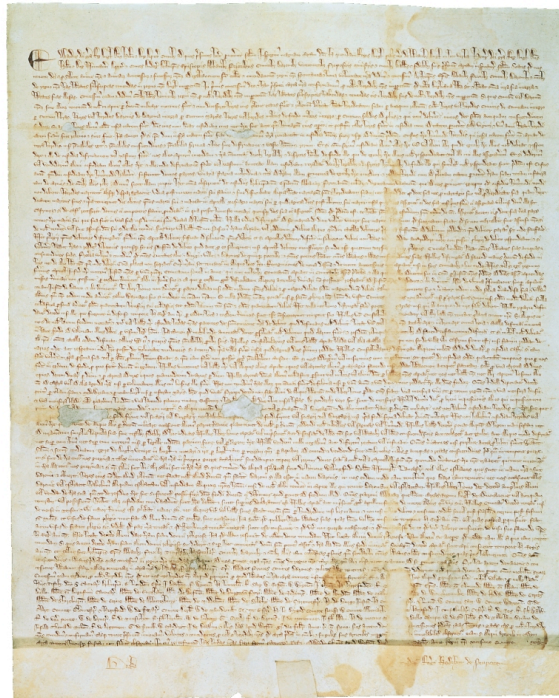


THE BEST OF THE OLL #41

“Magna Carta” (The Great Charter) (1215)

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“No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in anyway destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.”



Magna Carta (1215)

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The Best of Bastiat <oll.libertyfund.org/title/2477>

[June, 2013]

Editor's Introduction

The document known as Magna Carta was an agreement signed between King John and his feudal nobles settling disputes they had had about taxation and the exercise of political power which had led to fighting. What makes this document stand out from many others is the language used in the agreement which referred to general principles in many cases rather than to the nitty gritty of the specific disputes at hand. Thus, it could be and was interpreted as a more general and principled limit placed upon the power of both the King and the nobles vis-à-vis each other. This was not the intent of the parties involved in 1215 but a fortunate unintended consequence of history.

The most important clauses in the Charter had to do with the freedom of the Church from monarchical control, limits placed on the power of the King to tax and seize property (the nobles had to agree to tax increases in council and seized property had to be paid for), and that the operations of the state had to proceed upon settled and accepted rules (the embryo of the rule of law). Over time the liberties enumerated in the Charter came to be regarded as the birthright of all Englishmen not just the King, the nobles, and the senior clergy.

These restrictions on the power of the English king were often resisted which prompted resistance from powerful groups within English society. This was especially true during the 17th century when the Stuart monarchy challenged the power of Parliament, leading to the English Revolution and the execution of King Charles I, and during the 18th century when English colonists in North America turned the principles enunciated in the Charter against the power of the British crown. Thus, the first written charter of English legal principles spawned several offspring in the 17th and 18th centuries which had a profound impact on the emergence of constitutional, limited government.

It should be noted that the 800th anniversary of the signing of the Great Charta will be in June 2015.

“Also all those customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them. And for this our grant and gift of these Liberties, and of the others contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free Tenants, and all others of our Kingdom, have given unto us the fifteenth part of all their move-ables. And we have granted to them for us and our heirs, that neither we nor our heirs shall procure or do any thing, whereby the Liberties in this Charter contained shall be infringed or broken.”

Magna Carta (1215, 1225)¹

THE THIRD GREAT CHARTER OF KING HENRY THE THIRD [1]

Granted A.D. 1224–25,

In the Ninth Year of His Reign.

[Translated from the Original, Preserved in the Archives of Durham Cathedral.]

Henry, by the Grace Of God, King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Sheriffs, Governors, Officers, and all Bailiffs, and his faithful subjects, who see this present Charter,

Greeting. Know ye, that in the presence of God, and for the salvation of our own soul, and of the souls of our ancestors, and of our successors, to the exaltation of the Holy Church, and the amendment of our kingdom, that we *spontaneously and of our own free will, do give and grant to the Archbishops, the Bishops, Abbots, Priors, Earls, Barons, and all of our kingdom,*

these under-written liberties to be held in our realm of England for ever.

(I.) In the first place we grant unto God, and by this our present Charter we have confirmed for us, and for our heirs for ever, that the English Church shall be free, and shall have her whole rights and her liberties inviolable. We have also granted to all the free-men of our kingdom, for us and for our heirs for ever, all the under-written liberties to be *had and held* by them and by their heirs, of us and of our heirs.

(II.) If any of our Earls or Barons, or others who hold of us in chief by Military Service, shall die, and at his death his heir shall be of full age, and shall owe a relief, he shall have his inheritance by the ancient relief; that is to say, the heir or heirs of an Earl, a whole Earl's Barony for one hundred pounds: the heir or heirs of a Baron, a whole Barony, for one hundred pounds; the heir or heirs of a Knight, a whole Knight's Fee, for one hundred shillings at the most: and he who owes less, shall give less, according to the ancient customs of fees.

(III.) But if the heir of any such be under age, his Lord shall not have the Wardship of him nor of his land, before he shall have received his homage, and afterward such heir shall be in ward; and when he shall come to age, that is to say, to twenty and one years, he shall have his inheritance without relief and without fine: yet so, that if he be made a Knight, whilst he is under age, his lands shall nevertheless remain in custody of his Lords, until the term aforesaid.

***“In the first place we grant unto God,
and by this our present Charter we
have confirmed for us, and for our
heirs for ever, that the English Church
shall be free, and shall have her whole
rights and her liberties inviolable. We
have also granted to all the free-men of
our kingdom, for us and for our heirs
for ever, all the under-written liberties
to be had and held by them and by their
heirs, of us and of our heirs.”***

(IV.) The warden of the land of such heir who shall be under age, shall not take from the lands of the heir any but reasonable issues, and reasonable customs, and reasonable services, and that without destruction and waste of the men or goods. And if we commit the custody of any such lands to a Sheriff, or to any other person who is bound to us for the issues of them, and he shall make destruction or waste upon the ward-lands, we will recover damages from him, and the lands shall be committed to two lawful and discreet men of the same fee, who shall answer for the issues to us, or to him to whom we have assigned them: and if we shall give or sell to any one the custody of any such lands, and he shall make destruction or waste upon them, he shall lose the custody; and it shall be committed to two lawful and discreet men of the same fee, who shall answer to us in like manner as it is said before.

¹ In *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, edited and with an Introduction by Ellis Sandoz (Indianapolis: Liberty Fund, 2008). Appendix: Text and Translation of Magna Carta. <<http://oll.libertyfund.org/title/2180/201016>>.

(V.) But the warden, as long as he hath the custody of the lands, shall keep up and maintain the houses, parks, warrens, ponds, mills, and other things belonging to them, out of their issues; and shall restore to the heir, when he comes of full age, his whole estate, provided with carriages and all other things at the least as such as he received it. All these things shall be observed in the custodies of vacant Archbishoprics, Bishoprics, Abbies, Priories, Churches, and Dignities, which appertain to us; excepting that these wardships are not to be sold.

(VI.) Heirs shall be married without disparagement.

(VII.) A widow, after the death of her husband, shall immediately, and without difficulty, have her freedom of marriage and her inheritance; nor shall she give any thing for her dower, or for her freedom of marriage, or for her inheritance, which her husband and she held at the day of his death; and she may remain in the principal messuage of her husband, for forty days after husband's death, within which time her dower shall be assigned; unless it shall have been assigned before, or excepting his house shall be a Castle; and if she depart from the Castle, there shall be provided for her a complete house in which she may decently dwell, until her dower shall be assigned to her as aforesaid: and she shall have her reasonable Estover within a common term. And for her dower, shall be assigned to her the third part of all the lands of her husband, which were his during his life, except she were endowed with less at the church door.

No widow shall be distrained to marry herself, whilst she is willing to live without a husband; but yet she shall give security that she will not marry herself, without our consent, if she hold of us, or without the consent of her lord if she hold of another.

(VIII.) We nor our Bailiffs, will not seize any land or rent for any debt, whilst the chattels of the debtor present sufficient for the payment of the debt, and the debtor shall be ready to make satisfaction: nor shall the sureties of the debtor be distrained, whilst the principal debtor is able to pay the debt; and if the principal debtor fail in payment of the debt, not having wherewith to discharge it, or will not discharge it when he is able, then the sureties shall answer for the debt; and if they be willing, they shall have the lands and rents of the debtor, until satisfaction be made to them for the debt which they had before paid for him, unless

the principal debtor can shew himself acquitted thereof against the said sureties.

“The City of London shall have all its ancient liberties, and its free customs, as well by land as by water.

Furthermore, we will and grant that all other Cities, and Burghs, and Towns, and the Barons of the Cinque Ports, and all Ports, should have all their liberties and free customs.”

(IX.) The City of London shall have all its ancient liberties, and its free customs, as well by land as by water.

Furthermore, we will and grant that all other Cities, and Burghs, and Towns, and the Barons of the Cinque Ports, and all Ports, should have all their liberties and free customs.

(X.) None shall be distrained to do more service for a Knight's-Fee, nor for any other free tenement, than what is due from thence.

(XI.) Common Pleas shall not follow our court, but shall be held in any certain place.

(XII.) Trials upon the Writs of Novel Disseisin and of Mort d'Ancestre, shall not be taken but in their proper counties, and in this manner:

We, or our Chief Justiciary, if we should be out of the kingdom, will send Justiciaries into every county, once in the year; who, with the knights of each county, shall hold in the county, the aforesaid assizes.

And those things, which at the coming of the aforesaid Justiciaries being sent to take the said assizes, cannot be determined, shall be ended by them in some other place in their circuit; and those things which for difficulty of some of the articles cannot be determined by them, shall be determined by our Justiciaries of the Bench, and there shall be ended.

(XIII.) Assizes of Last Presentation shall always be taken before our Justiciaries of the Bench, and there shall be determined.

(XIV.) A Free-man shall not be amerced for a small offence, but only according to the degree of the offence; and for a great delinquency, according to the

magnitude of the delinquency, saving his contentment; and a Merchant in the same manner, saving his merchandise, and a villain, if he belong to another, shall be amerced after the same manner, saving to him his Wainage, if he shall fall into our mercy; and none of the aforesaid amerciaments shall be assessed, but by the oath of honest and lawful men of the vicinage.

“A Free-man shall not be amerced for a small offence, but only according to the degree of the offence; and for a great delinquency, according to the magnitude of the delinquency,”

Earls and Barons shall not be amerced but by their Peers, and that only according to the degree of their delinquency.

No Ecclesiastical person shall be amerced according to the quantity of his ecclesiastical benefice, but according to the quantity of his lay-fee, and the extent of his crime.

(XV.) Neither a town nor any person shall be distrained to build bridges or embankments, excepting those which anciently, and of right, are bound to do it.

(XVI.) No embankments shall from henceforth be defended, but such as were in defence in the time of King Henry our grandfather; by the same places, and the same bounds as they were accustomed to be in his time.

(XVII.) No Sheriff, Constable, Coroners, nor other of our Bailiffs, shall hold pleas of our crown.

(XVIII.) If any one holding of us a lay-fee die, and the Sheriff or our Bailiff shall shew our letters-patent of summons concerning the debt, which the defunct owed to us, it shall be lawful for the Sheriff, or for our Bailiff to attach and register all the goods and chattels of the defunct found on that lay-fee, to the amount of that debt by the view of lawful men. So that nothing shall be removed from thence until our debt be paid to us; and the rest shall be left to the executors to fulfil the will of the defunct; and if nothing be owing to us by him, all the chattels shall fall to the defunct, saving to his wife and children their reasonable shares.

(XIX.) No Constable, nor his Bailiff, shall take the corn or other goods of any one, who is not of that town where his Castle is, without instantly paying

money for them, unless he can obtain a respite from the free will of the seller; but if he be of that town wherein the Castle is, he shall give him the price within forty days.

“No Constable, nor his Bailiff, shall take the corn or other goods of any one, who is not of that town where his Castle is, without instantly paying money for them, unless he can obtain a respite from the free will of the seller”

(XX.) No Constable shall distrain any Knight to give him money for Castle-guard, if he be willing to perform it in his own person, or by another able man, if he cannot perform it himself, for a reasonable cause; and if we do lead or send him into the army, he shall be excused from Castle-guard, according to the time that he shall be with us in the army, on account of the fee for which he hath done service in the host.

(XXI.) No Sheriff nor Bailiff of ours, nor of any other person, shall take the horses or carts of any, for the purpose of carriage, without paying according to the rate anciently appointed; that is to say, for a cart with two horses, ten-pence by the day, and for a cart with three horses, fourteen-pence by the day.

No demesne cart of any ecclesiastical person, or knight, or of any lord, shall be taken by the aforesaid Bailiffs.

Neither we, nor our Bailiffs, nor those of another, shall take another man's wood, for our Castles or for other uses, unless by the consent of him to whom the wood belongs.

(XXII.) We will not retain the lands of those who have been convicted of felony, excepting for one year and one day, and then they shall be given up to the Lords of the fees.

(XXIII.) All Kydells (weirs) for the future, shall be quite removed out of the Thames and the Medway, and through all England, excepting upon the sea coast.

(XXIV.) The Writ which is called Præcipe, for the future shall not be granted to any one of any tenement, by which a Free-man loses his court.

(XXV.) There shall be one Measure of Wine throughout all our kingdom, and one Measure of Ale,

and one Measure of Corn, namely, the Quarter of London; and one breadth of Dyed Cloth, of Russets, and of Halberjects, namely, Two Ells within the lists. Also it shall be the same with Weights as with Measures.

“There shall be one Measure of Wine throughout all our kingdom, and one Measure of Ale, and one Measure of Corn, namely, the Quarter of London... Also it shall be the same with Weights as with Measures.”

(XXVI.) Nothing shall for the future be given or taken for a Writ of Inquisition, nor taken of him that prayeth Inquisition of life or limb; but it shall be given without charge, and not denied.

“No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in anyway destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land. To none will we sell, to none will we deny, to none will we delay right or justice.”

(XXVII.) If any hold of us by Fee-Farm, or Socage, or Burgage, and hold land of another by Military Service, we will not have the custody of the heir, nor of his lands, which are of the fee of another, on account of that Fee-Farm, or Socage, or Burgage; nor will we have the custody of the Fee-Farm, Socage, or Burgage, unless the Fee-Farm owe Military Service. We will not have the custody of the heir, nor of the lands of any one, which he holds of another by

Military Service, on account of any Petty-Sergeantry which he holds of us, by the service of giving us daggers, or arrows, or the like.

(XXVIII.) No Bailiff, for the future, shall put any man to his open law, nor to an oath, upon his own simple affirmation, without faithful witnesses produced for that purpose.

(XXIX.) No Free-man shall be taken, or imprisoned, or dispossessed, of his free tenement, or liberties, or free customs, or be outlawed, or exiled, or in anyway destroyed; nor will we condemn him, nor will we commit him to prison, excepting by the legal judgment of his peers, or by the laws of the land.

To none will we sell, to none will we deny, to none will we delay right or justice.

“All Merchants, unless they have before been publicly prohibited, shall have safety and security in going out of England, and in coming into England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war,”

(XXX.) All Merchants, unless they have before been publicly prohibited, shall have safety and security in going out of England, and in coming into England, and in staying and in travelling through England, as well by land as by water, to buy and sell, without any unjust exactions, according to ancient and right customs, excepting in the time of war, and if they be of a country at war against us: and if such are found in our land at the beginning of a war, they shall be apprehended, without injury of their bodies or goods, until it be known to us, or to our Chief Justiciary, how the Merchants of our country are treated who are found in the country at war against us: and if ours be in safety there, the others shall be in safety in our land.

(XXXI.) If any hold of any Escheat, as of the Honour of Wallingford, Boulogne, Nottingham,

Lancaster, or of other Escheats which are in our hand, and are Baronies, and shall die, his heir shall not give any other relief, nor do any other service to us, than he should have done to the Baron, if those lands had been in the hands of the Baron; and we will hold it in the same manner that the Baron held it. Neither will we have, by occasion of any Barony or Escheat, any Escheat, or the custody of any of our men, unless he who held the Barony or Escheat, held otherwise of us in chief.

(XXXII.) No Free-man shall, from henceforth, give or sell any more of his land, but so that of the residue of his lands, the Lord of the fee may have the service due to him which belongeth to the fee.

(XXXIII.) All Patrons of Abbies, which are held by Charters of Advowson from the Kings of England, or by ancient tenure or possession of the same, shall have the custody of them when they become vacant, as they ought to have, and such as it hath been declared above.

(XXXIV.) No man shall be apprehended or imprisoned on the appeal of a woman, for the death of any other man than her husband.

(XXXV.) No County Court shall, from henceforth, be holden but from month to month; and where a greater term hath been used, it shall be greater. Neither shall any Sheriff or his Bailiff, keep his turn in the hundred but twice in the year; and no where but in due and accustomed place; that is to say, once after Easter, and again after the Feast of Saint Michael. And the view of Frank-pledge, shall be likewise at Saint Michael's term, without occasion; so that every man may have his liberties, which he had and was accustomed to have, in the time of King Henry our grandfather; or which he hath since procured him. Also the view of Frank-pledge shall be so done, that our peace may be kept, and that the tything may be wholly kept, as it hath been accustomed; and that the Sheriff seek no occasions, and that he be content with so much as the Sheriff was wont to have for his view-making, in the time of King Henry our grandfather.

(XXXVI.) It shall not from henceforth, be lawful for any to give his lands to any Religious House, and to take the same land again to hold of the same House. Nor shall it be lawful to any House of Religion to take the lands of any, and to lease the same to him from whom they were received. Therefore, if any from henceforth do give his land to any Religious House,

and thereupon be convict, his gift shall be utterly void, and the land shall accrue to the Lord of the fee.

(XXXVII.) Scutage from henceforth shall be taken as it was accustomed to be taken in the time of King Henry our grandfather.

Saving to the Archbishops, Bishops, Abbots, Priors, Templars, Hospitallers, Earls, Barons, and all others, as well ecclesiastical as secular persons, the liberties and free customs which they have formerly had.

“Also all those customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them. And for this our grant and gift of these Liberties, and of the others contained in our Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free Tenants, and all others of our Kingdom, have given unto us the fifteenth part of all their move-ables. And we have granted to them for us and our heirs, that neither we nor our heirs shall procure or do any thing, whereby the Liberties in this Charter contained shall be infringed or broken”

Also all those customs and liberties aforesaid, which we have granted to be held in our kingdom, for so much of it as belongs to us, all our subjects, as well clergy as laity, shall observe towards their tenants as far as concerns them. And for this our grant and gift of these Liberties, and of the others contained in our

Charter of Liberties of our Forest, the Archbishops, Bishops, Abbots, Priors, Earls, Barons, Knights, Free Tenants, and all others of our Kingdom, have given unto us the fifteenth part of all their move-ables. And we have granted to them for us and our heirs, that neither we nor our heirs shall procure or do any thing, whereby the Liberties in this Charter contained shall be infringed or broken; and if any thing shall be procured by any person contrary to the premises, it shall be had of no force nor effect. These being witnesses, the Lord Stephen Archbishop of Canterbury, Roger of London, Joceline of Bath, Peter of Winchester, Hugh of Lincoln, Richard of Salisbury, Benedict of Rochester, William of Worcester, John of Ely, Hugh of Hereford, Ralph of Chi-chester, William of Exeter, for the Bishops: the Abbot of Saint Edmund's, the Abbot of Saint Alban's, the Abbot of Battle Abbey, the Abbot of Saint Augustine's Canterbury, the Abbot of Evesham, the Abbot of Westminster, the Abbot of Peterborough, the Abbot of Reading, the Abbot of Abingdon, the Abbot of Malmesbury, the Abbot of Winchcomb, the Abbot of Hyde, the Abbot of Chertsey, the Abbot of Sherburn, the Abbot of Cerne, the Abbot of Abbotsbury, the Abbot of Middleton, the Abbot of Selby, the Abbot of Whitby, the Abbot of Cirencester, Hubert de Burgh, the King's Justiciary, Randolph Earl of Chester and Lincoln, William Earl of Salisbury, William Earl of Warren, Gilbert de Clare, Earl of Gloucester and Hertford, William de Ferrers, Earl of Derby, William de Mandeville, Earl of Essex, Hugh le Bigod, Earl of Norfolk, William Earl of Albemarle, Humphrey Earl of Hereford, John Constable of Chester, Robert de Ros, Robert Fitz Walter, Robert de Vipont, William de Brewer, Richard de Montfichet, Peter Fitz Herbert, Matthew Fitz Herbert, William de Albiniac, Robert Gresley, Reginald de Bruce, John de Monmouth, John Fitz Alan, Hugh de Mortimer, Walter de Beauchamp, William de Saint John, Peter de Mauley, Brian de Lisle, Thomas de Muleton, Richard de Argentine, Walter de Neville, William Mauduit, John de Baalun.

Given at Westminster, the Eleventh day of February, in the Ninth Year of our Reign.

[1] The text given here is that of *Statutes of the Realm* (London: Record Commission, 1810–1828), 1:22–25, as reprinted in Faith Thompson, *Magna Carta: Its Role in the Making of the English Constitution, 1300–1629* (Minneapolis, 1948), 377–82. Italicized words indicate those passages not found in the original 1215 Magna Carta of King John which were introduced in 1216, 1217, or 1225; numbers in parentheses refer to articles in the 1215 document. Source: Richard Thomson, *An Historical Essay on the Magna Charta of King John: To which are added, the Great Charter in Latin and English; The Charters of Liberties and Confirmations, Granted by Henry III. and Edward I.; The Original Charter of the Forests; and Various Authentic Instruments Connected with Them; etc.* (London, 1829), 131–44.

Notes

Further Information

SOURCE

The edition used for this extract: *The Roots of Liberty: Magna Carta, Ancient Constitution, and the Anglo-American Tradition of Rule of Law*, edited and with an Introduction by Ellis Sandoz (Indianapolis: Liberty Fund, 2008). Appendix: Text and Translation of Magna Carta. <oll.libertyfund.org/title/2180/201016>.

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FURTHER READING

Subject Area: Law <oll.libertyfund.org/collection/50>.

Collection: Laws, Charters, Constitutions, Bills of Right <oll.libertyfund.org/collection/103>.

Topic: Magna Carta <oll.libertyfund.org/collection/132>.

For a detailed analysis of each clause of the Magna Carta see *Magna Carta: A Commentary on the Great Charter of King John, with an Historical Introduction*, by William Sharp McKechnie (Glasgow: Maclehose, 1914). <oll.libertyfund.org/title/338>.

“The distinctive principle of Western social philosophy is individualism. It aims at the creation of a sphere in which the individual is free to think, to choose, and to act without being restrained by the interference of the social apparatus of coercion and oppression, the State.”
[Ludwig von Mises, “Liberty and Property” (1958)]



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Another useful sampling of the contents of the OLL website is the collection of weekly *Quotations about Liberty and Power* which are organized by themes such as Free Trade, Money and Banking, Natural Rights, and so on. See for example, Richard Cobden's "I have a dream" speech <oll.libertyfund.org/quote/326>.

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