

MAARTJE DE MEULDER

# A Barking Dog That Never Bites? The British Sign Language (Scotland) Bill

## Abstract

This article describes and analyses the pathway to the British Sign Language (Scotland) Bill and the strategies used to reach it. Data collection has been done by means of interviews with key players, analysis of official documents, and participant observation. The article discusses the bill in relation to the Gaelic Language (Scotland) Act 2005 and posits that, although the bill will raise awareness, it also has significant weaknesses. These include the absence of enforceable rights, the representative imbalance during the negotiation process, the perception of BSL as a tool to access public services, the question who is benefiting from recognition, and most of all the absence of educational linguistic rights and cultural rights.

Note: Acronyms used are as follows:

AoHL	Action on Hearing Loss
BDA	British Deaf Association
CPGD	Cross-Party Group on Deafness
NDCS	National Deaf Children's Society
NGBU	Nongovernment Bills Unit
SCoD	Scottish Council on Deafness

BRITISH SIGN LANGUAGE (BSL), one of Scotland's autochthonous minority languages, is used by 12,533 people<sup>1</sup> (Scottish Census 2011). Scottish BSL signers<sup>2</sup> are not territorially concentrated

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Maartje De Meulder is a PhD researcher at the University of Jyväskylä.

but live dispersed throughout Scotland. Unlike Gaelic, one of the main spoken, autochthonous, minority languages in Scotland, BSL has no legal status there or in any other part of the UK and is not protected under the European Charter for Regional or Minority Languages.<sup>3</sup> The status of BSL in Scotland may change with the introduction of the British Sign Language (Scotland) Bill, which was lodged in the Scottish Parliament on October 29, 2014. The proposed bill aims to promote the use and understanding of BSL principally by means of “BSL plans,” which are to be published by the Scottish ministers and specified public authorities. These plans are to be reviewed and updated at regular intervals and reported on via a performance review.

In some respects this article may seem premature in that the bill was introduced only in October 2014. The main focus here, however, is the pathway to getting the bill proposed. Indeed, we can learn much from these strategies for the development of future sign language legislation, both in the UK and abroad. Data collection has been done through in-depth interviews with people involved in the process (activists, academics, policymakers, staff members of several organizations), analysis of official documents, and participant observation. All of this allowed for the collection of a broad range of views and for data triangulation.

The proposed bill sees legislation for BSL as a language issue. That is not self-evident, given the context in which it was developed, and not self-evident for sign language legislation in general, which is often disability oriented (Reagan 2010; De Meulder forthcoming). But it is a “sterile” bill, which merely perceives BSL as a tool to access public services. It also has significant weaknesses, which result partly from the strategies chosen to achieve it and partly from the general UK and Scotland (language) policy context. These weaknesses are analyzed against the context in which the bill was developed and negotiated. Because the BSL bill is modeled on the Gaelic Language (Scotland) Act 2005,<sup>4</sup> comparisons with this act and the Gaelic situation are made where applicable.

### Linguistic Context and Language Policy in Scotland

Scotland is a part of the United Kingdom. The Scottish Parliament and government have legislative and executive responsibility for a

wide range of “devolved matters” (including health, education, justice, rural affairs, and transportation), while the UK government retains responsibility for “reserved matters” (for example tax, equality legislation, employment, defense, and foreign affairs). Scotland has thirty-two local authorities, who have far-reaching functions, including education and social services.

The UK has no constitutional document or any other piece of legislation that defines any particular language as the UK’s official language, but English is the *de facto* official language.<sup>5</sup> Although English is the main language of Scotland, too, an estimated 150 other different languages are in use in the country, although many of these have only a few speakers. For the purpose of public policy and to better understand the needs of these languages, the Scottish government often considers them as five main language groups: English, Gaelic, Scots, British Sign Language, and minority/community languages (such as Urdu, Turkish, Arabic, etc., which have been brought to the UK by immigration) (Scottish Government 2007).

Despite changes in the last twenty years, the prevailing linguistic ideology in the UK remains one of monolingualism, in which linguistic diversity still tends to be viewed as a problem that must be overcome rather than a resource that must be fostered (Dunbar 2002). Language planning and legislation tend to be *ad hoc*, reactive, geographically specific, and based on political expedience and pressure. Specifically for BSL, the UK government’s language policy has been described as “cross-cutting and disorganized,” making the “voice” of BSL signers extremely hard to discern (Turner 2003b, 177), and as shaped by disability discourse and inadequate engagement with BSL signers themselves (Turner 2009; Batterbury 2014). Generally speaking, the UK has a relatively weak “rights culture” and a certain reluctance to create legislation based on the concept of legally enforceable rights, which can be used to hold governments accountable (Dunbar 2002, 2009). The tendency is more toward “administrative enabling” or “planning-based” models of language planning and language legislation (Dunbar 2002). The Gaelic Language (Scotland) Act 2005 and the proposed British Sign Language (Scotland) Bill are examples of this.

## The Road to the British Sign Language (Scotland) Bill

### *The Key Players: Setting the Scene*

Historically, BSL signers in the UK have been represented by the British Deaf Association (BDA), which was founded in 1890 as a response to oralism.<sup>6</sup> The BDA has been Deaf-led since 1994, following a century of hearing leadership (Ladd 2003) and is currently the only organization in the UK that can rightly claim to be BSL signers' official representative.<sup>7</sup> However, as this article demonstrates, it is not routinely recognized as such by the authorities. In actuality, the lead organization behind the BSL bill in Scotland has not been the BDA but the Scottish Council on Deafness (SCoD). Although the BDA has a Scottish branch based in Glasgow, it is generally perceived as focusing more on England and Wales and is less visible in Scotland at present. The SCoD was founded as the Scottish Association for the Deaf in 1927<sup>8</sup> by missionaries and teachers of the deaf. Rather than join the newly established RNID<sup>9</sup> (now called Action on Hearing Loss), the founders decided to set up a Scottish organization. At that time each mission in Scotland, which would later become charities for and of deaf people, had one representative in SCoD. Currently SCoD is an umbrella organization with membership consisting of about ninety charities and organizations all over Scotland. As its name and membership indicates, SCoD works not only on BSL issues but also on broader issues relating to deafness. The fact that SCoD, with a diverse membership of deafness organizations has spearheaded the campaign for the bill has greatly influenced the outcome.

However, instead of a direct relationship of engagement between minority language associations and the government, such as occurs with Gaelic and Welsh, BSL signers in the UK have also been represented by charities for deaf people, which are led mostly by hearing individuals (Ladd 2003). These bodies are linked to the charity system of the UK, where the government has transferred major social responsibilities, power, and influence to nongovernmental organizations. However, this does not represent a value-free transfer by the government (Turner 2003b; Ladd 2003). Even though the public perception of charities is very positive, this system has been vehemently criticized

by the wider disability movement because of its medicalization of disability, the types of services and activities it provides, its downplaying of political activity, and its removal from visibility of those whom the charity actually serves in favor of its own representatives (Shakespeare 2006). Indeed, traditional disability charities have held significant power in policy and decision making concerning the lives of people with disabilities, dominated negotiations with governments, and appropriated most of the resources (Swain, French, and Cameron 2003). The most significant charity for deaf people and one of the “Big Five” disability organizations in the UK is Action on Hearing Loss (AoHL), mentioned earlier and founded in 1924 as a result of the medicalized pandeafness movement, which was dominated by the medical-oralist establishment, wealthy individuals, and the nobility (Ladd 2003). Today, AoHL claims to have as its constituency up to nine million people with a hearing loss in the UK (850,000 in Scotland), which allows it to describe itself to the government as a representative organization for BSL signers. Its financial, social, cultural, and linguistic capital also allows it easy and direct access to the government.

Consequently, as highlighted in the disability studies literature (Oliver 1990), a huge disparity exists in government funding to organizations that are *for* rather than *of* people with disabilities. For example, AoHL’s annual turnover is in the region of £100 million, and the organization has more than one thousand staff members.<sup>10</sup> By contrast, disabled people’s organizations have historically been run largely by volunteers and poorly funded (Shakespeare 2006). The BDA’s annual turnover is around £1.5 million (British Deaf Association 2013/2014).

Significantly, in 2011 AoHL merged with Deafness Research UK and now supports a wide range of biomedical research projects such as cures for hearing loss, stem cell technologies, and the identification of genes that cause deafness from birth. Taken together, Deaf communities perceive these as the first steps to legitimizing eugenic policies, which may result in the eradication of the community (Emery and Ladd forthcoming)—and, with it, its language. Thus, seeking legal recognition of BSL is seen as one strategy to prevent that outcome.

*BSL "Recognition" in the UK*

Officially, BSL was recognized in the UK in March 2003. This came about in the context of a broader international movement to recognize sign languages (Krausneker 2009; Reagan 2010; De Meulder forthcoming) and was the result of years of lobbying and several political marches. In the end, however, the UK Department of Work and Pensions<sup>11</sup> simply issued a statement that BSL was a language in its own right and allocated £1.5 million to “encourage” BSL (Turner 2003a). For the Deaf activists who had led the campaigning, this announcement was and still is seen as a situation in which hearing-led deaf charities hijacked the process and the only needs that were being met were those of hearing service providers (Gulliver 2003; Ladd, Gulliver, and Batterbury 2003; Batterbury 2012). Indeed, the majority of the money was invested in interpreter training (provided by those hearing service providers), while only 10 percent of the funding went to Deaf-led organizations (Batterbury 2010).

In 2004 local Welsh and Northern Irish Governments made similar recognition announcements but without direct funding, and in March 2011 the then Scottish minister of public health issued a statement accepting BSL as a language in Scotland: “British Sign Language is a vibrant language which makes a vital difference to the daily lives of many deaf people in Scotland. It is important that we do all we can to support the use of the language.” This announcement again merely acknowledged that BSL was a language and, given the source of the statement, firmly located it as a health issue.

The absence of legal protection for BSL was an important rationale for SCoD’s proposal of a BSL bill. Also, SCoD stated that, in Scotland, BSL signers are the only group whose first language is not English who must rely on disability discrimination legislation (Equality Act 2010) to secure access to information and services in their own language. The aim was thus to develop language legislation that BSL signers could use to claim their language rights. In this endeavor, SCoD’s demand was supported by the “Long and Winding Road” report from the BSL and Linguistic Access Working Group (BSL and Linguistic Access Working Group 2009), which consists of representatives from national deaf organizations and government officials. The group was

established by the Scottish government's Equality Unit as a result of a motion for debate about the legal recognition of BSL in the Scottish Parliament a few years before. The report firmly placed BSL with the other autochthonous languages of Scotland and exposed the government's dissimilar treatment of different languages.

### *Proposing the Bill*

Because BSL does not have a designated cross-party group in the Scottish Parliament (unlike Gaelic and Scots), SCoD proposed the idea for the bill in the Cross-Party Group on Deafness (CPGD) in the Scottish Parliament in 2008. Cross-party groups are convened by a member of the Scottish Parliament (MSP) and provide an opportunity for MSPs of all parties, outside organizations, and members of the public to get together and talk about a cause or subject of particular interest to them. The CPGD, which was established in 2000, aspires to "raise awareness amongst Members of issues affecting the Deaf and hard of hearing community in Scotland."<sup>12</sup> The CPGD membership has changed over the years but currently consists of a range of organizations<sup>13</sup> working under the "deafness" umbrella, mostly hearing-led charities for deaf people. The two most influential are AoHL and the National Deaf Children's Society (NDCS).

In 2008 SCoD prepared a briefing paper for the CPGD that asked for a BSL act similar to the Gaelic Language Act (Lawson 2012). Cathie Craigie MSP, the convener of the CPGD at that time, was prepared to put forward a members' bill.<sup>14</sup> To start the process, a subgroup of the CPGD, consisting of SCoD, BDA, NDCS, the Scottish Sensory Centre (SSC), and MSP Cathie Craigie and her assistant, was established. The subgroup received legal advice from the Non-Government Bills Unit (NGBU) to consult on the proposed bill, gauge support for it, and allow different stakeholders access to the decision-making process. This system of consultation prevents the Scottish government from being selective about which pressure groups have an opportunity to be consulted before policy is formulated. The evidence from the first and second consultations is presented here, and discussion follows.

### *The First Consultation*

The first proposed bill intended to secure BSL as one of Scotland's official languages, commanding equal respect with English and Gaelic;

achieve better awareness of information needs and services for BSL users; protect the linguistic integrity of the language; and promote the cultural aspects of BSL and the Deaf community as part of Scottish heritage (Craigie 2010).

The first consultation period ran from July 9 to October 29, 2010. Stated objectives of the proposed Private Members' Bill as outlined in the first consultation document were as follows (*ibid.*):

1. That the Scottish Government adopts BSL as one of Scotland's official languages in law commanding equal respect with English and Gaelic;
2. That a duty be placed on public bodies to translate all information produced in English and community languages into BSL and to ensure that all appropriate front line staff are Deaf aware and have BSL skills;
3. That the number of people able to use BSL is increased by using BSL in pre-school settings and teaching BSL at primary and secondary level for all children, in the same way other languages are taught either as autochthonous languages (Gaelic) or foreign languages (e.g., French). In order to achieve this, the bill should also cover changes to teacher-training courses to increase the opportunities for Deaf people to gain a qualification in teaching and the introduction of BSL as a higher education subject to help increase the number of BSL interpreters;
4. That family members of deaf babies and toddlers in Scotland should have the opportunity to access BSL classes free of charge.

People were invited to respond to four questions in relation to these objectives. The consultation document was translated into BSL, and SCoD took the lead in urging BSL signers to respond to the consultation. In addition, SCoD drew up standard guidelines on how to respond to the consultation questions and invited BSL signers to come to its offices and have their signed responses to the consultation filmed; these were then sent to Craigie.

By the consultation's closing date, October 29, 2010, 488 responses had been received (NGBU 2011a). Inasmuch as most consultation documents traditionally receive between five and forty responses, this number far exceeded expectations (SCoD 2011). The NGBU reviewed each response and in March 2011 issued a detailed report

(NGBU 2011a). According to a summary that was made available on the Scottish Parliament website,<sup>15</sup> 98 percent of responses were in favor of a BSL bill. However, the NGBU flagged several (legal) challenges to the original consultation document (NGBU 2011b), including the following:

- A conflict with reserved matters on legislation related to equality. Equal opportunities listed as reserved matter in L2 of Schedule 5 of the Scotland Act are defined as “the prevention, elimination or regulation of discrimination between persons on grounds of sex or marital status, on racial grounds, or on grounds of disability, age, sexual orientation, *language* or social origin, or other person attributes, including beliefs or opinions, such as religious beliefs or opinions” (emphasis added). There is an exception to the reservation, however, which is the “encouragement” (other than prohibition or regulation) of equal opportunities. It was thus necessary to make sure the provisions as stated in the BSL bill did not go beyond encouragement into prohibition or regulation, as this is a reserved matter.
- Cf. objective 1 of the bill (adopting BSL as one of Scotland’s official languages): there is no Scottish legislation providing for the formal recognition of a language. The NGBU advised using a similar statement to the one in the Gaelic Language (Scotland) Act 2005: that is, a provision that “seeks to secure the status of BSL as an official language in Scotland” rather than providing for it. This statement should then act as a forerunner to the identification of specific action that should be taken by the Scottish ministers and the public authorities to promote the use of BSL.
- The bill’s second objective (access to information and services in BSL) encountered the most severe challenges because its purpose appeared to clash with reserved matters on equality legislation. The NGBU stated that directing public bodies to translate information into BSL seemed to be directly related to the elimination of discrimination on the grounds of disability (and presumably on language grounds, too). It also goes beyond the encouragement of equal opportunities and is thus unlikely to fall within the exception of the reservation. The NGBU also noted the responses from NDCS and AoHL, which expressed reservations regarding

this objective because they maintained that information should be translated *at the request of BSL signers* and should not be imposed on public bodies. The NGBU also raised several questions linked to this objective, among other things the concern as to whether qualified personnel are available in sufficient number to provide such translation on this scale; whether BSL courses are available in sufficient number to train frontline staff; the cost implications of this objective; and whether consensus exists in the Deaf community concerning this objective.

- Concerning the bill's third objective (teaching BSL to all children to increase the number of people able to use it), the NGBU noted the responses from NDCS and AoHL that this should be an option in the curriculum and not a required subject. The NGBU also again advised against making this provision one of prohibiting or regulating but staying within the limits of merely encouraging equal opportunities. In principle, the NGBU stated, providing that it could be argued on educational rather than equal opportunity grounds, it might be possible to have a provision in the statute that essentially *required* BSL to be taught to all pupils or be included as a subject within the language curriculum (under the Curriculum for Excellence) and further require the development of national qualification(s) in BSL. However, the NGBU also listed a number of issues to consider regarding this objective, primarily the need to have enough qualified personnel to teach BSL, the cost implications, and the potential equal opportunity issues it would raise for "non-BSL users in the Deaf community" (no page number).
- Objective 4 raised the same issues with regard to equal opportunities reservations and Social Security reservations (which have similar provisions based on disability) and concerning personnel, number of courses, and cost implications.

The NGBU itself suggested another option, one that would combine aspects of each of the objectives, namely, setting up a structure similar to that for Gaelic (provided under the Gaelic Language Act). According to the NGBU, this option could incorporate Objective 1, and although it would not explicitly require Objectives 2, 3, and 4 to be provided for, it could indirectly have that effect.

*The Second Consultation*

At the next elections for the Scottish Parliament in May 2011, Cathie Craigie was not reelected. Instead, MSP for Central Scotland Mark Griffin (whose great-grandparents were deaf-blind) took over her seat and decided to take the BSL bill forward. Agreement was reached on following the NGBU's advice to set up a structure similar to that of the Gaelic Language Act: public bodies would develop action plans to increase the accessibility of information for BSL signers and raise awareness of the language, and a board would be set up to advise the government. In addition, the bill would propose that family members of deaf children would have access to BSL classes free of charge.

Because of these changes, the NGBU recommended a second consultation. Again, a subgroup<sup>16</sup> was established under the CPGD to draft a consultation paper; its members started working in the first months of 2012. Although it was decided, as mentioned earlier, that the structure of the Gaelic Language Act would be followed, there was no consensus on the setting up of a BSL board (consisting of a majority of BSL signers) to advise the government. Both NDCS and AoHL were more in favor of charging an appropriate government minister with this responsibility. In the end, however, a question on establishing a BSL board was included in the final draft of the second consultation document. The second consultation period started on July 27, 2012, and ran until November 7, 2012. Responses to the eleven questions were invited. Again, the consultation document was translated into BSL.

The second consultation document stated that the proposed bill would “encourage the use of BSL in Scottish public life and raise awareness of the language among the hearing population” (Griffin 2012). This would be done by:

- Promoting the use of BSL by placing a requirement on the Scottish Ministers to develop a Scottish Government BSL strategic plan
- Promoting the use of BSL by requiring the relevant<sup>17</sup> public authorities to prepare and publish action plans (BSL plans) on the measures they are taking regarding BSL
- Requiring the Scottish Ministers to report to the Scottish Parliament at least twice per parliamentary session on the content of

their strategic plan and the performance of the public authorities in relation to their BSL action plans

- Appointing a designated, or lead, Scottish minister for BSL, to update the Scottish Parliament on the action the Scottish government and the relevant public authorities are taking in relation to BSL. (The document stated that it was hoped that the lead minister would be advised by a board of “BSL and hearing people with an understanding of the language” (Griffin 2012, 9).

A specific paragraph of the second consultation document emphasized “communication for deaf children,” stating that “it is morally wrong that the parents and other family members of deaf children have to pay to learn BSL simply to be able to communicate with the child” (Griffin 2012, 11) and that, although the bill would not directly require individual education authorities to provide free BSL classes, there would be “an expectation that the Scottish government and public authorities will report specifically on the action they are taking to promote free BSL classes for family members to meet the needs of deaf children” (ibid.)

In June 2013 a summary of the consultation responses was published (NGBU 2013). In total, 222 responses were received, of which 49 were from organizations, 172 from individuals (including 39 anonymous responses enclosed with the submission from “Sign and Be Heard”), and one petition with 937 signatures.<sup>18</sup> Sixty-seven of the individual responses contained wording to this effect: “I support the general aim of the proposed bill but would like to see the aims extended to include a better awareness of not only the language among the hearing population but also an awareness of the rich culture and history of the Deaf community in Scotland. I want to see a firm commitment in the bill to include Deaf people as advisors to the Scottish government so that they are at the heart of the bill as it is their language. I want there to be a BSL board like Gaelic speakers have, and I want the board to have a majority of Deaf BSL users on it.”

The summary of the responses revealed “substantial and overall majority support” for the aims of the proposed bill (NGBU 2013, no page number). There was also majority agreement that legislation was indeed required, and the appropriate mechanism to fulfill those goals.

Those supporting the need for new legislation were, according to the consultation summary, “generally of the view that BSL users should be classed as a linguistic minority” and that BSL should be treated as a language and not an additional communication support, thereby requiring clear and distinct legislative powers for its protection and preservation.

A number of respondents provided additional comments in relation to education services. Among other things, they recommended that the proposed bill extend to developing awareness of teacher education and that guidance be given or a new mandate included to raise the levels of BSL proficiency in teachers of deaf children (up to a minimum of BSL level 3). A number of challenges to the bill were identified as well, including “few statistics on the number of BSL users” (which might be an argument for not producing plans), a traditionally slow pace in achieving Gaelic language policy change, public bodies treating the requirement as another layer of bureaucracy and thus providing only minimal implementation, and concerns that qualified teachers of deaf children might be diverted from deaf education to teach BSL as a modern language to hearing children.

Most respondents believed that a designated minister should take the lead on BSL in the Scottish government (instead of placing this responsibility on all of the Scottish ministers) and that, most appropriately, this should be the minister for learning, science, and Scotland’s languages under the cabinet secretary for education and lifelong learning. Respondents were generally supportive of the idea of an advisory board of BSL signers, although the makeup of the membership received mixed views. Also, a minority of respondents still stated that they feared that legislation for BSL would direct attention and funding away from “other communication methods” (e.g., Braille, Moon, symbol systems, pictures, expressive boards, talking mats, and IT) and that the designated minister should also be responsible for these other means of communication.

#### *Introducing the Bill*

On October 29, 2014, the British Sign Language (Scotland) Bill was introduced in the Scottish Parliament. It was accompanied by explanatory notes, a financial memorandum, the members’ and the presiding officer’s statement on legislative competence, a policy memorandum,

and a delegated powers memorandum.<sup>19</sup> All the documents have been translated into BSL as well.<sup>20</sup> As expected, the structure and content of the bill are similar to those of the Gaelic Language Act, although the BSL bill is much narrower.

Designed to promote the use and understanding of BSL, the bill introduces various measures to achieve this objective. They include the following:

- *BSL national plan:* Each parliamentary session, the Scottish ministers need to prepare a BSL national plan for Scotland, in which they explain their strategy for the promotion and facilitation of the use of BSL. In preparing the plan they must consult those who they consider “are likely to be directly affected by the national plan or otherwise to have an interest in that plan” (1.6.) and in particular are to include (1) persons who use BSL and (2) those who represent users of BSL. The Scottish ministers are also to assign responsibility for the exercise of these functions to a member of the Scottish government or a junior Scottish minister. The first national plan is expected in May 2017.
- *Authority plans:* Each parliamentary session, each listed authority<sup>21</sup> needs to prepare a BSL plan (or “authority plan”). The public authorities listed “have been carefully selected and represent the public-facing, service-oriented bodies in the key sectors of education, local government, health, justice and policing [law enforcement]. Private and voluntary sectors are not affected” (Policy Memorandum 2014, 4). Stakeholders were also consulted on which bodies should be included in the schedule (question 8 of the second consultation). In connection with the exercise of the authority’s functions, this plan sets out measures for the authority to take in relation to the use of BSL and presents timetables for them. The consultation requirements are similar to those for the national plan, and the goal is for the authorities to achieve consistency between their plan and the national plan. The first authority plans are expected in May 2018.
- *Performance review:* In each subsequent session of Parliament, the Scottish ministers are to prepare and lay before Parliament a performance review that provides an account of measures taken and outcomes achieved and mentions examples of best practices and poor performance. The first performance review is expected in May 2019.

The intention is that, by placing this obligation on the Scottish government and the listed authorities, the profile of BSL will be heightened and its use in the delivery of services increased (Policy Memorandum 2014). There are no statutory sanctions for noncompliance with the legislation: The performance review will act as a basis for Parliament to hold the Scottish ministers to account and for the Scottish ministers to in turn hold the listed authorities responsible for outcomes. The Policy Memorandum (2014, 7) states that “the risk of being ‘named and shamed’ for poor performance should act as a significant incentive for listed authorities.”

### Discussion of the Pathway and the Proposed Bill

The bill as it currently stands is a piece of language legislation, and, in that respect, one of the initial wishes for the bill as expressed by SCoD has been granted: If the bill becomes an act, BSL signers in Scotland will be—in principle, at least—entitled to services in BSL on the basis of their being a language group (and not a group of persons with a disability). The duties of the Scottish ministers and the public authorities to produce plans will make BSL more visible as a language and will increase awareness and understanding of it by the hearing majority population.

Also, it has been crucial for Griffin MSP to position the bill so as to strategically exclude other groups. During the consultation process, certain organizations and individuals attempted to influence the legislation to include “other communication needs.” Indeed, the NGBU has expressed concerns about “consensus among the Deaf community” regarding access to information and services in BSL, as well as “equality issues for non-BSL users in the Deaf community” related to the teaching of BSL to all children. This situation is not unique to Scotland or the UK. In countries such as Spain (Quer 2012) and Italy (Geraci 2012), legislation aimed at deaf signers has been challenged by nonsigning deaf people and the organizations representing them (including parent organizations), who perceived the legislation as discriminatory and exclusionary and feared that it would direct attention and funding away from other “communication needs.” Colombia, the Czech Republic, Spain, Poland, and Hungary have all passed legislation that makes regulations not only for the national sign language(s)

but also for those “other means of communication” (e.g., lipreading, hearing aids, subtitling, finger alphabets, visualization of spoken language, written record of speech; De Meulder forthcoming). In Italy, in November 2014 a bill has been introduced<sup>22</sup> that is designed not only to recognize Italian Sign Language (LIS) but also to support, protect, and disseminate “all communication tools, aids and methodologies that provide actions for prevention and treatment, integration and autonomy, respecting the choices of individuals and families: newborn screening, early prosthetic fitting, bilingualism, oral method, recognition and promotion of LIS and tactile LIS” (ENS 2014). Article 3 (“Prevention of deafness and means of mitigating, correcting and/or removing hearing deficiency”) promotes “early diagnostic intervention, habilitation and rehabilitation for all children born deaf or becoming deaf, for the purpose of the necessary prosthetic and speech therapy” (my translation). This bill is a blend of medical, disability, and accessibility approaches in which the specific culturo-linguistic identity and demands of LIS signers are wholly diluted and the campaign for their cultural and linguistic rights has been sidelined by legislation aimed at accessibility and communication issues and even at mitigating their “disability.”<sup>23</sup>

However, the bill also has significant weaknesses. First of all, it contains no enforceable rights and lacks a strong monitoring mechanism, which comes as no surprise in a UK language policy context with its weak “rights culture” (Dunbar 2002, 2009). It also has no associated budget for implementation (possibly because adding resource implications could hinder the bill’s passage). The cost estimates included in the financial memorandum of the bill take into account only the preparation of the plans, not implementation, and there is no specified additional implementation budget for the public authorities. This is different for Gaelic, for which the Gaelic Language Act Implementation Fund was established to help public authorities make good on their commitments in the Gaelic Language Plans and in support of the National Gaelic Language Plan. Gaelic also has a separate budget for broadcasting and Gaelic-medium education. The lack of enforceable rights and an associated budget make the bill administratively and politically acceptable but also mean that, if the bill is allowed to pass, it will remain merely symbolic. With regard to the New Zealand

Sign Language Act, as an example, this is “raising aspirations but not materially changing the status quo” (McKee 2007, 135). Second, because of the representation issues during the development of the bill and the absence of a well-organized Deaf grassroots movement, one wonders whose recognition this effectively is: that of the people who own the language and identify with it, or that of the service providers who purport to represent them. Furthermore, although the bill has been modeled on the Gaelic Language Act, as mentioned earlier it is only a weak copy of this legislation and much narrower. What will probably be seen as its biggest weakness, however, is that it contains nothing on the duty to deliver and the right to receive education in BSL, as well as on the rights of deaf children to acquire BSL from birth, especially since this was one of the initial rationales for SCoD to propose the bill and one of the most important international aspirations of Deaf communities with regard to sign languages’ recognition (De Meulder forthcoming). I now turn to a brief analysis of these last three weaknesses.

### *Representative Obstacles*

The SCoD chose to discuss the BSL bill in the CPGD and to adopt a pragmatic attitude to enable all of the CPGD’s member organizations to agree on the very idea of a BSL bill in the first place and, after that, on the drafts of the two consultation documents. This practical collaborative attitude seems to be very much valued by the Scottish organizations. However, a number of weaknesses have emerged.

First, the bill allowed the major charities *for* deaf people to be involved in the recognition process and be identified by the Scottish government as the representatives of BSL signers. Thus, the bill was developed within a context where the strongest and best-funded parties were those with an ambiguous relationship with and attitude toward BSL. Moreover, those organizations do not want to disappoint their members by being perceived as too openly supportive of BSL issues—support that, if offered, may be perceived to weaken their single-issue campaigning (e.g., on the resolution of hearing loss). Further, this approach allows for a conflation of a “recognition” agenda, most often seen by service providers as a way of securing policy provision and the “resolution” of deaf access, and the Deaf commu-

nity's own relationship with the language, which it describes in terms of "ownership," a metaphysical connection with the language as its primary identification, the source of its social and mental well-being, and community participation (Gulliver 2003).

In addition, a well-organized Deaf grassroots movement has not mobilized in active support of the bill despite the fact that the responses to the second consultation make it very clear that BSL signers need and want to be involved as advisors to the Scottish government; nonetheless, the BSL bill does not provide for the establishment of a statutory BSL board comparable to the Bòrd na Gàidhlig. The omission of such a body likely has partly to do with the performance of the Bòrd, which has not always set an example of good practice, and growing suspicion in the UK about the role of quasi-autonomous nongovernmental organizations (Dunbar 2002), which are seen as unaccountable, anonymous groups.

#### *Modeling on the Gaelic Language Act*

The modeling on the Gaelic Language Act is positive in that it shows that Griffin MSP clearly sees legislation for BSL as a language issue. Still, the BSL bill is much narrower than the Gaelic Language Act, which in itself is weak compared to language legislation in other constituencies such as Catalonia, Canada, or even Wales (McLeod 2006a). Several shortcomings of the Gaelic Language Act are as follows: The phrase "equal respect"<sup>24</sup> has no recognized legal meaning; the act creates no enforceable rights and has weak enforcement mechanisms; it says nothing about the content of public bodies' language plans; the powers of the Gaelic Language Board are weak compared to those of similar agencies or offices in Wales and Ireland; finally, the act does not extend to public bodies throughout the UK and does not address the private sector (McLeod 2006b). All of these concerns are also valid for the BSL bill. Another concern is the administrative model of language planning on which both the Gaelic Language Act and the BSL bill are based. Several issues can be distinguished with respect to this model, which may lead to tokenistic plans or minimalist policies without any real benefit to the BSL community. First of all, the bill merely creates expectations of governments and public authorities with regard to *how* they will do something, not an expectation that

they will, in fact, *do* something (Walsh and McLeod 2008; Dunbar 2002, 2009). For the national plan, the support of a broad range of organizations will be needed. A plan supported only by the ministers and BSL signers will have no effect. For the authority plans, the bill fails to prescribe any minimum level of activity beyond the production of a plan (explanatory notes, 8). Given the very urgent situation for BSL signers who face widespread linguistic exclusion in the UK (BDA 2014), the question is whether expectations suffice at this time.

An additional risk is that the public authorities, who already need to make plans for Gaelic, will see the BSL act as just another layer of bureaucracy. The model of language planning also means that power is in the hands of abstract administrative personnel who are not directly accountable to the language community (Dunbar 2009). Another pressing concern is the “monolingual mindset and monolingual ethos,” which is deeply rooted in Scotland’s institutional culture (McLeod 2006b, 12). What confirms the validity of these concerns is that the Scottish Parliament itself states that many of the specified authorities have been involved in BSL planning for some time already and that, in cases where best practice is already being observed, the bill will merely put existing activity on a statutory footing (explanatory notes, 7–8).

### Absence of Educational Linguistic Rights

Education in and about BSL for both deaf and hearing children was one of the key demands of the SCoD at the start of the negotiations for the bill. Remarkably, nothing in the bill addresses either the right to receive or duties to deliver education in BSL or the right of deaf children to acquire BSL from birth and that of their parents to the right kind of guidance. The Gaelic Language (Scotland) Act 2005, although lacking in any legal requirements and obligations in relation to Gaelic education (a very important demand of Gaelic campaigners), at least requires the Bòrd to produce the National Gaelic Education Strategy and authorizes it to develop educational guidance. Furthermore, Gaelic education is already fairly well established in Scotland and has a significant level of parental demand (McLeod 2006b). This is completely different from the situation with regard to BSL. For instance, BSL education is not well established, and most parents of deaf children lack effective and sufficient information on BSL and the

value of bilingual education. In theory, the public authorities could play a role in the provision of BSL in schools and in defining the minimum quality of signing for people working with deaf children. But whether this will happen will entirely depend on their goodwill, and goodwill is not an enforceable right. Should the bill be passed as it currently stands, the omission of any educational linguistic rights may come to be regarded as the bill's greatest failing.

Moreover, a lesson learned from Gaelic (McLeod 2006a) and certainly also valid for BSL (and any other sign language) is that excessive emphasis on provisions by public authorities fails to tackle the central problem of the lack of (early) language acquisition or the use of the language in families and the community. One aspect in which sign languages stand out from spoken languages is that their weak position centers above all on the family and the home (Turner 2003b). The bill would do nothing to stop BSL from sliding into linguistic obsolescence, which is the entirely predictable fate of languages that are not acquired from birth, are not used in education, and have no intergenerational continuity (Fishman 1991).

## Conclusion

At the time of this writing, the bill is in Stage 1 of the debates. It has been assigned to the Education and Culture Committee, which is to report to Parliament about the bill's general principles and the financial memorandum. A call for evidence<sup>25</sup> has been launched; this is an invitation by the committee for people to offer their views on the general approach of the proposed legislation, the duties of the Scottish ministers, and the BSL authority plans. If Parliament agrees on the general principles, the bill goes to Stage 2, in which MSPs can propose amendments to the bill, which are then discussed.

What is clear so far is that, even though it was BSL signers who initially submitted the proposal, the Scottish government either has not noticed or does not fully understand the existence of a representative imbalance. The field is crowded by the "for" organizations, which undermine BSL signers' organizational power. Up to now, no well-organized Deaf grassroots movement has mobilized to promote the bill although the BSL community made its wishes very clear during the consultation phase. Also, whereas the Gaelic Language Act

refers to Gaelic culture (in relation to the Bòrd na Gàidhlig, which is charged with promoting Gaelic culture), the BSL bill contains not a single reference to culture despite responses to the second consultation, which indicated respondents' wish to see the bill extended to include the cultural aspects of BSL and an awareness of the rich culture and history of the Scottish Deaf community, much as has been done with Gaelic. In this respect, the bill is a sterile one that perceives BSL merely as a tool to access public services and BSL signers as "service users" but strips the language of its strong cultural and historical background.

There further seems to be little public consensus and no real societal affirmation that this bill is indeed crucial for Scotland. However, the current relationship between Scotland and the rest of the UK (influenced by the independence referendum of September 2014) is such that Scotland takes great pride and delight in distinguishing itself from the rest of the UK, especially if the distinction paints Scotland as a more just, fair, democratic, and egalitarian society than the UK as a whole. In this respect, the BSL bill is very timely and will probably be backed by a majority of Scottish MSPs because, without imposing significant financial obligations, it will put Scotland ahead of the rest and flaunt its preference for social justice in the face of those across the border.

Just as with the Gaelic Language Act (McLeod 2006b), the real controversial issues (i.e., the right to receive and the obligation to provide education in BSL, as well as the right of deaf children to acquire BSL from birth in a rich language environment) seem to have been postponed. Also, the absence of any cultural rights means the bill offers no protection from the issues (e.g., genetic interventions and stem cell therapy) that are threatening the continued existence of deaf people, the same issues that some organizations involved in the recognition process are currently funding. The passing of the Human Fertilisation and Embryology Act (2008) in the UK (Bryan and Emery 2014) is only an indication of what is yet to come. Ironically, without protections for culture, although the language may end up being safeguarded and prioritized, it may simply vanish as the Deaf culture and community that birth it and preserve it are annihilated in a medical purge.

The BSL (Scotland) Act—if it is allowed to pass—will certainly be a milestone in the area of sign language rights and policy, but at the same time, because of its reliance on public authorities' goodwill and lack of enforceable rights, it risks becoming “a barking dog that never bites,” that is, making a lot of promises but leading to little action. It appears that a real and meaningful recognition of BSL signers as a culturo-linguistic minority in Scotland is not yet in place. It is hoped that this analysis of the road traveled so far and the obstacles on it can assist in improving this situation not only in Scotland but also the world over.

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### Notes

1. This number might not be accurate, however. The census asked, “Do you use a language other than English at home?” One of the possible responses was “BSL.” It counted 12,533 people who use sign language at home in a population of 5 million. For comparison, the Australian Census of Population and Housing (2011) asked a similar question: “Does the person speak a language other than English at home?” to which respondents could then reply that they used Australian Sign Language. The Australian 2011 Census counted 9,721 people using sign language at home in a population of 22 million.

2. The expression “BSL signers” has been chosen here for two reasons: for consistency with expressions such as “English speakers” or “Gaelic speakers” and to distinguish them from deaf people who do not use or identify with BSL (an important distinction in this article). The expression “BSL signers” as used here refers primarily to deaf signers, although it could also include hearing signers whose first or preferred language is BSL (e.g., hearing children of deaf parents).

3. The UK ratified the Charter for Welsh, Scots, Ulster Scots, Scottish Gaelic, Irish Gaelic, Cornish, and Manx.

4. Other sign language legislation has been modeled on legislations/laws for indigenous spoken languages as well. For example, the New Zealand Sign Language Act has been modeled on the Māori Language Act (1987) (McKee 2007, 2011).

5. Welsh is a de jure official language but only in Wales, pursuant to the Welsh Language (Wales) Measure 2011.

6. Oralism is the theory, practice, advocacy, and ideology of education for deaf children chiefly or exclusively through lipreading, training in speech production, and training of residual hearing.

7. In 2004, the BDA added the catchphrase “Sign Community” to its name to differentiate itself from deafness-related organizations and to demonstrate that it represents the sign language community. However, in 2011, after consultation with the membership, the catchphrase was dropped and the name changed back to BDA.

8. The name was changed to Scottish Council on Deafness in 1999.

9. Royal National Institute for Deaf People.

10. <http://www.actiononhearingloss.org.uk/about-us/who-we-are.aspx>.

11. The Federation of Deaf People (FDP), the leading organization behind the recognition campaign and the marches, had always demanded that the statement come from the home office. The UK government, however, rerouted the submission to the Disability Resource Commission (Gulliver 2003; Ladd 2003).

12. <http://www.scottish.parliament.uk/msps/41820.aspx>.

13. These are the Scottish Council on Deafness (SCoD), the British Deaf Association (BDA), Action on Hearing Loss (AoHL, formerly RNID), the National Deaf Children’s Society (NDCS), the Scottish Association of Sign Language Interpreters (SASLI), the Scottish Sensory Centre (SSC), Hearing Link, Deaf Action, Deaf Connections, Deafblind Scotland, Signature (formerly CACPD), the British Association of Teachers of the Deaf (BATOD), Tayside Deaf Hub, the Association of Teachers of Lip-Reading to Adults, the Royal College of Speech and Language Therapists, the University of Edinburgh, Donaldson’s School for the Deaf, Sensory Services, and West of Scotland Deaf Children’s Society.

14. A members’ bill is a public bill introduced by an individual MSP who is not a government minister.

15. <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/17758.aspx>.

16. The subgroup consisted of SCoD, the Scottish Sensory Centre (under the University of Edinburgh), BDA, NDCS, and Griffin MSP.

17. “Relevant public authorities” are those who represent the public-facing, service-oriented bodies in the key sectors of education, local government, health, justice, and law enforcement.

18. The petition was worded as follows:

We, the undersigned, support the general aim of the Proposed BSL Bill (Scotland) because we would like to see the aim extended to include the cultural aspects of BSL and the Deaf Community in a similar way to that of Gaelic. We would also like the

aim to be extended to include a better awareness not only of the language among the hearing population, but also an awareness of the rich culture and history of the Deaf Community in Scotland. We would want to see a firm commitment in the Bill to include Deaf people as advisers to the Scottish Government so that they are at the heart of the Bill as it is their language. There should be a BSL Board like Gaelic speakers have and the Board should have a majority of Deaf BSL users on it. The legislation should be designed to promote the use of BSL, secure the status of the language and ensure its long-term future.

19. All of the documents are online at <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/82853.aspx>.

20. <http://www.scottish.parliament.uk/help/82866.aspx>.

21. The bill defines a “listed authority” as any public authority for the time being listed or described in Schedule 2 of the bill. Currently, 117 bodies are affected by the bill, six of which belong to the Scottish administration.

22. “Provisions for the removal of barriers of communication, for the recognition of LIS, tactile LIS and for the promotion of social inclusion of the deaf and deaf blind.”

23. A similar bill, focusing on BSL as a communication system, was proposed by MP Malcolm Bruce at Westminster in 2013. However, it failed to complete its passage through Parliament before the end of the session (<http://services.parliament.uk/bills/2013-14/communicationsupportdeafness.html>).

24. The phrase occurs in the following sentence: “An Act of the Scottish Parliament to establish a body having functions exercisable with a view to securing the status of the Gaelic language as an official language of Scotland commanding equal respect to [*sic*] the English language.” The “body” referred to is the Bòrd na Gàidhlig. McLeod (2006a, b) even states that the phrase was chosen precisely to avoid any suggestion that Gaelic would have equal validity or parity of esteem with English or that the act might be perceived as imposing a general duty to institutionalize Gaelic-English bilingualism.

25. <http://www.scottish.parliament.uk/parliamentarybusiness/Current-Committees/83906.aspx>.

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