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The Future of Reputation

Technology is redefining how information is spread and what the distinction is between private and public. Through the Internet, a person's digital reputation can be permanently destroyed from one mistake. Despite this negative repercussion, the Internet has made positive impacts on society by maintaining and enforcing social standards. The first half of Solove's *The Future of Reputation* is centered around how rumors, gossip, and shaming are transformed when they take place online. The second half discusses new ways that information is disseminated through the social media and the legal approaches to correct the problems highlighted in the first half.

Solove begins with a horror story of a girl whose dog poops on the subway, but she refuses to clean it up. What would have been an incident only witnessed by a handful of people spread to the world from one blog post, indelibly on the internet. The girl was immediately shamed by the Internet and labeled the "dog poop girl" as well as turned into a meme. Although this was an isolated incident, the girl's reputation was permanently ruined with no opportunity to remedy it. As a result, her social standing will forever be negatively impacted by this mistake. This is only one example of how the internet is changing the way information is shared. Solove argues that "[individuals] must protect privacy to ensure that the freedom of the Internet doesn't make us less free" (Solove 11). Without a balance between privacy and freedom of speech, the free flow of information threatens to undermine an individual's privacy. This is evident with the dog poop girl as her privacy was compromised from one blog post. He states that society must rethink its notions of privacy and find a way for the law to achieve this goal. Due to this argument, Solove's *The Future of Reputation* discusses methods of how to achieve equilibrium in privacy and freedom.

With the evolution of the Internet, Solove highlights the ways information is disseminated and claims that society is the media. He starts with the growing popularity of

blogging and its impact on an individual's everyday life. Through blogging, any person with a computer can disclose information as in the case of the dog poop girl. As a result, Glenn Reynolds claims that "power that was once concentrated in the hands of a few professionals has been distributed to many amateurs" (Solove 23). The average blogger is not a journalist but children and teenagers under the age of nineteen. In addition, most blog posts are about personal experiences as opposed to politics.

Another mode of disclosing information is through social network websites. Based on a survey, Facebook is the most popular social media website in the United States with the following statistics: 90.8% of profiles contained an image, 87.8% revealed birthdates, 39.9% gave phone numbers, and 50.8% stated current residence (Solove 27). Although Facebook is well-known in the United States, other websites of the same nature were popular in other countries. For example, Cyworld is preferred over Facebook in South Korea where 92% of its population in the twenties have an account. Overall, 30% of South Korea's population has an account with Cyworld. From blogging to social networking sites, it is clear that the media is no longer merely comprised of professional journalists.

This ties back to the theme discussed during class of how technology has changed the "privacy game". Technology has redefined what the distinction between public and private is. With the social media networks and blogging, individuals are sharing more information online. One search on the Internet can reveal an individual's birth date, current residency, education, etc. Based on the statistics from Facebook, people are willing to reveal sensitive information about themselves to the world. On the other hand, this does not mean that society does not care about its privacy either. It is more of a question of controlling who is able to see their information rather than what information is revealed. For the younger generation, it was found that sharing their social network passwords with other friends was seen as a token of trust or intimacy (Sweeney). This relates back to Solove's idea of creating a balance between freedom of speech and privacy. Therefore, the "privacy game" can no longer be simply defined as keeping all personal information about an individual private from the rest of the world.

With all of the personal data on the Internet, Solove believes people are able to make assumptions and judgements based on the available information. This leads to an individual

building a digital reputation, which can lead to positive and negative repercussions. In the case of dog poop girl, she has a poor reputation. It is irreparable and destroyed from a blog post because there is no way to erase the information available on her, creating a permanent reputation stain. This is the negative impact of personal data on the Internet, because everyone knows everyone's business. Privacy combats this negative impact since it enables people to conceal information that is detrimental to their reputation. However, privacy is becoming more difficult to maintain with the growing presence of the Internet. This creates a paradox: people want free information flow yet want some control over what is shared.

Due to this, Solove brings up the question of whether or not controlling privacy will control reputation. He argues that reputation is an essential component to freedom, claiming it is impossible to have freedom without a positive reputation. Solove states that an individual's reputation affects his or her ability to engage in basic activities in society. This is due to the fact that people rely on each other to accomplish tasks and function in society. If an individual has a poor reputation, society will be reluctant to cooperate with the person to accomplish tasks. Therefore, Solove resolves that freedom is dependent upon reputation.

The idea of a digital reputation relates back to the topic of a data shadow. With everything people do on the Internet, small traces of information are left behind with everyday activities, such as sending an email or updating a social media profile. Just as a person's Internet reputation can be used to create an assumption, conclusions can be drawn based on his or her data shadow. For example, a person's interests on his or her social media accounts can be used to make an assumption of what type of personality he or she has. In addition, an individual's internet reputation and data shadow cannot be erased from the internet. This can lead to positive or negative repercussions based on the data shadow. For both cases, having a positive data shadow and reputation on the Internet is essential to effectively participate in society.

Solove ends his discussion on disseminating information and reputation on the Internet by reflecting on the two possible ways society can be impacted. The first way is the positive outlook. If society expects little to no privacy, it could build a future where people are inhibited and honest. This would enable others to stop condemning each other and allow social norms to disappear as well. On the other hand, the second way is a negatively impacted future. Solove

argues that technology could make society less free, especially if there is no balance between privacy and freedom of speech. This stems from the idea that technology could lead to uncontrollable and oppressive people where one mistake leads to a irreparable reputation. As a result, a person's reputation can thwart opportunities as well as any way to redeem one's self.

Since society is inherently curious about the lives of others, Solove talks about gossip and how technology has heightened its negative effects by making it more painful and permanent. Mainstream media has ethical rules regarding people's privacy, such as not naming the victims of rapes and sexual assaults. However, this is drastically different from blogs. 25% of posts are about personal situations and 66% of the time bloggers never asked for permission from the individuals involved (Solove 59). Due to technology, gossip can spread like wildfire and leap from social circle to social circle. Rumors spread easily and the truth is often distorted because people do not bother to learn the full story. Although gossip has a negative connotation, Solove believes that it is necessary within society. Gossip helps enforce norms in a way that eases social tension and confrontation. In some instances, disclosing a person's secrets can even help change certain social norms. When some norms persist even though people consistently violate them, society is forced to confront it and spark a change. Solove concludes that gossip undermines norms by exposing back-stage behavior but also affirms by using social pressure to enforce it.

In the end, Solove argues that people are more complex than products when it comes to gossip and rumors. When information is taken out of context, it distorts judgements rather than increase its accuracy. Human judgements are imperfect, especially because individuals do not know the whole story. There are two different types of selves that people portray: the private self and the public self (Solove 68). The private self is more relaxed and at ease, whereas the public self meets the expectations of others and is constructed according to social norms. If humans knew everything, it would be hard to pass judgement at all. Due to human's flawed nature, Solove believes that gossip should be taken with humility. When learning more information about a person, it can help understand him or her but it can also deter a person since the whole story is unknown.

Just as technology changes, social norms are constantly changing. One instance is the usage of cellphones where the social norm created is to not speak in a loud voice when taking a

phone call. Solove claims that social norms can positively influence society because they enable people to get along and resolve many situations. Due to this, social norms help individuals to maintain an orderly society. Conversely, social norms can also be detrimental since they help create double standards within society. For example, adultery is more culpable for women than men. Although certain social norms have been consistent, they can still be dissolved within society.

Solove transitions into the concept of internet shaming and explains how it helps maintain the norms of civility and etiquette. In the case of dog poop girl, it left her deed unpunished in the face of society and forced her to take responsibility for her actions. Without the threat of shaming, people would transgress norms and make society less orderly as well as civil. However, it can create a blemish on a person's identity and can lead to alienation as well as a tarnished internet reputation. The problem with internet shaming stems from a lack of due process. Norm enforcers can be mistaken but it can be too late to take back the damage. This is especially an issue when internet shaming becomes out of control and targets people without careful consideration of all the facts. As a result, people are punished for supposed infractions without proportionality.

Although society is unable to catch all violators of social norms, Solove claims that one's own judgement is the most harsh: "Even if we're not caught, we can never escape from ourselves, and our internal judges are often our more stringent..." (Solove 99). People are their own worst critic. Even if they can escape Internet shaming, individuals do not violate social standards because they inherently know it is wrong. By infringing on society's standards, an individual automatically feels shame for the action without needing other's judgement. Overall, shaming is an important tool for social control but can be dangerous if unchecked.

In the second half of Solove's *The Future of Reputation*, he begins to discuss the concepts of privacy, free speech, and the law. David Brin, a science fiction writer, and David Brin, an essayist, believe that it is too late to save an individual's privacy: "Light is going to shine into nearly every corner of our lives." Scott McNealy, CEO of Sun Microsystems, has famously quipped: "You already have zero privacy. Get over it". They assume: Privacy is Dead (Solove 105).

From class discussions, it is known that gossip, rumor, and shaming have been with people since the dawn of civilization. Breach of Privacy was considered long back by people in the 19th Century as well. It starts in the second half of the 19th Century : Rise of the Newspaper with roots in 1830's in England : "Penny Press." New printing technology enabled newspapers to be sold much more cheaply than ever before—for just a penny. In form of Tabloids- a newspaper having pages half the size of those of a standard newspaper, typically popular in style and dominated by headlines, photographs, and sensational stories. Topics discussed may include:-news of scandals, family squabbles, public drunkenness, petty crimes. The penny press came to America in 1833 in New York by :Benjamin Day. He published a newspaper called the Sun modeled on the English penny papers (Solove, 105-106).

Having a cheap price and a heavy dose of sensationalism is a prime example of attracting readers, forcing them to cook up stories when they didn't have one, an example being the creatures on moon called the "Moon hoax". This was revolutionized in big cities like Boston and Philadelphia. Even Charles Dickens depicted this frenzy of newspapers in his novel Martin Chuzzlewit. When Martin steps off a steamer from England to New York in the 1840s, he encounters a crowd of paperboys: “ ‘Here’s this morning’s New York Sewer!’ cried one. ‘Here’s this morning’s New York Stabber! Here’s the New York Family Spy! Here’s the New York Private Listener! Here’s the New York Peeper! Here’s the New York Plunderer! Here’s the New York Keyhole Reporter! Here’s the New York Rowdy Journal!’” This new breed of sensationalistic reportage, called “YELLOW JOURNALISM..” soon dictated by Joseph Pulitzer and William Randolph Hearst. Even a Novel includes a character: In the novelist Henry James’ *The Reverberator* written in 1888, a character proclaims the prevailing attitude of the media: “It ain’t going to be possible to keep out anywhere the light of the press. Now what I’m going to do is to set up the biggest lamp yet made over and make it shine all over the place. We’ll see who’s private then” (Solove 106).

When journalists converged around President Grover Cleveland’s cottage, where he was vacationing on his honeymoon, the President complained. The media went into overdrive during the 1875 adultery trial of the Reverend Henry Ward Beecher, which one commentator describes as “one of the first great American media/privacy stories.” Victoria Woodhull revealed that

Beecher was having an affair with Elizabeth Tilton, a member of his congregation and the wife of his friend Theodore Tilton.¹¹ The story received unprecedented media coverage. Before the trial, the Associated Press dispatched thirty reporters to cover Beecher's address before his church commission. Nearly all newspapers covered the trial, and some even printed daily transcripts. The trial ended with the jury deadlocked. Just fourteen minutes after the verdict was announced, one newspaper was already on the streets with the news.

Threats to privacy increase with the upcoming inventions of new technology. The telephone was invented by Thomas Edison in 1876 and soon after technology to wiretap phone conversations was developed. The snap camera was invented by the Eastman Kodak Company and they were cheap and portable. In 1890 E. L. Godkin, a famous social commentator, complained that these developments were threatening privacy. He believed that gossip is the "chief enemy of privacy in modern life." He said that "Gossip about private individuals is now printed, and makes its victim, with all his imperfections on his head, known to hundreds or thousands miles away from his place of abode." Godkin was not optimistic about finding a solution to these new threats to privacy.

Warren and Brandeis initially worked together on two articles on "The Watuppa Pond Cases" but didn't get a strong base. Afterwards Warren and Brandeis turned to a much more gripping topic—privacy. This would become one of the most famous law review articles of all time. "The Right to Privacy" was published in the Harvard Law Review in 1890. They observed that the problem of the increased commercial exploitation of the private life would be vastly heightened by the impact of new technologies: "Instantaneous photographs and newspaper enterprise have invaded the sacred precincts of private and domestic life; and numerous mechanical devices threaten to make good the prediction that 'what is whispered in the closet shall be proclaimed from the house-tops.' "

Unlike Godkin, Warren and Brandeis believed that law could provide a solution to these privacy problems. They recommended a tort remedy for people whose privacy is invaded. A tort is a legal cause of action where people can sue others who have wronged them. Between 1890-1900 more than ten articles examined Warren and Brandeis's proposal to create privacy torts. Throughout the twentieth century, states began to recognize privacy torts as Warren and

Brandeis had suggested. Today, the vast majority of states have created tort actions in response to the Warren and Brandeis article.

This article got recognized as "One of the primary foundations of privacy law in the United States" and "The most influential law review article of all". One author takes his side saying that "There are those like Godkin, who say that there is little to be done. And there are those like Warren and Brandeis, who call for action. I side with Warren and Brandeis."

There are three types of legal approaches when dealing internet privacy cases. The first is a Libertarian approach, its main aspect is to be as "hands off" as possible. The case of Laurie Garrett, a Pulitzer Prize-winning journalist, she attended the World Economic Forum in 2003 and wrote a candid email to a few friends about her experience. Among other things, she described her "hobnobbing with the ruling class": "A day spent with Bill Gates turned out to be fascinating and fun. I found the CEO of Heineken hilarious, and George Soros proved quite earnest about confronting AIDS. Vicente Fox—who I had breakfast with—proved sexy and smart like a— well, a fox. David Stern (Chair of the NBA) ran up and gave me a hug." Somehow, Garrett's email got forwarded around to others, and eventually made it onto the Web, where it was reproduced on numerous websites and widely read and commented upon. The letter was her personal opinion, so it seems to be unnecessary. The problem with the libertarian approach is that it fully embraces the free flow of information and does little to protect privacy. The result of this "hands off" approach is that people who suffer the stings of gossip and rumor on the Internet have little redress.

The second type is the authoritarian approach which attempts to radically limit the ability of people to spread information on the Internet. Employs strict control over the spread of information. Employs censorship in an attempt to halt the circulation of problematic information so Lawmakers often find it appealing. Eg: Attempts to ban social network sites from public schools and libraries. They do little to stop students from using them. The use of the sites will simply migrate to places outside of school, where schools have even less control. In short, authoritative approaches attempt to address the problem in a broad and crude manner that is

inconsistent with the U.S. Constitution. The authoritative approach can be oppressive and far too stifling of free speech.

The third and final approach is finding a middle ground. Some middle-ground approaches fall between these extremes. A more moderate role for the law to take would be to help shape the norms that govern the circulation of information. The law should ensure that people better understand the dramatic difference between gossip offline and online. Tort law remedies are lawsuits. They aren't authoritarian because they are initiated by individuals and are not systematic in their reach but again it comes with many problems. So, in order to work effectively, two changes can be made according to the author. First, the law must be broadened significantly, especially the law of privacy. Second, the law must be restricted so that the lawsuit is employed only rarely to redress privacy invasions.

Legal Protection of Privacy and Reputation :

The Randolph Family case in which a man was involved in affair with a woman named Nancy which resulted in unwanted pregnancy with infant may be miscarried or stillborn). To defend himself, Richard published an open letter to the public in the principal newspaper of Virginia (it appeared just after news of King Louis XVI's beheading in Paris). In the letter, he indicated that he would be willing to duel to defend his reputation. The Richard Randolph scandal illustrates the benefits and limitations of using the courts as an alternative to dueling. The courts could provide a more orderly and fair way to vindicate one's reputation, but they also could further spread the offensive information.

Courts won over Duelling almost after the period of Civil War.

Two main bodies of law available to people who sue because of information (or misinformation) being circulated about them—the law of privacy and the law of defamation. These two bodies of law serve as a primary tool for people to vindicate their reputations.

~Law of Defamation: Spreading false rumors about a person. Defamation “exposes a person to hatred, contempt, ridicule, or obloquy, or causes him to be shunned and avoided”. In the early Middle Ages, defamation was punished by cutting out the offender's tongue. Later on in the Middle Ages, ecclesiastical courts began to punish defamation by requiring public

penance. Eventually, the state required defamers to pay damages and publicly admit to their lies. Today, defamation law consists of two torts—Libel and Slander. Libel involves written or recorded words (newspaper articles, television broadcasts, and writing on the Internet). Slander involves oral communications and speech between individuals. For the law to kick in, a statement must be false and it must harm a person's reputation. The person making the defamatory statement must be at fault—if she reasonably believed the fact to be true, then she isn't liable. It is up to the plaintiff to prove that the statement was false, and the speaker doesn't have to vouch for its truth. If the statement is true, the plaintiff loses. Someone can be liable for defamation even for just spreading information originated by someone else. Because of its complexities defamation law was a relatively ineffective tool to protect against the spread of rumors on the Internet.

~Law of Privacy : Second body of law available to protect reputation. A number of torts evolved to protect privacy. Four of them:

- (1) Intrusion upon Seclusion : Intentional interference into one's private affairs or concerns.
- (2) False Light : The spread of false, distorted, or misleading information about an individual. Both should be "highly offensive to a reasonable person."
- (3) Public disclosure of Private Facts : When somebody widely discloses another person's private information. The disclosure must be "highly offensive to a reasonable person" and "not of legitimate concern to the public."
- (4) Appropriation : Protects against the use of a person's name or likeness for the benefit of another without his/her consent.

Finding the Right Role of Law :

Problems with Lawsuits: expensive, imposing, stressful, abusive. Defamation law does not protect one from being the target of negative opinions, criticisms, satire, or insults. It protects one from having falsehoods spread that damage one's reputation. But people merely insulted by criticism or satire can overreact by filing an inappropriate defamation suit. Likewise, people may misuse invasion of privacy torts to attack speakers because they dislike criticism, not because of

any privacy violation. Defamation Case of man named Todd who sued website Don't date Him Girl for false statements about him. Anyways the moral of the story, the blogger concluded, was: “Don’t sue for defamation, because even if you win, you’ll lose. Solution according to Author: More people should be allowed to sue without having their real names appear in the record. This would allow people to seek a remedy for the spread of information about them without having to increase the exposure of the information.

The best laws for addressing harms are ones that not only help fix the damage but also keep the harms from occurring in the first place. The most effective law rarely needs to be used, as the legal process is expensive and time-consuming. The law works best when it helps people resolve disputes outside the courtroom.

Too much law, too little law :

Make it too hard to sue, and the law ceases to be a credible threat. Make it too easy to sue, and lawsuits multiply like rabbits. How can we maintain the law as a credible threat yet keep lawsuits in check? I propose a requirement that a plaintiff first exhaust informal mechanisms for dealing with the problem. If the defendant agrees to remove the harmful information from the website, then this should be the end of the lawsuit unless the victim can demonstrate that merely taking down the offensive speech won’t sufficiently patch up the harm. In many cases, problems can be resolved before they spiral out of control, in other situations, it is too late like In several cases the information has become infectious and has spread far and wide, such as the video of the Star Wars Kid such as the damage is irreparable. “Alternative Dispute Resolution.”

The Law’s Binary Understanding of Privacy :

A husband and wife were engaged in a romantic embrace near an ice cream stand at a farmer’s market. Their photo was snapped, and it appeared in the October 1947 issue of Harper’s Bazaar in an article celebrating the splendor of love. The photo was also published in the May 1949 issue of Ladies’ Home Journal . Although the photo depicted the couple in a moment of love, the couple wasn’t in love with the fact that their intimacy was displayed in national magazines, and they felt humiliated and embarrassed. They sued the magazines for publicly disclosing private facts.

Free Speech, Anonymity, and Accountability :

Freedom of speech is an essential right in a democratic society. Places some limits on defamation law since “one man’s vulgarity is another’s lyric”. The First Amendment gives people the right to say whatever they want so long as it is true. It gives you and me the right to blog our thoughts without fear of reprisal. How can the public-disclosure tort—which would make someone liable for saying true things about someone else—be constitutional under the First Amendment? Although the privacy torts can be squared with the First Amendment, the issue is a difficult one.

Absolutism: A popular view of the First Amendment is that its protection of free speech is absolute. This means that if somebody is engaging in speech, then the First Amendment bars any attempt to regulate or prohibit that speech—no matter how odious or harmful the message might be. The First Amendment forbids the law from restricting people from saying what they want to say.

Balancing free speech and privacy: Protecting Privacy vs Restricting Free-Speech Most of them choose to protect free speech at first place. : WHY?

(1)Individual Autonomy :

We want people to have the freedom to express themselves in all their uniqueness, eccentricity, and candor. Stopping someone write a blog may limit her freedom as well as may take away autonomy of readers who want to read such stories. Protecting privacy can promote people’s autonomy as much as free speech can.

(2)Democracy :

Free speech is most valuable when it contributes to public discussion on issues of policy and politics. Without privacy, many people might not feel comfortable having these candid conversations. Protecting privacy can actually promote free speech, not just restrict it.

(3)The Marketplace of Ideas :

It contributes to the promotion of truth. The law should butt out and let people decide for themselves what's true and false without censoring any content as it is difficult to decide what is censored is true or not.

Newsworthiness : To reconcile the public disclosure tort with free speech, the tort doesn't apply when the information is of "legitimate concern to the public." This is referred to as the "newsworthiness test." If a particular disclosure is newsworthy, then a public-disclosure tort case is dismissed. Information is of public concern when "the public has a proper interest in learning about [it]." But sometimes they do so without the legitimate concern as for example Video of President giving free speech Vs Video of Some Celebrity sharing intimate moments. Obviously, people will be more attracted towards the later one. Therefore information that involves matters of public concern should be protected rather than information that merely provokes our prurient curiosity.

Identifying Information : "Starving Glutton" Case : Identity could have been hidden
Ruth's Case : Identity if hidden could have affected the creditability of an article. On the contrary, it could have led to nervous breakdown of Ruth.

Anonymity can be essential to free speech. It allows people to be more experimental and eccentric without risking damage to their reputations. Without anonymity, some people might not be willing to express controversial ideas. Can be critical to preserving people's right to speak freely.

Accountability : Anonymity too has a darker side. Anonymity can preserve privacy by allowing people to speak freely without being publicly identified, yet it can undermine privacy by allowing people to more easily invade the privacy of others and be less accountable.

Wikipedia: John Seigenthaler, accused of involving in assassinations of Kennedy Brothers.

Privacy in Public : The Burning Man case - If a person is naked at a festival with twenty-five thousand others, how can that person claim privacy? The Law's Binary
Understanding of Privacy : According to the court, "There can be no privacy in that which is already public".
The Challenge of New Technology : New technologies will increasingly invade the enclaves of privacy we enjoy in public. Confidentiality is important.

The Video Voyeurism Prevention Act is only considered on federal premises. The rise of video voyeurism has pushed the law toward a greater recognition of different degrees of privacy. New technology has made video voyeurism easy. Anybody armed with a cell phone camera can quickly take photos of others in the action and post the photos online. In one incident, nude photos of a men's wrestling team at the University of Pennsylvania appeared on a website. One athlete said, "I pulled up the home page and I am looking at myself naked on the InternetIt is terrible because I have no control over it".

Many think of privacy when it comes to proliferating access of information that people have already made available about themselves online as seen in the Self-Exposure Problem. How does one determine if violation of confidentiality among people is grounds for a lawsuit? Lior Strahilevitz suggests a social network theory: If one has shared their secrets or private details with others outside of relevant social networks then it justifies making that information public because one has revealed it by their own accord to outsiders. However, by providing confidential information to the Internet, it should automatically be grounds for a breach of implicit contract because there are no social network limitations online, even if one posts about someone on a blog where they have mutual friends. Solove suggests that the law should treat privacy with more strictness like intellectual property via Copyright Laws. Some other possible problems of privacy online include, but are not limited to: blogging norms that are less restrained than those of mainstream media, websites that purposely set default settings of least privacy and employers who can do entire background searches on Google. We ourselves disseminate large amount of data. Changing the defaults : Default Settings are always Public so always change them to private to restrict flow of data. To The End of The Internet : Internet is growing exponentially at pace of light so there is no way we can escape the breach of security because we will always find a loophole in it.

As technology continues to become more prominent in everyday life, it has positive and negative aspects to it. It could promote a more open, honest society by encouraging others to be open minded, but it could also create a hostile, toxic society where people are violent to each other. This future is dependent on how society maintains the equilibrium between privacy and

the freedom of the Internet. It is essential to ensure that the freedom of the Internet does not make individuals less free, taking away their privacy.

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