nieborów Sygnatura 1233) Since she had her father's blessing, it can be assumed that she encountered no problems from her family with regard to choice of a husband.

The same cannot be said for her experiences with her own children. There is no similar letter of blessing to be found among her family papers. But she did leave behind her *Manifesto*, a document that sheds light on the relationships between a widow and her children, and the control that a widow had over the family's wealth after the death of her husband.

Case II: A Widow's Control over Her Son's Marriage Choice

In August 1767, Barbara Radziwiłłowa's eldest son Udalryk entered into a marriage contract with Kunegond Eleonora Kamińska, a noblewoman whose father held a minor office in the military. The signatures on the marriage contract indicate that the bride's parents agreed, and they offered a very modest dowry of 30,000 Polish zloty. (Biblioteka Narodowa MF.32918) By way of comparison, this dowry and corresponding dower were intended to provide security for a wife in the event of her husband's death, yet Krzysztof Zawisza's funeral cost 70,000 Polish zloty, (Zawisza, p. XXXVII) and the minimum that the Radziwiłłs were expected to provide for daughters' dowrys was 200,000 zloty. Despite the meager dowry and the fact that the groom's parents did not sign, this marital contract was legal and binding.

The requirements for constituting a valid marriage were undoubtedly great in number and complex, but little is known about them. An exhaustive study has been done to determine how marriages were constituted in primordial Polish law (Abraham) but no such study has been done for the early modern period. The laws regarding marriage in the Commonwealth were based upon canon law, but the question is how that law was applied. (Alexandrowicz, p.157) One study noted that the Vatican was concerned by the apparent disregard in the Commonwealth for following the letter of canon law which allowed marriages to be readily contracted and readily dissolved. (Lorence-Kot p. 152) Given the fact that this marriage took place between consenting Christians in a church, with benefit of a marriage contract, and the marriage was physically consummated, it could only be dissolved by the death of one of the parties.

Barbara Radziwiłłowa strongly opposed the marriage, and she expressed this in her *Manifesto*. She opposed it on various grounds. In the first place, she wrote that her son Udalryk was financially irresponsible, and that he had squandered the family's fortune while living on the estate that she brought into the family, Berdyczów, located in what is currently Ukraine. He had been in such financial difficulty that he was forced to sell the office that she and her husband had procured for him, the Master of the Horse. Now that he wanted to marry for a second time she planned to refuse to provide him with the dower money that he would need to match his second wife's dowry and to make the marriage legal, as a means of punishing him for not consulting her and for contracting a marriage that was not financially advantageous to the family. (Biblioteka Narodowa MF.32918).

In Barbara Radziwiłłowa's *Manifesto*, she laments her son's marriage choice and also his ingratitude over all that she has done to secure his future. Her lamentation is made in the most stark and vivid language. In the Commonwealth of the eighteenth century, legal documents such as these were passionate and dramatic, in order to gain the support of the judges:

That my first-born son, Prince Udalryk Radziwiłł, so lightly weighing both the laws of God and nature, through the entire course of his life behaved in the most troubling way, to such a degree to bring worry and pain upon his own mother. One needs a register to record it all. In a word, being so ungrateful for all that has been done for him. Material evidence bears out that no amount of expense has been spared on his high level of education, for learning in foreign countries and in the acquisition of dignities [offices] which he has miserably trampled underfoot. These circumstances, and the necessity of gathering oral and written evidence has had the effect of completely eradicating all feeling in the maternal heart, replacing it with the wrath of God and of a mother. He brought it all upon himself: from unpleasantness to unpleasantness, and worry to worry, continuously adding to it. He only bestirred himself from his wantonness in a ripe old age through the efforts of Lady Kamińska. (BN-MF32918 p.197-199)

Besides stating so clearly her disappointment in her son, the *Manifesto* also explained that Udalryk Radziwiłł had taken advantage of a legal convention that was new to the Grand Duchy of Lithuania in the eighteenth century, the *abrenuncjacja* or the *ab renuntio*, the prior renunciation of rights to property. (Zielińska, T. p. 95) Although it was not widely practiced, one of the ways in which this law was applied was to allow the dowry money given to a woman to stand as her share of her family's estate. In this case, Udalryk Radziwiłł voluntarily divested himself of any rights

that he had on paternal and maternal property. These properties were granted to his brother, Albrycht Radziwiłł, Starost of Rzeczyca, in exchange for a settlement to be remitted in perpetuity.(BN-MF32918) Given his profligacy, Udalryk probably found that the only way to settle his debts was to renounce his share of the inheritance in the future in exchange for having his debts paid immediately.

Barbara Radziwiłłowa ,wrote her *Manifesto* in 1766, but later relented, stating that she would bless the marriage *ex post facto* when it became apparent that the marriage would produce children. She would give her blessing if a son were born and christened as a result of the marriage. (Konopczyński) The marriage did produce an heir, Mateusz, but a year later, on February 15, 1770, Barbara Radziwiłłowa died, at the age of 80, and she could no longer act as protector to her son and his family. Udalryk's brothers were only waiting for the death of their mother to declare a kind of small-scale civil war upon their brother and to take their property, to which he no longer had any right. They used the Radziwiłłfamily militia to occupy all the family properties and to drive him out of Berdyczów, taking his child Mateusz under armed guard to the family seat, and imprisoning his wife in a cloister adjacent to the palace.(Konopczyński, p.186)

Udalryk Radziwiłłdied in the same year, 1770, and the conflict among his brothers, his widow and his heir was not settled until 1778. The *Sejm* delegated a commission that took a year and a half to settle the conflict, and a settlement was reached. Mateusz, the heir, was given lifetime use of Berdyczów, and his mother, Eleonora Kamińska, was appointed his guardian.

It was not unusual for a woman to be named her own child's guardian in the eighteenth century, and this possibility was allowed for under the second and third Lithuanian Statutes. The naming of a woman as her child's guardian was grounded more in practice than in law, because the third Lithuanian Statute stated that if the father did not designate a guardian, then guardianship would fall to the paternal uncle and to more distant relatives. (Loho-Sobolewski p.80) In this case, the father (Udalryk) explicitly excluded paternal uncles from guardianship. Instead, he designated the head of the Radziwiłł house and member of the Nieśwież branch, Karol Stanisław Radziwiłł, the Voivode of Wilno, as guardian as well as naming five other noblemen. But his wish was that his mother's maternal authority over his son should not be impeded. (Radziwiłł, U) The procedure in guardianship was that the ward's property should be inventoried, with the guardian being provided a certain sum for the minor child's maintenance. The mother's guardianship over her own child would remain until she remarried. (Loho-Sobolewski, pp. 73-74, 78-80).

This incident shows that a noble widow had a much stronger position in the Commonwealth than a wife did, and that a widow in the Commonwealth had a strong position relative to her counterparts in other countries of Europe. In England, for example, a widow, upon the marriage of the eldest living son, would either have had to live on the main estate with her son and his family, or she might have been forced to move to another estate. She would have had a small maintenance allowance, but she would not have controlled the family fortunes, as Barbara Radziwiłłowa did. She would not have had the strength of position to file a manifesto in court against her son in her own name. (Stone, p.4) She would not have been able to deny him the money for a dowry. She would not have been able to bequeath him her estate, since she could not have continued to hold ownership to that property in her own name. The fact that her sons waited until she died to engage in their violent and uncivil behavior against her eldest son indicates that she must have had a certain degree of control over them during her lifetime.

A woman's independence, status, and personal freedom depended upon her age and marital status, not simply her status in law. This fact is illustrated in a seventeenth-century poem reprinted in a family's *silva rerum* or family notebook:

Bread for girls, cakes for married women, marzipan for widows, scraps of food for crones.
Cheese for girls, milk for married women, cream for widows, and whey for crones.
Apples for girls, pears for married women, oranges for widows and wild apples for crones.
Mead for girls, wine for married women, malmsey for widows and slops for crones.
A cart for girls, a chariot for married women, a carriage for widows and a wheelbarrow for crones.

The world for girls, paradise for married women, heaven for widows and hell for crones.

(Bogucka, *Lost World*, p.146)

As this poem illustrates, the influence of women within the family and in society in general waxed and waned depending upon their age and their marital status. Given the scheme depicted in this poem, and the marriage choice cases examined above, it is not surprising that Barbara Radziwiłłowa, Anna Radziwiłłowa and others like them who customarily gained lifetime usufruct of their husband's estate chose not marry again, (Bogucka, "Foundations" p 39) but to live out their relatively long wives enjoying the benefits of the status of widow and heiress.

Krzysztof Zawisza's foray against his sister-in-law's misalliance was an example of atavistic practice in the Polish Lithuanian Commonwealth. Forays were rare, and they produced a uniquely anarchistic legal environment. If the foray is taken as the exemplar for legal practice of this time and place, then one would have to conclude that women did not benefit from the "disordered" legal environment of the Commonwealth, but instead they lost. They lost because the foray deprived them of rights, such as the freedom to choose a marriage partner, which were guaranteed to them by law. However, it would be wrong to take the foray as the legal model of the period. Despite the fact that the foray has been depicted as emblematic of the Polish legal system in well-known works such as *Pan Tadeusz*, Polish anarchy, and the lawlessness of the period would be exaggerated by such a conclusion. These particular cases were ones in which the rough justice of the foray prevailed, but the foray was rare. But by examining cases in which noblemen took action outside of the legal system, one can come to an understanding of how the nobility worked through the customary collective practices like the foray to enforce behavioral norms. Some scholars have even argued that "it was not the state and not an official legal system which mostly introduced the social discipline and dictated social behaviour, but the nobility (through) its use of customs as a means of shaping the social hierarchy." (Bogucka, *Lost World* p.209)

Family members might react violently in situations when their will was disregarded, and those without the protection that privilege afforded could be subject to arbitrary and rough justice. Even as noblemen acted as violent vigilantes who claimed to be acting in defense of female honor, they were clearly acting in the same way that the vigilantes of the Old frontier West and southern men had acted in defense of lynching. As Ida B. Wells observed in 1892, "to justify their barbarism, they assume a chivalry which they do not possess." (Arellano, p.11) Vigilantes like Krzysztof Zawisza relied on stories of self-justification to legitimize their violent behavior and to reinforce community norms regarding freedom of choice in marriage. In doing this, they trampled on the rights and freedoms of their family members instead of preserving the golden freedoms of the nobility.

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