

Manipulations of Freedom

The Dirty Fight for Prop 22 and the Gig Economy [of Modern Slave Work]

Sumona Gupta

An air of uncertainty hung above the United States on November 3, 2020—no one knew how the presidential election would play out, how long it would take to decide, when the backlash against the winner would begin, or if it would turn into violence. One thing was relatively certain, though: California would vote overwhelmingly for Joe Biden. Indeed, Biden won the state with 64.6 percent of the vote, a historically large margin.¹ However, there were also several propositions on the 2020 California ballot, the results of which were not as easily predictable. In California, ballot initiatives are a significant part of election season. California ballot measure campaigns take second place to U.S. presidential campaigns in global political spending. This is likely because of the state's wide influence in U.S. politics and the size of its population.²



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On last November's ballot there were some contentious and important issues, including restoring voting rights for people on parole (Proposition 17), an increase on commercial property taxes for education funding (Proposition 15), and allowing affirmative action policies in public institutions (Proposition 16). Two of the most closely watched around the

¹ ↪ ["California Presidential Election Results,"](#) *New York Times*, December 5, 2020.

² ↪ Dara Kerr, ["A Totally Different Ballgame': Inside Uber and Lyft's Fight over Gig Worker Status,"](#) *CNET*, August 28, 2020.

country were Proposition 21, allowing rent control policies, and Proposition 22, classifying rideshare drivers and app-based delivery workers as independent contractors.³

The latter, often called “Prop 22,” was particularly controversial. It centred on Assembly Bill 5 (AB 5), a law passed by the California state legislature to reclassify certain independent contractors and freelancers as employees. Gig economy giants Uber, Lyft, Doordash, and others spent a whopping \$111 million on Prop 22, which, if passed, would overturn AB 5.⁴ This was by far the most spent on a ballot initiative campaign in the state’s history. But of course, the companies had a lot to lose. If they were made to treat their drivers or delivery people as employees and compensate them accordingly, they would be bankrupted, they claimed. They fought ceaselessly in the courts against AB 5, threatening to leave the state if it was enforced.⁵

To some voters, the amount spent on Prop 22 was a clear warning sign that it would serve the companies’ interests and theirs alone.⁶ However, to most, bombarded with Yes on Prop 22 advertisements on their televisions and pop-up messages when they opened the Uber app, this was not the case. California overwhelmingly voted in favor of Prop 22, preventing gig economy workers from receiving minimum wage, many benefits, and the right to collective bargaining.⁷

In fact, of the aforementioned ballot initiatives, only Proposition 17 passed, marking a blow for large-scale progressive reforms in the state. The right took some solace in this after their presidential loss. In a column, right-wing commentator Will Swaim wrote that California was “not as crazy as [he] thought” due to their rejection of the progressive measures.⁸

The Gig Economy: A New Name for an Old System

To be clear, AB 5 had issues from the outset. Signed into law in September 2019, it originally required companies to reclassify all workers that met certain criteria as full employees. The sole exceptions were:

- (1) if a worker was “free from the control and direction of the hiring entity in the performance of the work,”
- (2) if a worker was able to perform work “outside the usual course of the hiring entity’s business,”
- (3) and if a worker is “customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.”⁹

These guidelines determining whether a worker is an employee or an independent contractor were outlined in a 2018 California Supreme Court case, *Dynamex v. Superior Court*. AB 5 simply codified this three-prong test. If workers did not meet these requirements, they would be considered employees, entitled to unemployment compensation, sick leave, family leave, health insurance, and other employment benefits, per California’s Labor Code.

³ ↪ Alix Martichoux, “[California Propositions: Election Results for the 2020 Ballot Measures](#),” *ABC7*, accessed December 16, 2020.

⁴ ↪ Kerr, “A Totally Different Ballgame.”

⁵ ↪ Natalie Shure, “[Uber and Lyft Are Threatening a Capital Strike](#),” *Jacobin*, October 20, 2020.

⁶ ↪ Eric Rosenbaum, “[What Uber, Lyft Prop 22 Win Could Mean for the Future of All Freelance Work](#),” *CNBC*, November 4, 2020.

⁷ ↪ Martichoux, “California Propositions.”

⁸ ↪ Will Swaim, “[California: Not as Crazy as We Thought?](#),” *National Review*, November 5, 2020.

⁹ ↪ *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County*, no. S222732, Ct. App. 2/7 B249546 (Los Angeles County Super Ct. no. BC332016 2018).

However, there was immediate backlash, as some felt these guidelines were too narrow and too many workers would be reclassified. Assembly Bill 2257 was soon signed to exempt certain freelancers, businesses, and independent contractors from AB 5. This seemed to remedy most of the substantive issues with the law. The exempted groups included freelance writers, editors, translators, artists, musicians, photographers, and videographers.¹⁰ Notably, though, gig economy workers were not exempted. Uber and Lyft were left shaken, as they geared up for litigation, made threats, and prepared for a fight.¹¹

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Some of these companies are behemoths, especially Uber. It alone claims to have 91 million active customers and 3.9 million drivers across the world.¹³ And although the company's revenue is soaring, the company's losses are also staggering. Upon its initial public offering in 2019, it was revealed that it lost \$2.2 billion in 2018 and \$1.8 billion in 2019.¹⁴ While this would normally hinder valuation and scare off investors, Uber's initial public offering remained the largest in 2019.¹⁵

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The reason for this lies in the company's initial public offering prospectus. Uber envisioned a future in which it has dominated the delivery and driver space, expanding into trucking and shipping as well. It hoped to be the replacement for a crumbling public transport infrastructure, building its own private infrastructure of cars, scooters, and bikes. This would require some initial losses, of course. It would require undercutting their competitors and lowering fares to take full control of their desired markets.¹⁶ But the company planned to go further, investing over \$1 billion in driverless car technology.¹⁷ Ridding themselves of their drivers, their main workforce, was the key to future profitability, they believed.¹⁸

This is key to understanding the gig economy. Its flexibility is a double-edged sword for its workers. Though flexibility allows workers the convenience of choosing their hours, it also offers their employers the chance to disown them, to treat them as independent and undeserving of minimum benefits.

Uber ended up scrapping most of these plans in late 2020 because driverless car technology is still not viable for widespread use and these ventures did not look promising. However, they retain the foundational ideas behind the prospectus: that the company should attempt to unburden itself of its responsibilities to workers to keep afloat and

¹⁰ ↪ ["AB-2257 Worker Classification: Employees and Independent Contractors: Occupations: Professional Services,"](#) Assembly Bill No. 2257, chap. 38 (2020).

¹¹ ↪ Shure, "Uber and Lyft Are Threatening a Capital Strike."

¹² ↪ Alex J. Wood et al., "[Good Gig, Bad Gig: Autonomy and Algorithmic Control in the Global Gig Economy](#)," *Work, Employment and Society* 33, no. 1 (2019): 57.

¹³ ↪ "[Company Information | Uber Newsroom Pakistan](#)," Uber Newsroom, accessed November 8, 2020.

¹⁴ ↪ Sarah O'Brien, "[Uber Says It Lost \\$1.8 Billion in 2018](#)," CNN, February 15, 2019.

¹⁵ ↪ Daniel Strauss, "[Uber's IPO Was the Biggest of 2019. Here Are the 19 Firms That Have Bought the Most Shares Since](#)," *Business Insider*, August 15, 2019.

¹⁶ ↪ Alexis C. Madrigal, "[The Future According to Uber](#)," *Atlantic*, May 10, 2019.

¹⁷ ↪ Mark Bergen, "[Uber Has Spent More Than \\$1 Billion on Driverless Cars](#)," *Bloomberg*, April 11, 2019.

¹⁸ ↪ Sameepa Shetty, "[Uber's Self-Driving Cars Are a Key to Its Path to Profitability](#)," *CNBC*, January 28, 2020.

gain dominance. In fact, after Prop 22 passed and drivers were denied employee status, Uber's market value began to rise, going over \$30 billion.¹⁹

This is key to understanding the gig economy. Its flexibility is a double-edged sword for its workers. Though flexibility allows workers the convenience of choosing their hours, it also offers their employers the chance to disown them, to treat them as independent and undeserving of minimum benefits. After all, workers are a means to an end for large gig companies like Uber—monopolisation.

Uber touts the freedom its employees have, never revealing that they hope to be rid of them or terminally underpay or overwork them in the future.

For those who take gig work for supplementary income, this is not usually an issue. But for those who depend on this work for their livelihood, it most certainly is. If things go according to plan, if alternatives to gig services are undermined and replaced by companies like Uber and Lyft, fully dependent workers will likely increase and wages and autonomy

will decline.²⁰ Writing in August 2020, researchers predicted that the COVID-19 pandemic will hasten this process.²¹ Even before the pandemic, trends indicated that Uber and Lyft took more than the 25 percent commission fee they claimed and consistently cut fares, forcing drivers to pick up more customers to make the same wages they had previously.²² Still, Uber touts the freedom its employees have, never revealing that they hope to be rid of them or terminally underpay or overwork them in the future.

In this light, it is revealed that the gig economy is merely a new slick of paint on an old phenomenon. It is one of the many manifestations of precarious labour, otherwise known as casualisation or flexibilisation.

In the Global South precarious work is widespread, particularly among migrant workers, seasonal workers, and women. In recent decades, the United States and European Union have also seen an increase in the number of the working poor.

This situation benefits employers—in the wake of globalisation and financialisation, firms must outsource and cut labour costs to remain competitive. But it is to the detriment of workers. Precarious employment is tied to cyclical poverty as well as poor mental and physical health.²³ This is understandable, due to workers' inability to afford health care, long hours worked, and the constant stress of trying to make ends meet without a predictable income. In the Global South and poorer countries, precarious work is widespread, particularly among migrant workers, seasonal

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¹⁹ ↪ Edward Ongweso, "[Uber Sells Off Sci-Fi Pipe Dreams. Exploiting Human Labor Is Its Only Plan](#)," *VICE*, December 9, 2020.

²⁰ ↪ Joy Borkholder, Mariah Montgomery, Miya Saika Chen, Rebecca Smith, [Uber State Interference: How TNC's Buy, Bully, and Bamboozle Their Way to Deregulation](#) (New York: National Employment Law Project, 2018).

²¹ ↪ Juliet B. Schor et al., "[Dependence and Precarity in the Platform Economy](#)," *Theory and Society* 49, no. 5–6 (2020): 856.

²² ↪ Brett Helling, "[Uber Fees: How Much Does Uber Pay, Actually? \(With Case Studies\)](#)," *Ridester*, July 9, 2018.

²³ ↪ Benach et al., "[Precarious Employment: Understanding an Emerging Social Determinant of Health](#)," *Annual Review of Public Health* 35 (2014): 229.

workers, and women. In recent decades, the United States and European Union have also seen an increase in the number of the working poor—those who work almost full time but do not have a liveable income.²⁴ As more and more are required to take low-paying precarious jobs, workers will likely have less and less to spend, affecting the overall health of the economy and increasing income inequality in the long term.²⁵ But this is not of great concern to the employers who benefit from precariousness, who tend to prioritise short-term gains.

In a 2012 report, London Metropolitan University researchers detailed the state of precarious work in Europe. The authors wrote that it is characterised by a lack of insurance protections, low health and safety standards, low levels of pay, lack of protection against dismissal, and often a mismatch between the qualifications of workers and the work they are doing. Absence or limitations of choice about where to work and absence of representation (lack of unionisation or any decision-making ability) are also common traits.²⁶

The researchers devoted an entire section to gig economy work, which they termed “bogus self-employment.” It does not meet all the criteria of traditional precarious work, but it is marked by precariousness nonetheless. Though workers seem to have quite a high degree of autonomy, they are completely dependent on the relationship they have with their employers. This distinguishes it from true self-employment or independent contractor status. The risk associated with breaks in employment or lowered consumption of services is also absorbed wholly by the employee.²⁷ Gig economy companies were not true pioneers. Their primary innovation, their app-based interface, was being developed for use by taxi drivers in 2010.²⁸ The truth behind their dominance is their aggressive market takeovers, aided by their precarious labour model.

The Piece Wage, Precariousness, and Politics

In a city that has just begun to allow gig drivers, the market is large and there is little competition. It is then flooded with new drivers, who may enjoy the freedom of choosing their own hours. But as more and more people enter the gig economy for permanent work, competition becomes fierce—drivers spend more time idling and driving around, looking for customers, leading to higher maintenance and gas costs. They push themselves to work more hours and longer shifts as the burden of earning a minimum wage is not their employers’, but theirs.

This is another hallmark of precarious work: receiving payment not through a set hourly wage, but based on output or

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customers served. And it has long been used to workers’ detriment. Two centuries ago, Karl Marx described this type of wage, the piece wage, as the most advantageous form of payment for employers. This is because it “naturally” incentivises workers to spend more time and effort in working. It also forces workers to lengthen their working days, seemingly voluntarily, because this would increase their daily or weekly

wages. However, employers are not necessarily required to adjust wages to meet the increased output of workers.

“Piece-work, has, therefore, a tendency, while raising individual wages above the average, to lower this average itself,”

²⁴ ↪ Liz Alderman, “Ranks of Working Poor Grow in Europe,” *New York Times*, April 1, 2012.

²⁵ ↪ Uma Rani, Marianne Furrer, and Tom Lavers, “Employment Patterns, Poverty and Income Inequality,” *World of Work Report 2015*, no. 2 (2015): 39–71.

²⁶ ↪ Sonia McKay, Steve Jefferys, Anna Paraksevpoulou, Janoj Keles, *Study on Precarious Work and Social Rights* (London: London Metropolitan University, 2012).

²⁷ ↪ McKay, Jefferys, Paraksevpoulou, Keles, *Study on Precarious Work and Social Rights*, 25–27.

²⁸ ↪ Tom Foster, “He Saw Uber Coming Before Uber Did. Here’s His Next Big Idea,” *Inc.*, December 5, 2016.

Marx wrote. He used a report on the weaving industry in the early nineteenth century to illustrate these points: “[the cotton weaver’s] superiority over the common labourer, which at first was very great, has now almost entirely ceased.” Cotton weavers, skilled workers paid in piece wages, were eventually paid less per piece over time, despite “the very great lengthening of [their] working-day.”²⁹

Again, while workers appeared to have some level of freedom in the form of individual responsibility for their wages, this is not lucrative in the long run. The piece wage’s effect, inducing workers to toil longer and harder without much benefit to them, is well documented in modern-day studies of agricultural workers.³⁰ And it is echoed by the gig economy’s payment model as well.

Gig companies continue to expand their reach and power, despite workers’ efforts to gain a more stable wage and basic benefits. Many federal lawmakers do not seem likely to rein in companies. President Biden and Vice President Kamala

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Harris have deep ties to corporate donors, of which Uber and Lyft are two.³¹ Though both politicians opposed Prop 22 publicly and Biden’s campaign website currently expresses support for gig workers’ rights, their transition team picks are telling.³² They include Seth Harris, a former labour official and lobbyist who has already dismantled many labour protections and aided in creating

the basis for Uber’s arguments for Prop 22, as well as executives from Lyft and Uber.³³ Still, organisers and workers are

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willing to continue the fight elsewhere, taking on the challenge of unionising gig workers in other states without a shared workspace or working time.³⁴ Given the outcome of the Georgia Senate runoff elections, if Democrats choose to make this issue a priority, gig workers could be given employee status nationally. Gig companies, however, would deploy their considerable lobbying forces, made up of many

public-private “revolvers,” to prevent this.³⁵

Deception and Persuasion

The infiltration of private interests has not been confined to the political establishment—it has long invaded the individual and public consciousness as well. This was on full display in the campaign for Prop 22. Journalist Dara Kerr’s thorough investigation into the Yes on 22 campaign and its supporters details the insidious new lobbying tactics they used to garner support and conceal the reality of the issues at stake.

²⁹ ↪ Karl Marx, “Piece-Wages,” chap. 21 in *Capital*, vol. 1 (Moscow: Progress Publishers, 1887).

³⁰ ↪ Oriana Bandiera, Iwan Barankay, and Imran Rasul, “Relative and Absolute Incentives: Evidence on Worker Productivity,” Social Science Research Network, March 2004, 45.

³¹ ↪ Walter Bragman, “Tech Monopolies Like Google Have a Friend in Kamala Harris,” *Jacobin*, July 31, 2020.

³² ↪ Alexia Fernández Campbell, “How a Controversial Gig Economy Bill Became a Test for 2020 Candidates,” *Vox*, August 27, 2019; “The Biden Plan for Strengthening Worker Organizing, Collective Bargaining, and Unions,” JoeBiden.com, accessed January 5, 2020.

³³ ↪ Edward Ongweso, “Biden’s Transition Team Is Stuffed with Amazon, Uber, Lyft, and Airbnb Personnel,” *VICE*, November 12, 2020.

³⁴ ↪ Michelle Chen, “A Blow for Labor Rights in California,” *Dissent*, November 6, 2020.

³⁵ ↪ Ian Karbal, “Uber and Lyft Boost Lobbying Power as They Threaten to Pull out of California,” *Open Secrets*, August 21, 2020.

After the passage of AB 5, gig companies Uber, Lyft, Doordash, Instacart, and Postmates set aside their differences and came together for a plan of attack. They began assembling a handpicked team of public relations firms, some specialising in opposition research for political campaigns, others in social media promotion. One, Bicker, Castillo & Fairbanks, claims to “appeal to the self-interest of the third-party groups necessary to turn the tide,” creating “grassroots armies” and “giving allies the tools to make it easy for them to take action and influence public policy outcomes.”

First, they paid canvassers \$4 per signature to get the number needed to put Proposition 22 on the November 2020 ballot. They successfully gained one million signatures within a few months. Later, one public relations firm engineered a harassment campaign for labour law professors and other workers’ advocates on Twitter. Hit pieces were published on conservative websites on otherwise obscure academics. Some had their addresses and income information leaked. Soon, large anti-AB 5 Facebook groups began appearing, gaining thousands of members. Multiple Twitter accounts, YouTube channels, Instagram accounts, a podcast series, and more popped up as well. Notably, the most vocal “activists” in the campaign were generally freelancers who would not even be affected by AB 5—they claimed to be translators, musicians, or writers. But they may have been successful in presenting themselves as representatives of all gig workers’ interests.³⁶

It is unclear just how many of the Prop 22 activists were paid for their support, but it was likely only a small portion of the thousands of followers the Yes on Prop 22 campaign amassed. And it seems that many gig workers who would actually be affected by Prop 22 were persuaded to ignore the ballot measure’s issues by the campaign. This includes Prop 22’s wage floor guarantee, which would not be nearly enough to cover the costs of maintenance for cars, the offered health care stipend that would not cover most workers, and that the workers would not be allowed to collectively bargain if the ballot measure was passed.³⁷

One of the Prop 22 campaign’s websites, Drivers for Proposition 22, showcases stories submitted by gig economy

By handpicking stories that fit their narrative, the campaign also avoided highlighting another population of gig workers, those who work full time for gig companies but still cannot make ends meet, those who are injured on the job but have little hope for assistance from the employer they “contract” from, those who would like to unionise for fair wages.

workers. One entry is from a mother whose husband lost his job two years ago—“as the emergency fund was drying up and we were both unsuccessful in gaining full time work, we turned to Doordash,” she wrote. Another is from a retired man. “Without this opportunity, I would not be able to supplement my income! That would create a hardship for me! The independence and flexibility of app-based work is unique and must be preserved as an

option!”³⁸

These earnest stories show the benefits of gig-based flexibility. But they leave out the fact that the flexible model could have been preserved if AB 5 remained in place. There was nothing in the law preventing gig companies from allowing employees to work intermittent schedules.³⁹ By handpicking stories that fit their narrative, the campaign also surreptitiously avoided highlighting another population of gig workers, those who work full time for gig companies but still cannot make ends meet, those who are injured on the job but have little hope for assistance from the employer they

³⁶ ↪ Kerr, “A Totally Different Ballgame.”

³⁷ ↪ Ken Jacobs and Michael Reich, “[The Uber/Lyft Ballot Initiative Guarantees Only \\$5.64 an Hour](#),” UC Berkeley Labor Center (blog), October 31, 2019; Lauren Hepler, “[After Gig Companies’ Prop. 22 Win, California Labor Groups Vow Challenge](#),” Jefferson Public Radio, November 5, 2020.

³⁸ ↪ “[Driver Stories – In Their Words](#),” Drivers for Prop 22, 2020.

³⁹ ↪ Sarah O’Brien, “[Prop 22: Uber and Lyft’s \\$185 Million Campaign in California](#),” CNN, October 8, 2020.

In the campaign for Prop 22, gig companies successfully hid their true intentions behind “grassroots armies” and real workers. They bought votes not only through outright payment, but also through weaponised deception and persuasion.

“contract” from, those who would like to unionise for fair wages.⁴⁰

In the campaign for Prop 22, gig companies successfully hid their true intentions behind “grassroots armies” and real workers. They bought votes not only through outright payment, but also through weaponised deception and persuasion. They gained lasting loyalty for the purported freedom they offer, as well as momentary political support. This mindset can be observed in the aforementioned right-wing columnist, Swaim. He manages to paint the California legislators elected with union support as self-interested and the companies throwing money at a political measure as the people’s champions. “Uber and Lyft, of course, spent millions of dollars in the campaign [for Prop 22], hoping to secure their freedom. And God bless them for defending themselves,” he wrote. “But the only real defence against the metastasising power of government bureaucrats is a citizenry that understands its own self-interest. In that case, we can thank the California electorate: men and women who generally understand freedom when they see it.”⁴¹

The emphasis on “freedom” in the Yes on Prop 22 campaign’s messaging was an exceedingly powerful tool. It is well

“People have so manipulated the concept of freedom that it finally boils down to the right of the stronger and richer to take from the weaker and poorer whatever they still have.”

known that the concept of freedom is foundational to the U.S. conception of liberal democracy. This is a very particular sort of freedom, however—usually centred on negative, individual rights (like freedom from state constraints) and not positive, substantive ones (like basic needs).⁴² Thus, gig companies could effectively

argue that they represented freedom of choice and independence, which should come at any cost, fair wages and health care included.

In recent years, there has been an increase in legal rulings regarding the concept of corporate personhood. Some have argued that this is linked to the strange rise of companies creating human-like personalities on Twitter for branding purposes. This is an interesting connection to make—both effectively create some semblance of a persona and build support for an otherwise faceless company.⁴³ However, these phenomena are not tied on a more material level. One is a savvy marketing strategy, made to keep brands in the minds of younger consumers as they ignore traditional advertising and scroll through social media. The other, a centuries-old legal fiction meant to strengthen the freedoms corporations enjoy by extending to them some of the freedoms previously only limited to citizens. With the tactics shown in Prop 22’s campaign, however, the ideological and the political are bound together through their weaponisation of notions of freedom. The hold of the private sphere on voters was exerted both on the deeply personal and broad, structural levels. A reflection from Theodor Adorno puts it simply: “People have so manipulated the concept of freedom that it finally boils down to the right of the stronger and richer to take from the weaker and poorer whatever they still have.”⁴⁴ As has been

⁴⁰ ↪ Caroline O’Donovan, “Prop 22 May Hurt Drivers, But Uber Wants It to Pass,” *BuzzFeed*, October 31, 2020.

⁴¹ ↪ Swaim, “California: Not as Crazy as We Thought?”

⁴² ↪ Albert Szymanski, *Human Rights in the Soviet Union* (London: Zed, 1984), 2; Evgeny Pashukanis, *General Theory of Law and Marxism* (New Brunswick: Transaction, 2002), 39–40.

⁴³ ↪ Eli Zeger, “How Corporations Try to Be More Human Than Humans,” *Current Affairs*, June 24, 2020; Stuart Kirsch, “Imagining Corporate Personhood,” *Political and Legal Anthropology Review* 37, no. 2 (2014): 208.

⁴⁴ ↪ Theodor Adorno, “Messages in a Bottle,” *New Left Review* 1, no. 199 (1993): 7.

demonstrated many times during this pandemic, many may link capital's and business's freedom to go on unimpeded with their own.

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