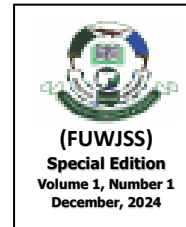


PROTESTERS' RIGHTS IN NIGERIA'S CONSTITUTIONAL DEMOCRACY



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Abstract

The social contract under which democratic governance is predicated has largely vested governance on the people and allocated exercise of day to day administration of governance on elected individuals. This delegation of powers does not divest the people of their right to express displeasures on reproachable policies exacted by those to whom power has been entrusted. The crux of civility and modern civilization resides in citizens freely gathering and expressing their grievance in protest. Thus, this paper focuses on the rights of Nigerians to protest under the Nigerian constitutional democracy. The doctrinal methodology is adopted in analyzing provisions of the the Nigerian 1999 Constitution and international instruments relevant to right to protest. Findings affirm protests as part and parcel of human rights recognized under national and international *groundnorms* which do not require the permission of governments before the exercise of such human rights. Findings also established that the Nigeria Police has the constitutional duty to provide security for protesters whenever they are exercising their right to protest. The paper concludes that protest is a constitutionally recognized human right and all institutions of government should ensure its enforcement and enjoyment.

Keywords: Protest, human rights, lawful-assembly, groundnorms

Introduction

History is filled with protests that brought change like the Civil Rights Movement or women's suffrage (Werft & Ngalle, 2016). Each time people gathered to voice their dissatisfaction, some change happened. These movements showed that standing together against unfriendly policies could shift opinions and even laws. Does that mean every protest will lead to instant change? Not always, but it plants seeds for future discussions. Protesting springs from deep feelings (Hoffman, 2017). When policies that hit too close to home come from the government, it is like a storm cloud hanging over a picnic. It feels unfair, and that is when most people decide to take action. Protests allow voices to rise. They send the message to the effect that citizens matter; everyone has a voice that deserves to be heard.

Every protest has a purpose (Williamson, Trump & Einstein, 2018). It's a way to shine a light on issues that might be ignored otherwise. When people gather to protest, it creates a buzz (Williamson, et al 2018). Ever noticed how quickly news travels when a crowd gathers? Your voice might be the spark that ignites a larger conversation. This is drawn from the speed with which fuel prices skyrocketed on the announcement on 29 May 2023 that fuel subsidy had been removed. Economic implications of the fuel hike and consequent food price hike doubling in multiples led to the hunger protests across Nigerian states and major cities. The Government response against those Nigerians who took to the street was arrest, shots of life bullets by police, malicious prosecution and intimidation of alleged protests sponsors.

The August 2023 protests across Nigeria intended to end hunger arising from bad economy policies which had led to uncontrolled rise in prices of basic food items and daily food ingredients in local markets all over Nigeria (Abdulrazaq, 2024). The media, print and unconventional had documentaries of citizens who were not given protection according to law during the protest. Some were accused of participating in violent manner or conducting themselves contrary to Police expectation from those who participated across some states in Nigeria. On August 3, 2024, the Whistleblowers reported online that the Nigerian Police shot and killed a teenager at Kubwa axis of Abuja, Nigeria Federal Capital Territory (Benson, N. 2024). Shehu Ahmed from Kaduna State is reported to have said that "*How can they be living*

large in the midst of mass poverty and expect us to keep quiet?” (Baje, 2024).

Human Right of Protests

Human rights, in the words of Arnold Lien, are inherent rights that apply to every individual, regardless of their circumstances or location, race, gender, or environment. In this sense, the intrinsic dignity of every human being serves as the foundation for human rights (Keller & Ulfstein, 2012). These are rights that belong to a certain person just by virtue of his humanity. Human rights are not gifts to be taken, denied, or awarded at the whim or will of any one person. Rather, they are inalienable rights that all members of the global village are entitled to enjoy. They are referred to as imprescriptible or inalienable in this sense. The Latin term "rectus," meaning "that to which a person has a just and valid claim, whether it be land, a thing, or the privilege of doing something or saying something," (Garner, 2004) is the source of the English word "right." (Ogbu, 2013) It might allude to anything that is generally right or required because it is a right, which denotes moral principles, justice, and moral rectitude. It could also allude to an individual's entitlement—the unique claim they have to a good or opportunity. Traditional civil and political rights, such as the freedom of speech, of the press, of religion are referred to as first generation. The rights are designed to guarantee that the government is not allowed to meddle in an individual's affairs. These are the "classical" human rights that may be found in several country constitutions' bills of rights. In *Uwaifo v A G Bendel State* (1982) the Supreme Court of Nigeria held that a legal right is any advantage or benefit conferred upon a person by a rule of law. For the purpose of this paper, right under discourse is as it pertains to human being otherwise known as human rights. Human rights are inherent in man by virtue of his birth. It represents demands or claims which individuals or group make on society or fellow individuals, some of which are protected by rule of law while others remain aspirations to be achieved later.

Protest is a part of the right which flows from freedom of assembly, freedom of speech and freedom of movement. The right to protest is not bequeathed by government or their agencies; it is foundational to democratic society and alien to autocratic ruler. Making an impact

during a protest requires some planning (Sampson, 2010). A meaningful protest isn't just about showing up; it's about sending a clear message. Are you hoping for a specific change, or are you aiming just to raise awareness? The clearer the goal, the stronger the message.

Protesting is like a loud shout in the quiet room of society. It's a way for people to voice their concerns, ideas, and struggles. But where does this right come from? The United Nations Charter, signed in 1945, serves as a cornerstone for international law and human rights. It lays out the principles aimed at promoting peace and security. One of its key goals is to encourage respect for human rights, including the right of individuals to express their opinions and gather peacefully (Iwuoha & Aniche, 2022). Article 20 of the Universal Declaration of Human Rights (UDHR), which emerged from the UN's efforts, clearly states that everyone has the right to freedom of peaceful assembly and association; this means individuals can come together to share their thoughts and advocate for change without fear of government retaliation. The UN sees protests as a fundamental part of democracy!

Beyond the United Nations Charter, several international conventions reinforce citizens' rights to protest. The International Covenant on Civil and Political Rights (ICCPR) is a prime example (Art.3, International Covenant on Civil and Political Rights). Adopted in 1966, it emphasizes that every person has the right to freedom of expression, which includes the freedom to peacefully assemble. Article 21 of the ICCPR specifically recognizes the right to peaceful assembly. This isn't just a suggestion; it's a legal obligation for countries that sign the treaty. Governments must respect and protect the rights of individuals to gather and protest peacefully. It's like a safety net for citizens, ensuring they can speak out without facing harsh penalties. In addition to global agreements, regional treaties add another layer of protection for the right to protest. For instance, the European Convention on Human Rights (ECHR) is a significant regional agreement that outlines individual rights. Article 11 of the ECHR guarantees the right to freedom of assembly and association. This means that countries in Europe are also obligated to maintain these rights for their citizens.

The Constitutionality of the Rights to Protest in Nigeria

Protesting is a powerful way for people to express their feelings and opinions. In Nigeria, this right has sparked a lot of debate. But what does the constitution say about it?(Lawal, 2024). Protesting allows citizens to speak out against issues they care about. It's like raising your hand in class when you have something important to say. In Nigeria, the right to protest is tied to freedom of expression and assembly. The Nigerian Constitution, specifically Section 40 Nigerian Constitution, ensures that every citizen has the right to assemble freely and associate with others. So, when people gather to voice their concerns, they're exercising a right that's meant to be protected. Nigeria has a rich history of protests. From the fight against colonial rule to the recent #EndSARS movement and #EndBadGovernment protest, citizens have taken to the streets to demand change (Olanrewaju, 2024). Each time people protest, they highlight issues that impact their lives, like police brutality, corruption, and lack of basic services. Yet, despite these constitutional protections, the government sometimes reacts with force. This brings up questions: When does peaceful protest cross the line? And how does the government decide which protests are acceptable?

Law enforcement plays a crucial role during protests. Ideally, their job is to ensure safety and order. However, there have been reports of excessive force used against protesters. This struggles between maintaining order and respecting constitutional rights. When police respond with violence, it raises alarms about the protection of citizens' rights. Over the years, the Nigerian government has introduced laws regulating protests. While some regulations aim to maintain peace, others seem to restrict the right to protest. To many, this feels like a tightening grip on freedom(Genasys, 2024). The balance between maintaining public order and ensuring the constitutional right to protest is delicate. Is there a way to protect both protesters and public order? The answer lies in an open dialogue between the government and its citizens. Laws should not only protect citizens' rights but also ensure safety. When people hear their voices matter, they're more likely to protest peacefully. It's like a conversation; when both sides listen, understanding grows.

The Nigerian Courts and Rights of Nigerians to Protest

Nigeria is not only far too big, but twice as tall when it comes to protests. Beginning with the #RemovalofFuelSubsidy and continuing with the #RevolutionNow, the #EndSarCampaign and the #NomeansNo, protests are a common occurrence in Nigeria's sociopolitical landscape. Protests, as a form of political engagement, give people a platform to freely express their ire over political, economic, and/or social concerns with which they disagree. Most of the time, they also represent a strong demand for leaders to take responsibility and accountability. After all, there would have been very few demonstrations if everything had been normal. Furthermore, some governments prefer to use force to put an end to protests, while others want to weaken their longevity by caving in to the demands of the demonstrators. In Nigeria, the latter has been a recurrent issue. Most unjustified attacks on demonstrators are utterly unjustified, especially when they are completely nonviolent, free of animosity or violence, and don't pose a threat to public safety or violate any existing laws (Falana, 2014).

The freedom of expression, peaceful assembly, and movement guaranteed by Sections 39 and 40 of the Federal Republic of Nigeria, 1999 (as amended) and Articles 10 and 11 of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act serve as the foundation for citizens' right to peaceful protest. The freedom of association and assembly is a qualified right, meaning that there are restrictions, just like any other right. The law enforcement agencies, whose primary duty is the protection of law and order, will not permit meetings that are violent and cause the breakdown of law and order in society. In order to protest the rigging of the 2003 elections, the All Nigeria Peoples' Party had asked the Inspector-General of Police to grant police permits to its members so they could stage unification rallies around the nation. The police chief denied the request without providing an explanation. The rallies were organized by the ANPP. General Muhammadu Buhari, the party's presidential candidate, and other ANPP leaders attended the first rally, which took place in Kano on September 22, 2003. The police forcefully broke up the event since the organizers did not have a police permission.

The pertinent question that needed to be resolved was whether a permission was required in order to participate in a rally or protest in accordance with Section 1(1)(2) of the Public Order Act. To ensure clarity, a summary of these parts will be provided. The Governor of each state was given the authority by Section 1 of the Act to oversee the conduct of all assemblies, gatherings, and processions on state-owned roadways or in public resort areas, as well as to determine the path and timing of any procession. Flowing from Section 2, unless the assembly, meeting, or procession is authorized by a general license granted under subsection (3) of this section, the person wishing to organize, collect, or form any assembly, meeting, or procession in any public road or place of public resort must first apply for a license to the Governor, preferably within 48 hours of the event.

It is clear from the foregoing that the Police Order's provisions conflict with those of the Constitution. According to the Supremacy Clause found in Section 1(3) of the Constitution, the Constitution will take precedence over any other legislation and that other law will be void to the extent of its conflict with the provisions of the Constitution (in this case, the Police Order Act). Refer to *Fawehinmi v. Abacha & Ors* (2000) LPELR-14 SC. The court, per Adekeye JCA decided that:

Public Order Act should be promulgated to compliment sections 39 and 40 of the Constitution in context and not to stifle or cripple it. A rally or placard carrying demonstration has become a form of expression of views on current issues affecting government and the governed in a sovereign state. It is a tread recognized and deeply entrenched in the system of governance in civilized countries – it will not only be primitive but also retrogressive if Nigeria continues to require a pass to hold a rally. We must borrow a leaf from those who have trekked the rugged path of democracy and are now reaping the dividend of their experience.

Justice Adekeye was forced to ask, how long shall we continue with the present attitude of allowing our society to be haunted by the memories of oppression and gagging meted out to us by our colonial masters through the enforcement of issuance of permit to enforce our rights under the Constitution? in light of the fact that the British colonial regime had introduced and enforced the Public Order

Ordinance in order to stop the Nigerian people from protesting against foreign domination and exploitation. The Court held the opinion that our Criminal Code has made adequate provisions for sanctions against breakdown of law and order so that the requirement of permit as a conditionality to holding meetings and rallies can no longer be justified in a democratic society in response to the police's common fear that a peaceful protest might be hijacked by thugs leading to a breach of the peace.

The Ghanaian Supreme Court's unanimous ruling in the well-known case of *NPP v IGP 1992-1993(585-2000) 2 HRLRA 1* is also reminiscent of the Appeal Court's approval in this case. In that case, the Court declared in the final decade of the 20th century, "I wish to add a few words to demonstrate that police permits are colonial relics and have no place in Ghana. The Public Order Decree that provided that the holding of all public processions and meetings should be subject to the obtaining prior police permission was unconstitutional because it was inconsistent with article 21(1) (d) of the 1992 Constitution, which granted every citizen the freedom of assembly, including the freedom to take part in *processions and demonstrations*."

The authorities of the Nigeria Police Force have acknowledged Nigeria's inherent right to peaceful demonstrate without a police permission in light of the aforementioned judicial ruling. Therefore, when operating in their official role, police officers are required by Principle 6 of the Nigerian Police Code of Conduct to maintain a neutral stance regarding the merits of any labor dispute, political protest, or other public demonstration. Nonetheless, this principle does not always rule the Police, and most of the time they flagrantly and shamelessly flout it. The Constitution guarantees fundamental rights. Therefore, the only way to limit or abridge them is through a legal process. It is advisable that a police officer seek for an injunction in a competent court of law if they have knowledge that a demonstration or rally could result in a breakdown of law and order.

The safeguarding of human rights in Nigeria is significantly affected by these court rulings. It is reiterated that no permits are needed. Permission from the police is not required for citizens to plan and take part in nonviolent demonstrations and gatherings. imposed restrictions on police power. Peaceful protests cannot be arbitrarily

interrupted or put down by the police, as this would be against fundamental rights (Abdullahi, 2024). Legal safeguarding against the overreach of the prosecutor. A vital check on governmental and law enforcement acts that violate citizens' rights is provided by the court.

Theoretical Framework

The right to protest stems from countries *groundnorm* which enshrines in its Bill of Rights or Constitution citizen's rights to peaceful assembly (Okoye, 2021). The right to peaceful assembly emblems freewill to gather for lawful purposes without interference of government, it indicates that the citizens are not oppressed by those they elected to government positions and that both the governed and the government has respect for democratic principles (Ekeke, 2023). In the African Charter on Human and Peoples Right as well as under the Nigerian Constitution, it is arguably true that both instruments for regional and national governance envisages that citizens can gather to register their disapproval of certain government policies which citizens require immediate reversal because of the economic social and political impact of such policies.

Citizens freedom to assembly and expression therefore, is a fundamental component of democracy (Landman, 2016). Democracy runs on what is fit for the people, by the people and of the people. Where the people, which is the basis of democracy, are irked by government decision or policy, and they lawfully allowed to express such displeasure in open without molestation and intimidation by agencies of government; then, such society can be said to be democratic (Jega, 2008). The implications of provisions for freedom to assemble and expression under a democracy are that it is become the basis on which rights to protest can be anchored. If the laws which regulates conduct has not identified basic rights for citizens like those of assembly and expression without censorship, it will become difficult insist that any right had been violated since rights stems from *groundnorms*, generally.

Research Methodology

The doctrinal method is used as the methodology for this paper as it examines the Constitution, Police Act and other documented data

resources on citizens rights to protest; Police duty to provide security for protesters and the need to articulate what policies of government the people are up against. This method allows for what has been enacted, examined against what has been done by the government or its agencies on one part and grievance expression mechanism of the citizens as well as citizens rights to gather without permits from government or its agencies.

Notable Protests in Nigeria

Nigerians have demonstrated against injustices, called for improved administration, and frequently staged public protests. These demonstrations, which are frequently sparked by a confluence of social, political, and economic issues, have influenced the history of the country and will continue to do so in the future. Here, we examine a few of the most notable protest incidents in Nigerian history.

The Aba Women's Riot (1929)

The Aba Women's Riot, often referred to as the Aba Women's War, was one of the first and most important demonstrations in Nigeria's colonial history (Enyioko, 2021). Thousands of Igbo women demonstrated against the policies of the British colonial authority in November 1929 in the towns of Aba, Calabar, and Owerri in the southeast. They were especially against the taxes imposed on market women. The women called for the removal of Warrant Chiefs and the elimination of taxes while brandishing symbolic guns and screaming war songs. At least fifty women lost their lives as a result of the colonial authorities' brutal suppression of the protests. The Aba Women's Riot is still remembered as a symbol of the first wave of Nigerian opposition to colonial rule.

The Enugu Coal Miners Strike (1949)

In Nigeria's history of labor strikes, the 1949 Enugu Coal Miners Strike is another significant event. The Enugu coalfields' subpar working conditions and insufficient pay for coal miners served as the impetus for the walkout. The Nigeria Union of Mine Workers led an organization of miners who sought improved working conditions and compensation. When the colonial authorities dispatched the police to

break up the striking miners, the protest turned violent, with 21 miners being shot and killed (Nathaniel, 2024). The Enugu Coal Miners Strike laid the groundwork for later labor movements in Nigeria by bringing attention to the challenges faced by workers in that nation during colonial exploitation.

The “Ali Must Go” Protests (1978)

Nigerian students spearheaded the 1978 "Ali Must Go" demonstrations in opposition to the military government's plan to raise college tuition. The demonstrations were called in honor of Colonel Ahmadu Ali, the Federal Commissioner for Education at the time, who carried out the divisive program. Students from all throughout the nation organized protests and rallied for Colonel Ali to step down and for the fee increase to be reversed (Stiftung, 2018). The military administration violently suppressed the protests, killing a number of people and injuring many more. An important turning point in Nigerian history was the "Ali Must Go" rallies, which demonstrated the effectiveness of student movement in opposing governmental policy.

The June 12 Protests (1993)

Nigerians protested in large numbers when General Ibrahim Babangida's military government canceled the June 12, 1993, presidential election. Chief Moshood Kashimawo Olawale Abiola became victorious in the election, which was universally acknowledged as the most equitable and unhindered in Nigerian history (Sanusi, Owolabi & Zakariyau, 2023). The military, however, declared the results void due to purported anomalies. Nationwide demonstrations and civil turmoil were triggered by this action, with pro-democracy demonstrators calling for Abiola to be declared the true winner once again. Significant participation from a range of social groups in the June 12 protests ultimately resulted in the end of military dictatorship and the return of democratic governance to Nigeria in 1999.

The Occupy Nigeria Movement (2012)

The Occupy Nigeria movement, one of the biggest demonstrations Nigeria has seen in recent memory, began in January 2012

(Nwachukwu, 2015). The government's decision to eliminate fuel subsidies, which resulted in a dramatic increase in the price of gasoline and a corresponding rise in living expenses, was the catalyst for the protests. People from all walks of life in Nigeria staged protests in major cities such as Lagos, Abuja, and Kano, calling for the restoration of the subsidies and more extensive economic changes. Large-scale demonstrations, sit-ins, and strikes characterized the protests, which brought the nation to a complete halt. The Occupy Nigeria movement initiated a national conversation on political and economic reforms and forced the government to partially resume the subsidies.

The #EndSARS Protests (2020)

The 2020 #EndSARS demonstrations were a ground-breaking campaign against Nigerian police abuse. Widespread reports of mistreatment, extortion, and extrajudicial killings by the Nigerian police's Special Anti-Robbery Squad (SARS) served as the impetus for the protests (Iwuoha & Aniche, 2022). Young Nigerians were at the forefront of the nationwide public protests that swiftly evolved from what started out as online activism. The demonstrators called for extensive police reforms, the dissolution of SARS, and justice for victims of police violence. In response, the government announced that SARS would be disbanded and set up judicial panels to look into abuses. The sad events of October 20, 2020, when the military allegedly opened fire on nonviolent protestors at the Lekki Toll Gate in Lagos, resulting in numerous casualties, overshadowed the protests, nevertheless. The #EndSARS demonstrations brought attention to Nigeria's continuous fight for justice and accountability as well as the strength of youth-led activism.

The #EndBadGovernance Protests, August 2024

A wave of hunger protests swept through Nigeria in August 2024, bringing attention to the country's mounting problems with food insecurity, economic hardship, and bad governance (Lawal, 2024). The demonstrations, which were organized by a number of community organizations, civil society organizations, and private citizens, raised awareness to the predicament faced by millions of Nigerians who lack access to essential services including food, water, and medical care.

Thousands of Nigerians took to the streets in major cities like Lagos, Abuja, Kano, and Port Harcourt during the hunger demonstrations, which started on August 10, 2024. In order to represent the emptiness in their stomachs and the lack of government action, protesters held banners, posters, and empty plates (Olanrewaju, 2024). They called for better food availability and security, lower food costs, more agricultural investment, efficient social welfare programs, accountability, and sound governance. Leaders of the protests gave the government a memo with their main demands and suggestions: put policies in place to lower food inflation, boost financing for rural development and agriculture, create a national food reserve, fortify social safety nets like cash transfers and food assistance programs, and guarantee accountability and transparency in government. There were conflicting responses from the Nigerian administration. The government's initial response was criticized for being insufficient, even though the Nigerian president acknowledged the protesters' concerns. Protesters contended that more tangible measures were required, despite the Agriculture Minister's pledge to expand food production and distribution. Concern over the situation was voiced by the international community, which included human rights organizations, the African Union, and the United Nations. The UN Resident Coordinator in Nigeria demanded that the humanitarian issue be addressed immediately.

The hunger protests in Nigeria in August 2024 are a wake-up call for the government to put the wellbeing of its people first. Proactive governance, economic reforms, investments in social welfare and agriculture, as well as accountability and openness, are all necessary, as the demonstrations demonstrate. To address the underlying causes of hunger and poverty, the government, civic society, and international community must collaborate as Nigeria continues to face these difficulties. Peaceful assembly and protest rights are a cornerstone of democracy. It allows citizens to express their views, hold leaders accountable and advocate for change. The Nigerian government must protect this right and ensure that protests are met with understanding and dialogue, not violence and repression (Lawal, 2024).

Violation of Protests Rights in Nigeria

Nigeria has experienced a complicated interplay of political, social, and legal factors in recent years, which has shaped the country's freedom of expression and protest rights. Proposals for laws and policies: laws pertaining to hate speech and social media. Nigeria's government has introduced measures to control online speech in response to the growing use of social media for mobilization. There has been much discussion and controversy about the proposed Social Media and Hate Speech laws. If these legislations are enacted, according to their opponents, they might be used to restrict free speech and silence opposition. A number of states established judicial panels to look into allegations of police brutality and violations of human rights after the #EndSARS rallies. These tribunals have given victims a forum to pursue justice and have made numerous reform recommendations. Nevertheless, putting these suggestions into practice continues to be difficult.

Government Crackdowns: The Nigerian government has periodically used crackdowns on protestors in violation of legal protections. Concerns concerning the commitment to preserving constitutional rights are raised by instances of military and police engagement in nonviolent protests. Independence of the judiciary nationwide: the defense of human rights depends on the judiciary's independence. Nonetheless, there are worries about political meddling in the legal system, which may make it more difficult for the courts to uphold the freedom of speech and the right to protest. Activism in Civil Society Organization is still very important in the fight for human rights. Nonetheless, state authorities frequently harass, intimidate, and file legal challenges against them. It is imperative to create an atmosphere that is favorable to civil society activism in order to safeguard and advance fundamental rights. **Engagement of Youth:** it is a good thing that young Nigerians are actively involved in advocacy and protest activities. But there is still a significant barrier in tackling the underlying socioeconomic problems—such as unemployment and a lack of opportunities—that fuel teenage discontent.

Conclusion and Recommendation

The dynamic nature of the right to protest and freedom of expression in Nigeria is highlighted by these court rulings and historical demonstrations. They draw attention to the judiciary's crucial role in defending constitutional rights as well as Nigerian individuals' tenacious efforts to exercise their fundamental freedoms in the face of obstacles. These rights' development is a reflection of Nigeria's larger fight for social justice, democracy, and human rights. It is not only legal to protest against unfavorable government policies, but also a potent form of resistance. You fight for everyone who feels unheard when you stand up for what you believe in, not just for yourself. Raise your voice and make it heard clearly!

A democracy must allow people to protest in order for it to function. The United Nations Charter and other international conventions provide people with the legal authority to organize, speak out, and demand change. Even while there are still issues, the groundwork established by these international declarations gives people the ability to speak up. Ultimately, defending one's rights is a shared journey rather than merely a personal struggle. It should be possible for everyone to join the chorus calling for change, creating a better place for future generations.

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