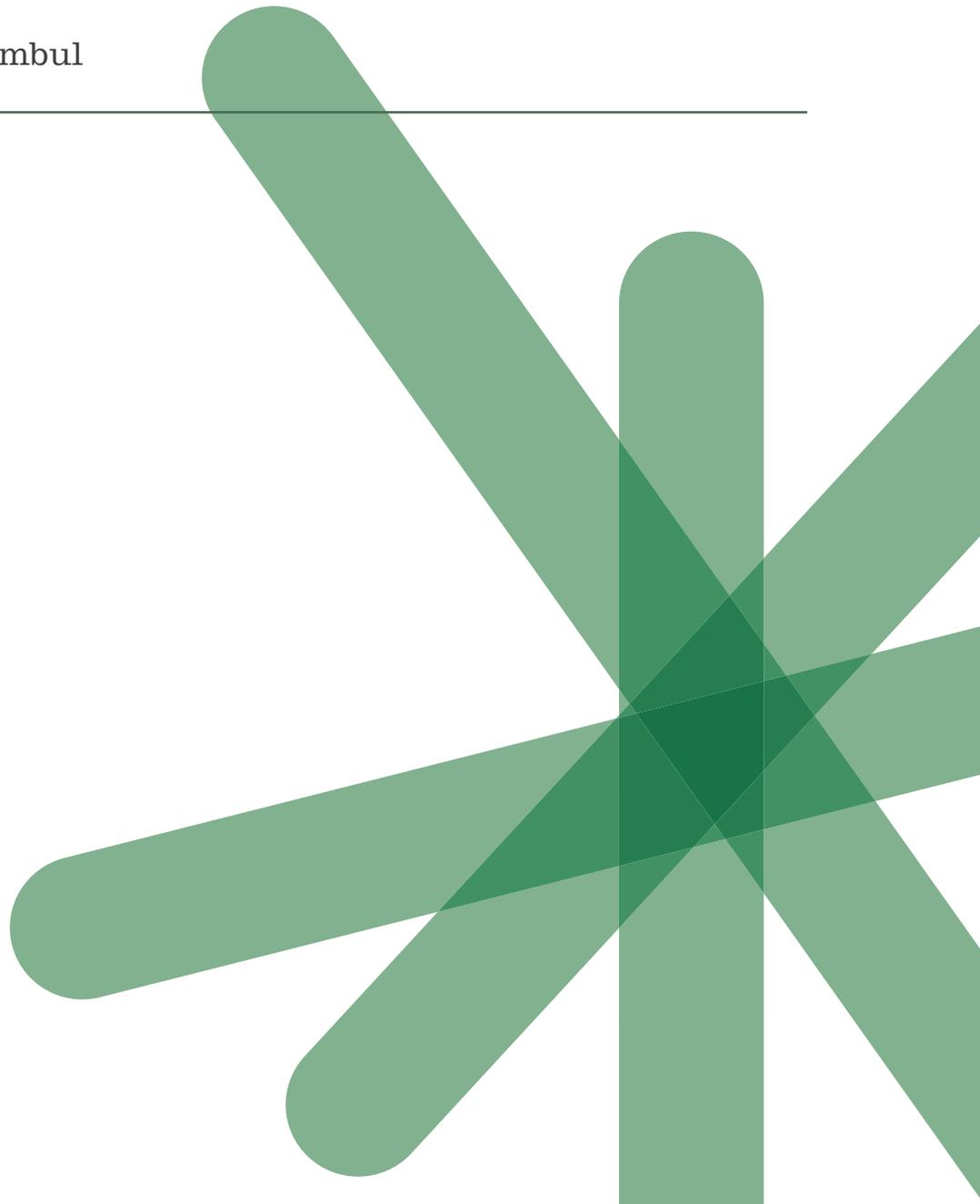
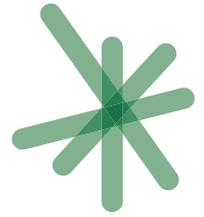

Chapter 10

The Scrutiny Capacity of Civil Society in Wales

Rebecca Rumbul





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Introduction

A diverse and vibrant civil society is essential to a functioning and engaging democratic system. Few would argue with this statement. But why is civil society so important? What role is it that civil society plays in improving the quality of public life? And how does it execute this role? More importantly perhaps, given its importance, how is it supported by the public and our governing institutions in performing its vital role in civil life? In 2001, reflecting on the early days of devolution, Kevin Morgan and Gareth Rees stated:

“The Welsh governance system now enables much greater accessibility, at least to those with the organisational capacity to capitalise on the opportunities which are newly available.” (Morgan and Rees, 2001)

Over ten years of Welsh devolution later, this paper explores if, and how, that accessibility has been utilised. It centres on the capacity of Welsh civil society to engage with the governing institutions in a scrutiny and development role, from proposing and scrutinising legislation to manifesto contributions and policy development and delivery.

It was stated that, should a ‘Yes’ vote be achieved in the Welsh 2011 referendum, a stronger civil society would need to emerge in order to both take advantage of, and regulate the quality of, public life in Wales (Nicholl, 2010). There are a number of definitions of what civil society actually is. Too often, ‘civil society’ is narrowly considered to be the voluntary sector. However, trade unions, public affairs organisations, political parties and campaigning organisations also have an important role in influencing and scrutinising the activities of government. One commonly cited definition is that civil society occupies the space between government, the market and the individual, and this is the base from which this paper is approached.

A wide variety of research has now been carried out into civil society in Wales. However, very little academic literature has specifically examined the capacity of Welsh civil society to fully scrutinise the work of the governing institutions in Wales, the National Assembly and the Welsh Government.

Unlike Scotland, where the Constitutional Convention bound civil society together in the process of achieving devolution, Welsh civil society was largely absent from the devolution conversation pre-1999 (Day, 2006). This meant that Welsh civil society was somewhat off-the-pace from the very beginning in terms of understanding the mechanisms put in place, and how to work with them. There has been

recognition within voluntary sector conferences and speeches (Davies, 2010; McAllister, 2010) that scrutiny needs to be set apart from general opposition and 'nit-picking' (Rees and Chaney, 2011), and needs to be opened up to wider civil society and members of the public (Williams, 2011).

Day (2006) notes that positive structures were put in place to ensure inclusivity was built into the National Assembly's remit. However, he notes that the "speed and intensity of policy formulation and review admits only the well-resourced, and skilled, into the process". Hodgson (2004) has accused the Welsh Government of 'manufacturing' civil society, corralling organisations into its own vision of a helpful and productive sector. This, he says, suggests a tendency for governing institutions to impose their own values upon the sector.

Generally, the academic literature highlights the many opportunities for Welsh civil society, and the positive structures put in place to include and support it. Many papers are critical of certain aspects of meaningful inclusion and capacity to engage, but are often forgiving in light of the youth and on-going process of devolution. Looking to the future, it is perhaps prudent to ask, at what point do we become less forgiving?

The role of the governing institutions

The differences between the National Assembly's and Welsh Government's approach and to the engagement of civil society were, at least in the limited scope of this research, quite marked. The efforts of the Assembly have clearly evolved over the four terms. Initial efforts to engage with those outside its walls focused on individuals in a rather scattergun manner through presence at shows and popular public events. In the Third Assembly, external engagement and civil society capacity building shifted towards defining the Assembly as an institution and understanding the powers held by it, in anticipation of the 2011 Referendum.

Since the inception of the Fourth Assembly, there has been a recognition that the Assembly needs to focus its engagement activities with civil society in a more targeted and strategic manner in order to achieve meaningful change. Accordingly, it has developed a range of tools to try to improve its engagement with civil society, and appears genuinely enthusiastic about trying to increase participation. These tools include a newly re-focused outreach team, which is targeting specific areas of society to engage, and a 'toolkit' available to AMs in which a menu of activities and events are laid out for use in successfully engaging relevant groups and individuals for the purposes of policy development and legislative scrutiny. All this reflects a reality that the National Assembly has historically been a misunderstood organisation, both by the media and civil society generally, in terms of media coverage and civil society understanding, so it is perhaps not surprising that its corporate attitude is somewhat eager.

On the other hand, the Welsh Government is generally accepted to be less energetic and innovative in widening participation by civil society. This institutional lethargy towards engaging with civil society was evident in some of the interviews conducted for this paper. It is also detectable in the lack of information available to civil society on how to get involved with policy development and delivery. The Welsh Government's website is widely regarded as difficult to navigate and unhelpful in directing individuals to the relevant information. Similarly, individuals expressed difficulty in finding the 'right person to talk to' when trying to contact the Government about specific issues, whether by telephone or email. Two interviewees used the term 'faceless' to describe the Welsh Government, illustrating the lack of meaningful information available to those trying to generate a dialogue on specific issues.

Most respondents in this study identified Welsh Government's consultation processes as time-

consuming and, occasionally, superficial. Some individuals cited a feeling of powerlessness, saying they felt they had to respond to consultations in order to demonstrate their engagement. However, the process often felt pointless, as their contributions rarely appeared to influence the Welsh Government's thinking. This was most strongly felt by voluntary organisations that did not have particularly good links with government.

This was not experienced across the board, however, and some individuals, in particular in education, recalled very positive consultative processes with the government. At the same time, the quality of consultations appears to be dependent upon the civil servants and departments involved, the level of expertise in civil society and the capacity of civil society organisations to engage. In instances where the individuals involved are enthusiastic and receive support from their managers/ministers, it works well. In instances where expertise is lower, where political will appears weak or where organisations cannot afford to devote time to engaging further than responding to a consultation, the quality of the process itself appears to decrease, with civil society satisfaction declining with it.

The Welsh Government established structures to engage with the voluntary sector through its obligations as part of Government of Wales Act 1998 and the later Government of Wales Act 2006. This gave birth to the Third Sector Partnership Council. However, this is a narrower obligation than to civil society as a whole. Nevertheless, the Council includes a wide range of thematic representation, and its facilitation by the WCVA enables it to engage a wide range of organisations in tackling common issues.

Nevertheless, the Partnership Council has been subject to some criticism, ranging from the lack of time allocated to it by the Welsh Government and the Ministers responsible for it, a lack of diversity in its representation ('the same old faces' sitting around the table), and a tendency of the thematic representatives to represent the interests of their own organisations, rather than the variety of organisations in their area. These criticisms are not necessarily representative of the sector, and many individuals have over-estimated the scope of the Council, leaving them disappointed with its outcomes.

In the current financial climate, funding is of course a significant issue, and while the Council has addressed this, some perhaps felt that this wasn't generating the funding for the sector for which they were hoping. Possibly the most fitting description of the Council was that it was "a good thing to have. Not amazing. But better than not having it".

The Welsh Government provides significant funding to civil society organisations to support their work and contribute to their operating costs. Several organisations indicated this support was vital to their continued existence. Over time, the relationships they developed with civil servants was key in their development, their ability to deliver, and their ability to secure other funds, for instance from the European Social Fund

Yet such long-term on-going Welsh Government support raises two considerations. First is the extent to which established relationships between the Welsh Government and civil society organisations impedes the development of relationships with other organisations operating in similar policy areas. Several participants felt that some organisations were the 'go-to' organisations for certain policy areas, and found it difficult to get their voices heard or to gain funding from the government due to the dominance of these trusted organisations. Whilst there will always be conspiracy theorists dissecting these relationships, these organisations are mostly ones which have worked with the Welsh Government in the past, and are simply those that are automatically considered as operating in their areas. More often than not, they are able to deliver activity on a Wales-wide basis.

However, if the Welsh Government fails to make new relationships or to keep informed of activity in civil society, and continues simply to fund the same activities within the same organisations, then it is likely that civil society will stagnate. Since the financial difficulties of 2008, a number of civil society organisations have ceased to operate, and this has not only reduced the plurality of the sector, but has reduced the pool of organisations not reliant upon some support from the government.

This leads to the second consideration, which is the extent to which organisations reliant upon funding from the Welsh Government are properly able to scrutinise and hold it to account. One of the key roles of civil society is to advise the governing institutions, and to challenge proposals that could be inappropriate or ineffectual. Are organisations reliant upon state funding able to do this without concern that this will later impact their income?

The findings of this research show that, generally, organisations exercise choice and strategy in their scrutiny role, but few feel fully able to criticise government. This is not to say that Welsh Government funding is conditional upon the support of the organisation for all its aims. In fact, the government and also the National Assembly were steadfast in their belief that civil society organisations should be their critical friends and partners in policy development.

However, often in such situations, there is a difference between the official line and practice. In theory civil society organisations may be defiant about their ability to stand up to the Welsh Government. In practice they tend to deploy significant diplomacy in their criticism of government. One participant noted a 'good-cop/bad-cop' approach, where the policy officer would be critical of the Welsh Government in a consultation response or in the media, and the organisation's chief executive would meet their relevant Welsh Government or Assembly contacts to smooth things over. This uneasy role has been reflected in previous research (Day, 2006).

It is clear that there exists a tension between the relationships that government quite rightly cultivate with civil society, and the ability of civil society to separate these relationships from their scrutiny and advice role.

The view from civil society

Ask an average Welsh person on the street what their level of knowledge is about the National Assembly, and the chances are, that at least 52 per cent will exhibit some uncertainty in their answer (Scully *et al*, 2008). This is slowly changing as devolution matures. Nonetheless, many people, even some professionals with policy functions within civil society, remain unsure of themselves when describing the role of the National Assembly and distinguishing it from the different functions served by the Welsh Government.

Policy and public affairs professionals within civil society predominantly talk about policy delivery activity with the Welsh Government when discussing their engagement in governance. This activity mostly consisted of participation on the Third Sector Partnership Council, various steering groups or through grants awarded for core work carried out. This is very much the thin end of the wedge in terms of influencing how government addresses issues, as room for manoeuvre is limited to the manner in which policy aims are delivered. At this point, broad policy aims have been enshrined in manifesto pledges, and attempting to work outside of these priority areas can, in one participant's words, feel like an uphill struggle.

When discussing the potential ways of influencing political and government priorities before

delivery stage, that uncertainty identified earlier in this section creeps back into a lot of responses. Probe a little further and query engagement with the National Assembly, and activity frequently appears to centre on lobbying individual AMs for more funding for particular service delivery areas. Participation in committee's and consultation processes is evident in larger organisations, but very much less so in smaller organisations.

There was an evident lack of understanding of the opportunities available to civil society organisations through petitioning and legislative processes. Several organisations that did have a basic understanding of these mechanisms exhibited a degree of indifference to those opportunities, even whilst admitting that these would probably be the best routes to influence policy and funding at a later date. Some recognised that engaging with these mechanisms would entail an enormous amount of work that they would have to take on in addition to their existing duties. Others were daunted by the length of time such activities would take to bear fruit. Generally, participants were reluctant to consider such activities because they would not receive the support from their organisations in terms of staff resource and expertise to cope with the additional workload.

A number of research participants from the voluntary sector were in roles with multiple responsibilities. Whilst larger organisations had dedicated posts for policy and public affairs, the majority of smaller organisations bound policy and public affairs responsibilities up into the roles of director, manager or other officer posts. This means that many organisations have employed individuals on the basis of their management skills or expertise in the organisations policy area, with responsibilities for public affairs and media engagement bolted-on. It is these individuals that exhibited the greatest frustration. Many wanted to be more active in public affairs through engaging with the National Assembly and Welsh Government, but felt powerless to do so. They wanted the opportunity to participate on Steering Groups or Advisory Committee's administered by the government or the WCVA, they wanted to give evidence to the Assembly where appropriate, and were willing to put in the extra hours to do so. However, they were often at a loss as to how to achieve these goals.

Most of them had not received any support from their organisations such as training or development in understanding Welsh institutions and their functions, and found it difficult to identify appropriate opportunities to do so. A general feeling amongst this group was that there was an upper tier of people in civil society that not only knew how it all worked, but also had good contacts and relationships that facilitated their engagement.

Whilst it is debateable whether such an 'upper tier' exists in practice, there does exist a group of policy and public affairs professionals who are extremely knowledgeable about the devolved system in Wales, and are confident in engaging with the Welsh institutions. Most have a public affairs or political background. Many having studied politics at Aberystwyth or Cardiff Universities, or have been employed by politicians in previous professional roles. They tend to be much more connected to other public affairs professionals in Wales through social, family and professional ties than other voluntary and civil society workers. Indeed, many are members of political parties.

This group of professionals are demonstrably better at engaging with constitutional issues than 'sector people' – a term used by one research participant to refer to individuals whose employment history is in the voluntary sector, and who have a greater interest in their organisations charitable aims rather than politics.

This difference between those who understand and engage with the Welsh governance framework and those who don't, presents a dilemma for assessing the state of civil society engagement in

Wales. There are undoubtedly very positive and engaged people actively influencing and scrutinising the work of the Welsh institutions. However, there is not a broad or deep enough pool of such professionals. Meanwhile, there a significant number of other people feel disengaged, disillusioned and disregarded by the political and public sector institutions in Wales, either because they feel situated outside of the 'go-to' organisations or lack the right knowledge about how to engage.

This poses the question - where does responsibility for civil society engagement lie? Those involved must accept a certain amount of criticism for failing to professionalise public affairs within their organisations. It is clear that those organisations that have hired public affairs professionals are benefitting from their expertise and are more engaged with government. Organisations that have hired people who are not from a public affairs background struggle engage effectively.

At the same time the institutions that rely on civil society for expertise, scrutiny and advice are not without blame. In particular, the Welsh Government appears happy to maintain the status quo, exerting very little effort in keeping abreast of civil society work or engaging with other than the 'usual suspects' in policy development and delivery. The efforts of the National Assembly as an institution, as discussed earlier in this paper, are more positive, but somewhat scattergun and superficial. Arguably, AMs rely too heavily on the support and knowledge of their special advisors and political parties, a collection of individuals who have significant expertise in public and constitutional affairs, but, more often than not, lack meaningful knowledge of civil society organisations and their work.

The representatives

The role of the Wales Council for Voluntary Action divides opinion in Welsh civil society. Championed by some as key in funding and up-skilling the voluntary sector over the first decade of devolution, others are less convinced of its ability to facilitate the voluntary sector to develop its own voice, rather than simply speaking for it. The Voices for Change Cymru project it developed with National Lottery funding between 2008-2011 was cited by many participants in this research as a standout initiative. Certainly, of all the training on offer at WCVA and other Voluntary Councils, it was this programme that was most enthusiastically discussed by those who had benefitted from it. However, there will always be those with greater ambitions for such initiatives than the projects themselves can reasonably achieve. Several commentators suggested the project was not ambitious enough. While it provided a baseline knowledge of Welsh institutions and opportunities for engagement, it was considered a 'missed opportunity' by some in terms of giving organisations a greater push towards approaching the National Assembly. Despite this, the end of the project, due to lack of funding, was lamented by a number of participants. Undoubtedly, and it has left a gap in provision for civil society.

Training and other public affairs activities are, of course, available to organisations in other forms. Commercial lobbying occupies an interesting space in civil society, representing organisations, providing updates and generally negotiating waters with which some organisations are unfamiliar. Several civil society organisations operating in Wales have turned to public affairs firms, at some expense, instead of cultivating expertise within their organisations. Participants in this study mostly purchased only select services, such as monitoring and policy analysis, as their own in-house teams did not have the capacity for these activities. Others opted for a larger package of services. The short-term nature of procuring these services was most commonly cited as a reason to use this route over employing staff. Procuring a public affairs firm was a more versatile option, and reduced financial obligation in the long-term.

The Trade Unions appear to be the most organised corner of civil society in their approach to representation of their members and engagement with the National Assembly and Welsh Government. They placed greater emphasis on recruiting public affairs and policy staff with political education and experience, and generally had a very good overview of the Welsh governance mechanisms. However, they are focused upon empowering individuals in very specific, work-related issues, and stand somewhat apart from the voluntary sector. They are also political organisations themselves, and have histories of influencing and engaging with particular parties. At a senior level, social and professional links to the parties and to civil servants enable the Unions to influence at a number of levels, in manifesto development, during the progress of legislation through the Assembly, and in the implementation of policy. Whilst political association may not be of huge benefit to individual civil society organisations, the importance the Unions appear to assign to public affairs demonstrates how effective organisations can be when they have the right resources to engage with the governance of Wales.

Comparing Scotland and Northern Ireland

The devolved nations each operate in a different civil society landscape. The Scots have made strides to set themselves apart from their UK counterparts, whereas organisations in Northern Ireland appear less enthusiastic about championing their differences from Westminster. In Scotland civil society organisations matured during a decade of experience with the Constitutional Convention prior to the 1997 referendum. This provided a cornerstone for them to develop working relationships with political organisation and to gain a deep understanding of government.

Organisations in both Scotland and Northern Ireland were able to rely on separate jurisdictions as clear examples of their 'separateness' from the rest of the UK, which was key to establishing strong, and independently branded organisations. They appear to enjoy more autonomy from UK policy teams than their Welsh colleagues. Certainly in Scotland, several organisations appear to have larger budgets and greater evidence of engagement with the government. Nevertheless, Scotland and Northern Ireland experience similar frustrations. There is also a similar split in civil society between some organisations which have very good access, and a large pool of others with very little (Meade, 2005).

Recommendations

Key areas that could be targeted to achieve improvement include greater provision high quality training and development, greater investment by the Assembly and Welsh Government in developing links with civil society organisations, and greater investment by civil society organisations themselves in engaging with the government.

Training and development:

A gap in the market exists in Wales for public affairs training. With the exception of one or two bespoke courses, the cost of which is beyond many civil society organisations, there is little training available for organisations wishing to improve the skills their employees. It would be inappropriate for Welsh Government to completely fill this gap. Universities should explore providing training courses and continuing professional development aimed at governance and civil society.

However, both the National Assembly and the Welsh Government should certainly consider ways of demystifying their organisations. The Assembly is trying to do this through its communications toolkit and through its recent partnership with the Wales Governance Centre. However, the Welsh Government appears impenetrable to many in civil society. Both institutions could benefit from

better engagement, either through inviting civil society organisations to specially organised events, with secondments, or through partnering with organisations such as WCVA to deliver training or information sessions.

Greater investment by the Welsh Government and Assembly:

At present a small pool of people in some civil society organisations tend to be ‘over-consulted’ and a large pool of people are ignored. By tasking their workforce to become more actively knowledgeable about civil society activity and its organisations, the Welsh Government and the Assembly would benefit by improving the quality of their policy development and service delivery. Both already have teams tasked with civil society knowledge and engagement. These could either be enlarged or refocused to include commitment to actively developing and maintaining their knowledge of civil society, and to act in an advisory capacity for the rest of their organisation. This would ensure a broader level of engagement, and reduce the distorting influence of the ‘Cardiff bubble’ of professionals.

Greater engagement by civil society:

With the exception of a small number, most civil society organisations did not present themselves as taking public affairs and engagement with the Welsh level of governance as seriously as other areas of their activity. That is not to say that the employees of those organisations charged with overseeing public affairs and policy do not take their roles seriously. Often these people went above and beyond their remit to engage with the institutions. Rather, it appeared that organisational management is failing to assign adequate importance to understanding and engaging with Welsh devolution, and this was most common in UK-wide organisations. Whilst the extent to which civil society should engage is arguable, many organisations in Wales appeared under-staffed, under-skilled and under-supported by their UK parent organisations in public affairs and policy roles. Leaders and trustees of civil society organisations must make a conscious choice to do public affairs well, and to use their expertise to influence policy development and delivery at every level. This requires leaders of organisations to invest their own time in gaining an understanding of the Welsh constitutional landscape and the opportunities it offers. It also requires Welsh employees to be bold and vocal internally in order to raise awareness of the differences in Welsh policy.

Conclusion

Whilst there is much to be positive about civil society engagement in Wales, there is also much work to be done. A vibrant and engaged civil society is an important feature of a high quality and informed democracy. If Wales is to boast such a system, both civil society and the Welsh Government and National Assembly themselves must commit to improving the current state of affairs.

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