

Chinese Legal Professionals and Transformation of Gender Roles. A Case Study

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Abstract: Gender equality is a part of global policy, as specified for instance in The UN Convention on the Elimination of Discrimination against Women. The Committee on the Elimination of Discrimination against Women (CEDAW) is the body of independent experts that monitor the implementation of the convention. China has reported her initiatives to advance the rights of women to CEDAW. However, China studies indicate that there is a link missing between traditional Chinese values rooted in Confucianism on the one hand and Marxist political policy on the other. This deficiency could be a barrier to gender equality. Inspired by classical feminist theory and sociology of law, the article explores how members of the legal profession in a Chinese provincial city function when they deal with gender roles. The article builds on a small sample of qualitative data. It concludes that legal professionals may seek to get an effect on the construction of gender roles and equality for women. In their professional work, they have a potential for forging a link between Marxist modernization and commercialization on the one hand and traditional values on the other. Their function may depend on their individual awareness of their role, their support of gender equality, and their position vis-à-vis the state and party.

Exploring Gender Equality in a Chinese Provincial City

Under the UN Convention on All Forms of Discrimination Against Women China has had focus on equality in education, career options for women, and educational programs to strengthen the knowledge of rule of law among citizens. See point 20, 22, 28 and 38 in China's report of 2012 to CEDAW (Committee on the Elimination of Discrimination Against Women). (United Nations 2013. 6, 8 - 11).

China's report has inspired me to take up the three themes of (1) equality in education; (2) career options for women; (3) and rule of law instruction. I have discussed the themes with a small sample of Chinese legal professionals. I shall present their

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reflections on their own work practice involving gender relations against a backdrop of political science analyses of Chinese society reforms, advancing the thesis that legal professionals may function as a link between traditional patriarchal culture and socialist ideology of equality.

Traditions, Ideology and Practice

The aim is not to explore the progress of the official Chinese policy concerning gender equality. Rather, I shall try to identify how traditional ideology – as phrased in ‘socialist harmonious society’ (United Nations 2013. 6) - may work its way into and leave an effect on the daily practice among legal practitioners and how they deal with this effect. Finally, I shall discuss if their working practice holds potential for change of the traditional ideology.

Marxism is a revolutionary ideology and practice supporting the oppressed masses in their conflicting revolution against the ruling elite. It wears also the cloak of a science, historical materialism, of the inevitable progress of society toward communism. Hence, it is a theory of society modernization and the equalizing reduction of rank and classes. Equality between the sexes will be a result, as asserted by Simone de Beauvoir in the feminist classic *The Second Sex*. (de Beauvoir 1998. 55-63; 134-35 on the Soviet Union). In the opposite corner, the Confucian tradition of Chinese law is a conservative, consensus-seeking culture encouraging mediation and compromise. (Zweigert and Kötz 1993. 293) Moreover, the culture holds an ideal of staying your proper behavior through understanding your own place in the social structure and hierarchy, for instance in that of the family. (Zweigert and Kötz 1993. 288) Thus, the Confucian outlook on life will run counter to progress of gender equality.

Political studies have investigated the equality issue and discussed the possible influence of ideology and values. In 2006, Jude Howell examined the influence of women in local politics. She found that women were generally under-represented on the committees of the three provinces she examined. Professor Howell showed that top-level political management in practice leads to gender inequality, since it regards gender equality as part-and-parcel of socialist society development. However, the failure of women to take part in public life is partly due to traditional prejudice against women. (Howell 2006. 603-04) In other sectors of society, traditional values have a great influence. When analyzing business management, Min Chen found that the key to Chinese management reform lies in the success of combining the market system with positive elements of Confucian values. (Chen 1992. 86-98) Hence, a result could be a closure to

women. When turning to the labor market, Maurer-Fazio, Rawski and Zhang suggest that inequality in wages for men and women in urban areas, in opposition to official ideology, reflects a complex interplay with a patriarchal Confucian legacy with its tradition of male dominance. (Maurer-Fazio, Rawski and Zhang 1999. 55-57; 85-88)

Data from three surveys in Zhejiang province during the period from 1999 to 2006 show that while men and women have obtained a very similar level of self-awareness and motivation in terms of political participation, China's patriarchal system, embedded in various forms of mindset and political practice, continues to constrain rural women's political involvement in a substantial way. They show that there is no causal linkage between economic development and the improvement of women's political participation, and hence the lack of political and other systemic supports leads to the low proportion of women in local power structures. (Guo, Zheng and Yang 2009. 145-46)

Interestingly enough, there seems to be indication of global dynamics advancing the equality process in China. In a UN program, the global women's movement provides a mechanism for the globalization of equality ideas, aided more recently by the internet. (Kaufman 2010. 585-586) Supplementing this idea of a global rights approach, research indicates Chinese women would benefit if more women's legal aid organizations were developed and supported. (Lee and Regan 2009. 541-42) Chinese women's organizations seem to converge with the global discourse of women's rights, thus showing a relationship between a global and a local perspective. (Jacka 2006. 585) Though by no means providing an in-depth analysis, this overview seems to indicate that China will not automatically establish gender equality with the implementation of Marxist modernization or economic commercialization, simply because equality runs counter to an already firmly established ideology and because of few programs targeting the issue.

Legal professionals

The function of Lawyers

I now turn to the question if the legal profession may provide a link the political science studies found missing in the Chinese implementation of gender equality. Lawyers hold a specific position in society. In Talcott Parsons' understanding, US lawyers of the 1950s took an intermediary role between the citizen and the state. In doing so, they had a function in stabilizing a dynamic society. (Parsons 1954. 370-386) Parsons presented his theory in the context of the cold war and the bipolar world with the Western free

professional, as opposed to the socialist, state employed specialist who enacted the law bound by economic structures and the party. I do not wish to claim that the situation of the American lawyer of the 1950s is comparable to that of lawyers in contemporary China, with its strong state and party and a weak civil society. However, for the last ten years, China has undergone profound changes with structural development and growth, just as was the case with the USA in the 1950s. Would it be unreasonable to suggest that Parsons' inspiration to see the legal profession as an intermediary between state and citizen could be relevant also in the Chinese case? After all, Parsons inspired Scandinavian socio-legal studies in their analyses of the Scandinavian lawyer as the jack-of-all-trades in the process of society transformation of the 19th and early 20th centuries in a situation when society changed from a traditional close structure to modern anonymous relations. The value system of the lawyer transformed abstract rules to concrete behavior, thus providing a new source of trust in human transactions. (Bertilsson 2013. 663-666) Thus, I find it helpful, as a theme for my examination to ask if the Chinese lawyer in some respects may function as an intermediary and consequently communicate values on gender equality? If the legal professional may function as such, this could be a missing link in the modernization process. However, the intermediary position places the lawyer under a certain pressure. He may seek to relieve himself of this and in guarding himself display malfunctioning of his role. Parsons identifies the following strategies: Self-seeking interests, a tendency to formalism, and a sentimental exaggeration of the client's case. (Parsons 1954. 372-373) I shall address the possible pressures on contemporary Chinese lawyers and discuss, if the pressures they experience provoke similar malfunctions.

Respondents and Setting

My sample of respondents includes five members of the legal profession in a large and growing Chinese provincial city. When the interviews took place, the city saw a rapid construction of high rises, both near the urban center and in suburban or rural areas. A law student assisting me, told me that she wondered who ever would move into those high rises: *'the cost of living is so high here. How will I be able to pay for that? When I have my exam, I shall settle down in my hometown. Here it is too expensive.'* My respondents are by no means representative, not even for their own group, since my host, the local university, had provided me with the contacts. I interviewed a practicing male lawyer in his 40s, a young female judge of 27, a law professor in her 40s, and two female project consultants in their 30s. All interviews were in English, apart from the one with the practicing lawyer, where a young professor from the law school acted as a translator. During the same period, I had numerous encounters with other legal professionals and students. They offered me reflections and comments. In these brief encounters, I

sometimes took the position close to the participant observer, as when I took part in the class of the gender studies professor, or when I sat in on meetings with Chinese professionals.

I have not been able systematically to validate the information, I received. However, I found that much information corresponded with other sources. Considering that the professionals have offered me an insight into their multiple experiences, I find that the interviews render information of some value concerning the professional practice, viewpoints and values for legal professionals in the city, just as each of the professionals from his or her vantage point as a professional possessed considerable knowledge in the field. The practicing lawyer was a leading attorney in a private law firm. He had experience in both criminal and civil cases and he had acquaintances among professors at the university. The judge presided over a local court, deciding more complicated divorce cases. The law professor was a leading specialist in gender studies. She also was the director of the law school legal clinic. In that capacity, she had contact to a wide segment of citizens seeking legal advice. The project consultants had contacts to both grass-root level advisors and official institutions. When studying law, they had been students of excellence and they had studied at Western universities. They worked at a small center collaborating with a foreign Institute of Human Rights accredited by GANHRI (Global Alliance of National Human Rights Institutions) under UN.

The setting, selection of sample, and the language limitation to English are factors that limit the perspective of my inquiry and analysis. Besides, my own background in the tradition of Western law and choice of theory will limit my range of perception and create a bias.

The Law Firm

The law firm was located in an office high rise in the city center. We met the lawyer in his office. Prior to his present position, he had conducted cases at the law faculty legal clinic. At the time of the interview, he handled criminal cases. His position was independent. However, his information that Chinese practice required a yearly renewal of his license left no doubt of a thorough state control, of which he was highly aware. (Blomquist 2016. 98) It left the impression of a professional under a certain pressure, underscored by his information that presently he was representing a former fellow law student of his, indicted for corruption.

Given the Chinese tradition of mediation, it was natural to ask the lawyer if mediation or litigation is more common in his work: *'In the cases that I have, there is seldom*

mediation. The business clients of this law firm want to take the case to court. Litigation has become a large part of a lawyer's work. Mediation is more common among plain, simple people, for instance in the cases I dealt with when I worked at the legal clinic.' Thereby he identified two different groups of Chinese society with different relations to the legal system, one being a target group for traditional conflict resolution and one in demand of a rule-oriented approach.

When asked about the typical career path of a practicing lawyer he made this observation: *'A lot of both men and women start at the courts. However, after a number of years, the men will leave the court and start working as lawyers. The women will stay at the court.'*

His initial explanation for this divide was graphic, employing the well-known argument in feminist theory of the physical insufficiency of women, degrading them as 'the other' and hence the incompetent sex (de Beauvoir 1993. 165-68): *'It is tough to be a lawyer. You have to be able to carry the burden of heavy papers.'* When stating this, he nodded to the full binders on his table. They represented the papers in the criminal case he was undertaking. He subsequently commented: *'And also I work late hours, nights and weekends. I doubt a woman could do that.'*

The argument made an impression on the female student guide following our company from the office: *'I have always thought that I would like to be a practicing lawyer. Now, I am worried that I won't be able to do it'*. His remark had clearly had a gatekeeping function., Although possible unaware of this, he communicated the social norms of the sector to a potential applicant of the other gender. Norms which were hardly in accordance with the spirit of the Chinese report to CEDAW of advancing female career options. I did not ask directly, whether he had a positive interest in keeping this status quo., However, he seemed to have no regrets about the situation, and his remarks could border on a self-serving initiative to support his own interest, as identified by Parsons (Parsons 1954. 372-373)

The judge

My interview with the judge took place over an evening dinner at a restaurant in city center. She met no prejudice against women in her work as a judge, she told me. And after dinner she would go to court and prepare her cases. To document her position as a modern woman, she showed me snapshots of a table of fine Chinese cooking, prepared by her husband. Moreover, she reported that she enjoyed a great deal of autonomy

in her work: *'It is my decision if I find the case uncomplicated enough to be decided by a people's court, or if I should decide it by myself.'*

When telling me about the material law, however, other norms came to the fore: *'Chinese family law has a problem and that is that it is to the disadvantage of the woman who typically will do the work in the home. The two parties, man and wife are not treated equally, since Chinese law does not recognize the job in the family as work.'* She enjoyed a wide range of independence in her work: *'there is a certain amount of discretion. I have to make my decision in the best interest of the child, but within this range, I have a certain discretion. This is in opposition to many cases in contract law, where the judge will be more constrained by the phrasing of the contract. Often the words of the contract will be clear. In family law the judge interprets according to the spirit of the law.'*

One could ask if it would be possible to think of the court as an agent of change in the direction of gender equality. My material does not allow me to offer any conclusions on this in general. However, when regulation does not value equal rights, it seems to me that 'the spirit of the law' would not be likely to do so either. Moreover, the procedure and function of the court may support traditional values. In the judge's explanation: *'An important part of my work is to try to mediate. This is the idea of the harmonious society. And if an agreement is made between the parties, I shall not pass a verdict.'* The judge left me with the understanding that a judge, rather than communicating equal rights, administers traditional values as laid down in the law. In the particular case of the respondent, this could be the source of some tension, since obviously she personally adhered to other norms. Seen through Parsons' lens, I interpret the formalism laid down in her response as a malfunction of the tension. (Parsons 1954. 372-373)

The Law Professor and the Legal Clinic

The professor in gender issues invited me to join her class of administrative law. I had a chance to look at the classrooms with technological equipment and furniture setting that encourages students to enter into discussions, rather than passively listening to lectures.

The gender ratio on this afternoon was 13 young women to four men, a balance that told me that women at least were not rare in some law school classes, but also that recruitment perhaps could be uneven. I noticed that she appointed a female student to translate for me and she was firm, even when the student protested and with her body language showed great surprise and insecurity about the situation, a recruitment situation in minuscule. This little intermezzo for me was a demonstration of how gender

bias may produce lack of confidence in the group being discriminated against. It also showed how a legal professional and educator could work to overcome it, guided by her own norms of gender equality. The young men and women participated on an equal footing, yet there was a difference, where the young men were more eager to ask questions and engage in discussion after my presentation.

I touched upon this, although indirectly, in my subsequent exchange with the professor. In her response, she referred to the general value of equality vis-à-vis practice. *‘In principle, we have equality. Both men and women go out to work. In that sense, they are equal. However, in reality they are not equal. There is a difference. The women also have to work at home. They do the work with the home, the children. This is extra work.’*

She took me to the premises of the legal clinic. The furniture had some similarity to a courtroom, with a podium and spectator seats. However, at the seats were computers and at the sides along the walls of the room, were bookshelves with binders. Students could work at the computers and with the binders. The parties to the cases were encouraged to find the regulation applying to their case, be it family law, rent of housing, or employment law. The practice was a part-and- parcel to the idea of empowerment of the citizens involved in the conflict: *‘People seeking help here expect that we take over and solve their problem. However, they have to learn ways to their own solutions. We provide them with help to find the relevant regulation instead of just doing mediation.’*

The law professor also took some time to explain how this rights approach ran counter to making a decision according to custom or simply mediating according to tradition. She did not see the clinic as a complaints board for the husband feeling dissatisfied with his wife’s performance as a housewife. She referred to a case from the legal clinic: *‘We had a case when the man went to the provincial Women’s Federation and complained about his wife. His wife was happy at work but not happy at home. At home, there was nothing to eat and she didn’t take care of him. Then conflict started to build up. He would follow her, check her text messages on the phone; he would tell her to change work, tell her to come home directly after work, tell her to report every day about what she had been doing... The third step in the case was divorce.’* The man had expected to get support from the Women’s Federation (The All-China Women’s Federation, the official state sponsored organization for women). Thanks to his wife’s perseverance and the work in the legal clinic, he did not succeed to find a mediation solution based on the traditional gender roles. So, would there be a preferred solution, according to the professor? *‘No, Equality does not mean the same in different contexts. Men and women are different and this means*

that we should not treat them in the same way. You should give the woman choices. There is not just one choice, as for instance the choice of going out to work or staying at home... there are a number of choices, and the women should be equal to make their choices as are men in each case'

When lifestyle is not a one-way street, the partners will have to negotiate and agree upon a number of different options. This in itself challenges a harmonious, organic outlook and stresses an individualistic one with an emphasis on explicit agreements, based on equal rights.

To the walls of the clinic were pinned large banners with Chinese characters. When I asked what they signified, the law professor smiled and told me that they were gifts from parties to some of the cases they had at the clinic, thanking the clinic for helping the person to find his or her way in their conflict: *'It is a tradition that people involved in cases bring their thanks. They are expensive to have made, and most of our clients are poor. During the first year, we told them not to do this, since we want them to know that we work without a fee... Nevertheless, they just went on coming with them. So now, we post them on the walls.'*

Mediation may be a part of the caseload in the legal clinic. However, the focus point was on equal rights as a part of the formal law and how to transmit this value to the concrete decision in each case. Contrary to the formal reply from the judge who stressed the restrictions of formal law, the legal clinic director could apply a principle of equality in advising her clients. Her embrace of the banners emphasized her activity as an intermediary one between modernity and tradition.

The Empowerment Project

The University hosted an empowerment project, referring to the third point of the CEDAW report, educational programs to strengthen the knowledge of rule of law among citizens.

When the two female lawyers told me about the initiation of their project, it shed a new light on the recruitment to female carrier options: *'We were in the legal clinic program when we studied law. In this class, we talked to people who came to the legal aid center. To this center also came migrants from an autonomous region to ask for help. This inspired us to do a program in the region'*. Hence, the recruitment to their project went via the director of the legal clinic.

Their story urged me to ask about the rights of women in different areas. *‘Women are more equal in the cities than they are in the rural area, women in the rural areas suffer more, but still, even here in the city and at the law school, the professors prefer boys to girls.’* It is interesting to experience the dual message in this observation. The modernization project of the city is a levelling force that has softened the rigid gender roles. Education options offer themselves to both sexes and physical force is no longer of relevance. Women come to the fore, but perception and preference still linger, bound by traditional mental barriers that catch both sexes behind them.

It makes sense, then, to go into the didactic framework for transcending the barriers. The two young lawyers told me: *‘Working with women’s empowerment is influencing the mindset and making people open to gender awareness. There are links between the mindset and social patterns. We can see when they [course participants] communicate that there is a hierarchy. Men are more important than women are. Older women are more important than younger ones. The younger women look to the older ones before they say anything, as if to wait for a sort of a sign from them.’*

So how to influence the specific power hierarchy and open up for the individuals to contribute?

‘At first, they will sit down with the people they know. They arrive from different villages, and they feel comfortable with those they know. However, we’ll change that right away by giving them a game, so that they have to move around [She smiles]. They will get to talk to others and on the second day they are more relaxed.’ The work to tear down the hierarchy continues in the conference room. On the one hand, they have traditional ex cathedra lecturing. On the other hand, the project consultants will facilitate active discussion and thereby implement equality in practice: *‘There will be a podium with the president presiding over the seminar. Here also the participants will make their presentations, more or less traditional style, with one-way speech and presentation slides. We will be in the middle of the room going from one table to the other, facilitating the discussions. They will discuss examples, cases that we present to them and we ask them to volunteer some cases that they have experienced. During the breaks, we will let them do games. They love that and it will ease them up.’*

A first reaction could be to see the empowerment perspective as one tied to a certain, defined field, sector, or discipline, as family law. However, the project consultants directed their attention to how equality played out in practice: *‘We don’t think of some problems as being specific women’s problems. Rather we tend to take the women’s perspective*

on each problem we encounter.' Or: 'Our program concerns the training of women leaders. In the program will be men as well as women, younger persons as well as older. We could start the program because it is about providing legal aid to people who cannot afford it.'

In other words, they integrate empowerment of women in daily life. While they do not define their work by a specific discipline of law or to formal procedures, they still stress the rights approach: *'During the course we will show them how they can do internet search of regulation so that they will be able to find the relevant regulation after the course.'* This practice affirmed Kaufman's findings that internet search in combination with international awareness of equality programs may be helpful in facilitating equality. (Kaufman 2010. 585-586) In their evaluation of the rights approach, vis-à-vis mediation in family cases the empowerment project workers had no doubts about this: *'Mediation is a common way of solving conflicts in the villages. Not so infrequently, mediation will be to the disfavor of the woman in the conflict. By providing a rights perspective we can secure a better outcome for the woman.'*

The interview established that the project consultants took upon them the function of providing a link between urban modernization processes and rights. Moreover, they encouraged for this link to reproduce itself into local society: *'The challenge in general is to reach as many people as possible with limited funds. This has initiated a working method where we instruct local paralegals. Rather than spending all the time with practical consulting of the citizens with legal problems. We work more on the institutional level with the local legal aid worker. In our training course are grassroots lawyers and with them we try to institutionalize the work, so that they continue. They work at different levels of administration, both township, village, regional.'*

The next question could be if this function is prone to place the project consultants under pressure from the state or institutions integrated in the state, as for instance the All-China Women's Federation. In the words of the program lawyers: *'The Federation's programs are built around the idea of harmonious society, how to be a good housewife, not exactly the kind of thing that we do.'* Interestingly, however, the consultant also had positive experiences with the activities of the Federation: *and yes, they do have programs of children awareness... to be aware of children not being hurt or injured or slapped. 'That's good... sounds like a really good program.... Parents and children slap children. They are not supposed to, but they do.'*

Being able to collaborate with official structures is of vast importance for an empowerment project in terms of resources, recognition and impact. For one thing, the project needs financing. Access to certain facilities can be crucial and may be tied to a

personal relationship. This will place certain pressures on the project consultants. Thus, they told me of the advantages when their first course took place at the headquarters of the local party: *'The party premises were better than the hotel where we did our second course. The party building had an aircon, and they had a great playground where we could go and do games.'* The support of a dedicated party member can be a valuable asset. In some cases, it can be a precondition for support of the initiation of an empowerment program: *'...a women party member wanted the course. She arranged so that the course could be there [at party headquarters]. She was a strong, intelligent woman and she later became the deputy leader of the local party organization, which is a high post. She was in charge of the whole seminar and you could tell that she was good. [She smiles] At that time, she was the temporary leader of the Women's Federation here. After she left her position, we haven't had collaboration with the Federation.'* In spite of this top-level influence, the project consultants reported that they had influence on the course, on both the dimensions of the course, the activities and the setting, hence attesting to the pressure on negotiating the individual projects: *'At first, they told us that they wanted a representative from each village in the course. That would be around 200 people. We said that this would be impossible. We cannot train this many at one time and it is too much organization and too expensive. Consequently, they changed it to 30.'*

Keeping Kaufman's work in mind, (Kaufman 2010. 585-586) I would expect that a paper like the Chinese CEDAW reports could be instrumental for forming the work in the empowerment project. However, that did not seem to be the case. The project consultants did not refer to CEDAW reports and they did not seem to seek support there. Consequently, while their international education and their internet search for sources obviously formed their practice, they did not see themselves as a direct instrument of implementation of this particular program. In spite of a certain pressure from power structures, their focus was on the needs and wishes of their own clients, without seeming to, in front of me, to exaggerate their client's situation, as could be the malfunction in their case. (Parsons 1954. 372-373).

The Missing Link?

From my modest sample of interviews, class participation, and conversations, I can draw no general conclusion on Chinese lawyers and their influence on gender equality. Neither can I claim that Chinese lawyers as a whole function as intermediaries between general equality norms and individual citizens in transmitting equality norms and that they perform a function as such in the modernization process. However, I found that lawyers do transmit values on gender equality grounded on their knowledge of society.

The practicing lawyer in my sample transmitted a powerful message of traditional gender values. His remark left an impression on my student helper and made her doubt her previous decision to become a practicing lawyer. Thus, it had a potential for making (negative) impact on recruitment of women to the profession. Would positive impact in the case of the opposite communication be unlikely? Hardly. The law professor and project consultants reported concrete examples of implementing equal values in the instruction and advising process, not as a manifest function of their work that would be directed towards counselling within a broad spectrum of law. It was a latent, but not random function of their task. The judge stood out in that respect. On the one hand, she herself supported equal rights values and had a certain amount of discretion to form her decision. On the other, she also administered a state system with traditional values, and it made me wonder, if she found the full and entire support for the principles of equal rights here that she could have wanted. It may suggest that a structural effect is at play here, and whether the part of the profession under lesser state pressure is more likely to have an equalizing effect. Global equal rights reports and the norms laid down in them did not seem to be directly instrumental in the communication of equal rights to the clients. However, the ones to communicate equal rights most directly were also the professionals more oriented towards the international community. Teaching clients to search their rights on the internet served as a means of this communication. With the limitations of my material, I conclude that some Chinese lawyers may be able to function as the missing link towards modernization that political science research identifies, partly because of their individual preference and position in society and partly, because as lawyers they fit the role of professionals transforming modern abstract values of equality to specific, concrete solutions.

My findings are biased, partly as a result of the limitations in setting and language, partly due to my own professional bias as based in a Western rule-of-law tradition. In both cases the bias will tend to produce a focus on the rights aspect and perhaps a tendency among the respondents to call the rights aspect to the fore when reporting from their practice. This does not alter the fact that the respondents did function as intermediaries between state regulation and citizens and this function gave them a vantage point in which to communicate equal rights.

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