

# VITAL FORCES, SELVES, AND CONSENT: RESPONDING TO A PHILOSOPHICAL LOVE LETTER

*Ann CAHILL*<sup>1</sup>

*Elon University, North Carolina*

## 1. INTRODUCTION

I will admit that, as someone who is most decidedly not a Kant scholar, I'm a bit intimidated by the task that is set before me. Helga Varden's book is many things: a tour de force, a love letter, a dive into Kant's writings that somehow manages to be equally broad and deep, and, in the end, a distinctly philosophical answer to a kind of distinctly philosophical dare. Actually, it's an answer to a double dare. I imagine the discipline of philosophy looking at Varden and saying, hey, I dare you to come up with a comprehensive theory of sex, love, and gender. That in and of itself would have most of us quaking in our boots. But no, that's not enough, the dare is doubled: philosophy adds, I dare you to ground it in the thinking of the figure who is most often trotted out to exemplify just how bad (meaning sexist, heterosexist, as well as utterly distanced from, and seemingly devoid of any understanding of, actual lived experiences) philosophical theories of sex, love, and gender can be.

This is an absolutely foolish endeavor to take up. And yet, here we are. And here is this book, which somehow manages to be both meticulous and sprawling, audacious and careful, passionate in equal measure about the contours of a flourishing human life, including what it means to love each other well in our most intimate of relationships, and the political structures that we can, if we are brave and lucky enough, opt to construct together. I get dizzy thinking about the sheer scope of this book. Varden doesn't, though. She proceeds apace, without panic or rhetorical flourishes, but with a palpable commitment to the questions that drive her, and to the stakes involved as she answers them.

I am intimidated, then, by both the scope of the book and the scholarly expertise, the deep and fine-grained familiarity with both Kant's own writings and the enormous secondary literature that they have inspired, that writing the book required. That expertise is particularly daunting for someone like me, whose work has taken up Kant (or Kantianism) in precisely the ways that Helga's book challenges. Particularly, but not only, in my work on objectification

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(2011), I have argued against what I have characterized as a distinctly Kantian model of the self, an Enlightenment model that, in my reading, overly privileges rationality with regard to moral worth and dignity, and either marginalizes or vilifies the material aspects of human existence (that is, embodiment) as either peripheral or contrary to those traits that endow the human being with value: reason, independence, autonomy. As Varden writes:

...Kant's moral philosophy is commonly viewed as advocating a moral ideal of a rather disembodied kind. To many, Kant's ideal moral agent is the independent, hyper-reflective man who constantly strives to act only on universalizable maxims, and only from the motivation of duty. Kant's practical philosophy is therefore typically deemed a particularly poor resource for understanding issues concerning human embodiment and dependency in general and for understanding the condition of woman and sexual or gendered minorities in particular. (2020, 19-20)

As I was writing a book that took on Kantianism in exactly this way, I gave presentations on my analysis at several conferences where Varden was in attendance. She would be in the back of the room, shaking her head in disagreement – but in a way that made more conversation not just possible, but appealing and invigorating.

Now I am certainly not alone in representing Kant or Kantianism in these ways, which is precisely why Varden has set out, in this book, to respond to such criticisms. Without denying the significant mistakes that Kant made, particularly in his claims about women and the ethical need for marriage to rescue sexual interactions from their seemingly hopelessly unethical nature, Varden aims to convince skeptics like me that Kant's theory, understood in a comprehensive way, actually has much to contribute to our understanding of embodied phenomena such as sexuality and gender, including on matters regarding marriage and sexual assault. Central to her argument is that correctly accounting for the entirety of Kant's theory of human nature, particularly his account of animality as a necessary (and, in Varden's reading, not regrettable or problematic) element of human nature, can answer the overly reductive and sometimes dismissive responses to Kant's moral theory. What is needed, Varden argues, is a more robust and comprehensive understanding of Kant's moral anthropology; and while such an understanding does not rescue Kant from accusations of sexism and heteronormativity (accusations that Varden agrees with), it does, in Varden's reading, provides the tools to correct Kant's egregious mistakes. That same moral anthropology casts Kant's legal and political theories in a distinctly new light: "The human self is no longer a detached, rational subject that is prior to all it attaches to, and relations of care are no longer understood on the model of autonomous agents. Rather, as we have seen, care relations require their own legal analysis (as status relations) and the robustly just state seeks to build institutions that enable caregivers, among others, to have not just safe places (shelters) to go with their families, but homes" (321).

In responding to Varden's analysis, I am refraining from taking up her close readings of Kant's texts, and in particular her insistence that reclaiming the importance of Kant's moral anthropology provides the groundwork necessary for establishing his theories as the foundation of a new, comprehensive theory of sex and love that can account for the centrality of gendered and sexual identities to lived experiences and acknowledge the moral acceptability of gendered and sexual identities that have been unjustly marginalized in contemporary

Western social and political spaces. Those aspects of her arguments will need to be scrutinized by philosophers with far more expertise in Kant's works than I currently have or intend on developing in the future. Instead, I will respond as a feminist philosopher strongly influenced by the postmodern tradition, and as a philosopher with an abiding interest in the philosophical questions surrounding the matter of sexual assault. As Varden makes clear in the preface to the work (2020, xi-xii), her analyses are both influenced by and directed toward Kantian and non-Kantian scholars alike, and as such, they are open to a variety of philosophical responses, not only those generated by a deep familiarity with the extensive primary and secondary literature that constitutes Kant scholarship. My philosophical commitments lead me to focus here on two distinct points: first, a consideration of one of the arguments she makes against postmodern conceptualizations of sex, gender, and identity; and second, a consideration of the role of consent in her theory and the limitations of Kantian idealism with regard to legal responses to sexual assault.

## 2. SOCIAL CONSTRUCTION, POSTMODERNISM, AND THE EXPERIENCE OF THE DEEP-SEATED SELF

One of the central arguments that Varden provides in favor of a Kantian approach to sex, love, and gender is that it offers a richer and more accurate portrayal than the three central alternatives that she describes: the deterministic approach of science, the choice-based approach of existentialism, and the rudderless and ethically nihilistic approach of postmodernism.

One particularly appealing aspect of Kant's philosophy, I argue in this book, results from the way in which it can engage the philosophical ideas and take on the philosophical challenges posed by these other theories, according to which sex, love, and gender can be understood in terms of choices (existentialist freedom), violence (postmodernist destructive forces), determinism (scientific causality), or virtuous embodied, social being (virtue/capability theory)... Central to my view is that a philosophical theory of sex, love, and gender must be founded on both a more complex account of human nature and a more complex philosophical system than any of the first three types of theory have. (7)

I am most interested in the ways in which Varden has taken up the existentialist focus on choice (which she sometimes links to Butler's notions of performativity) and the association of postmodernism with a lack of both hope and ethical guidance. On the first point, Helga emphasizes that a notion of assumedly limitless free choice about one's sexuality or gender identity – as if what we *are* is, in some crucial way, primarily or even only up to us as choice-making agents – denies the lived experience of LGBTQIA folks. And the same aspect of that lived experience that makes such philosophical privileging of choice ring false also contradicts the postmodern notion of identity as constructed, particularly by discursive power structures. For Helga, framing those aspects of identity that are related to sex and gender – particularly those that have to do with sexual orientation and gender identity – as products of either individual action or the social imposition of categories does violence to the first-hand experience of those identities:

Thus, neither the perspective of deterministic science, nor that of choice nor that of language (construction) goes all the way when it comes to sex, love, and gender. There is something in us—a direction or structure to our embodied forcefulness—that we are in tune with, first-personally, when we are getting all of this basically right about ourselves. (128)

I want to challenge some of Varden's portrayals of postmodern approaches to sex and gender here. And in doing so, I realize that I may not, in the end, offer an analysis that is going to be ultimately convincing to a Kantian. Still, in offering my analysis I hope to provide a bit more nuance and depth to the differences between a Kantian and a postmodern approach.

Varden is quite correct that postmodern theory takes a dim view of sexual identities as a stable, pre-political, pre-social features of identity. But to say that such identities are produced is not to say that they are not real, nor is it to say that they are not experienced as deep-seated, even fundamental aspects of one's identity. (I am going to sidestep the question of whether this construction can be reduced to violence or power dynamics; let me just say that it is a mistake, in my view, to understand all power as violence.) This, in my view, is a common misunderstanding of various theories of social construction – as if to describe something as socially constructed is to deny its reality. Importantly, this misunderstanding can be implicated in seriously harmful practices; for example, interpreting some instantiations of critical race theory as including claims that race isn't "real" can be weaponized by: 1) rejecting any account of racialized injustice (if race isn't "real," we shouldn't engage in any conversations that take it seriously); and 2) mandating that any ethics worth its salt must be race-neutral (because to engage in any ethics that endows race with significance is to take something that isn't real as if it is). Obviously, either of these approaches would lead to masking, not addressing or rectifying, racial inequality.

But here's the thing: to claim that race is a socially and political produced artifact is not, in fact, to deny its reality. It is, rather, to describe its reality, to name its nature, and to name it in a way that is not only accurate, but well-suited to developing effective analyses of racism that are both informed by and capable of informing anti-racist political action. In other words: understanding race as a political and social artifact, rather than a pre-political aspect of one's identity, only undermines its reality if one reserves the honor of "reality" to that which exists either prior to or independently of social and political living and contexts.

More to the point, understanding race as a social and political construction in no way contradicts the fact that, say, Black people experience their Blackness as a central or crucial part of their identity, as something without which they would not be the same person. In other words, the ontological point about race – that it is a social category constructed in particular ways for particular purposes, and that it cannot be conceptualized without reference to social, political, and historical forces, such that any attempt to define it as a prepolitical or presocial phenomenon is misguided at best and damaging at worst – is not contradicted by first-hand experiences of racial identities as central or foundational. That one experiences one's identity as fundamentally racialized (such that the I that I am is indelibly shaped by my racial identity) does not place race outside of social and political forces.

Now it is dangerous, as we all know, to move too quickly from claims about race to claims about sex, for at least two main reasons: one, doing so denies the fundamental ways in which they two categories intersect (such that the particular ways in which racialization functions is strongly influenced by sex, and vice versa), and two, doing so lends itself to ignoring specific positionalities (the title of an early and central anthology in Black Women's Studies captures this idea aptly: *All the Blacks are Men, All the Women are White, But Some of Us are Brave* [Hull, Scott and Smith, 1982]). But for the very limited purposes that I am referring to the categories here, a comparison is at least potentially productive. That is, working through the relevance of the social construction theory of race, and noting that such a theory does not contradict a person's strong identification with their race, such that they experience themselves as ineluctably and unmistakably Black, might allow us to consider that the postmodern deconstruction of gender and sexual identity may not necessarily conflict with a first-person experience of one's sexual orientation, say, as robust or even given.

I have not set out in these brief remarks to provide a detailed argument for the social construction of sexual and gendered identities; there is not time (and I'm not as brave as Helga). So far, I have sought to question Helga's claim that the postmodern approach cannot account for, or is brought into question by, a first-person experience of one's gendered, sexed, or sexual being as something that is so fundamental as to appear natural, in the sense of existing prior to social and political structures. That being said, I do think that there is one particular way in which Helga's approach is compelling. Importantly, even as she adopts a model of sexed, sexual, and gender identities that serves as a kind of ontological undertow that one can either struggle against – to one's detriment – or learn to move with, and even use to power one's flourishing, Varden rejects essentialist notions of sexual or gender identity. In Helga's terms, "there is something to get right about one's sexual or gender identity and sexual orientation and in an irreducible sense, only each individual can explore this" (125). And further:

What we are exploring is not, in other words, our bodies qua spatio-temporal objects to be studied scientifically or qua objects we can choose to do sexual things with. Rather, we are exploring partially unreflective aspects of ourselves as having an embodied, animalistic, aesthetically responsive forcefulness. We are tending not only to the fact that there is a certain direction to our sexual forcefulness, but also to the nature of it—how it feels when we imaginatively develop our embodied forcefulness (our vital force) in enhancing our productive sexual and affectionately loving ways, when engaging it feels comfortable, safe, good, and aesthetically deeply pleasing as who we are, from a first-personal, subjective, and unreflective point of view. We are paying attention also to ways in which we respond and others complement and affirm us through their own sexual and affectionately loving forcefulness. And when we do this well, as who we are, we seek and are invited to affirm one another in playful, aesthetic, sexual, erotic, affectionately loving, and respectful—and so personally empowering—ways. (128)

Now, again, I am skeptical about the givenness of this vital force. But putting that point aside, what I appreciate in this account is something that on the whole I have found missing in dominant accounts of sexuality as a lived experience, which is a recognition of the importance of, and an account of, sexual experimentation. Varden is on to something here about the ways in which sexual becoming entails not a pre-existing knowledge of oneself, and who one is, but an openness to figuring out what forwards our own flourishing. And this openness by definition entails risk: not only of harm, although that too, but of sexual encounters that do not forward

our flourishing, that leave a bad taste in our mouth (!), that run somehow counter to our sexual grain, whether that grain be innate or developed over time or a combination of the two. The sheer prevalence of the phenomenon of sexual assault, as well as the social and political failure to take it seriously and to take significant steps to prevent it, have combined, I fear, to compel feminist philosophers of sex and love to neglect some other important aspects of sexual subjectivity and becoming, including what I'm referring to here as sexual experimentation. And surely such experimentation can be extended beyond the sexual, to encompass experimenting with both expressing/embodying/presenting different gender identities and with expressing/embodying/presenting gender identities in different ways.

### 3. THE PROBLEM OF CONSENT

I turn now to my second point. The kind of complexities that this model of sexual experimentation and exploration entail are precisely the kinds of complexities that consent theory is, by and large, incapable of addressing with regard to sexual ethics. The feminist literature on the weaknesses of consent theory is extensive (see Pateman 1980; Cahill 2001, 167-97; West 2009; Kukla 2018; and Ichikawa 2020; feminists are concerned, for example, that a focus on consent replicates sexist and heterosexist models of sexual interaction, insofar as dominant discourses about sexuality focus almost exclusively on the consent of women, and thus assume that men are the instigators of sexual interactions). And so it is striking that Helga's account of what kinds of sexual actions should be illegal relies heavily, indeed, almost exclusively, on the presence or absence of authorized consent. Now it's important that Helga's comments on consent are explicitly and consistently limited to the legal realm; she is not arguing that receiving authorized consent is sufficient to define ethical sex, or even sex that is good for us as sexual beings. Consent comes primarily into play when one person has violated another person's rights in a way that justifies the involvement of the state; we are in the realm of right, not virtue. Yet in this realm, it seems that consent reigns supreme; as Helga puts it, "According to this philosophical position, only a lack of authorizing consent can make a sexual deed wrong in the legal sense, or, conversely, authorizing consent is constitutive of any rightful sexual interaction" (237).

My question to Helga is this: might this not be an example of the ways in which a Kantian idealism is simply not up to the task of representing the lived reality of sexual violence within the legal realm (I am setting aside for the moment the question of whether a Kantian approach is up to the task of representing the lived reality of sexual violence within the ethical realm, although I think some fairly similar questions could be raised along those lines). To adopt an approach similar to that of Catharine MacKinnon (1991), it seems that the focus on the presence or absence of consent in the law ignores the ways in which structural inequality based on gender has already corrupted the possibilities that such a focus requires: not only the degree to which consent can be freely given in a social and political context where sexual coercion is the rule, not the exception, and where so much of women's safety, social status, and economic well-being rests on their conformity to oppressive gender norms which include the eroticization of their own submission and degradation. But also – and this point, I think,



gets far too little airtime in the many critiques of consent as a legal yardstick – to the degree in which women's consent is likely to be taken up, to be taken seriously, to have a significant impact on the kind of sexual interactions that may occur.<sup>2</sup>

If we live in a world, as I believe we do, where hegemonic heterosexuality as a social and political phenomenon is not in fact shaped by an investment in consent (that is, a lived, embodied, visceral sense that to have non-consensual sex is abhorrent), it stands to reason that the sexual subjects that take shape in this context are ill-equipped to figure out how and when to give consent, and how to receive both consent and the refusal or withdrawal of consent. Structural sexual inequality entails, and perhaps even requires, a lack of fluency about consent (and even about desire). And if we, as social and sexual beings, are not well versed in the complexities of consent discourse, then using consent as the main legal yardstick by which we collectively adjudicate instances of sexual violence is going to fail.

An analogy may be of us to grasp the enormity of the problem. Let's pretend that instead of communicating desires and willingness regarding sexual interactions verbally, we relied on generating visual representations (say, drawings) of our internal states, desires, understandings, etc., which we would then share with our partner(s). Our partner(s) would, in turn, generate a visual representation of their own, and as we interpreted each other's drawings, we would develop a shared understanding of what was sexually possible, desired, and welcome. Should the interaction go wrong in some way, whether it involved an honest miscommunication or a willful failure to either draw well or interpret well, and should the legal system be brought to bear to adjudicate the matter, the relevant drawings could be produced as evidence.

To make the analogy work, however, we need to add two crucial points: the surrounding culture does not teach sexual subjects the skills needed to generate effective drawings or to interpret those drawings in a careful and meaningful way. All instruction in drawing ceases in the early years of elementary school, and the only implicit instruction emanates from a variety of media that represents an incredibly narrow scope of simplistic drawings and interpretive practices that are not only sophomoric and woefully misguided, but designed to justify any interpretation that persons in position of power may choose to attach to any given drawing. The drawings are, therefore, largely clumsy, even childish; when asked to represent their sexual desires, preferences, and interests via a graphic representation, sexual subjects respond with hesitation, uncertainty, and ineptitude. And that uncertainty isn't limited to an inability to wield a pencil or pen to create an image – since the sexual subject has not been encouraged to develop the habit of identifying one's own desires, preferences, and interests, they may well be uncertain as to what they actually want to represent on the page. The capacity for interpretation is similarly undeveloped, and so not only may sexual subjects be genuinely confused by the representations that their partner(s) may offer, but they may also be ill-prepared to recognize faulty or hostile acts of misinterpretation. The reliance on drawings in order to determine whether one sexual partner knowingly assaulted another, while seemingly fair and neutral, is in fact unjustified, because sexual subjects are not well versed in the complex tasks of drawing and interpreting. More to the point: they're not well versed in those tasks because actual, meaningful communication about sexual interactions is not in fact valued by the culture in

which those subjects are immersed. What is valued is the sexual domination of some of its members over others, which the reliance on drawings mystifies and masks.

Relying on any form of consent (verbal or nonverbal, explicit or implicit) in contemporary Western culture seems to me quite similar to the reliance on graphic images in the imagined case above, in that doing so fails to capture the kinds of sexual subjects that hegemonic heterosexuality in particular tends to produce, and the experiences those sexual subjects are likely to have. To rely on consent in this way, in a cultural context where there is no collective investment in developing sexual subjects capable of figuring out what they want, sharing their desires with another, and having at least a reasonable expectation that their desires matter, results in precisely the situation we find ourselves now in and have been in for some time: the vast majority of sexual assaults going unreported, uninvestigated, and unrecognized by courts of law.

This line of questioning reveals, I think, what may be at the heart of some of philosophical disagreements that I have with Varden. From my more postmodern-inflected view, sexuality as a lived experience in the contemporary Western context is indelibly marked by long-standing patterns of injustice, patterns that find their way into our bodily habits, preferences, sensations, and aspirations. Such patterns are not unchecked by our own agency, and are taken up in a multitude of ways; they can be challenged, redirected, even (at least partially, and perhaps eventually, completely) dismantled. And we can certainly imagine and set out to create social worlds where sexuality is experienced more widely as a site of intercorporeal flourishing, and where our capacities for living richly and well with each other are deepened. I think we can aim for such worlds without necessarily adopting a universal and thus ideal account of what the sexual human being is or always should be; moreover, and this my point, importing such a universal and ideal account into our legal systems as a cornerstone of our collective response to instances of sexual assault, as I think the privileging of consent does, hampers our ability to respond effectively to the phenomenon of sexual assault as we encounter it in the many spheres of our social lives.

#### 4. FURTHER QUESTIONS, AND APPRECIATION

I have more questions for Varden, although they are less developed than the two points I have focused my remarks on here. I wonder about whether a Kantian model has enough room for a kind of robust alterity – something that moves beyond the kind of dependency upon care that her notion of human embodiment requires, and that understands the self as always and already in relation to the other, and as irreducible beyond relations. Even more tentatively, I wonder if there is any kind of analogy (a weak one, of course!) to be made between philosophical orientation and sexual orientation; whether we can understand how we, as philosophers, gravitate toward certain ways of thinking not primarily as a result of dispassionate, rational processes of comparison, but in response to our own intellectual and ethical undertows. I made a brief reference earlier in my remarks that I consider this book, among other things, to be a love letter. And as Varden knows, one of the things that has always moved me deeply about her



work is by how obviously, how palpably, it is motivated by love: of these ideas, of what they might be able to accomplish, of what possibilities they open up, of what experiences they can help us to understand better. While I have to admit that I don't share her love of Kant, that love did create an entry for me to engage with his ideas in a fresh, compelling, and invigorating way. And so I remain deeply grateful for the way Varden models for all of us a way of being a philosopher that is guided by the twin lodestars of passion and integrity, a way of being that this book exemplifies beautifully.

**ABSTRACT:** In this response to Helga Varden's *Sex, Love, and Gender: A Kantian Theory*, I challenge Varden's characterization of postmodern approaches to sexual orientation and identity, arguing that it is mistaken to assume an opposition between social constructionism and reality, or social constructionism and an experience of deep-seated identity. I also question whether, once one takes into account the effects of hegemonic heterosexuality, consent can function effectively in the legal realm to identify acts of sexual assault and hold perpetrators responsible. Throughout my discussion, I applaud Varden's loving approach toward Kant's theories.

**KEYWORDS:** sex, gender, feminism, consent, postmodernism, the self, gender inequality, sexual assault

## REFERENCES

- Cahill, Ann J (2011) *Overcoming Objectification: A Carnal Ethics*. New York and London: Routledge.
- (2001) *Rethinking Rape*. Ithaca, NY: Cornell University Press.
- Hull, Gloria T., Patricia Bell Scott, and Barbara Smith (eds) (1982) *All the Blacks are Men, All the Women are White, But Some of Us are Brave*. Boston: Unwin Hyman.
- Ichikawa, Jonathan Jenkins (2020) "Presupposition and Consent". *Feminist Philosophy Quarterly* 6(4), Article 4. Available online: <https://ojs.lib.uwo.ca/index.php/fpq/article/view/8302/11032>.
- Kukla, Rebecca (2018) "That's What She Said: The Language of Sexual Negotiation". *Ethics*, 129 (1), pp. 70-97.
- MacKinnon, Catharine A (1981) *Toward a Feminist Theory of the State*. Boston: Harvard University Press.
- Pateman, Carole (1980) "Women and Consent". *Political Theory*, 8 (2), pp. 149-168.
- Taylor, Chloë (2018) "Anti-Carceral Feminism and Sexual Assault—A Defense". *Social Philosophy Today*, 34, pp. 29-49.
- Terwiel, Anna (2020) "What Is Carceral Feminism?" *Political Theory*, 48 (4), pp. 421-442.
- Varden, Helga (2020) *Sex, Love, and Gender: A Kantian Theory*. Oxford: Oxford University Press.
- West, Robin (2009) "Sex, Law, and Consent". In Miller and Wertheimer (eds), *The Ethics of Consent: Theory and Practice* (Oxford: Oxford University Press), pp. 221-250.

## NOTES

<sup>1</sup> Ann J. Cahill is professor of philosophy at Elon University, NC. Her research interests lie at the intersection of feminist philosophy and philosophy of the body, and are largely grounded in the continental tradition. *Rethinking Rape* (2001) argued that conceptualizing sexual assault as an embodied experience allowed for a better understanding of its harms and social and political meanings; *Overcoming Objectification: A Carnal Ethics* (2011) revisited a foundational concept in feminist theory, ultimately concluding that deploying the concept of objectification to analyze the ethical questions inherent in social phenomena such as sexual assault, sex work, and representation of femininely gendered bodies was both philosophically and politically problematic. Her most recent book, *Sounding Bodies: Identity, Injustice, and the Voice* (2021) is co-authored with Christine Hamel, and explores the ethical, political, and social meanings of voice as human generated sound. In addition to her book-length works, she has published journal articles and book chapters addressing topics such as miscarriage, beautification, pedagogy, and inequality in academia. Cahill holds a PhD in Philosophy from the State University of New York at Stony Brook.

<sup>2</sup> I do not address here the important matter of carceral feminism, that is, the assumption that judicial and criminal systems are the appropriate social site to address matters of sexual assault. As many critics have noted, relying on carceral systems to ameliorate systemic injustices is in many ways a contradiction in terms (Taylor 2018, Terwiel 2020).

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