

rights

responsibilities

resources

# Making equality law work for Deaf people

Rob Wilks

recognition

residency

# The Hearing-, Disabled- and Deaf-World



## Hearing-World

A culturo-linguistic group  
Sign Language Peoples  
An ethnic group



## Disabled-World

Medical or individual model  
Social model of disability  
Minority group model  
Cultural model



## Deaf-World

A culturo-linguistic group  
Sign Language Peoples  
An ethnic group

residency

**Which of my identities are protected?**

# recognition



*rights*

protected

deaf  
disabled  
white  
British  
Welsh  
husband  
father

equality (disability)  
equality (disability)  
equality (race)  
equality (race)  
equality (race)  
equality (marital)  
employment (paternity,  
social welfare)

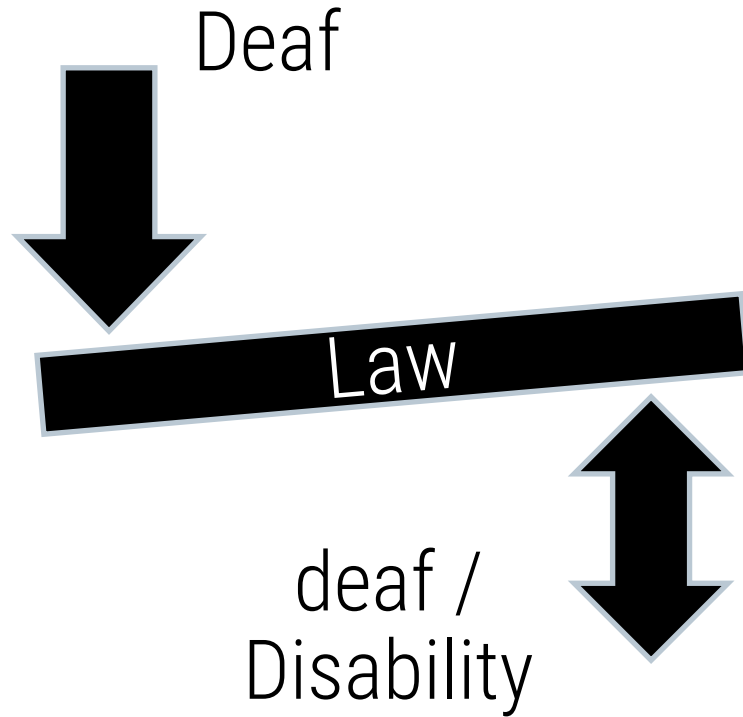
lawyer  
lecturer  
academic

employment  
employment  
employment

not protected

Deaf

## The Deaf Legal Dilemma



- Most identities are covered, except Deaf identity.
- The law tends to regard Deaf people as ‘disabled’ and enact laws to ‘protect’ or ‘provide for’ them as such
- Deaf people can only challenge inequality or receive ‘help’ if they accept the disability label
- The disability label doesn’t recognise Deaf people’s language, culture, heritage, not wanting to be cured
- Is that why Deaf people continue to experience inequality?

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CRIMINAL  
LAW

Which laws?

CONTRACT  
LAW

Welfare  
Law

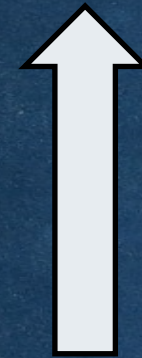
EQUALITY  
LAW

EQUITY

HUMAN  
RIGHTS  
LAW

LAND  
LAW

responsibilities



## What is equality?

- No initial agreement among scholars as to what the important questions are (Hellman and Moreau)
- Different analyses of equality may be suited to different protected grounds (Vickers)
  - Fraser suggests that “class inequality is best understood in terms of redistribution, and sexual orientation inequality best understood in terms of recognition“
- Thus question must be: which equality analyses lend themselves more closely to the Deaf-World?

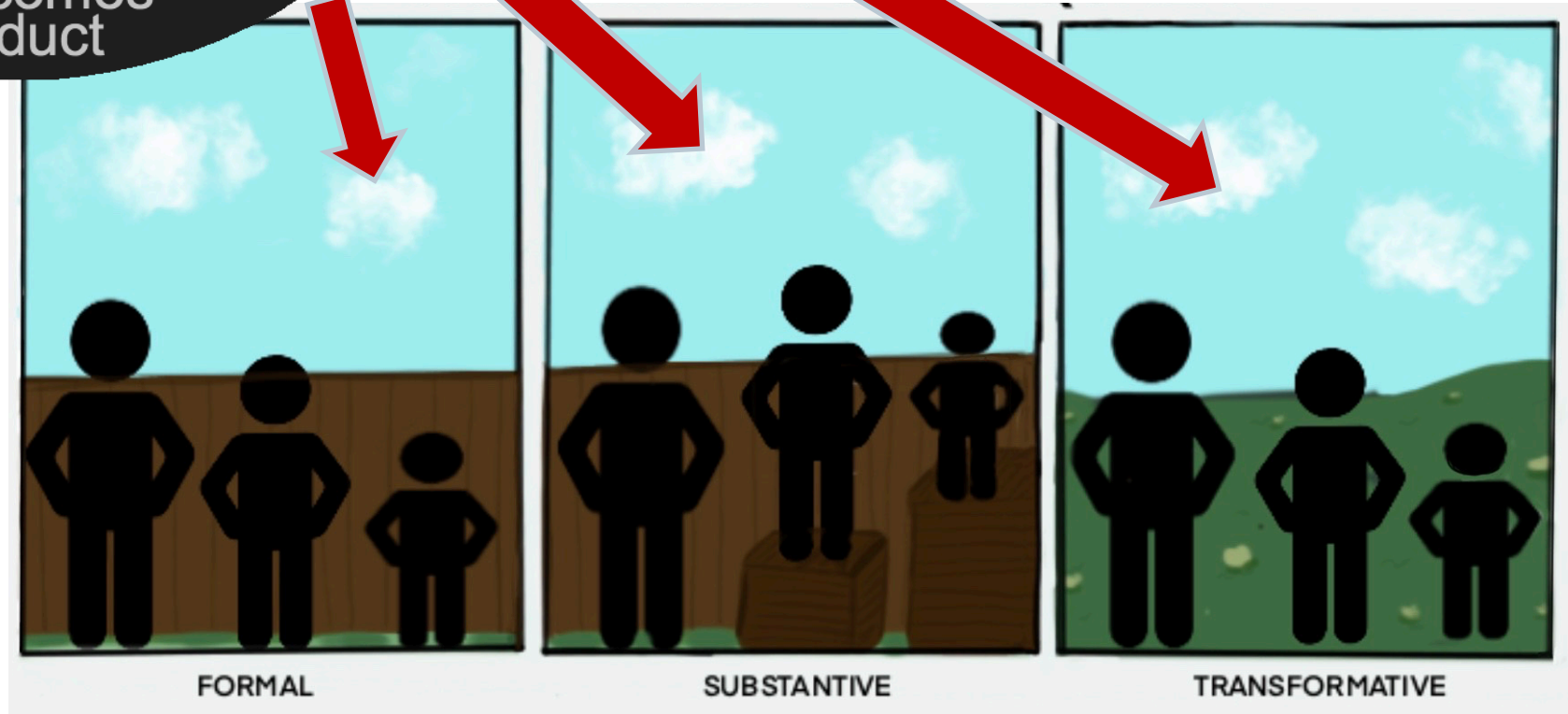
responsibilities





Precepts of equality (Western)  
or "emerging rocks of certainty"  
(McLachlin)

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# Which equality concepts lend themselves to the Deaf-World?

## responsibilities

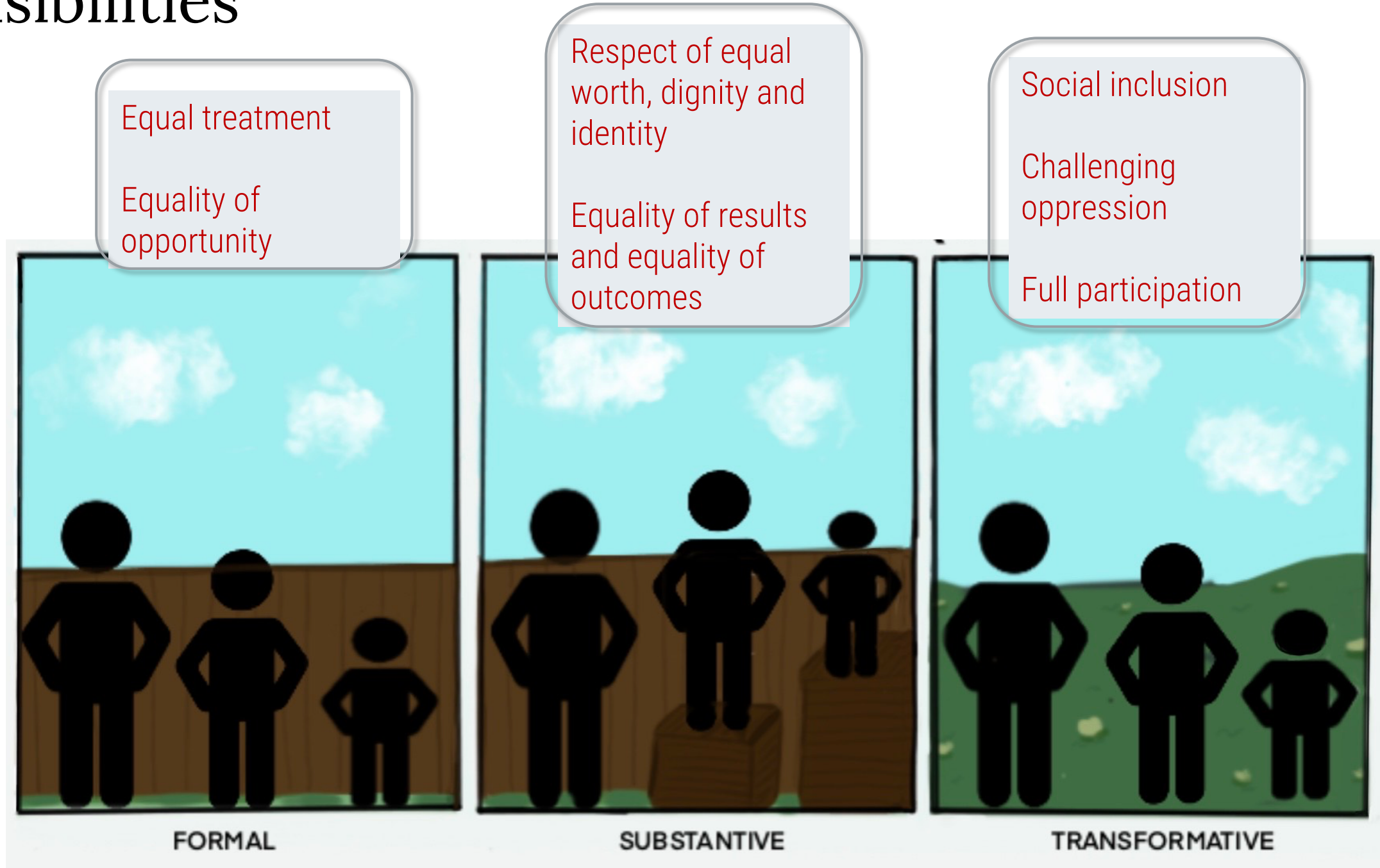


- Readings in the field of Deaf Studies focus on:
  - dignity (Lane, Hoffmeister and Bahan)
  - social inclusion (Batterbury Magill)
  - challenge to oppression (audism) (Bauman).
- Equality of opportunity is considered to be popular among academics (Schaar)
- Therefore, the following concepts of equality are relevant:
  - equal worth and dignity
  - equality of opportunity
  - social inclusion
  - challenge to oppression



# responsibilities

## The Deaf Equality Concepts



# How equality law works for Deaf people

## European Convention on Human Rights



### FORMAL (DIGNITY AND EQUAL WORTH)

- Extremely relevant as gives Deaf people various rights, e.g. right to life, right to fair trial, expression
- 4 cases involving Deaf people
- Article 14: protection from discrimination
- Limited right, means that only enforceable when other rights are breached
- Enforcement difficulties (individual enforcement model)

## Equality Act 2010



### MIXTURE OF FORMAL, SUBSTANTIVE AND TRANSFORMATIVE (EQUALITY OF OPPORTUNITY AND SOCIAL INCLUSION)

- Reasonable adjustments
  - Single, one-off adjustments more likely to be reasonable than recurrent ones
  - Deaf people tend to need recurrent adjustments
- Public sector equality duty
  - Can effect positive change

## Convention on the Rights of Persons with Disabilities



### POTENTIALLY TRANSFORMATIVE (DIGNITY AND EQUAL WORTH)

- Refers to national sign languages
- Have to exhaust domestic means of redress (individual enforcement model)
- Only 19 complaints received to date, 3 related to Deaf people

recognition  
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The (Conservative) Government has  
no appetite to legally recognise  
BSL as a minority language

British Deaf Association, 'Government reluctant to legally recognise BSL, says disability  
minister' (10 July 2015)

**Is sign language recognition the solution?**



**Scotland**

Received Royal Assent  
22 October 2015  
National plans  
10 long term goals  
Local plans  
Public sector equality  
duty  
Early stages



**New Zealand**

Received Royal Assent 10  
April 2006  
Official language of NZ  
Use of NZSL in legal  
proceedings  
competency standards  
State departments to  
promote and use NZSL  
Reviewed September 2011  
Deaf community has  
more pride and  
confidence  
Increased interest  
Lack of awareness  
Sporadic inclusion at  
official events  
Negligible information  
provided by Government  
departments



**Finland**

Leader in sign language  
rights  
first European country to  
mention sign language in  
constitution  
Legislation  
Confers rights of  
individuals in education,  
health care, social care,  
the judiciary and  
broadcasting  
Primary legislation  
focuses on authorities'  
duties



**Ireland**

2017  
11 sections including  
right to use it, ISL  
users' statutory rights  
to access public  
services, the setting up  
of an accreditation and  
registration scheme for  
ISL interpreters and  
children's rights in  
education  
ISL in legal proceedings  
Review of Act within  
three years and every  
five years

**TRANSFORMATIVE**

residency  
recognition rights

## Equality law = Deaf citizenship?

- Deaf people have to identify as disabled in order to access their rights = Deaf Legal Dilemma
- The relevant equality analyses to the Deaf-World have been identified
- Precepts of equality are used to identify the effectiveness of equality law
- Formal and substantive equality have shortcomings
- Transformative equality is needed to achieve equality for Deaf people
- There has been an in-depth exposé of equality law
- Sign language recognition is *transformative* equality
- The relevance of the five Rs has been highlighted

**THANKS!**

Do you have any questions?  
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