Making equality law work for Deaf people
Dr Rob Wilks
The Hearing-, Disabled- and Deaf-World

Hearing-World

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
Which of my identities are protected?

protected

deaf equality (disability)
disabled equality (disability)
white equality (race)
British equality (race)
Welsh equality (race)
husband equality (marital)
father employment (paternity, social welfare)
lawyer employment
lecturer employment
academic 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?
Which laws?
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?
Precepts of equality (Westen) or "emerging rocks of certainty" (McLachlin)
Which equality concepts lend themselves to the Deaf-World?

- 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
The Deaf Equality Concepts

Equal treatment
Equality of opportunity

Respect of equal worth, dignity and identity
Equality of results and equality of outcomes

Social inclusion
Challenging oppression
Full participation
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
**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
**Is sign language recognition the solution?**

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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)
Conclusions

- 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
- Need more empirical research on impact of sign language recognition to prove thesis further
  - Scotland – impact on education (with Rachel O’Neill at University of Edinburgh)
  - Ireland
  - Brazil (Libertas)
  - Mass Observation Study in Scotland, New Zealand and Ireland
THANKS!

Do you have any questions?
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