

The Creation of Districts and Constituencies in Ghana: Some Pertinent Issues in the Current Dispensation

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Abstract

The creation of administrative districts and parliamentary constituencies constitute major aspects of the internal organisation of states. The Ghanaian Constitution of 1992 invests the creation of districts and constituencies in the Presidency and the independent Electoral Commission respectively. This arrangement has created an uneasy relationship between the two institutions particularly as administrative districts automatically become constituencies on the dissolution of parliament. This paper discusses the constitutional and political issues emanating from the procedures for the creation of districts and constituencies and concludes that they should be streamlined.

Keywords: *Boundary Demarcation, District, Constituency*

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Introduction

The creation of administrative districts and parliamentary constituencies, in recent times, has faced many challenges, some of which are due to the manner in which the districts and constituencies are created. Over the past eleven years, the administrative and constituency maps of the country have become unusually volatile. New districts were created in 2004 (28), 2007 (32) and 2011 (42). In 2004, the large and populous districts which constituted single-member constituencies were split and the smaller administrative units were automatically converted into constituencies. This raised the membership of parliament from 200 to 230. In 2007, it was the multi-constituency districts which were carved up on the basis of the existing constituencies so the composition of the legislature was not affected.

In 2011, the announcement of the creation of forty-two districts was made when the certified national and district level figures for the 2010 National Population and Housing Census had not been released. The committee which was established by the Minister of Local Government and Rural Development, at the instance of the Government Statistician, to resolve the district boundary disputes that had delayed the release of the district level census data was still sitting when the new districts were created.

Some of the districts announced in 2011 would certainly become constituencies as the normal practice is that constituency boundaries should not cross district boundaries. Although this principle is not explicitly stated in the constitution, Members of Parliament are ex-officio members of the District Assemblies. The Local Government Act of 1993 states that (Ghana 1993): "No person shall at any one time be a member of more than one District Assembly". Since an MP cannot belong to two districts since a constituency cannot be divided by a district boundary an MP cannot belong to two districts. The situation was compounded by the declared intention of the Electoral Commission to create new constituencies before the December 2012 general election. The Electoral Commission has the constitutional mandate to review the constituencies after the publication of the census figures. The prospect of a further increase in the composition of parliament has caused some consternation in several quarters of the Ghanaian public.

The Constitution invests the President with the power to create districts but the procedure and criteria for their creation are spelt out in the Local Government Act of 2004 (Act 462). No time frame for the creation of districts has been specified. On the other hand, the Constitution stipulates the criteria for the creation of constituencies and mandates the Electoral Commission to (Ghana 1992a): "*review the division of Ghana into*

constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies”.

This paper discusses the constitutional and political issues arising from the volatility of the administrative and constituency maps of Ghana in recent times against the background of earlier developments since the colonial era. Some suggestions are made in order to streamline the procedures for the creation of districts and constituencies and ensure peace and stability for the socio-economic and political development of the country.

The Regions of Ghana

Ghana is presently divided into ten political regions which are subdivided into districts and constituencies (Bening 1999, Bening 2011). Since the colonial era, an important consideration in the creation of regions, districts and constituencies, has been the avoidance of the partition of chiefdoms or traditional areas. As much as possible, attempts were made to keep the traditional areas intact in one administrative district in order not to interfere with the exercise of the authority of the chiefs and traditional allegiance. However, wherever there was a conflict between traditional allegiance and administrative convenience, the latter prevailed.

In view of the strong agitation of the Brong and Ahafo for separation from Ashanti in the early 1950s, which was vehemently opposed by the Asanteman Council, and the desire of the chiefs in the Colony to continue to co-operate on the lines of the Joint Provincial Council⁴, special procedures for altering the regional boundaries and names of Regions were included in the Independence Constitution of Ghana. The procedures involved the approval of the Regional Assemblies of every Region whose boundaries would be affected and referenda in the regions before the introduction of a Bill to effect the change of boundary or the creation of a new region (Ghana 1957a). The 1957 Constitution was amended to enable the Nkrumah regime to create the Brong-Ahafo, Central and Upper Regions and to change the name of Trans-Volta/Togoland Region to Volta Region between 1959 and 1960.

After the overthrow of the Nkrumah regime, the 1969 Constitution made detailed provisions for the creation of regions, the alteration of regional boundaries and the merger of two or more regions. The procedure culminated in the holding of a referendum in the areas to be affected before any change could be made (Ghana 1969a, Ghana 1979a). The constitutional

strictures on the creation and merger of regions and the alteration of regional boundaries were adopted in 1979. The 1992 Constitution that ushered in the present democratic and decentralised system of government in 1993 incorporated the earlier limitations regarding changes to the regions (Ghana 1992b). This explains why no elected civilian government could create a region. The Greater Accra and Upper West Regions were created in 1983 by the PNDC junta under Ft-Lt J. J. Rawlings.

Procedures and Criteria for the Creation of Districts and Constituencies

In the 1969 and 1979 Constitutions, the EC had the mandate to create districts and constituencies with the assistance of two ad hoc delimitation commissions. Under the 1992 constituency three public institutions have constitutional and statutory mandates over the creation of districts and constituencies. These are Parliament, the Presidency and the Electoral Commission and their roles are captured below.

Creation of Districts

Article 4(2) of the 1992 Constitution merely states that: *“Parliament may by law make provision for the redrawing of the boundaries of districts or for reconstituting the districts”*, without specifying the legal procedures to be followed. Subsequently, Parliament enacted the Local Government Act, 2004 (Act 462) which spelt out the procedure and criteria for the creation of districts and robed in the independent Electoral Commission. The districts in existence immediately before the coming into force of the 1992 Constitution on 7 January 1993 were saved in the Local Government Act of 2004.

Section 42 of the Local Government Act of 2004 stipulates that: (Ghana 2004a);

“(2) The President may by executive instrument

(a) declare any area within Ghana to be a district.

(b) assign a name to the district.

(3) In the exercise of the powers conferred on him, the President shall: (a) direct the Electoral Commission to make such recommendations as it considers appropriate for the purpose.

(4) The Electoral Commission shall before making any recommendations to the President under sub-section (3) consider the following:

(a) *in the case of-*

(i) a district, that there is a minimum population of seventy-five thousand people;

(ii) a municipality, that the geographical area consists of a single compact settlement and that there is a minimum ninety-five thousand people;

(iii) a metropolis, that there is a minimum of two hundred and fifty thousand people; and

(b) the geographical contiguity and economic viability of the area.

(5) In this section economic viability meant "the ability of an area to provide the basic infrastructural and other developmental needs from the monetary and other resources generated in the area"

Under the Act, the Electoral Commission has the responsibility to, at the request of the President, (Ghana 2004b). "review areas of authority of unit committees, town, area, zonal, urban and sub-metropolitan assemblies and make such recommendations as it considers appropriate to the President".

Electoral Commission

Article 43 of the 1992 Constitution established the Electoral Commission consisting of a Chairman, two Deputy Chairmen and four other members. The members of the Commission are appointed by the President in consultation with the Council of State. Article 45 stipulates the following functions for the Electoral Commission:

"(a) to compile the register of voters and revise it at such periods as may be determined by law;

(b) to demarcate the electoral boundaries for both national and local government elections;

(c) to conduct and supervise all public elections and referenda;

(d) to educate the people on the electoral process and its purpose;

(e) to undertake programmes for the expansion of the registration of voters; and

(f) to perform such other functions as may be prescribed by law."

The independence of the Electoral Commission was provided for under Article 46: "Except as provided in this Constitution or in any other law not inconsistent with this Constitution, in the performance of its functions, the Electoral Commission shall not be subject to the direction or control of any person or authority."

Creation of Constituencies

For the purposes of representation in parliament, the provisions of the current constitution (Ghana 1992c) are presented in extenso:

(1) Ghana shall be divided into as many constituencies for the purpose of election of members of Parliament as the Electoral Commission may prescribe, and each constituency shall be represented by one member of Parliament.

(2) No constituency shall fall within more than one region

(3) The boundaries of each constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota.

(4) For the purposes of clause (3) of this article the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of means of communication, geographical features, density of population and area and boundaries of the regions and other administrative or traditional areas.

(5) The Electoral Commission shall review the division of Ghana into constituencies at intervals of not less than seven years, or within twelve months after the publication of the enumeration figures after the holding of a census of the population of Ghana, whichever is earlier, and may, as a result, alter the constituencies.

(6) Where the boundaries of a constituency established under this article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament.

(7) For the purposes of this article, 'population quota' means the number obtained by dividing the number of inhabitants of Ghana by the number of constituencies into which Ghana is divided under this article."

Provision was made for persons who are dissatisfied with the decisions of the Electoral Commission on the creation of constituencies to seek redress. Article 48 of the Constitution states (Ghana, 1992c):

"(1) A person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary, may appeal to a tribunal

consisting of three persons appointed by the Chief Justice; and the Electoral Commission shall give effect to the decision of the tribunal.

(2) A person aggrieved by a decision of the tribunal referred to in clause (1) of this article may appeal to the Court of Appeal whose decision on the matter shall be final.”

The Changing Composition of the National Legislature 1951-2012

Article 47(5) of the 1992 Constitution stipulates that parliament shall consist of “not less than 140 members” but does not specify the upper limit. Consequently, the composition of parliament after 1993 is the preserve of the President and the Electoral Commission with dire consequence for the composition and legitimacy of the national legislature. The vital question is: “Who should determine the composition of the national legislature?” The obvious answer is the sovereign people of Ghana.

The composition of the national legislature has changed several times since 1951. The 1950 Constitution which granted the Gold Coast internal self-government created a Legislative Assembly of 84 members comprising 75 elected members, 6 representatives of the Chambers of Mines and Commerce and 3 Ex-officio members (Gold Coast, 1950a). The composition of the legislature was determined by the fully representative Constitutional Reform Committee of Gold Coast Africans (Gold Coast 1949: 42-44). A proposal for equal representation of the Northern Territories, Ashanti and the littoral Colony was rejected as that would have impaired the unitary nature of the proposed constitution. The decision was in favour of a more democratic system based solely on population.

The concept of democratic equality of all Ghanaians as applied to parliamentary elections which are spatially organised required that the single-member constituencies should have the same number of inhabitants and not electors or voters. The manner in which constituencies areas defined may affect the outcome of the elections through spatial manipulation of votes.

The Select Committee of the Legislative Council which made tentative proposals for constituencies for the first general election in 1951 observed that: (Gold Coast, 1950b: 6);

No doubt a statistician, armed with a 'population density' map and the latest census figures could make the necessary calculations and then proceed with pencil and ruler to carve any country into any required number of constituencies on population parity

basis. So far as we know, this mathematical system of delimiting constituencies has never been applied in any country: Such a division of the Gold Coast could not take into account tribal allegiances and affinities, would cut ruthlessly across the boundaries of states and administrative districts, would have entirely to ignore ethnic considerations, and would certainly result in the grouping together of peoples who are mutually antipathetic. We consider that to delimit constituencies on such an artificial basis would lead only to complete chaos.

As the Gold Coast prepared for full internal self-government, public discussions on the composition of a fully representative Legislative Assembly centred around 100-150 members. It was proposed that the country should be organised into suitable constituencies on the basis of 45,000 people per each electoral area (Gold Coast 1953a: 12, 34-36). The Commission appointed to enquire into representational and electoral reform was instructed to divide the country into approximately 103 single-member constituencies. The Commission recommended 104 constituencies (Gold Coast 1954: 1, 16-17). The government accepted the proposal and the 1954 Legislative Assembly consisted 104 elected members. The Independence Constitution of Ghana created a Parliament in and for Ghana which consisted of Her Majesty the Queen and the National Assembly. The National Assembly comprised the Speaker and Members of Parliament. Each region of Ghana was to be divided into constituencies but (Ghana 1957b), "the total number of electoral districts shall not be less than one hundred and four or more than one hundred and thirty." Thus provision was made for the membership of the legislature to be increased from time to time but the upper limit was specified, unlike in the 1992 Constitution where there is no sealing.

The changing composition of parliament between 1957 and 2012 is shown below. You may guess the composition of parliament before the November general election.

Table 1: Composition of Parliament 1957-2012

1957—not less than 104 or more than 130.

1960 (a) The Speaker and not less than 104.

(b) Ten special seats for women.

1965 – not less than 198.

1969 – not less than 140 or more than 150.

1979 – not less than 140 elected members (Article 75(1));

1993 – not less than 140 members.

2000 – 2003 – 230

2004 – 2011 – 230.

2012–230 + some districts created by government + constituencies to be created by the Electoral Commission = ??

Some Pertinent Issues Regarding the Creation of Districts and Constituencies

The criteria for the creation of local government areas and electoral constituencies are virtually the same but the emphases on some factors are different. The establishment of administrative districts is a measure of spatial decentralization in order to bring the government closer to the people and to facilitate the delivery of services and facilities by the central and local governments. On the other hand, constituencies are purely for the election of the representatives of the inhabitants to the national legislature. The population factor is therefore more important in the redistribution, allocation and delimitation of constituencies than in the creation of administrative districts (Bening 1993).

There is general approval of the criteria for the creation of districts. It is the procedures involved in the establishment of administrative areas and the fallout that are worrisome.

- Should the President, in the exercise of the constitutional powers conferred on him to create districts, direct the Electoral Commission to make recommendations as it considers appropriate for that purpose?
- Since the President initiates, and has the final say in, the creation of districts, the present procedure tends to compromise the independence of the EC.
- Do the new districts satisfy the specified criteria in terms of population and viability? There may be cases where special districts may be created in deprived areas in order to stimulate socio-economic development.
- Some of the Municipalities created since 2004 do not conform to the requirement that their geographical areas should comprise a single compact settlement with a minimum population of 95,000.
- Should administrative districts be automatically transformed into parliamentary constituencies?

- What formula does the Electoral Commission apply to contain “presidential” constituencies and satisfy the population quota.
- Should the composition of parliament be the preserve of the Electoral Commission and the President?

In 1949 the Committee on Constitutional Reform made proposals for the modernisation of local administration based on larger areas, and it was suggested that (Gold Coast, 1950b: 2) the boundaries of constituencies and local government units must, as far as possible, coincide in order to avoid the confusion and misunderstanding that would arise from the adoption of deferent boundaries. It was however not feasible to adopt in their entirety the proposed combination of states for local authorities as the number of the recommended administrative districts was different from the number of constituencies allocated to each Region. Besides, the combination of state areas varied considerably in population size.

In 1962, Kwame Nkrumah enunciated the principle that parliamentary constituency and administrative boundaries should be conterminous in order to enable government to effectively bring the machinery of the only legal political movement, (the Convention Peoples Party), closer to each community at the grassroot level (Ghana 1964: 4).

A district could not only constitute a local council area administered by a District Commissioner but shall also constitute an electoral constituency. The ordinary worker, farmer and peasant thereby becomes an active participant in the government of the country and the life of the community generally becomes organized right at the base.

The 198 administrative districts created in 1964 automatically became parliamentary constituencies in 1965. There are obvious advantages of merging administrative and electoral districts. However administrative districts are established for the purposes of bringing the government closer to the people for the effective administration as well as equitable distribution of facilities and resources of the country while constituencies are for electing members to Parliament. Though the criteria for the creation of districts and constituencies are the same, the population factor is of greater significance for representation in the national legislature.

After the fall of the Nkrumah regime, the merger of administrative districts and constituencies was discontinued. In 1967, it was decided that the country should be organised into 140 constituencies with a population quota of 55,000 based on the popular wish as endorsed by the Constitutional Commission. Although the principle of equality of population of

constituencies was accorded great importance, a weight of ten percent was accorded to land mass since the density of population in Ghana varied considerably over the country, and the Regions were of differing geographical sizes. It was generally agreed that the allocation of electoral districts based on land mass and population (Ghana, 1967: 56) had resulted in "fairer representation for the more rural and less densely populated Regions than would otherwise have been possible". The government accepted this view (Ghana, 1968: 2).

At present, it is not easy to know who really creates districts which become constituencies. A better option will be to adopt the relevant portions of the 1969 Constitution on the composition of parliament and the creation of districts and constituencies which were retained in the 1979 Constitution. Article 70 of the 1969 Constitution stated that: "The National Assembly shall consist of not less than one hundred and forty and not more than one hundred and fifty elected members" and the country was to (Ghana 1969b) "be divided into as many constituencies as there are members of the National Assembly in such manner as the Electoral Commission may prescribe".

Article 30(1) of the 1969 Constitution stipulated that:
"the Electoral Commission shall

(a) in the demarcation of the boundaries of constituencies for elections to the National Assembly, and

(b) in the demarcation of the boundaries of the areas of authority of a Local or District Council, be assisted by two ad hoc Commissioners who shall be appointed for that purpose by the President acting in accordance with the advice of the Council of State."

The total independence of the Electoral Commission was secured in Article 30(6) of the 1969 Constitution which stipulated that "in the performance of any of his functions the Electoral Commissioner shall be subject only to this Constitution and shall not be subject to the direction or control of any other person or authority."

Not too long ago, the establishment of districts did not generate protests on the scale being witnessed now (Bening 2011). So I decided to step back and take a look into the administrative history of the country to find out whether the past has any lessons for us. In 1949, the Constitutional Reform Committee recommended that a Boundary Delimitation Commission, comprising a chairman and two members, should be appointed by the Governor to divide the country into suitable constituencies. One of the three members of the delimitation commission (Gold Coast, 1949a: 23): "Should be an African (not a chief) of the 'elderly statesman' type, who is above

political prejudices and has an intimate knowledge of the histories of the various peoples of the Gold Coast". The spirit and letter of this recommendation was upheld until 1987.

In 1951, the Local Government Ordinance provided that (Gold Coast 1951a) "the Minister may, with the prior approval of the Governor in Council, by Instrument establish such District, Urban and Local Councils as he may deem necessary or expedient for the purposes of Local Government". Section 3 (3) of the ordinance stipulated that the Minister shall "cause to be made such enquiries as he may deem desirable for the purpose of ascertaining the wishes of the inhabitants of the area concerned".

When the country was preparing for full internal self-government, the composition of the Legislative Assembly and of the boundary delimitation commission to recast constituency boundaries was extensively discussed and it was agreed that the commission should be generally representative (Bening 1993). The Gold Coast Government agreed that the Commission of Enquiry into representational and electoral reform should comprise a judge of the Supreme Court as Chairman; four members, one each to be appointed on the recommendation of the Territorial Councils and four members to be appointed by the Governor-in-Council (Gold Coast, 1953.13).

The Local Government Ordinance of 1951 was superseded by the Local Government Act 1961. Section 2(1) of the Act (Ghana 1961) stated that "the Minister may, with the prior approval of the President, by Instrument establish such councils as he deems necessary or expedient, and may amend any Instrument." Section 3(1) made provision for changes in the areas, boundaries and status of administrative districts through

- “(a) the union of two or more administrative areas;
- (b) the division of an administrative area; or
- (c) an alteration in the status of any administrative area”

The Local Government Act of 1961 stipulated that (Ghana, 1961) Section 4(1)d every Instrument establishing a council shall "define the limits of the administrative area". Interestingly, since then, we have continued to compose districts by listing the constituent settlements without describing the administrative boundaries. Also, the current statutory regulations do not make provision for the amalgamation unviable districts and alteration in the status of an administrative district is created as the creation of new districts.

In 1971 the Minister could established could by Instrument subject to the prior approval of the Cabinet and could create rural urban and other local government councils within any District (Ghana 1971a)

The PNDC assumed the power to create Districts in 1988 and, in consultation with the District Assemblies, to "alter the boundaries or the name of or abolish any district" (Ghana 1988).

Since Ghana attained political independence, four Commissions have delineated administrative areas and boundaries and their reports were published in 1958, 1964, 1968 and 1972. Public reactions to the Reports in 1964 and 1972 led to a revision of the original recommendations. The fifth Local Government Boundary Commission set up by the Limann Government in 1981 did not sit before the coup on 31 December 1981 (Ghana, 1957, 1964a, 1965b, 1968, 1972a, 1972b, 1981).

The Boundary Delimitation Commissions toured the country extensively to receive petitions and representations on the creation of optimum areas for local government purposes and for representation in Parliament. In 1964 and 1972, the reports of the Commissions were referred to the Houses of Chiefs, the Regional Organisations and other articulate and interested bodies for their views and recommendations. This was to ensure that the recommendations were generally acceptable. The comments of the various organizations were discussed at a conference attended by officials of the Ministry of Local Government, Regional Commissioners, Regional Administrative Officers and representatives of the Electoral Commission. The discussions led to minor boundary adjustments. In 1972, the Electoral Commissioner, on his own, carefully examined the composition of the local government areas as defined and discovered some topographical and other errors to which attention was drawn (Ghana 1972b:)

The democratic and transparent procedures were set aside when the District Assembly concept was introduced and decentralisation became a pivotal policy of government. Two cardinal principles of the decentralized system of government, initiated by the PNDC in 1987 were "participatory democracy and collective decision-making based on consensus at the grassroots" and "the promotion of transparency and accountability". The District/Municipal/ Metropolitan Assemblies now constitute the highest political authority at the local level but how they are created has generated considerable public discontent and acrimony among several communities with serious constitutional and political implications for the good governance of the country.

Conclusion

When the Electoral Commission was first established in the 1969 Constitution, it consisted of a sole Commissioner and he was to be assisted by two ad hoc Commissioners in the demarcation of the administrative and constituency' boundaries. However, since 1987, the creation of administrative districts has been shrouded in secrecy. The well tested

practice of appointing commissions to delineate administrative areas and constituencies after public discourse and publishing their reports have been abandoned. The National Commission on Democracy (NCD) operated under the military regime of the PNDC and the practice adopted then has been perpetuated under the current democratic dispensation. The President and the independent Electoral Commission are not to blame. The constitutional and legal frameworks are culpable.

The 1992 Constitution created a seven-member Electoral Commission with a Chairman and two Deputy Commissioners and the assistance of the two ad hoc Commissioners in the delimitation of district and constituency boundaries was dispensed with. The holding of free, fair and transparent elections begins with the equitable redistribution and delimitation of constituencies. The Electoral Commission was created to ensure that the delimitation of administrative and electoral boundaries and that the conduct of elections are not manipulated or influenced by partisan interest. Many people feel that the piecemeal creation of districts and their transformation into constituencies smacks of gerrymandering. The conversion of administrative districts into constituencies is not a new phenomenon in Ghana. The composition of Parliament and the principle of merging of districts and constituencies should be decided by the citizens or their representatives and an appropriate formula should be accepted for the process.

The Electoral Commission has since performed wonders and has been acclaimed worldwide for its credible performance in the conduct of general, district assembly and other public elections. However, the legal framework for the creation of districts has compromised the independence of the organisation. If indeed, Ghanaians want a truly independent Electoral Commission, why should the president be able to direct it in the creation of districts? Experience has shown that there is a lack of consultation between the Executive and the Electoral Commission in this matter and Parliament has usually gone along with the President's wishes.

The discomfiture of the Electoral Commission with the process of district creation has been stated on several occasions. Kwadwo Sarfo Kantanka, a deputy commissioner, has publicly declared that the EC has no statutory authority to create districts and demarcate administrative boundaries and that the responsibility lies with the President. He stated that petitions for the creation of districts should be directed to the MLGRD which acts on such matters for the President. The Electoral Commission, as an advisory body, may receive the petitions but can only act upon them on the request of the President. Major General N. Afari, a Commissioner for Local Government in the Acheampong regime, also accused politicians of viewing the local government system "more as a means to strengthening their hold on the

population rather than for rendering services.”

There are serious suspicions that political expediency rather than the national interest has been the driving force behind the creation of districts some of which are transformed into constituencies. This view is predicated on the piecemeal creation of districts, some of which automatically become constituencies, at four-year intervals and outside the constitutional time frame for the creation of constituencies. A stable and efficient local government system is necessary to buttress the central government in the provision of basic infrastructural development to the people.

The procedures for the creation of districts and constituencies, in the current decentralized system of government, have fanned public discontent, usually expressed through petitions, demonstrations, destruction of public property, and arrest of some chiefs and most regrettably, insults of our political leaders, the President not excepted. The constitutional and legal frameworks regarding the functions of the President and the EC in the delimitation of administrative districts and parliamentary constituencies have created grey areas requiring clarification and possible amendment of the 1992 Constitution.

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