

ORDERS OF ACCOUNTABILITY

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World Ethics Forum
Leadership, Ethics and Integrity in Public Life
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In the following pages I engage in what can best be called a “speculative exercise” in concept building and testing. It is clearly a “draft” version of a work in progress, but also much less. In some respects, it reflects an early (but not the earliest) stage in the strange process through which I tend to develop and test ideas about accountability.

The stimulus for this exercise was a growing sense that general approaches to accountability – including my own – failed to deal with several key structural aspects of accountable governance. Scanning the literature on accountability reveals that it takes a variety of structural forms -- as an action (holding one to account), a social relationship between and account giver and account receiver, a setting within which accountable actions occur, a moral attribute of an accountable individual, etc. The challenge is how to frame these various structural manifestations of accountability in an analytically fruitful way.

The occasion for developing such a potential framework emerged as I was engaged in two distinct projects, one related to corporate governance and the other focused on school accountability. Despite the considerable differences between these two arenas, they shared a similar pattern of accountability-related problems and reforms. Both the differences and similarities of the two arenas proved helpful as the outlines of the “orders of accountability” framework began to take shape. The framework, now a bit more developed, is ready for a “test drive” to see if it holds any promise.

The Framework:

When stripped to its sociological basics, accountability is a social relationship involving “account giving” – that is, a relationship in which there are at least two parties, one in a position to seek or require an accounting from the other for actions or conditions for which the account giver is deemed “responsible”.¹

Structurally, that relationship can take a variety of forms which can involve four levels of interaction:

First order accountability entails a situation requiring explicit and direct acts of account giving. Such “speech acts”² typically require at least two parties – an account giver who is *doing* the account giving and an account receiver who is the intended target of that act. The fact that account giving is an action unto itself – not merely a statement about something, but a “doing” per se – makes it what linguists and philosophers call a performative act (Austin 1975; Searle 1989) – thus the appellation *performative accountability*. To designate it as such does not imply that it is a meaningless or vacuous act – to the contrary, as is the case with other performatives such as “I promise” or “I bid” or “I bet”, the awkward “I account for” has some force and meaning within a given context.

At its most basic and informal, performative account giving can overlap with the social act of “reason giving” recently highlighted in the work of Charles Tilly. Humans are reason seeking/giving animals, Tilly asserts, and we engage in various forms of reason-giving in a range of social relationships from the most mundane (e.g., practices of etiquette) to the unfathomable (e.g. attempting to comprehend the events of 9/11 as they occurred) (Tilly 2004; Tilly 2006). But despite a fundamental similarity in form as well

¹ The scare quotes around “responsible” are important in this context, for that term acts as a placeholder for a family of related concepts that can be used synonymously – concepts such as blameworthy, liable, obligated, answerable, etc. For an approach to dealing with the relationship among these terms and how they relate to accountability, see Dubnick 1998.

² On the social nature of speech acts, see Searle 1962; Strawson 1964.

as a degree of overlap, the defining line between reason-giving and account-giving is crossed where the account-giver is assumed/perceived to be “responsible” to the account-receiver for the condition, action, or event that is the focus on the relationship.

In most scholarly examinations of first order account-giving, stress is placed on its role as a functional and appropriate reaction to some error or faux pas, and thus most analyses concentrate on the social conventions for making excuses or offering justifications (Scott and Lyman 1968). Although such mitigatory and explanatory first order acts of account giving are common place, they often overshadow equally important purposes for engaging in them, as found in information-generating (monitoring, surveilling) forms such as bookkeeping, reporting, responding to audits, subjecting oneself to inspection, etc. (Kaufman 1967; Kaufman 1973).

In all these instances, the acts of account-giving – whether in the form of publishing an annual or quarterly report, issuing a press release, giving testimony at a trial or before a legislative committee, offering a public apology, providing a written elaboration of reasons for taking actions, releasing or posting of transcripts -- are responses to a direct (although sometimes implied or perceived) solicitation from real or potential account receivers. The solicitation can take the form of a speeding ticket issued by a police officer, a reporter’s microphone placed in front of one’s mouth, a demand by an auditor to see one’s books, a phone call from one’s supervisor seeking an explanation for some action, a public accusation, etc. In each case the effort is to generate a performative response from the account giver.

But not all accountability is performative. Most forms of accountability in fact occur in anticipation (sometimes anxious anticipation) of the need or requirement to engage in performative accountability. They relate, in other words, to a “presumptive account giver”.

Second order accountability, for example, does not involve direct and explicit account giving, but is instead manifest in following the guidance, rules and operating standards of the presumptive account giver’s task environment. This is *regulatory accountability* and it makes use of the potential “threat” of being called to performative account to establish and maintain restrictive and directive control over the account giver.

In a widely discussed work on the nature of cyberspace (Lessig 1999), Lawrence Lessig takes note of four major mechanisms that society relies on to constrain or limit behavior, including law, social norms, the marketplace and the “architecture” of the operating environment. Of those four,³ law and architecture generate second order accountability by creating operating environments in which the possibility of some form performative account giving plays a significant role in shaping and directing the behavior of agents.

The use of law as a basis for regulatory accountability is well documented both historically (von Dornum 1997) and in contemporary analyses of requirements related to rule of law standards (Rosenbloom 1987; Rosenbloom, Carroll, and Carroll 2000). Lessig’s major contribution has been to highlight the role of task environment “architecture” in the regulatory endeavor. This architecture – which Lessig notes is manifest in the “code” of everything from computer programs to constitutions – determines such things as access and the range of discretion/autonomy an individual has while operating in the constructed environment. It obviously places various checks on the range of choices or decisions that an accountable individual can make, but it also functions as a rationale for constrained or directed behavior. Thus, if called upon to provide an account for his or her behavior (that is, to engage in first order accountability), the person who operates within the architecture would refer to its rules, parameters, SOPs, etc. (see also the discussion of codes in reason-giving in chapter 4 of Tilly 2006). Underlying all this is the belief that first order, performative accountability would be triggered if an individual was found to be challenging or violating the code.

In contrast, rather than focusing on the control of conduct, **third order accountability** relies on account giving as a means to elicit purposive behavior. Accountability in this sense is intended to be motivational rather than regulatory, and in

³ Challenges or violations to social norms would more likely call for reliance on what Tilly calls “reason giving” (Tilly 2006), and the price mechanisms of the marketplace operate within the context of law to deal with any problems. On the latter point, it is relevant that Lessig did not include the marketplace in his first examination of such mechanisms; see Lessig 1998-2000.

that sense the term *managerial accountability*⁴ seems most appropriate (Dixon, Kouzmin, and Korac-Kakabadse 1998; Fowles 1993; Lyons 1998; Meyer 2002; Page 2006; Skelcher 2005). The logic is simple: the measure or assessment of an action or condition for which the account giver is assumed “responsible” is, *under the right conditions*, regarded as an effective means for motivating that individual to improve that action or condition in the future. Under third order accountability, the focus is on designing task environment conditions (again, architectures) that facilitate those motivations rather than control or constrain them. Thus, we see the extensive use of incentives and sanctions in third order accountability.

[Third order accountability is central to what I have called the “promises of accountability” in other papers (e.g., Dubnick 2003; Dubnick 2005). These promises relate to a number of socially desirable ends, ranging from justice and democracy to ethical behavior and enhanced performance in the production of goods and service. Despite its simple logic, however, the value and validity of managerial accountability remains an empirical question.]

While second-order (regulatory) and third-order (managerial) accountability operates primarily through the architecture and machinations of task environments, **fourth order accountability** operates through the norms and values of the account giver – through what Foucauldian’s designate as “governmentality” (see Foucault 1991; Rose 2000; Rose 1999). We will use the label *embedded accountability* to stress the internalization of the sense of “moral responsibility” characteristic of this form, and take special note at this point of its association with professionalism and high levels of commitment to living up to perceived expectations.

In many respects, fourth order accountability stands as both foundational and aspirational in this scheme. Modern governance – whether public or corporate -- ultimately rests on a foundation of legitimacy and trust, and that legitimacy and trust is rooted in the belief that the governors/managers/administrators operate under the

⁴ Not long ago the concept of “managerial accountability” would have been more closely associated with regulation and control; see Mason 1958; Preston and Post 1974.

assumption that they are accountable. That is, it is expected that they have or will assume an accountable posture at all times, and that this embedded sense of “being accountable” will guide their behavior without having to resort to performative, regulatory or managerial forms.

The Speculations:

Given this scheme for the structure of accountability, two normative speculations emerge.

The first is that the ideal relationship among these orders of accountability would involve a “nesting” of the four with embedded (fourth order) accountability providing the foundation upon which the managerial and regulatory architectures would be built, and within which performative account giving serve its purposes.

The second speculation, derived from an acceptance of the first, is that the impact (including success and failure) of strategies designed to reform or change existing governance arrangements will be determined by how they relate to the current pattern of relationships among the four orders of accountability in any particular arena.

To “test” these two speculations, I will apply (quite superficially) this “orders of accountability” scheme to two cases where problems of accountability have emerged as central issues: corporate governance and the quality of elementary and secondary education. The aspirational “ideal” for an accountable governance system would be similar in both cases under this speculation. That is, the goal is to construct a system of “accountabilities”⁵ effectively rooted in an embedded sense of responsible action by the presumptive account giver. Under this rubric, some consensus about the appropriate form of corporate behavior vis-à-vis its “stakeholders” (see below) would provide the foundation and guidance for the design and implementation of performative, regulatory and managerial accountability systems.

⁵ On various notions of multiple accountabilities, see Day and Klein 1987; Dubnick and Romzek 1993; Koppell 2005; Romzek and Dubnick 1987; Strøm 2000; Yakel 2001.

Similarly, a foundational agreement about the mission of education would inform and direct the accountability systems applied to schooling. It would follow that, and the aspirational ideal, the design and application of each of the “lower order” accountabilities would be informed by the need to either nurture or reform the embedded norms and values that support the system.

As a speculative exercise, I now turn to the general cases to consider what insights might be gained from applying this normative frame.

The Cases:

Cases are hypotheses that challenge us in the form of a question: what has happened (is happening) here? Unless developed and approached with care, they are subject to “begging the question” fallacies, especially when offered in well developed narrative form. Telling the story (and, ironically, especially telling it well) can easily undermine the effort to uncover or effectively test potentially useful insights (e.g., Vaughan 1996). For that reason, it is often more effective to approach cases as bundles of problems that can challenge – and thereby put to the test – a set of assumptions that carry the seeds of understanding and insight (and, therefore, potential theories). In the present instance we rely on two such “cases”: corporate governance and school accountability.

In some respects, the comparison of corporate governance and school accountability seems like a bit of a stretch given the substantial differences in the scope, function and design of these two major institutions. Despite differences, however, both sectors operate through “purposive” organizations (Clark and Wilson 1961), one dedicated to creating wealth for its owners while the other has a more defined social goal in seeking to educate our children. Nevertheless, they do share a set of sector-spanning generic problems that in fact plagues any collective endeavor in our modern, pluralistic society – problems that go under the label “governance”.

As a generic problem, governance involves the need to develop and maintain the means for resolving collective action problems. Whether dealing with issues related to the “commons” (Ostrom 1990; Ostrom et al. 1999; Ostrom, Walker, and Gardner 1992), coordination (Lowndes and Skelcher 1998; Stoker 1998), or merely effective ruling

(Machiavelli 1992; Pocock 2003), it is the adoption of an appropriate form of governance that poses a major challenge for a collective. As important, once a governance arrangement is “in place,” the challenge is how to make the most effective use of its mechanisms and processes. For current purposes, that translates into issues about the role of accountability in sustaining effective governance solutions to the problems in a given arena.

Corporate Governance:

In the corporate governance arena, the central problem has been typically approached as an issue of enhancing the accountability of corporate directors and management. The salient problems involve how to assure that otherwise impotent ‘stakeholders’ (1) are capable of calling corporate official to account, (2) can be protected from possible abuse, (3) are assured of performance, and (4) can have their views represented or have their interests taken to account.

In its classical form, the stakeholder concept is limited to actual shareholders. A central purpose of corporate governance was to protect ‘outside’ investors from the expropriation of their investments by insiders. “Corporate governance is, to a large extent, a set of mechanisms through which outside investors protect themselves against expropriation by the insiders” (La Porta et al. 2000).

In the contemporary era of ‘corporate social responsibility,’ however, the stakeholder concept is extendable to a potentially wider set of populations (e.g., workers, customers, community, etc.) (Donaldson and Preston 1995; Huse 2003; Kochan 2003). Assuming that broader perspective, the question becomes “What do stakeholders want, and what is the role of corporate governance in achieving that?”

To facilitate this speculative exercise, I will characterize the four problems faced by our impotent stakeholders as follows:

- The Answerability problem: How does a stakeholder – whether a minority shareholder who lacks an effective voice or a member of other relevant groups – get “answers” from corporate management or directors? The issue here can take a range of forms depending on the status of the account-demanding party (i.e., their

“stake” in the company), the nature of the questions they are seeking answers to (i.e., the “proprietaryness” of the information; (Dye 1985; Dye 1986), and the tools already available to them (e.g. the “legal standing,” social status, or political influence of the account demander).

- The Protection problem: To what extent is the impotent stakeholder vulnerable to injury or abuse (financial or otherwise) at the hands of corporate decision-makers? This can range from protection for shareholders from unnecessarily risky investments by company officials (e.g., the WorldComm scandal), to safeguards against needless worker layoffs (Uchitelle 2006), to a community’s protection against the unsafe operation of plants (e.g., the Bhopal disaster; see Trotter, Day, and Love 1989).
- The Performance problem: To what extent can the stakeholder rely on (at least) competent performance related to desired outputs and outcomes? Again, the nature of the problem depends on the particular stakeholder under consideration. For shareholders, minority and otherwise, performance can be narrowed to an expected return on investment (Lazonick and O’Sullivan 2000). This performance issue has been broadened out to include the concept of “stakeholder” value (Charreaux and Desbrières 2001; Hillman and Keim 2001; Tirole 2001) and ultimately to the level of broadly defined corporate social responsibility (Reich 1998).
- The Representation problem: How can the interests of the various stakeholders become part of the governance system and its processes? Can it be literally represented on the board of directors (Hunter 1998; Luoma and Goodstein 1999)? In management (Fryxell and Lerner 1989)? Through the norms, values, and moral development of corporate management (Trevino 1986; Trevino, Hartman, and Brown 2000)? In the corporate culture (Chen, Sawyers, and Williams 1997)?

For present purposes, these problems have been intentionally presented in an order that allows us to align them with the four orders of accountability (see Figure 1). This is more than a matter of mere rhetorical convenience, for it allows the extension of

our speculation to questions of governance strategies. Each of the corporate governance problems seems to align nicely with its associated form of accountability.

	Orders of accountability			
Problem:	1 st order	2 nd order	3 rd order	4 th order
Answerability	Performative			
Protection		Regulatory		
Performance			Managerial	
Representation				Embedded

Figure 1
Problems of Corporate Governance and Orders of Accountability

The problem of answerability, for example, can seemingly be resolved by triggering or improving appropriate forms of performative account giving. The failure of corporate officials to be forthcoming with nonproprietary information can be challenge in court or through petition to the relevant regulatory body. Annual meetings can be used by minority shareholders to voice their opinions and frustrations. Public opinion can be mobilized against a company policy through organized media campaigns. And so forth.

Where problems of protection are involved, changes can be made to the mechanisms of regulatory accountability – either through changes in government rules or laws, of through adjustments of the corporation’s own bylaws. While you may not be able to get a response from Wal Mart when you request that they not locate a store in your community, you can work to change local zoning laws to block their access to local land. And although you may not be able to get the local cable TV company to offer more reasonable “packages” of channels in the local market, you can work to have the Federal Communication Commission adopt a rule mandating more reasonable options for consumers. Similar steps can be taken to alter the incentives for performance, including the working for tax breaks that would shift or refocus corporate decision making in desired directions.

But in many respects the use of embedded accountability approaches can prove to be the most useful yet most challenging point of access for reform. In a very real sense,

embedded accountability is the “holy grail” for those who rely on accountability to bring about solutions to the problems of corporate governance. The challenge is how to access and have any significant impact on the governmentality of corporate officials.

One possible strategy is to force a fourth order change through lower order actions. This is most evident in the government efforts to take (performative) legal actions against corporate officials, and especially the recent flurry of civil actions and criminal prosecutions against former high-flying senior managers. The intention of such prosecutions is in part retribution, but as important is the desire to enhance regulatory control (O'Brien 2006 forthcoming) and ultimately to alter the embedded sense of accountability among corporate officials by undertaking well publicized prosecutions against well known individuals.

Within this frame, Sarbanes-Oxley can be regarded as a second order (regulatory) effort designed as well to enhance fourth order accountability – particularly those provisions requiring corporate CEOs, CFOs, etc. to submit certifications that, among other things, they have reviewed their quarterly and annual reports and that, to the best of their knowledge, it contains no misstatements or omissions. The submitted certifications are themselves first-order performative acts of little immediate material consequence, but rather than dismiss the procedure as merely symbolic, we can assess it as a vehicle to serve other purposes -- not the least being reinforcement of the “fourth order” idea that corporations must be governed responsibly.

Applying this framework, we can point to additional examples of second and third order efforts to achieve fourth order accountability. Regulations related to who can serve as corporate directors and under what conditions can certainly shape embedded accountability in some companies, as can performance rating standards which have become part of the “sales pitch” in the US auto market (e.g., mileage ratings by the Environmental Protection Agency or crash test ratings from the National Highway Traffic Safety Administration).

Despite the normative aspirational ideal that underlies this perspective, it should be evident from these examples that actions taken at those lower order levels can have

either adverse or enhancing impacts on the established embedded consensus, and these impacts can be fostered inadvertently or by design.

School Accountability:

In the US, education policy is a complex of issues traditionally related to four basic questions: (1) who should be educated? (issues of access and equity); (2) what should they be taught? (curriculum); (3) how should they be taught? (pedagogy); and (4) who should make the decisions about these issues? (governance).⁶ On the more specific issues of governance, the problems addressed through accountability mechanisms are somewhat different from those facing corporate governance.

- **The Responsibility problem:** In American education, a central question is “who is responsible?” for what takes place in the school classroom. Unlike corporations where formal responsibility for governance rests with the board of directors and top management, a number of different sets of actors can claim legitimacy over core issues in the field of education. Teachers, school administrators, school district administrators and elected school boards, state education departments, the federal Department of Education, and in some cases the courts can all claim a major role in governance. Thus, while the issue in corporate governance is how to get answers and information, the issue in education has become “who do I seek answers from?” (Hanushek and Raymond 2001; Ladd 2001)
- **The Control problem:** While the focus in corporate governance is how to protect vulnerable stakeholders (and even bystanders) from the potential abuses of corporate power, a major dilemma in education is to achieve some degree of control and consistency among the education that was taken place in (literally)

⁶ A fifth, and not insignificant issue is financial: How should education be paid for? In many respects this is the most hotly debated question, but how it is answered shapes responses to the other four. For present purposes, however, we will leave it out of the analysis by treating it as a more generic, environmental factor.

thousands of school classrooms on any particular day. This has been particularly true in regard to efforts to standardize curriculum and pedagogy.

- The Performance problem: Despite some disagreement about the meaning and relevance of responsibility to stakeholders, there was consensus in the corporate governance arena that maximizing shareholder value was the core standard of performance. Such a consensus may emerge from time to time in education, but it is likely to be relatively short lived or at the least last only as long as a dominant coalition (the latests ‘movement’ in the education field) is able to hold sway over the norms and values of the field.
- The Mission problem: While corporate governance can be confident of its core mission (i.e., enhance shareholder value), education professionals (i.e, teachers, administrators, etc.) cannot. Professional identities – and the values and norms that accompany them – typically relate to a sense of mission. What does it mean to educate America’s children? Is it a matter of cultivating certain marketable skills, or is it to nurture each child’s distinct intelligence(s)?

	Orders of accountability			
Problem:	1 st order	2 nd order	3 rd order	4 th order
Responsibility	Performative			
Control		Regulatory		
Performance			Managerial	
Mission				Embedded

Figure 2
Problems of School Accountability and the Orders of Accountability

To understand the current role of accountability in American education, one needs to be immersed in the social history of education in the US (Cremin 1961; Kliebard 2004; Ravitch 2000) – or at least in the ongoing debate of education’s social role in American society. Institutionally, education acquired its moral ballast early in the twentieth century through the work of John Dewey. There is probably no clearer articulation of a fourth

order standard for any endeavor than his 1897 statement about the role of teachers in society:

I believe . . . finally, that the teacher is engaged, not simply in the training of individuals, but in the formation of the proper social life.

I believe that every teacher should realize the dignity of his calling; that he is a social servant set apart for the maintenance of social order and the securing of the right social growth.

I believe that in this way the teacher always is the prophet of the true God and the usherer in of the true kingdom of God. (Dewey 1897)

Although there were exceptions and challenges to this teacher-centric perspective,⁷ there is considerable evidence that educational accountability systems during the early part of 20th century were inclined to be deferential to the norms and needs of teachers and their professional communities. But the external deference was never quite matched by an internal consensus on questions of pedagogy or curriculum. Pedagogic and curriculum differences became politicized – and thus externalized into reform movements, which in turn results in efforts at consolidating control once a particular reform emerges as dominant (cf. Cuban 1990). The result was a slow but steady process of bureaucratization of schooling, with ever more administration and “architecture” built around reform generated institutions.⁸

The watershed period of school consolidation in the US during the 1950s (Conant 1959) can be attributed in part to the growing need to deal with control problems brought on by the proliferation of programs and standards emerging from the growing dissent and

⁷ In addition to support for reforms stressing manual and vocation training that emerge from time to time, there was the effort of Joseph Mayer Rice to bring the practices of scientific management to education (Graham 1966)

⁸ On the institutionalization of education reforms, see Cuban 1992a; Cuban 1992b.

division within the professional education community. In terms of the framework, the slow collapse of fourth order accountability in the education community was countered by second order responses (bureaucratization) which eventually came to dominate schooling in the US.

What was interesting about that process, however, is that the bureaucratization process did not radically alter the many first order accountability systems that operated within schools and among educational professionals. Larry Cuban has written extensively about the capacity of the education establishment to integrate reforms into ongoing structures and operations over time. While the control architecture proliferated, the first order accountability relationships either adapted to or avoided getting entangled with the codes and constraints. Training and certification standards for teachers, for example, often seemed disconnected to various streams of pedagogic or curriculum reforms that were being adopted with greater frequency during the 1970s and 1980s (Little 1993).

The same has not been true of the most recent flurry of reform. The current emphasis on “New Accountability” (Carnoy, Elmore, and Siskin 2003) in American education (and elsewhere; see Davies and Guppy 1997; Ginsburg et al. 1990) is a clear example of the shift from second-order (regulatory) to third-order (managerial) accountability, and in many respects it is a reaction to the excesses that resulted from the overly bureaucratized regulatory accountability of the post-World War Two era. Adopted with increasing frequency in the states during the 1980s and 1990s, the emphasis on high stakes testing regimes to improve teacher performance (as measured by student performance scores) has now emerged as national policy in the 2002 “No Child Left Behind” Act. Implied in these reforms has been indifference – if not a direct challenge – to what remained of the fourth order deference to teachers and other education professionals. As a result, first order performative accountability activities are now more focused, with the greatest attention at all levels to responding to the high stakes demands for improvements in student performance on tests that measure proficiency in basic skill areas at certain grade levels. Teachers, now driven by performance standards tied to both sanctions (losing one’s job) and rewards (financial rewards for consistently good performance) are increasingly engaged in first order “gaming” strategies (Figlio and

Getzler 2002) (some bordering on the perverse; Dorn 1998; Fuhrman 1999; Koretz 2003) to improve their scores – strategies that include greater focus on the subject matter, “teaching to the test”, developing ways to shift low scoring students out of the pool of test takers – and even outright cheating (see chapter 1 in Levitt and Dubner 2005).

This analysis leads to the speculation that by relying on managerial accountability to resolve problems associated with too much regulatory accountability, reformers have undermined the power and authority of whatever fourth order norms had underpinned teacher commitment and accountability for many decades. We have traded our growing control problems for mission problems. Perhaps this is a good thing and the result eventually will be a newly reformulated and strengthened embedded accountability that will deliver on the promises of educational performance.

Concluding comments:

This paper was an attempt to explore a new framework for understanding the logic and dynamics of accountability as a structural phenomenon – a framework based on distinct among four orders of accountability that seem to characterize contemporary governance arrangements. Conceptually and empirically this exploration leaves much to be desired, but the speculative exercise of applying it to two arenas where accountability is a major concern seemed to generate some insights worthy of further work.

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