

The Brief History of Fundamental Rights in East Timor

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ABSTRACT

Fundamental Rights are inalienable rights inherent to every human being. When men were born, they were born together with certain rights that no one nor the state can violate, such as the right to life, the right to equality, the right to security, the right to health, the right to image, the right to physical integrity, etc. Basically, Fundamental Rights, as the name implies, are always related to the rights that human beings must have to live a dignified life. Therefore, these fundamental rights seek to protect and value the dignity of the human person. What we have seen in the history of humanity, these fundamental rights, even if theoretically born inherent to the human being, but were always violated by the public power, especially by the dictator leaders, and were only valued and respected after a long struggle of the nobles and the peoples against the arbitrariness of these dictators. The state by nature seeks to maintain order and stability for the sake of governance; For governmental stability and often, on the one hand, in the name of the state, leaders can fall into temptation to violate fundamental rights

INTRODUCTION

Timor-Leste, in the drafting of its constitution, is very careful in its process of building the Democratic Rule of Law based on the fundamental rights of its citizen. This care is manifested within its Constitution, as the primary source of positive law in its legal system (the character of the supremacy of Constitutional Law), which was approved on March 22, 2002 and entered into force according to article 170 of the Constitution on May 20, 2002, as Professor Jorge Bacelar Gouveia explains about fundamental rights,

“Cumpre também assinalar o relevo dado, sendo assim erigida a parte própria, à matéria da defesa e segurança, no que não terá sido alheio o recente percurso histórico-político do povo e do território de Timor-Leste, o mesmo igualmente se dizendo dos princípios fundamentais, que se apresentam numa parte inicial, sistematicamente autonomizado.”

Translation:

"It is also important to point out the emphasis given, thus being erected to the matter of defence and security, in which the recent historical-political path of the people and territory of Timor-Leste has not been unrelated, the same can also be said of the fundamental principles, which are presented in an initial part, systematically autonomous".

As a rule of law, its construction is based on the principle of legality, the protection of fundamental rights and the separation of powers. We can confirm this statement on the basis of the fundamental principles of the first part and the fundamental rights, duties, freedoms and guarantees of the second part and the separation of power of the third part of its Constitution.

Just to remind here that in relation to the principle of legality, based on the Timorese reality where there are still very strong old traditional systems that directly influence the life of the community on the ground, the Constitution of Timor-Leste also gives importance to customary law. In other words, in the Timorese context, state law is not the only source of law, but also customary law, as stated in article 2, paragraph 4 of the Constitution: "The State recognizes and values the norms and customary practices of Timor-Leste that do not contradict the Constitution and legislation that deals, especially, with customary law".

That is why we share the idea, in relation to this relationship of the primacy of state laws over customary norms, of Professor Jorge Bacelar Gouveia says that “Daí automaticamente não se segue, porém, a impossibilidade de a lei neste caso, a lei constitucional- se pronunciar sobre a validade do costume”.

Translation:

"From this it does not automatically follow, however, the impossibility of the law - in this case, the constitutional law - to pronounce on the validity of custom".

We hope that we can address this issue, the importance of customary law in the construction of the Timorese Democratic Rule of Law, in another pertinent opportunity.

As a new-born country, Timor-Leste is still very fragile. The fragility of the construction of the rule of law of Timor-Leste due to its lack of well-qualified human resources in all areas, the divisionism between existing ethnicities, the conflict between martial arts, the conflicts of the past that have not yet been well resolved means that at any time the political situation of Timor-Leste can change drastically from one moment to another.

LITERATUR REVIEW

Hercus Pereira dos Santos's article "The Brief History of Fundamental Rights in East Timor" presents a comprehensive exploration of the philosophical, historical, and constitutional dimensions of fundamental rights within the framework of Timor-Leste's emerging democratic state. The author situates the notion of fundamental rights within the tradition of natural law, arguing that these rights are innate, inalienable, and inherent to human existence – an idea echoed by José Carlos Vieira de Andrade and rooted in the classical philosophies of John Locke and Immanuel Kant.

Historically, the article traces the evolution of fundamental rights from early legal codes such as the Code of Ur-Nammu and the Code of Hammurabi, which sought to limit arbitrary punishment, to significant European milestones including the Magna Charta Libertatum (1215), the Bill of Rights (1689), and the Declaration of the Rights of Man and of the Citizen (1789). These developments illustrate the progressive shift from absolutist regimes to constitutional orders based on liberty, equality, and human dignity.

In the Timorese context, Dos Santos underscores the central role of the 2002 Constitution as the supreme legal foundation ensuring the protection and promotion of citizens' fundamental rights. The Constitution embodies the principles of the rule of law, legality, separation of powers, and the inviolability of human dignity. Particularly, Article 23 – which mandates that the interpretation of constitutional rights align with the Universal Declaration of Human Rights – demonstrates Timor-Leste's commitment to universal human rights standards and global constitutionalism.

The author also emphasizes the recognition of customary law under Article 2(4) of the Constitution, reflecting a pluralistic approach that harmonizes state law with indigenous traditions, provided they do not contravene constitutional norms. Nonetheless, Dos Santos acknowledges that the consolidation of a democratic rule of law remains fragile due to limited human resources, social divisions, and unresolved historical conflicts, all of which pose challenges to the full realization of constitutional guarantees.

The article draws extensively on the works of eminent constitutional scholars such as J.J. Gomes Canotilho, Jorge Miranda, and Jorge Bacelar Gouveia, integrating their theoretical perspectives to elucidate the interdependence between democracy, legality, and the protection of human dignity. Dos Santos concludes that the safeguarding of fundamental rights constitutes not merely a moral imperative but a legal and political necessity underpinning the legitimacy of the democratic state.

In sum, this study provides a significant scholarly contribution to constitutional and human rights discourse in Timor-Leste. It effectively bridges philosophical foundations and historical developments with contemporary constitutional practice, affirming that the respect for human dignity remains the cornerstone of democratic governance and the rule of law in the Timorese state.

METHODOLOGY

This study was an observational study with a prospective cross-sectional approach. Secondary data were collected from medical records of hypertension patients in 2023. Inclusion criteria were patients diagnosed with hypertension undergoing outpatient care at the Bangil Community Health Center, adults over 18 years of age, and patients taking amlodipine and single-dose captopril. Exclusion criteria were illegible medical records, patients referred to other facilities, and deceased patients. This study was conducted at the Bangil Community Health Center in September 2023. A sample of 48 patients was used. The study analysis was performed using the Mann-Whitney test.

RESEARCH RESULT

1. Fundamental Rights and A Brief Look at Their Evolution

According to José Carlos Viera de Andrade says that, “Os direitos fundamentais triunfaram politicamente nos fins do século XVIII com as revoluções liberais. Aparecem por isso, fundamentalmente, como liberdades, esferas de autonomia dos indivíduos em face do poder do Estado.”

Translation:

Fundamental rights triumphed politically at the end of the eighteenth century with the liberal revolutions. Therefore, they appear, fundamentally, as freedoms, spheres of autonomy of individuals in the face of the power of the State".

Once again we have seen that the history of humanity is linked to the principle of freedom. Freedom is something more desired by the human being in the personal and private sphere or in the public and collective sphere. The breath of freedom has importance in the world of humanity.

We have seen that in every revolution and in every resistance of Man, he is always inspired by the principle of freedom. With this freedom, it leads the human being to build a new concept of state, the secular and democratic state, based on the popular sovereignty of the people as opposed to the absolute state, which is based on the divine right of the monarch.

Jose Carlos Viera de Andrade states that “os direitos fundamentais relevam em primeira instância do chamado direito natural.

Translation:

"Fundamental rights fall in the first instance of the so-called natural law".

This means that fundamental rights were born together with the human being. Regardless of race, color, religion and many other differences that exist in the human being. We can say that man alone has fundamental rights. According to him, fundamental rights were born from a philosophical perspective and then entered the positive order or legal practice of political societies. Whereas natural law for Locke is freedom. Freedom in itself. Freedom seen as a property right.

The human being itself is born within a society, a culture, a civilization and that these societies, cultures and civilizations are various and so the evolution of the concept of fundamental rights also varies. Cristina M.M Queiroz says.

“Definir os direitos a ordem jurídica, mesmo tratando-se dos direitos fundamentais, não se apresenta como tarefa fácil. A noção mostra-se difícil. O horizonte diverge consoante os países e as nacionalidades. As concepções filosóficas que lhe subjazem divergem também. As questões que levanta e conleva não são de resposta fácil.”

Translation:

"Defining rights, the legal order, even when dealing with fundamental rights, is not an easy task. The notion proves difficult. The horizon differs according to countries and nationalities. The philosophical conceptions that underlie it also diverge. The questions it raises and leads to are not easy to answer".

The view on the importance of fundamental rights also varies from one country to another. For some states, the most important thing is rights, freedoms and guarantees, and for others it is economic, social and cultural rights. It all depends on the game of interest that is behind it. Or we can say that it also depends on the culture, worldview, characteristics and needs of each country. We have seen that in the occidental world personal and individual rights and freedom prevail more than the common interest of society that still exists in the Asian and African worlds. This leads to affirm that the invention of Human Rights is seen as a Western, European invention that was born under the inspiration of this so-called individual personal freedom.

The pre-constitutional period began with the Code of your-Nammu (dated 2100 BC) and the Code of Humarabi (dated 1690). The purpose of these two codes is, inter alia, to limit the application of arbitrary penalties to the population.

While in Greece with the Stoics and then in Rome with Cicero they also had the recognition of the dignity and equality of men. Even though at that time there was the practice of slavery. The masters who own the slaves as their "property". But the most important thing is that the awareness of the dignity and equality of human beings was born at that time. We are also remembering what our Professor João Rosas said, in one of his classes on Construction, Meaning and Foundation of Human Rights, that even the protagonists of the elaboration of texts that defend the fundamental rights of the human person, also have slaves or subjects, such as Thomas Jefferson when he wrote the US declaration, there are slaves at home. There is always a difference in treatment within society from time immemorial until, we think, today. It is a reality of human life.

But the historical milestone that gives a lot of importance and has a lot of influence in shaping the idea of the fundamental rights of the human being in the occidental world precisely identified with the existence of a powerful identity of a religious character with a lot of political power, the Catholic Church, within European society in the Middle Ages. According to the teaching of Jesus Christ,

the greatest commandment of the Law is love (Matt 22:37-40). The law of love prevails in all circumstances of life, even in the face of an enemy (Luke 6:27-36).

The teaching of Jesus came to contradict the teaching of Moses and the Jewish tradition where there is an arbitrary treatment in relation to the judgment of the so-called "sinner", the one who violates the law of Moses with stoning. For example, in the case of stoning. When the people were about to stone Mary Magdalene, Jesus appeared and contested the degrading act of human dignity. Or it came to contradict even the old law in any ancient society "an eye for an eye and a tooth for a tooth". Love is the law that dignifies the human being as the "face" of God. God is the great, the magnificent, the most high and that if the human being is the image of God, then the human being is worthy, valuable and incomparable with any other creation of God.

According to Christian teaching, man is created by God according to his likeness. All men are children of God. Apostle Paul says in his letter to the Galatians: "You are all children of God." (Gal 3:26), he goes further to say "There is neither Jew nor Greek, there is neither slave nor free" (Gal 3:28). It was with the teaching of Jesus that he gave a new vision of treatment to respect for the dignity of the human person, equality between men and women of difference, cultures and nations.

In this medieval age that Magna Charta Libertatum of 1215 was born, it also provides for the limitation of the King's arbitrary power before the nobility class, the church; the clergy. In doctrine, Magna Charta Libertatum is considered as one of the instruments of delimitation of power. In addition, Magna Carta is also considered to be the origin of the principle of Habeas Corpus; the recognition of the integrity of the body and the freedom of each one in the face of the power of the State. There is also the principle of legality and the idea of a fair process.

While in the modern age, in relation to fundamental rights, Petition of Rights (1628), Abolition of Star Chamber (1641), The Habeas Corpus Act (1679), the Bill of Rights (1689) were born. The Bill of Rights, which was born out of the Glorious Revolution, was based on an idea that the people have the right to resist any holder of power who does not take care of the protection of property.

These declarations that were born in England and then had an influence with the American Revolution that gave rise to the Declarations of Rights of the States (Virginia, Pennsylvania and Maryland) and then the Federal Constitution of 1787 was also born.

The fundamental milestone for the recognition of fundamental rights in the contemporary age happened with the French Revolution, where the Declaration of the Rights of Man and of the Citizen of 1789 was born, where it clearly states in its article 16 "that any society in which the guarantee of fundamental rights is not ensured, nor the separation of powers established, has no constitution".

It was in this period that the so-called Liberal State was born. In the liberal state, according to Professor J. J. Gomes Canotilho and Vital Moreira, fundamental rights are (a). the rights of individuals before the State; citizen's right to defense against the State; (b) rights of individual liberty. c) fundamental rights have the character of norms for the distribution of competences between

the individual and the State; (d) the rights of freedoms are presented as pre-state rights, defined as a domain of individual and social freedom, in which any interference by the State is prohibited; (e) the freedom guaranteed by fundamental rights is freedom in and for itself. Expression of one's own individual freedom; (f) at the basis of all freedoms are the right to private property and the freedom to conduct a business, as presuppositions of the autonomy and independence of individuals.

2.Fundamental Rights in the Constitution of the Democratic Republic of Timor-Leste

To understand the legal political system of a state we must look at its constitution. With this idea, we tried to analyze the Protection of Fundamental Rights in the Construction of the Democratic Rule of Law of Timor-Leste based on the Constitution. Since anywhere in the world the construction of a democratic state of law must be based on and in harmony with constitutional guarantees, constitutional legal principles, the protection of the rights of the citizen, the protection of the dignity of the human person, freedom, justice and among other democratic principles. According to Gomes Canotilho, the guarantees.

“traduziam-se quer no direito dos cidadãos a exigir dos poderes públicos a protecção dos seus direitos, quer no reconhecimento de meios processuais adequadas a essa finalidade (ex.: direito de acesso aos tribunais para defesa dos direitos, princípios do Nullum crimen sine lege e nulla poena sine crimen, direito de habeas corpus, princípio non bis in idem).

Translation:

The guarantees "were translated both into the right of citizens to demand from the public authorities the protection of their rights, and into the recognition of procedural means appropriate to this purpose (e.g.: right of access to the courts for the defence of rights, principles of Nullum crimen sine lege and nulla poena sine crimen, right of habeas corpus, principle non bis in idem).

Respect for the constitution, laws and democratic rules is fundamental and inseparable in the process of building a democratic rule of law in the world at large. Without this respect the state becomes like a machine to satisfy the will of the ruler who intends only to secure his power.

We can see this clearly, as it happened in absolute monarchy or in dictatorship states, where the will of the king and/or the dictator emanates the whole life of the kingdom or state. As happened in France with the monarch Louis XIV when he says that the state was him "L'État c'est moi". Or in the most recent case of our time with North Korea where its President of the Republic Kim Jong-un had his uncle, Jang Song-thaek, killed on charges of treason. For in states dictatorships or in an absolute monarchy the penalty for a person accused of treason is death.

In the Timorese context there is no place for such a dictatorship because the Constitution of the Democratic Republic of Timor-Leste is well ensuring, in the preamble of the Constitution, the prohibition of any illegal act that contravenes the principle of legality and the principle of the dignity of the human person, as we will see in paragraph 12, when it says that.

"They solemnly reaffirm their determination to combat all forms of tyranny, oppression, domination and social, cultural or religious segregation, defend national independence, respect and guarantee human rights and the fundamental rights of the citizen, ensure the principle of separation of powers in the organization of the State and establish the essential rules of pluralist democracy, with a view to building a just and prosperous country and the development of a solidary and fraternal society".

Timor-Leste is aware of the importance of respect for the Constitution, the laws and the democratic culture and respect for democratically elected institutions that are normal paths to a democratic state of law that is being built. This awareness of the importance of respect for the Constitution and the laws shares the definition of the Rule of Law, according to Klaus Stern, quoted by Maria Lúcia Amaral in the book *The Shape of the Republic*, where Klaus Stern says that the Rule of Law means that the power of the State can only be exercised based on the Constitution, and in laws that are formally and materially in conformity with it (Constitution), and with the purpose of guaranteeing the dignity of the human person, freedom, justice, and security.

Based on this definition mentioned above, we make a link of interpretation to the preamble of the Constitution of Timor-Leste in paragraph 10 where it says that.

"Fully aware of the need to erect a democratic and institutional culture proper to a Rule of Law where respect for the Constitution, the laws and the democratically elected institutions are its unquestionable basis"

And in harmony with article 1 of the Constitution where it is stated that

"Timor-Leste is a democratic and institutional culture of the Constitution of Timor-Leste". Democratic, sovereign, independent and unitary rule of law, based on the popular will and respect for the dignity of the human person".

From this we can deduce and affirm with certainty that the principle of the democratic rule of law prevails in the legal system of Timor-Leste. According to Professor Gomes Canotilho and Vital Moreira say that.

"o princípio de Estado de Direito, exprime, de forma global, a ideia de uma «ordem de paz» estadualmente garantida através do direito, mas é também referido como designante de vários subprincípios concretizadores com ele conexas (princípio de juridicidade, princípio da constitucionalidade, princípio da legalidade da administração, princípio da protecção da confiança, princípio da divisão de poderes, entre outros)."

Translation:

"The principle of the Rule of Law expresses, in a global way, the idea of a «peace order» guaranteed by the state through law, but it is also referred to as designating several concretizing sub-principles connected with it (principle of legality, principle of constitutionality, principle of legality of administration, principle of protection of confidence, principle of division of powers, among others)".

They said,

"Por sua vez, o princípio democrático significa o «poder do povo, pelo povo e para povo», mas ele também uma condensação de várias dimensões

concretizadoras do fundamento e legitimação do poder político (princípio da soberania popular, princípio eleitoral, princípio pluripartidário, princípio representativo, princípio participativo”.

Translation:

"In turn, the democratic principle means the "power of the people, by the people and for the people", but it also a condensation of various dimensions that materialize the foundation and legitimation of political power (principle of popular sovereignty, electoral principle, multi-party principle, representative principle, participatory principle".

They added more by saying that,

“o Estado de Direito só o é verdadeiramente enquanto democraticamente legitimado (pela sua formação e pelo seu conteúdo). O Estado democrático só o é genuinamente enquanto a sua organização e funcionamento assentam no direito e não na prepotência”.

Translation:

"The Rule of Law is only truly legitimate as it is democratically legitimized (by its formation and its content). The democratic state is only genuinely democratic as long as its organization and functioning are based on law and not on arrogance."

In the same article 1 of the Constitution, it is also invoked one of the main elements in Klaus' definition of the rule of law, which is respect for the principle of the dignity of the human person. Since the principle of the dignity of the human person is one of the important principles in the protection of the fundamental rights of the citizen.

In any state, without the principle of the rule of law, the fundamental rights of the citizen are in danger. In a direct way, we can say that without the principle of the rule of law, there is no respect for the fundamental rights of the citizen.

The guarantee of the protection of the fundamental rights of the citizen can only be ensured within a state governed by the rule of law. Because the birth of the principle of the rule of law is based on the principle of popular sovereignty, the secularization and secularization of power, precisely to oppose the principle of the absolute state where an idea of the divine power of the Monarch, ancient régime, resides.

According to Professor Pedro Carlos Bacelar de Vasconcelos, “o princípio da soberania popular significa então, liminarmente, é o processo de secularização e laicização porque se vai diferenciar da sociedade uma identidade nova, o Estado”.

Translation:

"The principle of popular sovereignty means, then, at the outset, the process of secularization and secularization because a new identity, the State, will be differentiated from society".

The secular and secular state free from all divine and supernatural ideas. According to Professor Jorge Bacelar Gouveia in his book entitled Manual de Direito Constitucional, Vol. II. P. 777 says that "the principle of the Rule of Law emerges as one of the main results of Constitutionalism and Liberalism, being

the firm expression of opposition to the previous political system, with the essential concern for the limitation of political power, for this reason also founding the Contemporary State".

Timor-Leste also provides for its commitment in Article 9 to international conventions, treaties and agreements and these prevail in its domestic legal system. In this spirit, Article 23 provides that any interpretation of the fundamental rights of the constitution must be in line with the Universal Declaration of Human Rights. This means that the source of the interpretation of fundamental rights in the domestic legal system based on the Declaration.

We are following the idea of Professor Jorge Miranda (Manual de Direito Constitucional, IV, Direitos Fundamentais, p. 185) when he says that this interpretation of the Constitution in accordance with the Declaration becomes all the easier because it is certain that it was one of its sources. More than that, it is also very important to highlight the Professor's statement in relation to the importance of interpretation in line with the Declaration. According to the Professor, some articles of the Declaration, which, usefully, clarify constitutional norms, avoid doubts, overcome divergences of location or formulation, provide richer perspectives than, apparently, the perspectives of the text emanating from domestic law.

Timor-Leste as a newly independent state, Article 23 is a very fundamental article that clearly shows, in the light of the construction of the rule of law, Timor-Leste's commitment to guarantee and promote the fundamental rights of its citizen and that this commitment emerges as one of the main objectives of the state as provided for in Article 6; the guarantee and promotion of the fundamental rights and freedoms of citizens. We deduce that this guarantee and promotion of fundamental rights and freedoms, since these rights and freedoms are based on respect for the dignity of the human person, the protection of the dignity of the human person according to Article 1 of the Constitution. In any state that does not respect the principle of human dignity, to call into question fundamental rights and freedoms. We are sharing the idea of Professor Benedita Mac Crorie as she says in her book entitled *The Binding of Individuals to Fundamental Rights*, on page 18 "Thus, in the contemporary State, ensuring respect for human dignity remains the end of political society.

A citizen, as a human person, has in himself a value of dignity that cannot be violated in any circumstance of his life within and in any state of Democratic Law. The dignity of the human person is something inalienable and inalienable and that man cannot be considered as a means or instrument, but seen as an end, as Kant teaches. That is, a citizen, by the mere fact of being a person, cannot be abused his dignity as a human person in any circumstance. Therefore, here, it also invokes the prohibition of any form of cruel and degrading treatment that could jeopardize the principle of human dignity, such as death penalties, torture, etc.

This guarantee and promotion of fundamental freedoms and the protection of the dignity of the human person of citizens is in line with the spirit of universality and equality of Article 16. In other words, every citizen, by the

simple fact of being a person, is equal before the law and that no one can be discriminated against, for any reason, in the legal system of Timor-Leste.

In the light of article 29, number 2, paragraph gives exclusive competence to the National Parliament to legislate on the matter of rights, freedom and guarantees, and that any constitutional revision must respect, among others, the rights, freedoms and guarantees of the citizen, according to article 156, paragraph b. It is a guarantee exposed in the political dynamics of the construction of the democratic rule of law in Timor-Leste.

As we know that politics is dynamic and it is possible that there will be any change in the national political situation since Timor-Leste is a recent state and has just come out of a difficult conflict during its struggle for independence and is a legacy of many problems of the past and of many fractions of party and group interests within Timorese society and also foreign interests that may influence the internal politics of the country. However, in any case, Timor-Leste gives a guarantee for the respect of the fundamental rights of the citizen even in the matter of constitutional revision according to this article.

In the view of Professor Jorge Miranda, "the Rule of Law is not equivalent to a State subject to the Law, because there is no State without subjection to the Law in the double sense of a State that acts according to legal processes and that realizes an idea of Law, whatever it may be. The rule of law only exists when these processes are differentiated by various bodies, in accordance with a principle of power sharing, and when they are divided into it; it only exists when there is a material limitation of political power; and this is equivalent to safeguarding the fundamental rights of the human person".

In accordance with Professor Jorge Miranda's idea of the rule of law in relation to the principle of separation of power, which in his language is referred to as "the division of power", which we can find in the Constitution of Timor-Leste in article 69.

It is also important to mention here that the Annotated Constitution of Timor-Leste makes a very pertinent note in relation to the principle of separation of power. According to this annotation, "the principle of separation of powers is one of the genetic marks of modern constitutionalism of liberal origin. The ideal concept of the Constitution, referred to in Article 16 of the Universal Declaration of Human and Citizen Rights, provides for a written document in which the fundamental rights of the citizen are protected and the organization of political power according to the principle of separation of powers is guaranteed. In this understanding, without separation of powers there is no Constitution". In the words of Professor Pedro Carlos Bacelar de Vasconcelos, "the separation of powers is already the presupposition and necessary program of constitutionalism itself".

CONCLUSIONS AND RECOMMENDATIONS

Conclusion

We have seen that in the protection of fundamental rights in the construction of the Democratic Rule of Law of Timor-Leste, the Constitution, as a fundamental order of a political community, enshrines the respect and promotion of the fundamental rights of the citizen, as requirements of a

Democratic Rule of Law and the interpretation of these fundamental rights must be in line with the Universal Declaration of Human Rights.

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