

BOOK REVIEWS

THOMAS JEFFERSON, AMERICAN TOURIST. By Edward Dumbauld. University of Oklahoma Press. Pp. 266. \$3.00.

This is an extraordinary book. Obviously, it is a labor of love on the part of Mr. Dumbauld, who has assembled by enormous research all the data upon the journeyings of the author of the Declaration of Independence. The author is not the first, nor will he be the last, American to fall under the spell of what must have been the most charming personality of the eighteenth century. Others have studied Thomas Jefferson in many aspects of a singularly many-sided life; there are volumes upon his contributions as statesman, diplomat, party leader, architect, educator, philosopher, country squire.

Mr. Dumbauld seeks to find the clues to Jefferson's thinking that might have originated in his travels, rightly assuming that of so extraordinary a personality Jefferson must have been "a part of all that he had seen." From his study emerges a portrait of the third president that is important and that does much to explain, in terms of moral ascendancy, education, insight in affairs, and adroitness in handling men, the political leader who dominated America longer than any other man and who left the greatest imprint upon American institutions.

Nor does the author treat his subject either as a saint to be followed reverently through all his travels or with that surface cleverness that marked many of the biographies of the great during the twenties, when it was deemed the best technique of humanizing the great to smear them with mud from the nearest gutter. Mr. Dumbauld is factual. He does not ascribe thoughts to Jefferson that are unrecorded. He does not recount the feelings that might have been Jefferson's on some occasion or other. He limits his book to recording where Jefferson went, what Jefferson saw, what Jefferson did, and what Jefferson himself had to say about his visit.

Because the reader must draw his own conclusions and must interpret an extraordinary individual for himself, the book is challenging. Perhaps the best insight into a man's character can be supplied by an examination of his interests as he travels.

If that be so, then the philosophy of Jefferson is singularly well outlined in this book. He saw the earth, primarily, as the home of men. Much as he admired the beauties of nature and delighted in such wonders as the Natural Bridge, much as his roving mind explored every novelty from central heating to musical glasses, he never thought in any terms except those that he had laid down in Philadelphia when, a backwoodsman from the Western marches of Virginia, he had written: ". . . unalienable rights, and among these are life, liberty, and the pursuit of happiness." To Jefferson, one suspects the existence of the two first could be validated only by the exercise of the third.

This is revealed in his traveling notes for John Rutledge, Jr. and Thomas Lee Shippen, two young men who were visiting the Continent in 1788, soon after Jefferson had returned from France to assume new duties in the Washington cabinet. He lists under the caption, "Objects of Attention for an American," the following items: agriculture, mechanical arts, lighter manufactures, gardens, architecture, painting and statuary, politics and courts.

As footnotes on the two last, he appends the suggestion that the former be studied for "their influence on the happiness of the people." But as for courts, Mr. Dumbauld, who has let him speak for himself, quotes Jefferson:

"To be seen as you would see the Tower of London or menagerie of Versailles with their lions, tigers, hyenas, and other beasts of prey, standing in the same relation to their fellows. A slight acquaintance with them will suffice to show you that under the most imposing exterior, they are the weakest and worst part of mankind. Their manners, could you ape them, would not make you beloved in your own country, nor would they improve it could you introduce them to the exclusion of that honest simplicity now prevailing in America, and worthy of being cherished."

Those who affect a distaste for Jefferson, a distaste usually associated with a distaste for his ideas, find in his list and the accompanying suggestions a lack of aesthetic appreciation and a distinct utilitarianism.

Although Jefferson had become familiar, through his omniverous reading, with the French philosophers, Descartes, Rousseau and Pascal, throughout his life his principal obligation was to the great empiricists, Locke, Hume, and Berkeley; it is not surprising that many of his ideas parallel those of their disciple, his contemporary, Bentham. Jefferson's appreciation of aesthetic values were genuine and unfeigned. He did not need instructors to tell him, for example, that the folk-music which he delighted in playing on his fiddle—he eschewed the word "violin"—had a place in a harmonious world as did the enormously popular oratorios of Handel, about which Abigail Adams wrote him from London.

Therefore, it is the curious value of Mr. Dumbauld's volume that, without undue emphasis anywhere and without departure from his main objective of telling us accurately where Jefferson went and when, he pictures with restrained artistry and exceptional skill one of the greatest and most adventurous ages in the history of the mind of men. For it was the virtue of the eighteenth century that its great men were not shallow specialists, learning numbingly more and more about less and less until they attained the ignorance of the expert. Cheerfully, they believed that this queer biped, wandering a somewhat hostile earth with foreknowledge of death for a companion, could triumph over all circumstances by the exercise of moral and intellectual prowess and enlightenment. They presumed that they had the right to learn everything; which is somewhat different from assuming that they knew everything.

Jefferson, the son of a Scotch immigrant and a Virginia heiress, a backwoods boy who had never traveled twenty miles from home before he set out for his initial journey for Williamsburg and the entertainments of the Governor's Palace, was no narrow specialist, indeed. He spoke, it is true, only four languages fluently, not including the half-dozen Indian dialects he mastered in founding the science of comparative language; but he could read two or three others with ease and pleasure. As a pure scientist, except in zoology, where Buffon was his only rival in their day, he lacked the stature of his friend Priestley; as a practical scientist, possibly Franklin surpassed him; as a man of genius, he was unrivaled in an era of great men.

The author of this volume has done an extraordinary job of characterization, within the limited setting of chronicling the comings-and-goings of his hero. Every journey, whether from Monticello to Washington and back, or to explore the beauties of Lake George, or to wander unarmed over bandit-infested Europe, where only Holland was truly safe for the

traveler, is charged with meaning in the life of the man. In lavish footnotes, a list of many of his books are given, providing a glimpse into his sources of information. Here is told his preference in foods, his avoidance of those items of drink and diet that were not characteristic of the countryside, his enjoyment of cornbread and buttermilk, and his delight in ice cream enclosed in piping-hot pastry.

Here is told also his very accurate observation that, though the terrain of Holland and of adjacent Prussian-ruled areas were alike and the soil not dissimilar and the climate identical, the towns and countryside of the United Netherlands, whose States-General assumed the title of "Their High Mightinesses," neat and clean and green and pleasant and the people happy and well-fed, while the subjects of the Prussian monarch went ragged and hungry in dirty hovels.

From those facts, you are invited to conclude either that those who are too lazy to govern themselves are too incompetent to earn a living, or that tyrants habitually welch on their bargain to provide well for their people in return for an acceptance of slavery.

Finally, Mr. Dumbauld gives us a clue as to the background that made Jefferson the greatest success in American diplomatic history as well as the earliest advocate of a free world. The author of the Declaration had seen two worlds, one slave and one free. He preferred the latter. Reasonably, he assumed that other men would prefer it, too. Equally reasonably, he believed that his own freedom, however unalienable in ethics, might be threatened unless other men, everywhere, were free.

Governor Ellis Arnall.

Executive Mansion, December 2, 1946.
Atlanta, Georgia.

PENNSYLVANIA ORPHANS' COURT PRACTICE. By Raymond M. Remick. George T. Bisel Company, Philadelphia, 1946. Pp. text 1088, forms and tables 672. \$35.00.

It is a pleasant, albeit an extremely difficult, assignment to review the Fourth Edition of Remick's Pennsylvania Orphans' Court Practice. The pleasure arises because one cannot read even a single section of the work without getting a clear and comprehensive picture of the statutes and decisions which bear upon the subject under discussion. The difficulty arises because of the thought that a reviewer should ordinarily attempt to answer two questions which are the primary concern of the reader, namely (1) What has the author done and (2) How well has he done it? However, previous editions of this work have already answered these questions by establishing this treatise as an essential part of the equipment of every lawyer who has, or expects to have, any substantial practice in the Orphans' Courts of Pennsylvania.

Consequently, it would be naive to approach the Fourth Edition as though it were the new work of an unknown author. Herein lies the difficulty under which the present reviewer labors, for it would be not only tedious but unnecessary to dissect the present edition in the conventional fashion and point out in detail how it exhausts all phases of Orphans' Court practice, not to mention the powers, duties and liabilities of fiduciaries subject to the jurisdiction of that court. For the same reason, it would be superfluous to praise the work of the author or to expatiate upon

his well known qualifications. Indeed, judicial testimony of the competence of the author is at hand. For example, in *Powell's Estate*¹ the following unusual compliment appears:

"We commend the master, Raymond M. Remick, Esq., upon the form of his report and supplemental report. * * * It can well be used as a model for practice in this court."

Inasmuch as the bench and bar are already familiar with the author's work, perhaps the best approach is to indicate some of the outstanding features of the Fourth Edition which immediately upon publication became as indispensable as its predecessors.

The law of decedents' estates and trusts, and particularly the practice in the Orphans' Court, is generally considered to be one of the more static fields where only few and trifling developments may be expected from year to year. Although the Third Edition of Mr. Remick's book was published as recently as 1938, the changes which have taken place since that time are startling, at least in number. The legislature, the courts, rule makers and legal scholars have contributed a surprising amount of new material which has made necessary, and is fully treated in, the Fourth Edition of Mr. Remick's book.

It is safe to assume that the sessions of the legislature from 1939 to 1945 inclusive were primarily concerned with problems far removed from those encountered in the Orphans' Court. Nevertheless, the legislative grid during that period included no less than ninety-five new acts of assembly which are reflected in Mr. Remick's Fourth Edition.² Some of them, of course, were enacted for the purpose of solving problems arising out of the war but the vast majority, and certainly those of the most far reaching importance, have no relation to war problems. Obviously nobody, whether specialist or general practitioner, can have more than a fraction of these legislative changes in mind at any given time. Therefore every lawyer owes it to himself and to his client, when taking any step in the Orphans' Court, to check his procedure with this authoritative guide.

However, the legislature was not the only source of new developments. Further changes in Orphans' Court practice have been introduced by the Orphans' Court Rules, adopted by the Supreme Court of Pennsylvania on December 30, 1942, and effective July 5, 1943. These rules, which were designed to secure a reasonable degree of uniformity of practice among the several Orphans' Courts of the Commonwealth, override any local rule which is inconsistent with them. Mr. Remick has, of course, revised his forms in the light of these new rules and he has also printed the rules verbatim. More than that, however, he has set down the section number which refers the reader from the rule to the section of the book where the subject is treated in detail. On referring to the section number, the reader will find a complete discussion of the point with reference not only to the rule, but also to the applicable statute and decided cases, and will be directed to the particular form which should be used.

1. 51 Pa. D. & C. 422, 426 (O. C. Phila. 1944).

2.	Legislative Session	Number of Acts
	1939	38
	1941	20
	1942	2
	1943	20
	1945	15

The Fourth Edition has two hundred seventy-seven forms which are also found in the Third Edition, but thirty-six forms have not been repeated in the Fourth Edition. For the most part, these eliminations represent copies of the printed forms supplied by various public offices and the space which they occupied has been devoted to eighteen new forms which did not appear in the Third Edition.

Another feature of the Fourth Edition is the best table of cases which this reviewer has seen. It occupies two hundred eighty-four pages, gives each decision with its citation and refers the reader not only to every section of Mr. Remick's book in which it is mentioned, but also to every page of Hunter's *Orphans' Court Common Place Book* where the decision is cited. Incidentally, it should be noted that throughout his text Mr. Remick constantly cites the relevant parts of Judge Hunter's book and also Judge Ladner's *Real Estate Conveyancing*, together with all articles of interest in the *Fiduciary Review* and numerous articles in other legal publications. It is not enough merely to commend such broad-mindedness with respect to the work of other authors; rare as it is, it should be demanded of any treatise purporting to cover exhaustively any field of the law.

It will be obvious that it is no easy task to correlate statutes, rules of court, decisions, forms of practice and the work of other legal scholars in such a way that all of the material which is relevant to a particular point will be marshalled upon it clearly, concisely and without unnecessary cross references. The success with which the author has accomplished this task will be apparent upon inspection of any section of the book.

For the most part, the authors confines himself to a statement of the statutory rules and a summary of the decisions applying them. He is very chary of anything in the nature of criticism of either statute or case. In fact, the only exception which the reviewer particularly noted was Mr. Remick's discussion of Section 11 of the Uniform Principal and Income Act³ which relates to the apportionment of the proceeds of unproductive property. After quoting this section in full, Mr. Remick remarks: "Time alone will clarify its meaning and define its limitations."⁴ This, surely, is a masterpiece of understatement because many trustees, struggling with various sections of this ambitious statute, have wished that they could invoke Judge Penrose's classic statement of the inherent limitations upon legislative power:⁵

"There are some things, however, beyond the power of the legislature, even irrespective of constitutional limitations. It cannot change the laws of nature, the properties of numbers, or the meaning of words. It cannot modify an axiom. Water will not boil at 110° nor freeze at 52°; twelve times twelve will always be one hundred and forty-four; *insufficient* cannot be made the equivalent of *sufficient*; *bad* the equivalent of *good*; and things which are not equal to the same thing will not, in spite of the most solemn enactment to the contrary, be equal to each other."

However, it is enough for present purposes to say that the law grows and changes year by year even in the relatively restricted field of Orphans' Court practice, as new statutes and new decisions take their places as parts

3. Act of May 3, 1945, P. L. 416, 20 P. S. § 3471 ff.

4. 1 Remick, *Pennsylvania Orphans' Court Practice* (4th ed. 1946) § 241, page 686, n. 85b.

5. In the Matter of The American Banking and Trust Co., 4 Pa. D. R. 757, 761 (O. C. Phila. 1895).

of a mosaic which will never be finished. Therefore, this reviewer is tempted to suggest that the present edition of Mr. Remick's book is misnamed. Instead of being called merely the Fourth Edition, it could well have been called the definitive or permanent edition because Mr. Remick and his publishers have wisely adopted the loose-leaf form or, more properly speaking, volumes having detachable pages. No matter what legislative or other changes the future may hold, sections, chapters or even whole divisions of the book may be revised or rewritten whenever and as often as it may become desirable to do so. New material may be substituted for old with ease and economy. No better insurance against obsolescence can be provided.

Robert Brigham.†

SOVIET LEGAL THEORY. ITS SOCIAL BACKGROUND AND DEVELOPMENT.
By Rudolph Schlesinger. Oxford University Press, New York, 1945.
Pp. viii, 299. \$5.00.

Can law exist in a socialist economy, and, if so, what is its function? This is the central question around which this thoughtful study has been written. Experience in his native land, Austria, and in his adopted land, England, has made it clear to Dr. Schlesinger that this question is no longer academic for the west. The U. S. S. R. was selected by Dr. Schlesinger for study because it represented an opportunity to examine in the laboratory of practical experience the possible answers to the question. The limitations upon one who would derive conclusions as to socialism from the Soviet experience are recognized by Dr. Schlesinger. He points out that it is hard to determine how much of the Soviet experience is the reflection of the Russian heritage or the exigencies of anticipation and ultimate participation in war, and how much is the result of having embarked upon a socialist economy.

No student of legal theory who is interested in the interaction of events and ideas can afford to miss this book. He will be even more interested if he approaches it with curiosity as to what the progress of socialism in Europe means to the preservation of the freedoms which, with all their imperfections, have come to be associated with the best in the common law. England and some members of the British Commonwealth of Nations have already embarked upon economies motivated by the desire to achieve socialism. The tough traditions of the common law's defense of human rights are faced with the exigencies of planning. Will the traditions give way, or can the Anglo-American lawyer look for the preservation of political values associated with the common law? Dr. Schlesinger believes that he can.

Support for the conclusion that the protection of political values dear to minorities need not vanish with the advent of economic planning is found by Dr. Schlesinger in his study of the period of the New Economic Policy in post-revolutionary Russia. He has found that this period has been referred to by many Soviet writers as a retreat from the principles of War Communism, which prevailed from 1917 to 1921. His research leads him to doubt whether these Soviet writers are in accord with Lenin's real

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thoughts on the subject. He believes that Lenin saw the N. E. P. as a desirable progression beyond the stage when the first task was to smash the existing régime and all that it stood for, rather than as a retreat. He notes that the public, both inside and outside of Russia, and particularly those who hoped for the collapse of the Bolshevik leadership, thought that the N. E. P. was to be praised as a beginning of a return to capitalism. He finds that because of this association of the N. E. P. with capitalism and consideration of it as a retreat from revolutionary principles, its continuation was impaired. He believes that there would have been a possibility of continuing the limited measure of private enterprise economy, represented by N. E. P., while building a new economic base of socialism, had it not been for these misconceptions. In such a society where socialism was assured by state ownership of the major means of production, while private ownership of the small scale means of production was permitted under controls, he believes that the desirable features of socialism and private enterprise could have been blended. One receives the impression that Dr. Schlesinger would favor such an approach if he were asked to formulate the program for a socialist government in the west. He certainly feels that the discarding of it in the east was a mistake. On this issue he will be sharply criticized by Soviet writers.

Examination of the Soviet experience with law, as Dr. Schlesinger recounts it, presents an original opportunity to lawyers of the common law world. Previous books in English on Soviet law have concentrated on one or another single aspect, such as criminal law, legal procedure, housing law or the Soviet views on international law. Dr. Schlesinger's volume is the first to present the general scheme of Soviet law to English-reading lawyers. He says at the outset that he plans to deal with fundamental theoretical problems rather than with the details or substance of Soviet law. He adheres to his program and leaves the methodical treatment of details to those who will follow him. Nevertheless, there is much detail in this volume. Numerous laws are cited, and considerable economic material is presented to explain why legal programs were forced to change with the march of events. It is to be regretted that only a few court decisions are referred to, and that even these few omit presentation of facts. It is case law which interests the common law lawyer. He can be told that in civil law countries, of which the Soviet Union is one, court decisions play no part comparable to their position in the common law world. Nevertheless, he likes cases before him when he studies any system of law, particularly a foreign one. He is wary of statutes and text writers until he has tested what they say in the courts. He wants to see how problems on which he has worked in his office will be treated abroad. Soviet decisions are abstracted and published in Soviet journals. Use of them might have made this volume more palatable to practitioners, who may have trouble following the theoretical arguments presented in this volume.

The Marxist theory of the "withering away" of the state is extensively treated by Dr. Schlesinger. He reaches the conclusion that, as a result of the Soviet experience, any other socialist society may leave aside all dependent ideologies developed by Marx and Engels on the eventual "withering away" of the state. He believes that even Soviet jurists will put it far into the background of their thinking as a theory to which attention need not be given in the foreseeable future. He explains how this negation of Engels' expectations came about by rehearsing the experience of E. B. Pashukanis in the late 1920's and early 1930's before his ouster in 1937.

Pashukanis was one of the first to attempt a Marxist criticism of basic juridical conceptions. He developed the theory that law arose in the market place, and reached its most advanced stage under the bourgeoisie. For this reason he believed law to be essentially bourgeois in character and subject to a "withering" process as society advanced toward socialism. Dr. Schlesinger calls Pashukanis' theory the "commodity exchange conception of law" and shows how it leads to distortions of a character which could not be permitted by those who had to administer the Soviet state. In this review of Pashukanis' theories and the practical results of them, Dr. Schlesinger has helped those who would understand this most important but least understood dispute among Soviet jurists.

Dr. Schlesinger finds Soviet law at the end of its revolutionary period, following on the resolution of the conflict of opinion between the two schools of thought on the method in which the state should "wither away." This is not to say that Dr. Schlesinger believes that the revolution has been lost or that the U. S. S. R. is adopting a system of law which is bourgeois or capitalist in substance. On the contrary, Dr. Schlesinger means that the new economic system has been thoroughly established. The nation can now be expected to settle down to the development of that system, rather than to expand its major resources solely upon its preservation.

Facts support Dr. Schlesinger in his conclusion that Soviet jurists are on the brink of working out theories and codes to introduce a new era. Post-war Soviet legal periodicals have been filled with news of the movement afoot, which has already resulted in the assignment of many research assistants in the Institute of Law of the Academy of Sciences to prepare the way. The Supreme Court, as Dr. Schlesinger correctly points out, has been presenting evidence of an increasing concern for the individual and the proper application of law so as to protect him from unjust abuse. It is clear that the turbulent years are passing. Dr. Schlesinger's book is an important chronicle of those years, and an introduction to the events which are certainly soon to appear in the field of Soviet law.

If one may be pardoned a few words of criticism, it might be placed on two points. The first relates to the running discussion, often in a few words, of great issues which have torn Soviet theorists asunder, such as the discussion of the role of labor unions in a socialist economy. One would have had to know a good deal about this discussion to appreciate the comments. The same holds true for several other issues and emphasizes the point that this book is not for beginners. Another point of criticism relates to the bibliography. It is understood that the British reader is greatly limited because of the incendiary bomb fire in the legal section of the British Museum, and because of the fact that the English have never collected large materials on other systems of law in the manner characteristic of American libraries. There are numerous Soviet volumes available in American libraries, and American Law Reviews carry a large volume of articles on Soviet law. No mention of this latter source is made, possibly for the reason that American Law Reviews rarely reach England. The American reader who would familiarize himself with this material may do so through an extensive bibliography published by the American Foreign Law Association. He will soon also be able to read translations of many of the basic texts referred to by Dr. Schlesinger. They are to be translated and published by the American Council of Learned Societies and the Association of American Law Schools.

The time is at hand when common law lawyers can easily familiarize themselves with Soviet law. Dr. Schlesinger's book stands on the threshold and should be read by those who plan to follow Soviet legal developments in a serious manner during the years immediately ahead.

John N. Hazard.†

THE CONCENTRATION OF ECONOMIC POWER. By David Lynch. Columbia University Press, New York, 1946. Pp. 423. Price: \$5.50.

The widespread apprehension of impending disaster on the economic front gives extraordinary timeliness to Mr. Lynch's review of the work of the Temporary National Economic Committee. As our epileptic economy staggers crazily from crisis to catastrophe, it becomes ever more important to diagnose clearly and to prescribe, not from the witchdoctor's pharmacopoeia or handbooks of political nostrums, but from honest and penetrating self-analysis. This was the task of the TNEC, which President Roosevelt brought into being in the years between the Great Depression and World War II. It was the greatest governmental inquiry ever conducted in this country, in scope and expenditure of money and effort. Through two years and 18,000 pages of printed testimony the Committee probed in the wreckage of our civic structure for the causes of collapse. One by one the rulers of the market place were summoned to describe their principalities: investment banking, insurance, utility holding companies, steel, copper, petroleum, glass, dairy products, building materials—hardly any significant field was overlooked. Came also Government experts and university professors with analysis and plan. Committee consultants prepared a monumental series of monographs, which, incidentally, deserve rather more note than Mr. Lynch accorded them. At last in March, 1941, issued the Final Report and Recommendation.

The range of the Committee's conclusions can be gauged from a few examples: it endorsed slum clearance and standardization of insurance policies, denounced "fair trade" laws and the theory of "mature economy." But monopoly, the excessive concentration of economic power, was the principal target; perhaps, as Mr. Lynch occasionally suggests, because the dominant members of the Committee had selected this objective from the beginning. Certain it is that the Committee's disclosures led to vast expansion in the activities of the Antitrust Division of the Department of Justice, which was represented on the Committee by dynamic Assistant Attorney-General Thurman Arnold. The Committee's influence, however, continues to be felt not only in the docket of pending Sherman Act cases but also in legislation on atomic energy, patents, full employment, government finance and trade barriers. Administrative policy in the allocation of government contracts and encouragement given to small business also reflect its work. Far-sighted makers of business policy, too, have heeded in varying degree the monition of this landmark investigation.

Mr. Lynch has ably performed an essential task in compressing into one volume the overwhelming mass of TNEC materials. His book is a convenient summary, but it is more than that. It is intelligent evaluation, expressed not alone in the chapter formally devoted to "An Appraisal" but throughout, wherever the significance of testimony or proposal requires critical judgment and economic training. Nor is it the least of

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its virtues that the story is told eloquently with a feeling for the drama of political and legal controversy. Lawyers, who are increasingly occupied with inquisitorial proceedings, will find useful Mr. Lynch's exposition of the background and methods of TNEC and his summary of the principal legislative investigations of the past. His chapter on "Exploiting the Arm of the Law," might well be required reading in law schools, for its illustrations of a fundamental skill of the profession, the adaptation to clients' purposes of indifferent or hostile principles of public policy. It is fascinating to study the technique by which laws for petroleum conservation or pasteurization of milk can be converted into instruments of price control and industrial regimentation. This technique must be known and understood to be effectively practiced and combated.

When the time comes for a new TNEC, or perhaps a permanent agency for exploring government-industrial problems, the creators of this agency will find in Mr. Lynch's book a stimulating introduction, an informed guide and a sympathetic warning that investigations as well as economies have their weaknesses.

Louis B. Schwartz.†

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