

Reinterpreting the ‘quickening’ perspective in the abortion debate

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Published online: 20 March 2009
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Abstract Personhood constitutes the pivotal point in the abortion debate. There exists a diversity of views as to when foetal personhood actually starts—from conception and implantation to viability and even birth. One perspective that has lost support for decades is that of quickening, a stance associated with Lord Ellenborough’s 1803 Act. This paper attempts to put quickening back into the limelight, albeit through a new interpretation. After discussing its philosophy and underpinning rationale, I will assess a number of arguments that have been directed against quickening as a viable point of distinction. I conclude by suggesting that according to modern proponents of quickening proponents, rational soul ensoulment begins after a certain degree of cerebral cortical formation has been realized, thus marking foetal volition, which promotes foetal interests, for the first time.

Keywords Abortion · Personhood · Quickening

Introduction

Although the term ‘quickening’ has come to refer to foetal movements perceived by the mother, in discussions of abortion focusing on personhood, the expression originally meant ‘being alive’. ‘Tis for the dead, not for the quick’, Hamlet exclaims in relation to an open grave—not a typical place for the living [1]. Hence, the entity that ‘quickens’ may apply to a wide spectrum of human organisms, from 5–6 week foetuses to living adults. However, in this article, the author intends to argue that a specific form of quickening is the start of personhood that is diagnosed and realized via the detection of *those* foetal movements that arise as a result of human volition albeit of a primitive degree (thus ruling out those movements that occur due to

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gravity, reflexes, and the like). The supposition that one's personhood, 'I', or personal identity commences with quickening may be defended by means of religious, philosophic, and secular principles and argumentation. The holy texts and traditions of some religions stipulate quickening as the time when ensoulment arises and thus marks the start of personhood and the point where aborting afterwards is tantamount to homicide. This religious tenet, shared by Christians such as Augustine [2, pp. 118–119] and Shiah Islamic denominations [3], shall not be touched upon here. Philosophically, 'delayed ensoulment' or animation (foetal movement or 'quickening') has been advocated as the starting point of human personhood due to the rational soul's infusion within the body. Aristotle articulated this theory [4, p. 161], and he was followed by Aquinas, among others [5]. From a secular perspective, instead of talking of souls directly, quickening may be defended by means of concepts such as human 'volition' and 'interests', i.e., where one's personhood arises or 'matters' once one's free will, volition, or capacity to acquire interests, (although rudimentary) begins. Indeed, quickening may actually signify such a beginning. Hence, quickening has the capacity to serve a variety of different methodologies; ultimately, however, it is a scientific process that involves a certain degree of cerebral cortical formation, thus marking foetal volition that, in turn, promotes foetal interests for the first time. This version of quickening does not rely on the concept of the soul. In this paper, the author intends to discuss the philosophic soul as it appears in the Western tradition together with its functions and then link it to the quickening position of personhood. I shall associate the theory with Lord Ellenborough's 1803 Act, suggesting how he reached his position. After clarifying the rationale behind quickening, I will be able to 'disguise' it with non-soul-orientated or 'secular' terminology, thus making it possible for me to convince both the religious and non-religious.

For the first time in Western tradition, in *De anima*, Aristotle defines the soul as the 'first actuality of a natural body with organs that is potentially alive' [4, p. 157]. The terms 'first actuality', 'natural body', 'organs', and 'potentially alive' ought to be dealt with before arriving at an understanding of his notion of the soul. According to Aristotle, three types of substances exist: potential matter, actual form, and a compound of matter and form. That which makes a potential something alive is its formal cause i.e. form makes matter a 'this' or 'particular' (i.e., instantiates matter) [4, p. 156]. This form is termed an actuality because it makes something potential actual. Aristotle believes that the soul is that substance *qua* form that enables a potentially living natural body to actually be alive. Why has it been labelled as the first rather than the second actuality? This form or actuality is a capacity, or active potentiality, that leads to a series of actions and attributes that are collectively termed the second actuality [4, p. 157]. The first actuality concerns the essence of *x* while the second actuality concerns its attributes and functions. The first actuality is tantamount to *x*'s essence, i.e., that which *x* is per se. Knowing the first actuality of an *x* enables one to differentiate it from other existents. Hence, taking humans by way of example, the locus wherein Man's first actualities or active potentialities lies is Man's form—i.e., one's soul. Natural bodies, here, implies things that are of natural origin in contrast to man-made or artificial things [6]. 'Organs' imply a being's components, parts, limbs, or organs etc., each of

which performs different functions. Human natural organs constitute matter that is potentially alive and will become actually alive by means of the human soul that 'is a kind of actuality of that which has the potentiality to be of the appropriate kind' [4, pp. 161–162]. In summary, therefore, according to Aristotle, the soul constitutes the difference between a plant/animal (including human) foetus that is only potentially alive with that which is actually living. Hence, all living things possess souls and this soul is responsible for that given thing's animate behaviour (or second actualities).

Depending on the kind of matter that the soul animates, a series of operations or second actualities arise, e.g. growth in plants, sight in animals, and so forth. In relation to the aforementioned definition of the soul offered by Aristotle, the vegetative, animal, and human souls may require a more detailed explanation. The vegetative soul (of a plant, for example) is the first actuality which possesses, and will only possess, the attributes of reproduction, nutrition, and growth; the animal (or sensitive) soul is the first actuality which possesses (in addition to the above three) the capacity to sense and move volitionally; and the human (or rational) soul of Man is the first actuality which possesses (in addition to the above five) the capacity to perceive universal concepts and assents as well as the ability to exercise thought, intuition, and apprehension. So, like Plato, Aristotle believed that humans have a single soul with three faculties and that it is this soul that is the source of life [7]. The difference between their concepts of the soul, however, lies in the fact that for Plato, the immortal part of the soul alone constitutes one's personal identity while for Aristotle, the united compound of soul-body, or form-matter is identical to one's 'I' [4, p. 161]. In the latter viewpoint, the 'I' may *only* arise once there is sufficient human matter or body to properly dispose for that 'I' or rational soul. The question now, therefore, is when in foetal development, if ever, does the 'I' arise?

In his 'On the Generation of Animals', Aristotle seems to have correlated the actuality and perfection of the foetus's organs with the possession of the locomotive animal soul, i.e., the source of volitional movement that manifests itself by means of foetal kicking [8]. This is further buttressed in 'On the History of Animals', where he comments:

In the case of male children the first movement usually occurs on the right-hand side of the womb and about the fortieth day, but if the child be a female then on the left-hand side and about the ninetieth day...

In the case of a male embryo aborted at the fortieth day...all the limbs are plain to see, including the penis, and the eyes also, which as in other animals are of great size. But the female embryo, if it suffers abortion during the first three months, is as a rule found to be undifferentiated...[9].

The above statements illustrate that foetal kicking is a manifestation, or second actuality, of the human rational soul, i.e., its locomotive faculty. At the moment of quickening, we now have proof, according to Aristotle, that there is a rational soul. I suggest that there must have existed a rudimentary or primitive degree of desire or interest for the foetus to have moved and that this is connected to its possession of a rational soul. Quickening is possibly the earliest manifestation of the rational soul;

with time, more and more complicated manifestations will arise in our progress throughout childhood, adolescence, and adulthood. We need not confine ourselves with Aristotle's empirical data in embryology; that which underlines his basic metaphysical principle throughout his embryological discussions, is that in Man, the active potentiality or first actuality or rational soul does not *inform* a human natural body until the latter is ready and that on movement, such an informing may be demonstrated. In *Scriptum super libros Sententiarum*, Aquinas follows suit and adheres to Aristotle's philosophy and even Aristotle's embryological observations [10]. Aquinas does differ with Aristotle on the question of the independence of the rational soul from the body after death.

Christians all believe in the rational soul. However, those who adhere to the concept of delayed ensoulment have always been in the minority. The mainline Catholic perspective, which continues to be the prevalent position today, is that the rational soul is present within the zygote from conception onwards (immediate ensoulment). D.A. Jones has illustrated that 'the first generations of Christians, as represented by *The Didache*, *The Letter of Barnabas*, Athenagoras and Mucius Felix, universally characterised abortion as *homicide*' and that "all witnesses to the early Christian tradition reject abortion without distinction as to the stage of development of the embryo" [11, p. 711]. The late Pope John Paul II stated that abortion is 'the deliberate and direct killing, by whatever means it is carried out, of a human being in the initial phase of his or her existence, extending from conception to birth' [12]. The present Pope, Benedict XVI, has not altered this doctrinal position to date.

The Aristotelian-Thomistic theory that human life/personhood began at the point of 'animation' or human soul 'delayed ensoulment', although rejected by Catholics from the very beginning, had in fact become incorporated into the non-Catholic Christian Church and subsequently by the non-Catholic law-making lords [13, pp. 3–4]. Differences, however, do arise when such a delayed ensoulment actually arises. Aristotle and Aquinas had claimed that delayed ensoulment occurs at forty and ninety days in male and female foetuses, respectively [11, p. 712]. In English law, however, possibly as a result of the social context of abortion during much of the seventeenth and eighteenth centuries, this phenomenon of animation or delayed ensoulment became associated with maternal experiences of foetal movements [14].

Hence, one may delineate the underlying rationale behind Lord Ellenborough's emphasis on quickening as the ensoulment of the foetus by the human rational soul. Quickening proponents regard 'us', our souls, as arising at this time. When is there evidence that such an event has in fact taken place? At quickening, when the foetus is moving volitionally! Years ago, when there was no ultrasonographic technology, no movements on behalf of the foetus were detectable except at quickening. Hence, maybe the mother's perception of foetal movements was the best they could go by as proof of delayed animation or ensoulment. Nowadays, though, actual foetal movements may be observed at 5–6 weeks, although they are reflex reactions [15]. The characteristic feature, however, for a quickening foetus is its volitional movements, not reflex movements. (The movements observed by Aristotle at forty days may have been reflex movements.) After all, volition implies a degree of rationality, albeit minute. In the same way that reflex movements may be observed in brain dead patients who are not regarded as persons, the same applies to

pre-quickening fetuses. Furthermore, movement of a rudimentary volitional nature cannot arise without the formation of at least particular cerebral cortical regions. Therefore, it would not be totally out of bounds to associate quickening and brain activity as manifestations of the same reality, in this case ensoulment. In summary, therefore, the sufficient requisite in relation to one's 'I', according to Ellenborough's Aristotelian-Thomistic-orientated perspective, is that of ensoulment, which can be detected by the mother's perception of foetal movements. The necessary condition *qua* personhood is enough neural brain development. In this paper's variation on quickening, ensoulment will be revealed after foetal movements per se are detected, even if this occurs before the mother's perceptions (i.e. via technology). The only prerequisite is that the movement ought to be deemed volitional.

In order to appeal to non-religious perspectives, we might consider avoiding 'soul' terminology and instead (1) concentrate on those functions perceived by some as emanating from the soul, (2) explain why they are pivotal vis-à-vis one's personhood and (3) justify why these operations may be associated with quickening. According to Aristotle's taxonomical observations [4, pp. 159–188], ultimately it is the power to will, choose, reason, judge, estimate, and deliberate that differentiates Man from other animal species, a view echoed by Locke [16]. These operations do not all exist within the quickening foetus; however, the decision and desire to freely move and learn may be suggested as occurring at quickening, as I discuss later. As the foetus grows, more of these rational attributes develop throughout its life. Assuming movements of a quickening nature were to be proven volitional, which is not the case today, then one might claim that such a foetus has, for the first time, acquired interests of its own, however primitive in degree. Here, instead of the soul, one may state that that which constitutes one's personal identity (from a foetus of x months to a child or adult) is the possession of thoughts, perceptions, and interests, irrespective of their quantity and quality. In short, if an entity has interests, it is a person. Even Locke, whose theory on persons is employed by pro-choice advocates, i.e., that one is a person after developing self-consciousness and rationality, takes a pro-life Hippocratic stance when it comes to abortion [17].¹ This may be, I speculate, due to the fact that he was of the belief that at some stage during gestation, the foetus *does* start to acquire some degree of awareness and rationality.

A number of criticisms may be raised against this paper's theory of quickening. We shall pose them one by one and then try to suggest possible responses:

- I. Some may argue that similar to the viability position on personhood, the quickening thesis possesses inconsistencies once complete ectogenesis becomes a reality. After analyzing and comparing viability pre- and post-complete ectogenesis, one observes that the start of personhood differs for (1) a Manhattan-born Caucasian and a Zambian-born Caucasian and, more relevantly, (2) a Manhattan Caucasian viable foetus in 2008 and a Manhattan Caucasian foetus in

¹ Locke believed in the prohibition of abortion at whatever stage as a matter of first principles. However, on the question as to when the rational soul or 'I'— and thus personhood may I add—arises, he writes "and it is so hard to imagine the rational soul should presently inhabit the yet unformed embryo..." (see [17, p. 127]). Interestingly, the formed foetus according to Hippocrates, and therefore maybe Locke as well, occurred at 3-4 months (depending on the gender), a stance closely linked with quickening (see [2, p. 20]).

3008. In the latter case (2), ‘viability’ proponents argue that the 24-week-old foetus is a person in 2008 but that its great, great, etc. grandchild in 3008 will be deemed a person from conception. Focusing on viability promotes the withdrawal of the personhood debate outside the boundaries of philosophy and grants it a technological, and thus constantly changing and incoherent nature. A similar line of attack may challenge quickening—i.e., quickening may occur at around 16–20 weeks today, but with complete ectogenesis and human interference, the growth of the ecto-child may be accelerated, thus promoting quickening at an earlier time period—two weeks, for example.

Reply: Regardless of the technological era one is situated in, in quickening, the criterion for the start of personhood and the ‘I’ is the arrival of a soul, be it at 2 weeks or 18 weeks. Once evidence of the soul appears in the form of volitional movement or the commencement of interests, the ‘I’ arises. Assuming a 2-week foetus and an 18-week foetus start quickening at the same time, they are both essentially the same type of entity, i.e., body infused by a rational soul. One may compare it to puberty, whose criterion for achievement is the realization of a number of biological signs; although the age of puberty in boys is around 12–15 years, this may be accelerated by means of doctors’ prescriptions of growth hormones, and so were a boy to develop specific biological signs at 9, he would still be deemed to have attained puberty and would qualify as a pubescent. However, in viability, no clear definition or criterion has been given for the ‘I’; what are *we* in essence according to *viabilitists*? Viability proponents claim we are essentially ‘potentially surviving human organisms’. Apart from being a vague and ambiguous criterion, for them, it is possible for a 1-day foetus to be a person and for a 24-week foetus to be a person, although they are essentially different in nature and development. However, in the above quickening scenario, it is true to say that an 18-week and a 2-week foetus are persons because, here, both are essentially and qualitatively similar—i.e., possessing volitional movement that arises from a rational soul. Another problem with the criterion that ‘we’ are essentially potentially surviving human organisms is that the 40-year old violinist in Thomson’s well-known scenario who, before the event, used to be continuous with the 24-week foetus, no longer can be said to be one and the same as that foetus due to his inability to survive without another human’s existence, according to the personal identity equation. In Thomson’s thought experiment, an otherwise dying unconscious violinist is hooked up into you while you are asleep. Unhooking him will lead to his death. Via this scenario, Thomson claims that the right not to be killed as it is discussed in debates over abortion means the right not to be killed unjustly. Hence, killing the violinist (and foetuses for that matter) may not qualify as unjust killing [18]. The criterion lacks substance, to say the least.

II. Some have said that the quickening criterion is subjective: 14–16 weeks for multiparous women, 20–22 weeks in first timers, earlier in Caucasians than in blacks and so forth [19].

Reply: What is so wrong with this? Who said that the commencement of the ‘I’ has to be the same to the second for all people? There are many different

geographical, biological, and psychological factors that can modify the onset of quickening. Once again, one can analogize this to the onset of puberty. Who says we all, boys and girls, have to become pubescent at the same time? Our duty is to respect human beings who have the capacity to acquire interests (because they possess rational souls or functional minds) regardless of when the time of acquisition is. To act otherwise may be deemed inappropriate and unfair for the following reason: imagine that a country gives its citizens the right to drive and vote at 15 years of age. Now, assuming a boy were to acquire the maturity of a fifteen-year-old at 10 (in his physique and I.Q.) due to the certain drugs, etc. that he had received over the years, would it not be unjust to delay the ten-year-old's rights to drive or vote? In short, differences that arise in relation to the onset of quickening need not be regarded as inconsistent. One must always ask oneself, 'Can the entity that I am facing perceive, feel, desire or acquire interests in any shape and form?' If the response is positive, then the entity morally matters, is a person, and will be harmed (albeit slightly) if aborted.

III. Some have suggested that quickening was proposed solely as an 'archaic test of human existence' because it used to be the one determining way of differentiating between pregnant and non-pregnant women [20, p. 735].

Reply: I could not agree more, but that does not alter the fact that its philosophy claims to establish the presence of the human soul or acquisition of perception and interests. Two hundred years ago, quickening was seen as evidence of ensoulment in addition to establishing pregnancy, and this was the best data they could go on. Today we have access to much better and more precise technological instruments that may aid us to distinguish when (1) one is pregnant, (2) reflex and gravitational movements occur, and (3) volitional movement possibly commences. Today's advanced machinery allows me to redefine and modify the original definition of quickening to 'the occurrence of volitional foetal movements'.

IV. Some have raised the fact that sometimes movement may never be felt by the mother, such as in spina bifida cases [20, p. 735].

Reply: Assuming movement could neither be felt by the mother *nor* observed via ultrasonography, then we on the outside would be hindered in ascertaining when ensoulment has actually occurred. I suggest that in such cases, instead of permitting abortions up to birth in spina bifida foetuses, we should assign a mean age of quickening (according to one's statistics) and regard that as the point of ensoulment, refraining from abortions from this time forward. Furthermore, one may argue that it would be extremely difficult for law courts to ascertain and substantiate when an even normal foetus has been illegally aborted in every individual case. Even here, I suggest (a) that a limit that accords with the mean age of quickening be assigned by government and (b) that pre-natal weekly surveillance and care worker teams supplied by the health authorities may assist with providing such evidence.

V. Some have claimed that today, actual foetal movement is detected at 5–6 weeks; hence, according to them, the point of quickening ought to be brought forward by several weeks [21].

Reply: The actual movement they allude to is that of reflex or gravitational movements. The movement occurring in quickening is of a volitional nature, albeit rudimentary. This volitional nature may be differentiated from reflex movements in a number of ways. By way of example, the mother often experiences the foetus's minutes-long leg and arm movements during her sleep, when she herself is in total peace and quiet. All mothers, I think, would support the claim that the quickening foetus is moving voluntarily. Most neonatologists I have spoken to during my years in medicine 'feel' that the foetus moves voluntarily during their amniocentesis procedures. More convincingly, however, scientists have shown that foetuses have *learnt* not to move away when challenged with weak noxious stimuli *after* experiencing the stimuli a number of times [22]. Although this is learning and feeling of a minimal calibre, but it is nevertheless *perception by* the foetus and thus a start to the foetus's acquisition of minimal interests and ability to become minimally frustrated in the face of noxious stimuli. These perceptions grow exponentially during one's development. Possessing minimal interests, I think, is justifiable grounds for granting a foetal human being the status of personhood; in the same way, it is justifiable for one to regard one's 90-year-old father who suffers from an extreme form of Alzheimers as a person despite having minimal memory, learning, and even locomotive abilities. Furthermore, Arabin et al. have demonstrated that the foetus is able to experience as well as react towards touch and pain during the middle stages of the second trimester and that 'cutaneous sensory receptors...spread...to the arm and legs at around 15 weeks' [23].

VI. Assuming at least some brain cortex has been formed that allows quickening to take place, why does one insist on ensoulment rather than stating that 'we' are our brains, or neuronal networks, or even embodied minds?

Reply: It is true to claim that brain formation is a necessary condition for personhood; however, whether or not it may act as a sufficient condition for personhood and one's personal identity has yet to be proven. Parfit's 'Teleporter' thought experiment [24], amongst others, refutes the sufficiency of the brains in relation to the 'I' (this theme lies beyond the scope of this paper). In any case, with regards to the actual start of foetal personhood, there may well be some common ground between quickening and cerebral cortical formation—i.e., in order for it to move volitionally, a minimum functional degree of cortical activity is required. Moreover, that which causes the foetus to move must be a minimum degree of free will emanating from a minimal interests-containing 'mind'. One may pose a further question and ask whether it would be wrong to end the lives of interests-possessing fishes or mind-possessing chimpanzees? In brief, I would reply affirmatively to this question. Ending the lives of fishes, bats, or chimpanzees for no justifiable reason is wrong and, regarding latter two, deemed illegal in some countries. However, I would still appreciate a quantitative and qualitative difference between the interests, potentials, and souls possessed between human beings and other animals. Naturally, were animal enhancements to become a reality one day, then the aforementioned gap would narrow accordingly.

VII. Some may question that the author's position is wholly different from the original definition of quickening proposed by Lord Ellenborough that referred to the mother's perception of her foetus' movements.

Reply: Who can blame them for having defined quickening as such? What other means did they have access to? They neither had our medical instrumentations nor did they possess our calibre of knowledge. As time passes and knowledge flourishes, I suggest that the underlying rationale of quickening may be better understood, enabling us to pinpoint the exact start of true quickening on a case-to-case basis—i.e., that time whereby a given foetus actually moves volitionally.

Thinking through some implications of the quickening position

Lord Ellenborough's 1803 Act treated post-quickenings abortions as homicides. The penalty then was tantamount to capital punishment [13, p. 15]. This would be translated to a long-term prison sentence under today's legal system. But is not homicide too harsh a term? Not for quickening proponents, because they regard post-quickenings abortions as essentially the same as infanticide. Both post-quickenings foetuses and infants share the ultimate criterion, i.e., the soul, mind, or interests-possessing entity. Assuming a mother is justified in aborting her ensouled foetus who possesses a mind, who is a person according to me, then what would make it wrong for her to kill her 1-year-old *were* similar circumstances to arise? One may ask what will happen if the foetus is 'threatening' to kill the mother in the case of mother-foetal conflicts? In reply, I would claim that (a) to threaten requires intention that is not yet possessed by the foetus; (b) the foetus is innocent with no ill intent; and (c) the mother chose to procreate the foetus and so should accept more responsibility (killing is not a first option).

Personhood is the most dignifying and sacred of concepts in bioethics, and should not be compromised, at least as a first option, but may—if extraordinary conditions dictate—arise as a last resort. By way of example, if a scenario arises whereby both mother and foetus will die if the mother is not saved immediately, preferring the mother's life is justified—'one life is more precious than none'. Moreover, as an advocate of the quickening perspective, I would never prevent a mother suffering from cancer, for example, from receiving medication, although it might be to the post-quickened foetus's detriment. Another hypothetical scenario is where a mother and infant are on a boat and, assuming one of them is not thrown into sea, both will die. Here we have a mother who is *responsible* for bringing an infant into this situation and the innocent infant. The choice here may possibly only be settled by the toss of a coin. Because if one claims the mother has priority due to *x* reason, one would have to say the same thing if the conflict were between a mother (one person) and triplet newborns (three persons)—what is there to stop her killing all three? This position is untenable because after all, three lives are more precious than one. No other way, therefore, can settle how to choose and give preference to one person over another person.

Unfortunately, today's law would never dream of accommodating such a position. However, I suppose once incubators that have the capacity to keep

15-week-plus fetuses alive are realized, then the sorrow of aborting ensouled fetuses will no longer arise. Such abortions cannot, I believe, be justified. Justifying such abortions is on a par with justifying infanticide. True, this may slightly increase the number of Caesarean sections performed per year, but would not acquiring a small scar be worth saving one's infant? If yes, then the same answer applies to post-quickening fetuses. Moreover, the mother *chose* to procreate and this brings some responsibility with it. The more time that passes during gestation, her responsibility with respect to the decision to abort becomes proportionately more complex. Raising issues such as the woman's right to bodily autonomy are secondary in relation to whether the foetus in question is a person or not. Only if it is not a person would a woman be justified in exercising her rights, thus avoiding serious burden and hardship. Otherwise, the matter of infanticide becomes a legitimate concern.

The issues mentioned above are just some issues that are involved were quickening to be treated as the commencement of foetal personhood. In short, were laity to treat infanticide (or even infant paedophilia, which cannot be worse than getting killed) as morally wrong, then aborting post-quickening fetuses, in turn, ought to be looked upon as being morally wrong. Quickening, according to this interpretation, may be looked upon as neither a pro-life nor pro-choice standpoint in addition to being in accord with religious, philosophic, and secular principles.

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