

Humor and the Politics of Emotion in the Courts of the Weimar Republic

by Sandra Schnädelbach

"Judge: 'Defendant, why do you let your wife drink?'

Defendant: 'I don't let her drink, but what should I do? She doesn't listen to me. You know, I can't beat her every day.' Judge (without changing expression, in seeming agreement): 'Not every day.'"

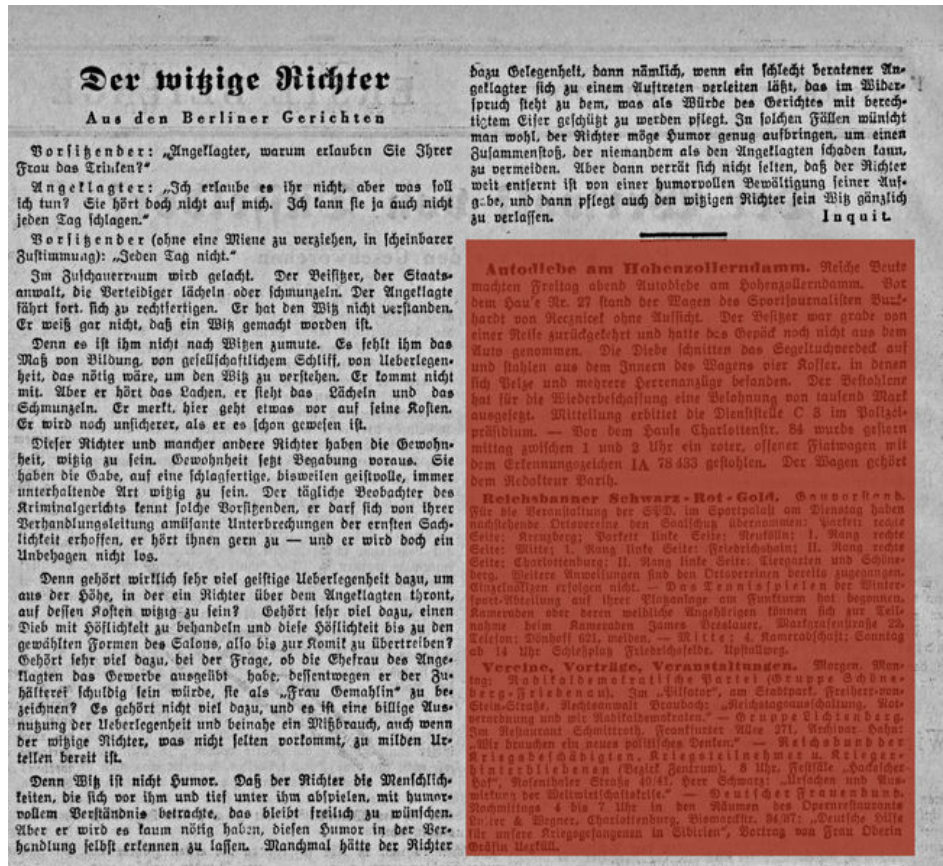
Laughter in the court. The joke worked. Even the "assessor, the prosecutor, the defense attorneys smiled or smirked," wrote the *Vossische Zeitung* in April 1931, in its regular feature, "From the Berlin Courts." [1] Such anecdotes were commonly published in the many volumes

on "Humor in the Courts," which described trials as stages for "funny scenes," recounted often in the local dialect. [2] In contrast, official newspaper accounts took a much more critical tone, as the medium served an important position in public discourse on the justice system in the 1930s. With the ascendancy of the printing press and resulting mass media at the turn of the century, court news rose in popularity and began reaching a wider audience. Criminal cases in particular attracted great public interest, as did sensational trials. But everyday cases were reported on, too, serving both to entertain and stoke discussion on the important social and political issues of the time. [3]

The *Vossische Zeitung's* court reporter was well aware that supposedly humorous situations were particularly well suited for identifying social fissures. Indeed, the anecdote recounted above touches on multiple points. First, the joke fed on the encounter of two different social classes by using alcohol abuse, domestic violence and the blurring of classic gender roles as signifiers of the defendant's milieu. Second, the recounted episode also served to challenge the way in which the judge administered the trial as a whole, thus criticizing the nature of the court itself. Courtroom journalism reveals how courtroom practice was a social practice, one that placed the perception and correct treatment of emotions front and center, as the following analysis will demonstrate. In the Weimar Republic, journalistic court reporting supplanted the old "judicial-official" mode of simply reporting on facts and motions and took on a new political dimension. [4] As a pillar of democratic discursive culture, court reporting developed into a form of social critique.

The reporter from the *Vossische Zeitung* used the anecdote quoted above for this exact purpose. He himself was not amused. Rather, the reporter took it as an occasion to admonish "the humorous judge" for failing to reflect on the emotional implications of his joke. Humor and laughter in the court were depicted as delicate subjects: while they might loosen up the otherwise stiff atmosphere produced by court formalities, their emotional effects could be problematic. At the heart of this lay humor's social function, because it had the power to both bolster agreements and forge bonds as well as to exclude certain people, as the reporter believed the judge had done. The defendant, the reported argued, had simply continued his testimony without pause: "He didn't understand the joke, he didn't even know that a joke was made." Humor thus served to exclude the defendant while reaffirming the status of those in the know. [5]

Open to the public and characterized by oral argument, the trial in its very self can be viewed as a form of communication and social interaction that displays and (re)produces social structures. [6] Humor as a mode of communication fulfills exactly this function: joking was one of the fundamental social practices of the court, something that was criticized and questioned by journalists of the time. [7] They recognized that taking a closer look at how jokes were made in court would reveal the mechanisms sustaining the forms of



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social interaction and hierarchies that structured court proceedings.

In the *Vossische Zeitung* reporter's critique of the Berlin judge, categorizing the latter as "witty" rather than "humorous" played a decisive role. He claimed that the two categories were indicative of two distinct forms of social and emotional interaction. The distinction traces itself to the nineteenth century, when a specifically German form of humor was juxtaposed against a supposedly French form of wit or irony. While contemporaries agreed that all were based on the clash of opposites, they held that wit, satire and irony failed to resolve the contradiction. Satire in particular was characterized as damaging and destructive. In contrast, "German" humor was supposed to have a harmonizing effect because it aimed at producing laughter in which everybody could join.[8]

In this sense, humor was perceived as a conciliatory practice and was valued as such in the courtroom. According to the reporter for the *Vossische Zeitung*, wit was founded in a sophistication that could only be enjoyed by initiates. Thus, instead of integrating, it had a deprecating function in the court. The lawyers were not laughing with someone, but *at* someone. The reporter honed in on the fact that the defendant was not in the mood for jokes and that in laughing at the judge's joke, an alliance was forged among the jurists that served to highlight the social differences present in the courtroom. The reporter commented that while the defendant lacked the education and "social finesse" required to laugh at the joke, it did have an effect on him: "He doesn't get it. But he hears the laughter, sees the smiles and smirks. He realizes that something is happening at his expense. He becomes less certain than he already is."[9]

The reporter's critique directly addressed the emotional effects of the judge's joke, which were intensified by the fact that not everyone present could grasp its content. Indeed, he thought that the gap opened up here was more significant than the verdict itself, because judges with a sense of humor tended to treat defendants more mildly in the end. Nevertheless, he emphasized that this fact did not make the joke acceptable but condemned it as "nearly an abuse" of the judge's position, an abuse consisting in the verbal exploitation of power that could affect the emotions of others.[10] Considered in this light, the judge had not only the responsibility of making a just verdict, but also of establishing an emotional setting during the trial that respected the backgrounds of all those present.

Early twentieth-century jurisprudence reflected increasingly upon the importance of the judge's correct treatment of his own emotions as well as those of the defendants, plaintiffs and lawyers in the process of ascertaining the truth.[11] The debate took place in the context of the press' constant claims that judges were engaging in "class justice" ("Klassenjustiz") and was spurred on in the mid-1920s by the perceived "crisis of trust" ("Vertrauenskrise") between the citizenry and judiciary, which put the Weimar Republic's judges under pressure.[12] Juridical analyses of the causes of these conflicts and the solutions they proposed addressed structural and methodical problems, but more than anything, almost all of them targeted jurists' insufficient emotional education as the key issue. Liberal, reform-oriented jurists believed that practices used by educated circles to exclude the lower classes should be replaced by emotional openness. Contemporary opinion held that trust was an emotional bond that could only be produced by knowledge of the other's life situation, style of speaking, and values. Accordingly, some progressive jurists promoted an active culture of exchange whilst holding trial. They argued that building trust was one of the judge's central tasks and that doing so successfully depended on his ability to grapple with the emotional challenges that were part and parcel of court proceedings.[13]

The insights of contemporary criminal psychology supported the view that emphasized the importance of a judge's capacity to manage emotions in the courtroom. Criminologists like Hans Gross believed that by cultivating positive emotions and properly using voice and body language, judges could produce a comfortable atmosphere in the courtroom, which would then make the defendant feel similar emotions, all to the benefit of the judicial search for truth. In contrast, anxiety and pressure beyond a reasonable measure would put constraints on defendants' ability to recollect and articulate themselves.[14]

The liberal-democratic press subscribed to the same theory, which is why it is no surprise that the Berlin judge's joke was not well received. The journalist who penned the anecdote above believed that humor could and should be used to build trust, but only insofar as it loosened hierarchies and made the defendant feel included. He claimed that it was desirable that "the judge use enough humor to avoid a conflict that could harm only the defendant." [15] Thus, he argued that judges should not seek to make the defendant aware of their authority and superiority, but rather try to overcome differences. Among other things, this meant that judges should show greater tolerance when people challenged courtroom conventions.

In this respect, humor could serve as a sort of meta-level that would allow jurists to comment on the trial and distance themselves from the normal procedures. Humor opened up space for flexibility within the formal rules of the court, which could often be an occasion for conflict if they were challenged. Court trials served as sites for negotiating social hierarchies that were marked not only by prescribed roles but also by the adherence or violation of behavioral norms.[16] Following the *Vossische Zeitung*, verdicts would be more just if the court and especially the presiding judge had the capacity to take themselves less seriously in moments of conflict. The reporter considered humor a better way to deal with conflict than the kind of irritability that would lead the judge to put his power on display. Thus, the ideal judge was characterized by both humor and tolerance, a combination that could not always be found in actual court room practice. In 1928, for instance, a judge in Berlin sentenced three witnesses to three days in jail for laughing out loud about an expression in a lawyer's speech, which the judge interpreted as an attack on the dignity of the

court.[17]

What type of humor one was permitted to use in court, as well as the consequences for doing so was highly dependent on a person's position in the trial as well as their social status. While the judge's own disciplinary power could quickly suppress unwanted humor in court, this was not the case for others in attendance. Moreover, jurists usually had a bourgeois background, while defendants often came from lower classes.[18] There were also conventions and rules dictating how and when jurists could use humor in court, most of which were laid out in works on courtroom rhetoric. Humor had been seen as a key rhetorical device for convincing an audience since antiquity, and standard texts on juridical eloquence at the turn of the century often drew on the classics. Whereas juridical rhetoric permitted the use of humor among defense lawyers, it restricted its use for judges, with one work proclaiming: "Humorous speech in courts is only to be permitted to lawyers." A humorous judge, it stated, might be funny, but humor "injures the finer sensibility," which is why, it claimed, judges should dispense with it.[19] This prescription matched up with the ideal of objectivity that judges were supposed to embody in their speech. Judges should express themselves in a "dignified, strict and measured" manner, not least of all because making judgments was an act of state.[20]

Thus, dispensing with humor was seen as way for the judge to show his neutrality and distance, both viewed as necessary for a just verdict. At the same time, some increasingly called for more interaction between the judge and defendants by claiming that judges should try to establish a courtroom environment that would invite everyone to participate in the juridical search for truth. Fulfilling this task, however, demanded that judges deploy the kinds of rhetorical appeals to emotions from which they were traditionally discouraged.

The article from the *Vossische Zeitung* clearly stated its expectations for judicial behavior and pointedly criticized the judge's actions – a development that bears witness to a shift in media history: such criticism of judges in newspapers was a very new phenomenon. Open criticism of the judiciary in newspaper columns was something that only developed in the expanding press of the German Empire and gave rise to a new conception of courtroom reporters' work. In the nineteenth century, court reports still consisted of little more than a bland statement of the facts of the case.[21] By the time the Weimar Republic was founded, this had changed drastically. In the 1920s, court reporting developed a dynamism and journalistic intensity that made it into a novel forum for sociopolitical debate. Since the turn of the century, new forms of production and distribution had enabled the press to become a mass media with a growing audience; tabloids that reported on criminal cases and sensational trials gained popularity.[22] But liberal papers like the *Vossische Zeitung* also defined themselves through court reporting, producing star reporters like Paul Schlesinger, who became famous in the Weimar Republic under the pseudonym "Sling." After he left the paper in 1928, he was replaced by Moritz Goldstein, who, publishing as "Inquit," wrote the article quoted above. The reports focussed on the jurists's behavior and rhetoric in court which shed a new light on the legal and political issues that defined the judiciary.[23]

Court reporting at the turn of the century also drew its potency from the development of a new style of journalistic writing. Court reporters used literary devices and were interested in trends in contemporary literature such as the New Objectivity movement.[24] The state also took notice of the growing influence of court reporting: the article on the "humorous judge" was archived by the Ministry of Justice, which collected newspaper reports on "grievances at the courts." In doing so, it documented contemporary criticism of the justice system, which formed the core of debates on the "crisis of trust in the judiciary" among jurists and non-jurists alike.[25] But jurists had been talking about the rise of the press since the time of the German Empire.[26] They were irritated by the fact that the justice system was being subject to more and more criticism and concerned about the increasing popularity of journalistic writing. In 1893, jurist Hermann Daubenspeck warned that the latter would rub off on juridical speech and writing. In his guidebook on court language, Daubenspeck felt compelled to take a position against the "simple style of the columnist" and advise jurists to free their language "from all polemics, humor and false pathos," particularly when writing verdicts.[27] Daubenspeck thought that the trends set by journalistic language increased the risk that one might insult somebody, which he of course believed should be avoided at all costs. He claimed that "newspaper phrases" were finding their way into the speech of younger generations, which ran contrary to the ideals of juridical language.[28]

So, while judges advised their colleagues to dispense with humor in order to underscore the stately nature of the judge's work, criticisms of judges' humor in the press advised not more stringency, but rather more flexibility, which their authors thought would help smooth over social differences in the courtroom. The way in which the *Vossische Zeitung* article dealt with issues of humor is indicative of a shift in views at that time on problems of the justice system and ways to resolve them. In contrast to the nineteenth century, court reporting in the twentieth was interested in the psychological mechanisms that expressed themselves in the courts, and journalists invested much more energy in analyzing the psychological significance of the motivations of an action and the behavior of lawyers, witnesses and defendants during the trial.[29] They viewed humor and its effects as aspects of an emotional space that was crucial for the workings of justice.

Humor thus took on a social function in the court. It could be used to both reinforce and loosen social hierarchies. Journalists did not think that humor was in and of itself inappropriate for the court, but rather criticized the emotional implications of some of its concrete expressions. As the history of emotions demonstrates, judges were made responsible for managing their own emotions and those of others in the courtroom. Humor, then, was understood to be an aspect of a politics of emotions that could be used both

positively and negatively. On account of its ability to both exclude and include, it contained within itself a political dimension, something that people of the time were well aware of. In the end, the courts in the Weimar Republic were still far away from attaining the ideal of paving over social differences as the proponents of integrative humor had imagined. Trials were gradually made into public battlegrounds for ideological conflicts, which were intentionally provoked to escalation.[30] The political situation kept the goal of social reconciliation even further out of reach. After the Nazis took power, Moritz Goldstein no longer felt he could rely on juridical humor. Fired from his job at the *Vossische Zeitung* on account of his Jewish faith, he went into exile in 1933.

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[1] "Der witzige Richter," *Vossische Zeitung* 12 April 1931, in: GSAPK, I. HA, Rep. 84a: Justizministerium. Zeitungs-Ausschnitte über wirkliche oder vermeintliche Missstände bei Gerichten des Kammergerichtsbezirks, 1929-1931, no. 20250.

[2] For example *Lustiger Berliner Pitaval. Neuer Humor vor Gericht im Berliner Dialect* (Berlin: Hugo Steinitz, 1888); *Berliner Humor vor Gericht. Heitere Szenen aus den Berliner Gerichtssälen* (Berlin, 1905); Peter Purzelbaum, *Auch Justitia lächelt. Allerlei Gerichts-Humor* (Berlin: Beenken, 1939).

[3] Cf. Benjamin Carter Hett, *Death in the Tiergarten. Murder and Criminal Justice in the Kaiser's Berlin* (Cambridge: Harvard University Press, 2004) 5, 181; Daniel Siemens, *Metropole und Verbrechen. Die Gerichtsreportage in Berlin, Paris und Chicago 1919-1933* (Stuttgart: Franz Steiner Verlag, 2007), 61-66.

[4] Cf. Siemens, *Metropole und Verbrechen*, 43-49, 61-66.

[5] Cf. Martina Kessel, "Introduction. Landscapes of Humour: The History and Politics of the Comical in the Twentieth Century," in *The Politics of Humour. Laughter, Inclusion, and Exclusion in the Twentieth Century*, Martina Kessel and Patrick Merziger, eds (Toronto: University of Toronto Press, 2012) 3-21, here p. 3, 9.

[6] Cf. Alexandra Ortmann, *Machtvolle Verhandlungen. Zur Kulturgeschichte der deutschen Strafjustiz 1879-1924* (Göttingen: Vandenhoeck & Ruprecht, 2014), 273-283; Cornelia Vismann, *Medien der Rechtsprechung* (Frankfurt/M.: S. Fischer Verlag, 2011), 19-33, 49-51; Rebekka Habermas, *Diebe vor Gericht. Die Entstehung der modernen Rechtsordnung im 19. Jahrhundert* (Frankfurt/M.: Campus Verlag, 2008), 235-237; pivotal: Niklas Luhmann, *Legitimation durch Verfahren* (Frankfurt/M.: Suhrkamp, 2017).

[7] Cf. Jan Bremmer and Herman Roodenburg, "Introduction: Humour and History," in *A Cultural History of Humour. From Antiquity to the Present Day*, Jan Bremmer and Herman Roodenburg, eds (Cambridge: Wiley, 1997), 1-10; Kessel, "Introduction"; Peter Jelavich, "When Are Jewish Jokes No Longer Funny? Ethnic Humour in Imperial and Republican Berlin," in *The Politics of Humour*, 22-51, hier: 24.

[8] Vgl. Martina Kessel, "Gewalt schreiben. 'Deutscher Humor' in den Weltkriegen," in Wolfgang Hardtwig, Hg., *Ordnungen in der Krise. Politische Kulturgeschichte Deutschlands 1900-1933*, (München: De Gruyter, 2007), 229-258, here p. 234; Patrick Merziger, *Nationalsozialistische Satire und "Deutscher Humor". Politische Bedeutung und Öffentlichkeit populärer Unterhaltung 1931-1945* (Stuttgart: Franz Steiner Verlag, 2010), 175-177, 191-192.

[9] "Der witzige Richter".

[10] Ibid.

[11] Cf. Sandra Schnädelbach, "The Jurist as Manager of Emotions. German Debates on "Rechtsgefühl" in the Late 19th and Early 20th Century as Sites of Negotiating the Juristic Treatment of Emotions," *InterDisciplines* 6, no. 2 (2015): 47-73.

[12] Cf. Daniel Siemens, "Die 'Vertrauenskrise' der Justiz," in *Die "Krise" der Weimarer Republik. Zur Kritik eines Deutungsmusters*, Moritz Föllmer, Rüdiger Graf, Hg. (Frankfurt/M.: Campus Verlag, 2005), 139-163; Thomas Drosdeck, "Richterbilder und richterliches Selbstverständnis in der Weimarer Republik," in *Europäische und amerikanische Richterbilder*, Andre Gouron et al., eds (Frankfurt/M.: Vittorio Klostermann, 1996), 293-332; Robert Kuhn, *Die Vertrauenskrise der Justiz (1926-1928). Der Kampf um die "Republikanisierung" der Rechtspflege in der Weimarer Republik* (Köln: Bundesanzeiger, 1983).

[13] On the concept of trust cf. Ute Frevert, "Vertrauen – eine historische Spurensuche," in *Vertrauen. Historische Annäherungen*, Ute Frevert, ed. (Göttingen: Vandenhoeck & Ruprecht, 2003), 7-66. On the entire complex cf. Sandra Schnädelbach, "Entscheidende Gefühle. 'Rechtsgefühl' und juristische Emotionalität in der deutschsprachigen Jurisprudenz 1870-1933," (Diss., Freie Universität Berlin 2017), 291-330.

[14] Cf. Hans Gross, *Kriminalpsychologie*, 2nd ed. (Leipzig: F.C.W. Vogel, 1905), 16-49; cf. Schnädelbach, "Entscheidende Gefühle," 278-283; on criminalistics of the period cf. Lukas Gschwend, *Justizias Griff zur Lupe. Zur Verwissenschaftlichung der Kriminalistik im 19. Jahrhundert* (Graz: Leykam, 2004).

[15] "Der witzige Richter".

[16] Cf. Habermas, *Diebe vor Gericht*, 235-237; Ortmann, *Machtvolle Verhandlungen*, 185-187; Schnädelbach, "Entscheidende Gefühle," 229-257.

[17] *Berliner Tageblatt*, 6 October 1928, in: GStA PK, I. HA, Rep. 84a: Justizministerium. Kammergerichtsbezirk Berlin. Personalangelegenheiten, Allgemein. Vorwürfe gegen die Justizverwaltung über die Führung einzelner Prozesse, Vol. 6: 1928-1929, No. 20306, fol. 119.

[18] Cf. Ortmann, *Machtvolle Verhandlungen*, 105-107; Alexandra Ortmann, "Jenseits von Klassenjustiz. Ein Blick in die ländliche Gesellschaft des deutschen Kaiserreichs," *Geschichte und Gesellschaft* 35, no. 4 (2009): 629-658; also the contributions in Richard Wetzell, ed., *Crime and Criminal Justice in Modern Germany* (New York: Berghahn Books, 2014).

[19] Hermann Ortloff, *Die gerichtliche Redekunst* (Berlin/Neuwied: Siemenroth & Worms, 1890), 116.

[20] Cf. Hermann Daubenspeck, *Die Sprache in gerichtlichen Entscheidungen* (Berlin: F. Vahlen, 1893), quote p. 5.

[21] Cf. Daniel Siemens, "'Vom Leben getötet.' Die Gerichtsreportage in der liberal-demokratischen Presse im Berlin der 1920er Jahre," in *Ordnungen in der Krise*, 327-354, here p. 329.

[22] Cf. Hett, *Death in the Tiergarten*, 5, 181; Siemens, *Metropole und Verbrechen*, 61-66.

[23] Cf. Siemens, "Vom Leben getötet," 327-333.

[24] Cf. *ibid.* One example is the jurist and journalist Kurt Tucholsky. On his biography cf. Thorsten Niederhoff, *'Man erspare es mir, mein Juristenherz auszuschütten.' Dr. iur. Kurt Tucholsky (1890 - 1935); sein juristischer Werdegang und seine Auseinandersetzung mit der Weimarer Strafrechtsreformdebatte am Beispiel der Rechtsprechung durch Laienrichter* (Frankfurt/M.: Peter Lang, 2008).

[25] Cf. GStA PK, I. HA, Rep. 84a: Justizministerium. Zeitungs-Ausschnitte über wirkliche oder vermeintliche Missstände bei Gerichten des Kammergerichtsbezirks, 1929-1931, Nr. 20250. On the topos of the "crisis of trust in the judiciary" see Siemens "Die 'Vertrauenskrise'"; Claudia Schöningh, *"Kontrolliert die Justiz". Die Vertrauenskrise der Weimarer Republik im Spiegel der Gerichtsreportagen von Weltbühne, Tagebuch und Vossischer Zeitung* (Paderborn: Wilhelm Fink, 2000).

[26] Cf. Uwe Wilhelm, *Das deutsche Kaiserreich und seine Justiz. Justizkritik – politische Strafrechtsprechung – Justizpolitik* (Berlin: Duncker & Humblot, 2010), insbesondere 299-303.

[27] Cf. Daubenspeck, *Die Sprache*, 3-6, quotes p. 5.

[28] *Ibid.*, 3.

[29] Cf. Siemens, "Vom Leben getötet," 344.

[30] Cf. details in Henning Grunwald, *From Courtroom to Revolutionary Stage. Performance and Ideology in Weimar Political Trials* (Oxford: Oxford University Press, 2012).

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