

## Improving the Law: Property Rights and Self-Possession in Joanna Baillie's *The Alienated Manor*

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In the *Introductory Discourse* to her series, *Plays on the Passions*, Joanna Baillie claimed that the dramas could improve the audience's understanding of human nature and equip them to "deal to others judgment tempered with mercy" (*Works* 4). Projecting this result as particularly important to the legal profession, which would gain better judges, advocates, and magistrates (4), Baillie revealed an interest in legal affairs that was furthered evidenced by the prominence of crime and punishment in the plays. Recent scholarship has explored some connections between Baillie's works and criminal law, copyright law, and the Poor Laws (Myers, Brigham, Hewitt). In this essay, I posit a connection with property law, for I read *The Alienated Manor* as an indictment of existing laws based on possessive individualism and a call for improved laws based on the common good.

To make my case, I first consider the aspects of property rights central to *The Alienated Manor*, then turn to the play itself, which is among the last in the series.<sup>1</sup> The topic is jealousy, which Mr. Charville, who owns the Manor, manifests in his absurdly possessive behavior as he tries to control his land and his wife. Like all the plays on the passions, the *Alienated Manor* invites spectators' "sympathetic curiosity" about the protagonist's obsession. It directs them to watch the unchecked emotion gradually master his life, and it encourages them to reflect on how such a thing can happen, on how it can be cured,<sup>2</sup> and on how it could have been prevented. The play expects them to learn to act with more self-control in analogous situations (*Works* 4:13). To follow Baillie's agenda, spectators have to judge Charville in context, noticing that he and they are in a culture that valorizes ownership. Understanding Charville's possessiveness as an extreme but logical way of fulfilling a culturally and legally defined role as an owner makes it impossible simply to blame him for personal failings. Some blame must be extended to the society that permitted his jealousy to develop. Carried out analogously in the experience of the audience, this comprehensive process of judging would inspire the reconsideration of property rights and changes in behavior that would help bring about the "more just, more merciful, more compassionate" society for which Baillie dared to hope (*Works* 4).

The attitude toward property that *The Alienated Manor* calls into question revolves around "possessive individualism," which is, as Balibar explains, a blend of ideas from Hobbes and Locke that had wide-ranging but not necessarily consistent effects in English law (299-303). The key idea in possessive individualism is the use of "ownership" to define both persons and things. Individuals are beings who have property in their own persons and abilities. This proprietor-

ship authorizes their free activities in the marketplace and in the state. They can exchange—or, in the vocabulary of the eighteenth-century, "alienate"—goods and labor because they own those things and talents and therefore have the right and the freedom to use them as they see fit. The legal system exists to protect the concept of property, and laws do so best when they impose only as much restraint on individual freedom as is necessary to allow other owners equivalent freedom (300).<sup>3</sup> Blackstone's *Commentaries on the Laws of England*, which often allude to Locke, celebrate the power of ownership. For example, Blackstone states that the law "will not authorize the least violation" of an owner's "free use, enjoyment, and disposal of all his acquisitions"—"not even for the general good of the whole community" (1:134-35).

In practice, the freedom of self-ownership was enjoyed only by men who possessed land that represented their status as proprietors. Most women could not be self-owners, for by the law of "coverture," they placed their possessions and their persons in the custody of their husbands when they married (Blackstone 1: 430). Men who did not own land also could not fully enjoy self-ownership because their activities were limited by their economic dependence. By the Romantic era, awareness of the injustice of these exclusions, and protests against them, appeared in the philosophical treatises and radical novels that Nancy Johnson and R. S. White have recently studied as exemplary of this opposition: Mary Wollstonecraft, William Godwin, Charlotte Smith and other writers depicted the hardships that this legal system imposed on women and non-elite men, and they sought alternative definitions of personhood through natural rights theories that valued human existence apart from ownership.

Natural rights advocates were not the only critics of possessive individualism. Coleridge, for example, who found natural rights theories insufficient on religious grounds and who considered land ownership important for national stability objected to conflation of persons and property (Edwards 95-103). Anya Taylor reveals the extent of his objections in her study of the divorce laws that prevented him from ending his unhappy marriage. Coleridge's circumstances, Taylor argues, taught him to sympathize with women who lost their possessions and freedom through marriage: he feared laws, institutions and attitudes that "threaten to 'be-thing' a person" (181).

While most criticism of possessive individualism emphasizes the injustice it does to non-owners, Baillie's *Alienated Manor* concentrates on the damage to an owner's personality, relationships and ethics when he defines himself by his

propriatorship. Though the play does indeed show that Mrs. Charville is a victim of injustice through her marriage, it gives her a more important role as a character with a non-possessive outlook. Her presence on the stage, along with that of a few dispossessed male characters, suggests that promising alternatives might be developed to replace the possessiveness that the play discredits by its exposure of Charville's jealously "warped" (4.4.356) personality.

If Baillie's focus on possessive individualism as damaging to owners is unexpected, so too is her skepticism about proprietorship, which, I suggest, comes from Scottish law. Elsewhere, I have argued that Baillie knew Scottish law because of her friendship with Walter Scott and because pride in the separate legal system that Scotland kept after the Union was part of her cultural identity (*Symbolic Interactions* 44-45). An image of Scotland as a more sympathetic society than England based on certain features of its legal system—such as the sparing use of capital punishment, the focus on intention in criminal trials, and the discretionary powers granted to judges—was promulgated in *Commentaries on the Law of Scotland* published in 1797 by Baron David Hume, the philosopher's nephew and Scott's instructor.<sup>4</sup> In addition, debates beginning in the 1810s, and lasting decades in both Scotland and England over changes in the administration of the Poor Laws created a rivalry between the two countries as to which was the more humane. According to a letter from Scott to John B. S. Morritt, Scotland exhibited a greater sense of cross-class responsibility for the welfare of the whole country than did England where people "both in high and low degree stand rather too much isolated" (4: 456). This broad sense of social responsibility extended to divorce laws in Scotland, where women were able to divorce unfaithful husbands—an action prohibited in England (Leneman; Taylor). Unfortunately, married women did not have greater freedom during marriage in Scotland, where they were still subject to coverture (Hume, *Lectures* 1:101). A letter from Baillie to Andrews Norton shows that she was aware of the effects of the laws on social and political relations: women "would get nothing but trouble by having equal suffrage with" men, she opined, unless women received expanded property rights first (945).

In keeping with the emphasis on social responsibility, Scottish commentaries on property laws assert the priority of the common good over individual enjoyment, which gives them a different emphasis from Blackstone, even when the point of law is the same. For example, eminent domain seizures (taking private property for public use) were legal in both countries, but Blackstone tortuously interprets the process in terms of a contract between individuals while John Erskine, his near contemporary whose *Institute of the Law of Scotland* was first published a decade before Blackstone's *Commentaries*,<sup>5</sup> does place the public good first. Despite having said that private property may not be taken even for public good, Blackstone concedes that the legislature may indeed "compel" an owner to give up his property for public

use, provided that it compensates him fully for the "injury." Blackstone rationalizes, "The public is now considered as an individual, treating with an individual for an exchange. All that the legislature does is to oblige the owner to alienate his possessions for a reasonable price" (1: 135). Contrast Erskine: "It is another legal limitation or restraint on property, That it must give way to the public necessity or utility." Two conditions must be met: first, necessity or utility must be demonstrated; "2dly The persons deprived of their property ought to have a full equivalent given them" (1: 162). In other passages, Erskine characteristically inserts positive comments about the importance of law in "inhibiting our licentiousness in the exercise" of our rights: "the law interposes so far for the public interest, that it suffers no person to use his property wantonly to his neighbour's prejudice" (162); Blackstone avoids positive comments about restraints on individual freedom.

A question about the right use of property sets in motion the plot of *The Alienated Manor*. Charville is reported to have acquired the manor by taking "very unfair advantage" of the "distresses" of another character, Crafton (1.1.337). That these distresses may have involved gambling debts is suggested by later allusions to Charville's having "robb[ed]" and "ruined" a cousin of Crafton's nephew Freemantle at the gaming table (1.1.338; 2.3.346). Though the transfer of family property in payment of personal debts was perfectly legal, Hume found it ethically questionable. In earlier centuries, when "alienation of heritage" was "unlawful," family members could stop such transactions, but the law came to accept the transfer of land to expunge debt when "men . . . tempted by the various objects of luxury and magnificence, and learning to undervalue the influence attached to their domains, in comparison of those personal and frivolous enjoyments came to be desirous of engaging their property to those, who could furnish them with the means of supplying their expenses" (*Lectures* 3: 243).

Baillie presents the alienation of the manor in her play in negative terms, focusing on the acquirer's indifference to the effects of his acts on others. Charville no more regrets the family's loss of the manor than he regrets other gamblers' losses. "He would be ruined: it was not my doing," says Charville, absolving himself of blame in the case of Freemantle's cousin. But Charville's sister presses: "Did you dissuade him from playing? and were you obliged to receive all that he lost?" (2.3.346). Centered on a legally permissible but morally questionable transaction, the play examines the emotional and ethical estrangement that follows from technically routine conveyances. Like Erskine's and Hume's commentaries, it elaborates on the human consequences of the law and calls people to account for the application of it, but as an imaginative drama and a comedy, it can go further in educating effects and speculating about alternatives.

Despite a proliferation of comic devices (disguises, eavesdropping, mistaken identities, and temporarily mis-

placed documents), the plot of *The Alienated Manor* is quite simple: it is about Charville's attempts to become an owner. Charville takes literally the law's definition of ownership as exclusive use and disposal (Erskine 1:162; Blackstone 1: 134), so he systematically tries to keep others away from his possessions and to mark those possessions with signs of his control. Charville might be seen to perform a passage from Blackstone's *Commentaries*—a passage rhapsodizing over the right of property as the “sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe” (2: 2). In exposing that performance as anti-social and self-destructive, the play invites criticism not just of one character's extremism but of the legal system that so plausibly grounds his extremism.

To mark the manor as his possession, Charville locks his garden, resulting in some confusion between visiting and trespassing when Crafton arrives (1.1.336; 1.2.340). Within his domain, Charville implements numerous “improvements” along fashionably picturesque lines, all of which involve changing the natural features of the landscape to features desired by the proprietor. Through the “improver” or landscape architect, Sir Level Clump, his plans include “clearing away the underwood, and cutting out that heavy mass of forest trees into separate groups” to create a “tasteful, parkish appearance” and turn the “rude untamed clown” of a forest into a “gentleman” (1.1.337). As Nigel Everett comments on Austen's *Mansfield Park*, picturesque improvements were already a cliché by the Romantic era (188). Well aware of the vogue for aesthetic cults, Baillie even lodges a German philosopher, given to discoursing on the related concept of the sublime, with the Charvilles as a houseguest. By their very familiarity, picturesque foibles and fashions demonstrate the attitude toward property that *The Alienated Manor* indicts.

Though entangled, the concepts of the picturesque and of improvement are not identical. The picturesque can foster respectful attitudes toward nature: Karl Kroeber examined its positive functions in *Romantic Landscape Vision* (1975) and David Miall in 2005. Baillie, however, is concerned with the intersection of the picturesque with “improvement,” a term for a range of practices from enclosure to clearance that were notoriously destructive. In combination, the picturesque was often used to justify improvement, which *The Alienated Manor* dramatizes in the relationship between the landscape architect and the philosopher. “I only pretend to make these grounds visibly beautiful,” says Sir Level; “he [the philosopher, Smitchenstault] will demonstrate, forsooth, that they become at the same time philosophically so” (1.1.338). At the end of the play, Smitchenstault is sent away when the characters see the damage in the guise of “improvement” and recognize Smitchenstault as a freeloading charlatan. Meanwhile, the drama offers ample illustrations of the kind of practices that the audience ought to be revaluing.

For instance, the “parkish appearance” that Sir Level creates evokes the practice of imparkment that Nigel Everett in *The Tory View of Landscape* (1994) equates with privilege. Its “emotional appeal” lay in possessing what “others do not and generally cannot enjoy” (39). Understandably, albeit not excusably, ostentatious landholding was favored most by new Whigs whose wealth and power came from trade. By commodifying land, such figures literally and symbolically took the traditional source of sustenance, authority, and belonging away from those with inherited title to it and alienated it, i.e. transferred it to themselves. Possession was then shown by dominating the land and its inhabitants through such procedures as cutting down trees, altering the course of a stream, moving cottages, or even whole villages, to suit the owner's view. In contrast to these New Whig improvers, Tories and Old Whigs rejected the commodification of land, treating it instead as a resource they held in trust for others (Everett 16). They cultivated relationships of benevolent paternalism instead of individualistic enterprise.

This political dichotomy, which Kroeber (in a review of Everett's book) cautions against, was useful to Baillie in another play, *The Election*, enabling her to characterize the Whig candidate as the one who “cut down the old gloomy trees” and straightened the stream on his estate, thus infuriating his neighbor, the Tory candidate. But in *The Alienated Manor*, the problem of destructive demonstration of ownership is countenanced by the legal system that both parties accept. Instead of relying on the Tories to counter Whig improvers, Baillie would inspire sympathetic judges, advocates and magistrates to modify the programs of Parliamentary enclosures and clearances that displaced many people. As Rachel Crawford explains in *Poetry, Enclosure, and the Vernacular Landscape* (2002), the Parliamentary enclosures of the Romantic era (unlike earlier, less formal versions of the process) systematically tied agriculture to commerce: the goal was to decrease the number of workers needed for farming or animal husbandry, to curtail the independence of laborers, and to move goods to market efficiently. Lost in the pursuit of productivity were the customary rights of rural residents to sustain themselves by farming or grazing in open fields (37-64). Agrarian improvement even made inroads into Scotland, where acts of clearing tenants signaled that owners were beginning to view land as “an asset to be exploited” rather than a source of common “welfare” (Devine 158). Hume protested the denial of gleaning privileges that often accompanied this new possessiveness, stating that although owners may legally forbid gleaning, they are “hard and churlish” if they do so (*Lectures* 3: 201).<sup>6</sup> Hume's interpretation of the law is what is needed to keep ownership from being a literal fulfillment of Blackstone's “despotic” figure of speech.

Because *The Alienated Manor* evokes so many practices relating to land management, it can imply an ecological consciousness, and in *Joanna Baillie: A Literary Life* (2002), Judith Slagle uses it as evidence of Baillie's environmentalism (255-

57). Reading the play ecologically can make it newly relevant to an audience for whom the touchstones of the picturesque are outdated but who recall analogous abuses of the land and wish likewise for sympathetic judges to curb them. Moreover, if ecology is understood to involve the reconciliation of nature and culture, as Kroeber says in *Ecological Literary Criticism* (1994), then an ecological reading can help connect Charville's jealous possession of his land with his jealous possession of his wife, for his aggressive ownership estranges him from both nature and people. Having pursued this reading in another essay, ("Joanna Bailie's Ecological Comedies"), I wish to concentrate here on the legal basis for Charville's figurative alienation from nature and people, for his relationship with his wife shows the lived experience of possessive individualism.

On his first appearance, Charville is "improving" his wife's appearance by putting flowers in her hair. Though she protests that "they look awkward, affected, and silly," she agrees to wear them because Charville takes her resistance as a sign that she does not love him (1.2.339). Charville can't accept his wife's identity or allow her own development. Convinced that Freemantle is trying to seduce her, Charville is overcome by fear of losing control of this possession, his wife. His perceiving Freemantle as a threat to his marriage is a plausible mistake, because Freemantle *does* pay exceptional attention to Charville's wife so that she will further his courtship of Charville's sister Mary. Freemantle and Mary would like to marry but fear displeasing Charville who expects his sister to win a wealthier husband. Pathologically jealous, Charville keeps looking for evidence of his wife's infidelity. He cancels trips to remain at home with her, eavesdrops on her conversations, reads her letters, and even disguises himself as a servant in his own house to spy on her. The exasperated and plain-speaking Mrs. Charville tries to discuss his obsession with him, exclaiming: "I hate a man who is so selfish that he must engross his wife's attention entirely. What do you think of the matter?" Instead of answering her question and confronting the problem of his obsession, Charville sulks over what he construes as her rejection. (1.2.339).

Not legally situated to possess anything, Mrs. Charville does not treat others as her property. She paints butterflies and sketches bats, taking an interest in the creatures in their own right. Her conversations about her nature studies pointedly contrast her attitude with her husband's: "He," she says, "looks at no creatures but those which are bred in his kennels and his stables" (2.3.345-46)—in other words, those which he possesses and controls. The contrasts between Mr. and Mrs. Charville's outlooks could well be added to the contrasts between masculine and feminine attitudes toward the picturesque in Jacqueline Labbe's *Romantic Visualities: Landscape, Gender, Romanticism* (1998). According to Labbe, the masculine approach organizes and supervises the elements in a given area into a "prospect view"; it rises above the scene and looks at the larger picture with the eyes of an owner who cares little for separate details. The feminine alternative

takes a position within the scene, becoming "part of it, "interact[ing]" with it, and having a high regard for separate details (x-xiii). Labbe speculates about the feminine view as potentially subversive of "the proprietary tradition": it raises the possibility of "stak[ing] a claim to what ones sees" irrespective of legal sanctions (xiii).

Though Mrs. Charville is a superficial character who enjoys gossiping about neighbors' love letters and writing parodies of sentimental novels, she need not be ideal to represent one plausibly alternative line of thinking in the play. And, since all of her activities aim at relieving her boredom as Charville's wife, her shortcomings seem more culturally conditioned than innate. It is typical of Baillie to portray the stifling effects of gender roles and paternalistic institutions as well as to suggest alternatives that one now calls feminist. In finding this strain in *The Alienated Manor*, I follow the lead of scholars such as Catherine Burroughs and Marjean Purinton who have explored the representation of gender in many of Baillie's other works. Alternatives to possessiveness, however, are not represented by Mrs. Charville alone.

Crafton and Freemantle are also able to work within the situation in which they are immersed. Their plot to gain Charville's approval of Freemantle as a suitor to his sister is a subversive rather than a controlling strategy, which shows the socio-economic factors that Labbe also identifies as conditioning the proprietary view (xi). Even if one interprets Crafton's and Freemantle's goals as the repossession of the manor, they are less controlling than Charville. Crafton, for example, announces his plan to reverse the "improvements" on any property he acquires, allowing the land to return to its natural state (4.4.355). Allocating similar attitudes to male and female characters is consistent with the strong stance against gender essentialism that Baillie takes in the *Introductory Discourse*, in which she states: "I believe there is no man that ever lived, who has behaved in a certain manner on a certain occasion, who has not had amongst women some corresponding spirit, who, on the like occasion, and every way similarly circumstanced, would have behaved in the like manner" (9). It is the legally disadvantaged circumstances of these characters that influence their conduct, just as Charville's legally dominant position influences his.

In a scene in which the servant of the debtor from whom Charville acquired the manor tries to kill him in retaliation reinforces the connection between legal circumstances and conduct. The attempt fails, but it gives Baillie the opportunity to add dialogue that reveals the effect of law on character. Chastised for taking the law into his own hands, Sancho replies (in rather unfortunate dialect): "Me care for te laws when te laws care for me" (5.2.358). Without endorsing Sancho's point of view, the play lets his words comment on his motives. Further, paying attention to why Sancho attempts this murder accords with the emphasis on intentions in Scottish criminal trials central to other Baillie plays such as *The Homicide* and *The Striplin*.

As events unfold, spectators see that Charville's desire for perfect ownership is untenable. The more obsessed with controlling his property he becomes, the more "warped" (to use the term his sister applies [4.4.356]) he becomes in his judgments of other people. When called upon to serve as magistrate in a wife-beating case, he projects his jealousy into the situation, dismissing the woman as "a hypocrite, and a liar and a jade" who deserves whatever punishment her husband chooses to inflict (4.3.355).<sup>7</sup> Giving a counter-example to the sympathetic legal officials Baillie sought to cultivate, this episode forcefully presents the widespread effects of possessiveness. Since all civil power depended on ownership (Blackstone 1: 8-9) (i.e., Charville is called upon to serve as a magistrate because he is a property owner), the fate of all members of society depended on the attitudes of these landholders. With this case, Baillie shows how unjust they could be. Despite his unhappiness, Charville remains determined to retain control of his wife: he vows not to divorce her because he will not "give her up to any man alive" (5.3.359). He does, however, long to sell the very property he has so wished to dominate so that he can, perhaps, find another place more susceptible to his will (4.3.354-55). He even considers suicide as preferable to failing to regain control (5.1.356-57). In sum, Charville's possessiveness leaves him alienated ethically and emotionally from the wife and land he had most wanted to hold.

Because *The Alienated Manor* is a comedy, it brings Charville back from the brink of destruction. Once he learns that Freemantle loves his sister, not his wife, he sees that his possessiveness interfered with his judgment. Trying to adopt a newly generous spirit, he promises to give up gambling, repay what he has won from Crafton's and Freemantle's relative, and transfer the manor back to Crafton for a fair price. Charville's contrition and wish to make amends, accompanied by promises from other characters that they, too, will be less selfish in the future, brings the comedy to a formulaic conclusion that might disappoint present-day readers by leaving the legal system itself unchallenged. The legal personhood of Mrs. Charville is not projected; the reversals of improvements at the manor depend on Crafton's following plan to return the land to nature.

But Baillie's way of improving the law is by preparing attitudinal changes that can gradually transform the system. In the short term, a call to eliminate coverture would be more daring politically but less so intellectually, for it would endorse the existing proprietary tradition by expanding it to include women. Instead, Baillie questions or subverts (to borrow Labbe's concept) proprietorship by moving men away from the possessive attitudes that sustain it. The possibilities for reform that stem from *The Alienated Manor* include adaptations of the non-possessive orientation suggested variously by Mrs. Charville, Crafton and Freemantle throughout the play. Should those alternatives be pursued—and Charville's renunciation of "selfishness" (5.3.360) implies

that they could be—coverture would become obsolete because possessive individualism itself would become obsolete. Self-ownership would become self-possession in the sense of self-control. Property holding would no longer imply an ability to dispose of goods and talents at will but a commitment to use them for collective benefit. Taken beyond Erskine and Hume by the legal professionals Baillie sought to reach through her plays, such a reinterpretation of property rights would significantly alter legal interactions, aligning them with the vision of a "more just" and "more merciful" society that Baillie projected in the *Introductory Discourse* (*Works* 4).

Lest Baillie's gradual and indirect approach to improving the law seem more naïve or fanciful than strategic, it should be remembered that Blackstone, Hume and Scott all describe legal reform as an incremental process, and in overlapping metaphors that Jane Millgate notes (110n13), they compare it to renovating an ancient castle. Blackstone introduces the castle comparison to explain how certain feudal practices in handling property were abandoned. Instead of being swept away by "legislative revolution," he states, they were reinterpreted by the "more liberal and enterprising judges, who have set in our courts of equity" until they were shaped to serve "the purpose of doing speedy and substantial justice, much better than could now be effected by any great fundamental alterations" (3: 268). By encouraging judges, advocates and magistrates to ponder the destructive and self-destructive effects of proprietorship, Baillie followed a recognized strategy for improving the law. And by fully representing the effects of possessiveness in *The Alienated Manor*, she created a drama that continues to prompt its audiences to ask themselves what constitutes genuine improvement in personal, social, environmental and legal relations.

## NOTES

<sup>1</sup> *The Alienated Manor* was first published in the 1836 edition of Baillie's dramas, which included several other plays that she had drafted "many years" earlier but withheld from print to make them more readily available for performance. As she explains in the preface, she released them in 1836 because she had despaired of getting them staged (*Works* 312).

<sup>2</sup> The medical resonances in the term "cure" are appropriate given Baillie's interest in her brother's and uncles' medical research, which has been explored by Burwick, Dwyer, McMillan and Purinton. Myers and Dwyer have investigated the overlapping medical and legal contexts for Baillie works.

<sup>3</sup> For the more extensive treatment of possessive individualism on which Balibar draws, Macpherson, and for feminist perspectives, Richardson.

<sup>4</sup> On Hume's role in promoting a sympathetic image of Scotland, Farmer; for further remarks on the importance of law in Scots culture, Millgate.

<sup>5</sup>Erskine was an important source for Hume (*Lectures* 1: 8-9). An enlarged and updated edition of Erskine's *Institute* was published in 1793.

<sup>6</sup>Blackstone says that distinguishing "gleaning" from "trespassing" is a "humane provision" of the law (3: 212-12), but he makes no negative comment about owners who fail to do so.

<sup>7</sup>Blackstone refers to a husband's right to "give his wife moderate correction" as obsolete except within the "lower rank of people" (1: 432-33); Hume's notes on a husband's rights say that "he may not beat or imprison her" (*Lectures* 1: 101n1).

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