

Legal Studies 100: Fundamentals of Legal Studies
University of California, Berkeley
Tuesdays and Thursdays, 2:10pm-3:30pm (Pacific)
Zoom Remote – Fall 2020

Professor Calvin Morrill

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(Please sign up in advance at: www.wejoinin.com/cmorrill@law.berkeley.edu. If you can't make my office hours, please email me to make an appointment.)

Graduate Student Instructors (GSIs)

Nikila Lakshmanan

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Alex Mabanta

Sections: Mondays, 10:00am – 11:00am, and Wednesdays, 4:00pm – 5:00pm

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Amelia Watts

Sections: Tuesdays, 12:00pm – 1:00pm, and Wednesdays, 2:00pm – 3:00pm

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Office Hours: Tuesdays, 11:00am-12:00pm, and Wednesdays, 1:00pm-2:00pm

Course Description

Law touches all aspects of human experience. But how does law actually operate? What is the relationship between the “law on the books” and the “law in action?” How does this relationship shed light on social inequality, social power, and the possibilities for social change? To answer these questions, we begin the semester by briefly exploring some basics about law and legal systems, with special emphasis on law, language, and race in the United States. We then turn to multiple ways of seeing law in society. Each of these ways of seeing, or analytic lenses, yields very different pictures of what law is, what it does, and how it influences and is influenced by society. In the next part of the course, we draw on different analytic lenses to understand the interplay of social conflict with disputing, policing and punishment. The final few weeks of the course explore the roles of law in creating, perpetuating, and potentially solving big challenges facing our country, especially housing, reparations, health inequities, environmental justice, and immigration.

Course Learning Objectives

By the end of this course you should be able to:

- (1) *Conceptualize* the classic tension between the law on the books and law in action;
- (2) *Explain* the role of law and language in shaping and reflecting everyday beliefs, practices, inequalities, and possibilities for social change; and
- (3) *Identify* when and how social biases play roles in U.S. criminal and civil legal systems.

Requirements and Grading

Course grades will consist of points earned on: (1) a scholarly blog project (details available later in the syllabus); (2) a take-home final exam; (3) responses to quiz questions (administered during 11 lecture sessions; the lowest score will be dropped); and (4) class and section participation. There will be a handout on the final exam format and expectations as we approach the exam. There is also a short extra-credit assignment worth five points due midway through the semester.

<u>Assignment</u>	<u>Value</u> (in points)
Blog post project	300
Quizzes/lecture participation	120 (100 quiz points + 20 points participation)
Final exam	90
<u>Section</u>	<u>90</u>
<i>Total</i>	600

Grading Scale

558-600	=	A	(93%-100%)
540-557	=	A-	(90%-92%)
522-539	=	B+	(87%-89%)
498-521	=	B	(83%-86%)
480-497	=	B-	(80%-82%)
462-479	=	C+	(77%-79%)
438-461	=	C	(73%-76%)
420-437	=	C-	(70%-72%)
402-419	=	D+	(67%-69%)
378-401	=	D	(63%-66%)
360-377	=	D-	(60%-62%)
> 360	=	F	(> 60%)

Readings

All the readings for the course are at our bCourses website and organized by lecture class session dates. If you cannot find a reading for a particular class or assignment, just ask.

I have chosen the readings to convey a broad range of information about law, legal systems, and their interplay in society. The readings reflect a range of voices in order to put different perspectives about law into conversation with one another. The readings consist of shorter excerpts from social and political theory writings, excerpts from contemporary peer reviewed and law review articles, high-quality journalism, excerpted Supreme Court cases, and excerpted legal policies and legislative acts. When an article contains quantitative materials for which you may not have the educational background to interpret, I highlight some of the key findings in yellow to underscore what you should take away from the findings. The length of a text does not signal its difficulty or importance. Be aware that law review articles often have lengthy footnotes. You are welcome to read these footnotes, but you are responsible for the material that occurs in the main text of each article. (The format of law review articles also means that they appear longer than they actually are because of the space devoted to footnotes.) Be sure to keep up with the readings and ask if anything is unclear about the assignments or their substance.

Course Format and Participation

In a typical semester, the lectures for this course would be held in person on campus in a large classroom with approximately 150 students, three GSIs, and me in attendance. GSIs would hold in-person sections in smaller classrooms on campus. In late July, UC Berkeley campus authorities – the UC Berkeley Chancellor, Provost and various deans (including the Dean of the Law School) – announced that the dramatic increase of COVID-19 cases in Alameda County and California necessitated **fully remote instruction for the fall semester**.

As a result, we are navigating largely uncharted waters as we teach Legal Studies 100 remotely for the first time. I recognize that a remote compared to an in-person course constitutes a different educational experience. The GSIs and my goal remain as always to make your experience in this course as educationally enriching as possible. We have implemented a course format intended to facilitate your engagement with the course materials and help you learn. This format, however, may take a bit of adjustment as we meet various technological or access challenges. Please ask either the GSIs or me if you are having difficulties with the format and/or accessing course materials and Zoom classrooms.

Taking this course is akin to learning a language: If you do not learn the fundamentals early on in the semester, consistently keep up with reading, and attend/participate in class and section, you will be lost later in the term.

Mixed-Flipped Lecture Format and Zoom Breakout Room Participation

All lectures will be recorded and lecture slides, discussion questions, and other materials will be available on the bCourses site for the course. Lecture sessions will follow a mixed-flipped format in which some lecture material for each week will be pre-recorded. Lecture sessions are thus flipped in that a portion of what one typically does in a lecture session – listen to a lecture – will occur away from the live lecture class sessions. You will be expected to watch each a pre-recorded lecture (40-45 minutes) prior to the relevant Tuesday class session. Each pre-recorded lecture will be available on the bCourses website over the weekend prior to each Tuesday class session. I will endeavor to have live lecture class sessions last for no more than 60-65 minutes each (of the 80 minutes allotted for each live session) in order to keep your screen time at a manageable limit. Slides for the pre-recorded Tuesday lectures will be available once the lecture is posted on the bCourses site. Slides for the Thursday lectures will be available on bCourses in advance of the live lecture.

I intend the pre-recorded lecture material to facilitate engagement with the course materials in lecture sessions. During the Tuesday class session, we will divide the class randomly into Zoom breakout rooms of approximately 10 students each during which you will work in your group to generate collective responses to discussion questions about course materials posted on bCourses for that class session. Discussion questions will range from putting concepts from the course into your own words to applying concepts from the course to real-world events to analyzing a legal case in light of ideas from the course. Both the GSIs and I will pop in to various breakout rooms during group discussions to see how the activity is going and help you in any way we can. To record the results of each small-group discussion, each group will select a scribe or co-scribes to post the group's responses to the discussion questions in the relevant discussion thread on the course bCourses site. (We'll have more details on this in advance of our first breakout room exercise in lecture.) Discussion questions will be available on bCourses in advance of each week so that you can begin thinking about them as you read and listen to the pre-recorded lecture prior to Tuesday's class session. There also will be study questions available for the materials covered during Thursday lecture sessions. In advance of each class, I suggest that you jot notes down in response to each question as you read or watch the asynchronous lectures to prepare for breakout room and general lecture discussions.

After groups post their discussions, we will break for 5 minutes while the GSIs and I select 2-3 groups to *briefly* present their outlines in 2-3 minute mini-presentations to the class as a whole (this can be a single person presenting or multiple people; the scribe does not have to be the presenter). These mini-presentations also will provide a point of departure to raise other relevant questions and comments. *For every breakout room activity you participate in, you will earn two (2) points up to a total of 20 lecture participation points for participating in 10 breakout room activities of the total number (13) we conduct.* Students will not earn extra points by functioning as scribes or presenters, although taking a turn as a scribe or presenter (they don't have to be the same person) will clearly help you learn the material.

On Thursdays, I will give a shorter (up to 30 minutes) live lecture, followed by time to ask questions and engage in class discussion relevant to course material.

Participation in the Post-Breakout Room Lecture Discussions and Live Lecture Sessions

Questions raised by students in class are not only important because they can clarify ideas and enhance critical thinking, but because they bring a course alive in the spirit of collective inquiry. We recognize the challenges for students asking questions in large lectures whether in person or on line. To facilitate you asking questions in this course, submit your question via the chat function to everyone in the course. There are no points awarded for general lecture session questions, but they can help you learn the material and will keep you engaged.

Note: Aside from providing opportunities for class participation, I welcome all your questions and comments, and will do my best to answer them. In order to answer as many questions received during non-breakout room lecture sessions, I may group some questions together. If I do not answer your question in that or another class session, it may mean that we simply ran out of time. If you want to follow-up further, please consult with me during office hours and/or with your GSI to ensure your participation points were recorded. If a question comes in that I do not know the answer to at the moment, I will follow up either in the next lecture class session or during office hours.

Quizzes

There will be 11 short quizzes each worth 10 points (drop your 3 lowest scores) that will occur on Thursdays via bCourses. Quizzes will primarily focus on readings and lecture materials for the week, based on the discussion questions that inform the Tuesday and Thursday lecture class sessions. Quizzes will take only a few minutes, will be multiple choice, and function as an on-going diagnostic. You should be able to earn most, if not all, the points on each quiz. If you find you are continually underperforming on the quizzes, please see your GSI or me.

Sections

Sections will offer another space in which to discuss and clarify course ideas. They also will provide an important space to receive support and discuss the components of the blog post project (covered below). You need to attend section meetings consistently since participation in them is worth *90 points of your final grade*.

Blog Post Project

The intent of this multi-part assignment is to allow you to investigate a legal rule that interests you and to find out how that rule actually works. The distinction between written laws and how those laws work in practice is one of the touchstones for the study of law in society.

You will write (across multiple drafts) a two-part scholarly blog post for the whole world to see. The project will have seven graded components. Note: you may use a pseudonym (approved by your GSI) to post on the public-facing blog. You will not be allowed to duplicate (or even worse, plagiarize from) existing blog posts, which you can see here. That means you will have to work harder for part (a) of the project to find a legal provision that has not yet been explored by LS 100 students.

Sub-assignment	Points	Due Date
a) Preclearance of legal provision + 4 references	15	9/15
b) Law on the books draft (maximum 800 words)	75	10/6
c) Law in action draft (maximum 1200 words)	100	11/10
d) Internet-ready post consisting of revised law on the books and law in action sections (maximum 2000 words)	90	12/8
e) Upload Internet-ready post to public-facing blog	20	12/10
Total	300	--

a) *Preclearance of legal provision + 4 references*

This is a document of no more than 300 words that:

- 1) identifies the specific law you plan to investigate and confirms it is of the proper scope (not too broad or narrow) for the blog post;
- 2) explains how you expect to find evidence for how the law works in action;
- 3) describes very briefly the evidence for how the law works (or fails to, or has been prevented from taking effect, etc.);
- 4) lists 4 quality references (e.g. refereed or law review articles, reliable journalism).

There must be evidence of how the law or rule has actually worked in practice to enable you to write both papers. (A good rule of thumb is that the law has already been in effect for at least two years.) At the end, you will list at least four references that will allow you to satisfy the requirements of the law on the books section and to write the law in action section. Be sure that you have narrowed the provision down enough! The tendency is to start too broad. ***Please discuss your law on the books with your GSI first.***

Too Broad	Proper Scope
<u>Fourth Amendment</u>	Effect of <i>United States v. Jones</i> (2012) on search via GPS device
Abortion rights	Wisconsin Statute §253.10(3g) on women’s informed consent to abortion procedures

Clean Air Act (1970)	Clean Air Act Title II on emission standards for vehicles
Recreational marijuana legalization	Colorado Amendment 64

b) *Law on the books draft (maximum 800 words)*

In this part you will describe a law (or a particular provision of a larger law) that has been passed by elected officials at any level of government (local, state, or federal) in the United States, or a legal rule that judges have made. You should tell your audience at least about the:

1. intent of the law or rule;
2. content of the law or rule (what the law or rule does);
3. history of the law or rule (who created it when? did it modify an earlier law or rule?);
4. proponents and opponents of the law or rule (key political information!); and
5. implementation of the law or rule, including who is responsible for implementing it and how the law or rule is to be implemented.

Examples could include: the Clean Air Act provisions on point sources of nitrogen oxides (the Clean Air Act itself is too huge, and even this section might be a bit much); the section of the state motor vehicle code that deals with expired tags on an operating vehicle; state law on eviction; or the municipal zoning ordinance provisions on garages. Any state or local law is fair game. Choose your law on the books with an eye to talking about how it works in action, whether you observe it working directly (e.g., in a courtroom or enforcement agency) or indirectly (through written accounts of how it works). The key is to make sure to pick a specific enough law or provision so that you can talk about it in 800 words.

For this part of the assignment, your job is to describe the law accurately in your own words and to provide a basis for asking, in the “law in action” paper, how closely the enforcement of the law matches what you found in the law itself. Use the highest quality references you can. Use a consistent style for your in-line citations and your references; I suggest the APSA Style Manual as a guide (although APA, ASA, or LSR style is also fine). The maximum length of the law on the books draft of the blog post assignment is 800 words.

Peer comments. Your GSI will organize you into groups for the semester to do the peer review part of the assignment, which will be done in your discussion section and will count toward your section participation grade. You will be responsible for making substantive comments on three other students’ draft posts for each part (law on the books

and law in action). Your comments should help the author improve her, his, or their content and writing.

c) *Law in action draft (maximum 1200 words)*

In this part of the project, you will investigate and observe what the law or rule you described in the first paper actually does. You should tell your audience:

1. the procedures used to enforce the law or rule;
2. court decisions, legislative actions, regulatory decisions, etc., that affected the implementation of the law or rule;
3. the pattern of enforcement for the law or rule (is it selective? is it biased?);
4. a brief explanation of the pattern of enforcement drawn from one analytic lens from the course (see Section 2 of the course chronology below); and
5. ideas for reforming the law and its enforcement.

Again, you will have to do some research on your own and draw from one of the analytic lenses used in the course. It may be difficult to interview any officials or to observe any procedures or enforcement activities given social distancing protocols, but such information can often be found on the web or is reported in newspapers. Any sources you use should be included in your list of references. The maximum length for the law in action draft of the blog post project is 1200 words.

d) *Internet-ready blog post*

Using the comments you have received from peers, your GSI, and the instructor, you will revise the draft posts into a publishable, concise essay that the whole world will see on a standard blogging platform. Previous sample posts from the last couple of years can be found at: <https://foundationsoflawandsociety.wordpress.com>. Your post will be published in the true sense of the word (on Wordpress), so you will want it to be accurate, to read well, and to be free of mechanical errors. The maximum length is 2000 words.

e) *Upload Internet-ready post to public-facing blog*

The instructors will make you an author on the WordPress site and you will publish your scholarly blog post there. Then, **you must post a link** on the bCourses assignments section for the course so that we know that the post is published on the WordPress site. Be sure you publish the post on the WordPress site rather than just leave it there as a draft.

There is a lot of law going on all around us. Early on in the semester, we will have a visit in lecture by a UC Berkeley librarian who will orient you to the resources available to you

to find laws and how you can find out about how they played out once they were implemented. So think about what interests you.

f) *Late penalties*

For each assignment, you will be assessed a 3-point deduction for each the assignment is late. If the assignment is not turned in within 7 days after its due date, the assignment will then receive a “0.” This policy enables students who could not meet the assignment due date an opportunity to earn a decent amount of points on the assignment. At the same time, we feel it is fair to students who did meet the assignment due date. If you are turning in a late assignment, you need to be in communication with your GSI and email your (late) assignment directly to them. The assignment portals for each assignment will close at 11:59pm (Pacific time) on each due date.

Students facing extreme health and other emergencies or with DSP accommodations should be in contact with their GSIs and me.

Extra Credit Song Essay

You can earn 5 points toward your total grade in the course by writing a short essay of no more than 300 words that discusses the lyrics to a law-themed song and explains how those lyrics illustrate a way of “seeing” law through one of the analytic lenses (“law as...”) covered in class. In addition to the essay, you must attach a copy of the lyrics to the song and a link to where the song can be streamed or viewed (such as YouTube). If possible, please include a link to a video stream of the song that includes the lyrics. ***The extra credit assignment is due no later than October 15th. Place the name of your GSI in the title of the document so we can identify who your GSI is.*** Extra credit assignments that are late will not be accepted. This will be the only opportunity for extra credit in this class. I strongly encourage you to submit your extra credit assignments earlier than this date as we will be listening to student-submitted, law-related songs periodically in class during the semester. By submitting your extra credit assignment early, your song may be played in class.

Course Policies

This course requires you to read the reading assignments (for which there will be discussion questions and discussion during breakout room activities in lecture), actively engage lecture and section sessions, do some writing, and take some quizzes and a final exam. Feel free to come to office hours (or use the bCourses discussion or email tools) with ideas and questions.

Please be on time to class and section sessions. You are expected to prepare for each lecture class and section session. Take notes as you read (and in class) and refer to the discussion questions posted on bCourses. Notes are important for lectures (either pre-recorded or live), in the breakout room discussions and general lecture discussions, and sections. Research shows that you learn

more when you take notes on paper. Obviously, you will need a networked device open to attend and participate in lecture and section. If you want to make the most of class, take notes on paper as you participate but **use social media, send text messages, or communicate with friends away from class**. Drinking coffee, water, etc., in class is fine, but eating may be a distraction to your fellow students, so please do not eat in class (unless you must because of your schedule).

Note that throughout the class we will be discussing difficult topics related to law, such as racial, sexual, and ableist discrimination, sexual harassment, and violence of various kinds. I do not cover these topics gratuitously, for they provide analytic windows into among the most impactful aspects of law in our lives. I will give fare warning when we will be discussing these and other topics of a similarly sensitive nature. The expectation is that we will treat one another with respect, support and dignity at all times in this class.

The GSIs and I respect your privacy, but we also want to create contexts in live lecture and section sessions that are not alienating and invite academic engagement and inquiry. We would appreciate it if you keep your screens open as much as you can but that you stay on mute when not raising a question or comment (to reduce feedback and background noise). We understand if doing so is difficult, but it will be more difficult to participate in the discussions and ask questions with your screens closed and everyone's microphones unmuted.

Students requiring accommodation for disability should make sure that both the GSIs and I receive the official accommodation notice from DSP **by the third week of the semester**. Make sure to check bCourses daily, since that will be our medium of collective communication (although emails directly to the GSIs and me also are effective).

Academic Integrity

The GSIs and I take academic integrity and honesty very seriously. If you plagiarize, cheat, or are otherwise dishonest, you will fail **at least** the assignment in question, and I will file an academic dishonesty report. If you have any questions about this, please ask.

The UC Berkeley Academic Integrity policy appears at this online location:

<http://sa.berkeley.edu/conduct/integrity>Links to an external site

Basic Needs

Many Berkeley students struggled to make ends meet with regard to housing and food prior to the coronavirus pandemic. If problems with food, a place to live, or Internet connections are getting in the way of academics, UC Berkeley has resources to help at *basicneeds.berkeley.edu*.

Course Structure

- Part 1 Orientation to Law, Legal Studies, and the Law on the Books and Law in Action
 Part 2. Seeing Law through Different Legal Studies Lenses
 Part 3. Putting Legal Studies to Work Understanding Social Conflict: Disputes, Policing, Courts, and Punishment
 Part 4. Putting Legal Studies to Work Understanding Selected Big Challenges

Course Chronology

Month	Date	Lecture # / Topic / Assignment Due	Readings
<i>Part 1: Orientation to Law, Legal Systems, and the Law on the Books and Law in Action</i>			
<u>August</u>	27/Th	L01 – Introduction to the Course	course syllabus
<u>September</u>	01/Tu	L02 – What is Law? What is a Legal System? What is Legal Studies?	Calavita (2016: Ch. 1)
	03/Th	L03 – Digging Deeper into the “Gap” between the Law on the Books and the Law in Action: Policing Hate Crimes	Jenness and Grattet (2005) CA Hate Crime Laws (2020) BPD Hate Crime Polices (2020)
	08/Tu	L04 – How Language Matters in Law: Making and Remaking Race and Legal Authority	Wilkerson (2020), Gómez (2018) Pozen and Scheppele (2020)
	10/Th	L05 – How Language Matters in Law: Making and Remaking Race and Legal Authority (cont.)	Obasogie (2010), Abrego (2008)
<i>Part 2: Seeing Law through Different Legal Studies Lenses</i>			
	15/Tu	L06 – Law as Security, Law as Power Preclearance of Legal Provision Due	Hobbes (1651), Turk (1976)
	17/Th	L07 – Law as Protecting Individual Liberty	Mill (1859) <i>Obergefell v. Hodges</i> (2015)
	22/Tu	L08 – Law as a Social Institution: Types of Societies, Types of Law	Marx and Engels (1845-63) Weber (1919), Carlson (2019)
	24/Th	L09 – Law as a Social Institution: Types of Societies, Types of Law (cont.)	Durkheim (1893) Mandatory Restitution Act (1996) <i>Lagos v. United States</i> (2018)
	29/Tu	L10 – Law as a Social Institution: Gender and Racial Inequality and Intersectionality	Wollstonecraft (1792) Du Bois (1903, 1940) Crenshaw (1989)
<u>October</u>	01/Th	L11 – Law as a Social Institution: Racial Inequality in College Admissions	<i>Fisher v. Texas</i> (2016)
	6/Tu	L12 – Law as an Economic Mechanism: From Efficiency and Neutrality to Behavior Law on the Books Draft Due	Cooter and Ulen (2016) Coase (1960), Jolls et al. (1998) Gintis (2008)
	08/Th	L13 – Law as a Political Economic	Britton-Purdy et al. (2020)

	Mechanism: Power, Equality, Democracy and the 2020 Election	Keyssar (2020), Bouie (2020)
13/Tu	L14 – Law as a Perceptual Construct: Procedural Justice	Tyler (1990: Chapters 1, 3, 13) Johnston (2019)
15/Th	L15 – Law as a Perceptual Construct: Free Speech on Campus Extra Credit Song Essay Due	Chemerinsky (2018)

Part 3: Putting Legal Studies to Work Understanding Social Conflict: Disputes, Policing, Courts, and Punishment

	L16 – Transforming Social Conflict into Disputes: Legal Mobilization	Miller (2005: 55-68) Felstiner et al. (1980-1) Morrill et al. (2010)
	L17 – Transforming Social Conflict into Disputes: Sexual Harassment in Workplaces	Sapiro (2018), Marshall (2017) Edelman (2018)
	L18 – Policing Social Conflict: Democracy, Crime, Trust, and Legal Cynicism	Skolnick (1966), Bell (2016)
	L19 – Policing Social Conflict: Police Violence	Obasogie (2020) Obasogie and Newman (2017)
<u>November</u>	03/Tu L20 – Social Conflict and Punishment: Mass Incarceration and Pre-trial Dynamics	Miller (2005: 68-91) Foucault (1977) Alexander (2011) Kohler-Haussman (2013)
	05/Th L21 – Social Conflict and Punishment: Ending Mass Incarceration	<i>Brown v. Plata</i> (2011) PLRA fact sheet (2019) Simon (2019)

Part 4: Putting Legal Studies to Work Understanding Selected Big Challenges

	10/Tu L22 – Housing and Reparations Law in Action Draft Due	Fair Housing Act (1968) Hannah-Jones (2020) Coates (2014) Lerner (2020) Desmond (2016, Chs. 8, 15)
	12/Th L23 – Health Inequities and Housing	Benfer et al. (2018)
	17/Tu L24 – Immigration: Thinking about Borders	Park (2018: Chs. 1, 3) Gonzales (2016)
	19/Th L25 – Immigration: Where are We Now?	<i>DHS v. California</i> (2020)
	24/Tu L26 – Law and Social Change: Conventional and Cause Lawyers – <i>no synchronous class</i>	Shdaimah (2006)
	26/Th <i>No class – Thanksgiving Holiday</i>	none
<u>December</u>	01/Tu L27 – Law and Social Change: Social Movements, Myth and Symbolism of Rights	Calavita (2016: Ch. 7) Astor (2020), Hunter (2020)
	03/Th L28 – Law and Social Change: Rebuilding the Country	Soll (2020), Sharkey (2018) Terriquez et al. (2020)

Due Dates for Blog Post and Final Exam

08/Tu	Internet-ready Blog Post Due
10/Th	Upload Internet-ready Posted on Public-facing Blog
14/Mo	Final Exam (take home) Available Electronically
18/Fr	Final Exam Due by 11:59pm (Pacific) to bCourses assignment space

References for Articles and Book Chapter Readings

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