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The influence of deaf people’s dual category status on sign language planning: the British Sign Language (Scotland) Act (2015)

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ABSTRACT

Through the British Sign Language (Scotland) Act, British Sign Language (BSL) was given legal status in Scotland. The main motives for the Act were a desire to put BSL on a similar footing with Gaelic and the fact that in Scotland, BSL signers are the only group whose first language is not English who must rely on disability discrimination legislation to secure access to services in their own language. I argue this is caused by deaf peoples’ dual category status, meaning they are seen within public policy as both a linguistic minority and a disability group. This article analyses how this status informed the Act’s parliamentary scrutiny and implementation measures. Data come from parliamentary debates, discussions on social media and interviews with key players involved in the process. The article demonstrates that despite the Parliament’s desire to treat BSL signers as any other language minority, the Act was subjected to a particular set of discourses which exposed it to a degree of scrutiny not experienced by discourses for spoken minority language legislation, and which points to the political and societal context in which sign languages and signers operate.

On 17 September 2015, the Scottish Parliament passed the British Sign Language (Scotland) Bill proposed by Mark Griffin, Member of Scottish Parliament (MSP), which became an Act (hereinafter “the BSL Act” or “the Act”) on 22 October 2015. Hereby, Scotland became the first country of the UK where British Sign Language (BSL) was given legal status. This development has not come from thin air – there has been a wider international campaign for the legal protection and promotion of sign languages since the 1990s (Murray, 2015).

One of the main motives for bringing forward the Bill was the absence of any legal status for BSL in Scotland, and a desire to put it on a similar footing with Gaelic, one of the other autochthonous minority languages of Scotland. As such, the Act takes a similar approach to that used in the Gaelic Language (Scotland) Act 2005, which requires relevant public authorities to produce Gaelic Language Plans, and for these to be reviewed on a regular basis.

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Another motive for legislation was that according to representative organisations of deaf people such as the Scottish Council on Deafness (SCoD) and the British Deaf Association (BDA), in Scotland, BSL signers are the only group whose first language is not English who must rely on disability discrimination legislation to secure access to information and services in their own language. I argue this is caused by deaf people’s dual category status within public policy, meaning they are categorised as both a linguistic minority and a disability group. While this should not in theory be problematic, in fact the policies that govern their lives traditionally frame them within only one category – as people with disabilities, a framing which has negatively impacted on the recognition of sign languages (De Meulder & Murray, in press). The focus of this article is on the ways in which this dual category status has influenced language planning for BSL in Scotland. During the Bill’s negotiations and parliamentary scrutiny, Scottish deaf signers explicitly made clear that they are not disabled or at least that their dual category status needs to be recognised, and that they want to be treated like other language minorities in Scotland, also in law. Although the Scottish Parliament made clear they want to engage with this view, this dual category status has nevertheless influenced the Bill’s parliamentary scrutiny and its traces can still be seen in the eventual Act that was adopted and its implementation measures.

This paper contributes to current language planning debates about the recognition of sign languages for at least two reasons. Studies on the outcomes of sign language recognition legislation show that the instrumental rights and social mobility obtained as a result have been limited, especially in terms of educational linguistic and language acquisition rights for deaf children (De Meulder, 2015a, 2016; McKee & Manning, 2015; Murray, 2015; Reagan, 2010) and that one of the reasons for this situation of limited outcomes is the deficit frame in which deaf people have been viewed (De Meulder & Murray, in press). Secondly, the documentation and analysis of these planning processes can contribute to theory building and knowledge in the field of sign language planning and policy. Indeed, while there is a fairly well established body of literature on language policy and planning for spoken (minority) languages (e.g. Cooper, 1989; Johnson, 2013) and on legislation for these languages (e.g. Laakso, Sarhimaa, Åkermark, & Toivanen, 2016), the campaigns for the legal recognition of sign languages got ahead of research into their planning processes and outcomes. This aim of this article is thus also to advance debate and thinking in the area of sign language planning and policy, and develop a new strand of critical scholarship on the status of sign languages more generally.

The planning of sign languages

The twenty-first century has seen “a veritable explosion of different kinds of language planning activities for sign languages around the world”, covering status, corpus, acquisition and attitude planning (Reagan, 2010, p. 156). The last two decades have seen a substantial growth in the most visible kind of language planning for sign languages: their legal recognition, ranging from constitutional status over general language legislation to specific sign language acts (see De Meulder, 2015b, for an overview).

Deaf communities’ campaigns for the recognition of sign languages seek a differentiated citizenship, a form of group representation rights accorded to accommodate their particular group’s needs and practices (De Meulder & Murray, in press). The key issue
is that in doing so, they seek to be able to retain a significant degree of cultural and linguistic self-determination. The past two decades have seen deaf communities develop strategies to achieve these outcomes by first getting (symbolic) legal confirmation that sign languages are indeed languages, having identity value for those who sign them. After establishing this, it is important that legislation can bring about (higher) instrumental value for sign languages, and increased mobility for signers. Thirdly, and most importantly given the historical and contemporary situation of deaf communities are educational linguistic and language acquisition rights in the home and education. Over 95% of deaf children is born in hearing nonsigning families (Mitchell & Karchmer, 2004) and sign languages are thus usually not transmitted within the home.

While the goals of language planners and sign language communities might diverge regarding how to protect and promote sign languages (Behares, Brovetto, & Peluso Crespi, 2012; Geraci, 2012; Müller de Quadros, 2012; Quer, 2012), the campaigns for sign language recognition differ from a long history of sign language planning by mostly hearing linguists, often perceived as having the potential to continue a hearing hegemony (Napier, Major, Ferrara, & Johnston, 2015). Indeed, sign languages have historically been (and often still are) viewed through a “language as a problem” perspective (Ruiz, 1984) and thus inappropriate in the education of deaf children (Ladd, 2003), have been treated as needing standardisation (Eichmann, 2009) and have been the subject of devaluing, audistic, stereotypical and economic ideologies (Krausneker, 2015).

By contrast, the recognition of sign languages is often seen as deaf-driven because the demand for their legal recognition springs from deaf communities themselves. Also, while the law has historically been used to “look after” deaf people (e.g. special educational needs legislation), curb what deaf people can do (e.g. prohibiting them to drive forklifts) or provide for their unnatural state through welfare, sign language recognition legislation has been described as an exception to this trend because deaf people have often been involved in the creation of this legislation (Bryan & Emery, 2014).

Still, Bryan and Emery (2014) argue that although the law affords deaf people rights and protection, the dominant group can still use the law as a mechanism to continue a hearing hegemony and enjoy privilege. Further, they state, society has a tendency to (legally) reward deaf people who, perhaps unintentionally, conform to a hearing construct of who they should be. For example, it legislates for mainstream education and the allocation of public funding for cochlear implants. In the opposite direction, when deaf people do not fit into the stereotype of what society expects them to be, the law can deny them legal rights or pose limitations on them. Kusters, De Meulder, Friedner, and Emery (2015) describe the UN Convention on the Rights of Persons with Disabilities (CRPD), in which deaf people and sign languages are included, as posing limitations on the right to be different. An example of this limitation is to be found in current discussions on the interpretation of Article 24 of the CRPD on education. Deaf (and blind) people’s interpretation of this article is distinct from that of other groups of persons with disabilities (Murray, De Meulder, & le Maire, 2016), yet the CRPD’s framework is such that it is not self-evident to accommodate these differences. Another and even more explicit example is the UK Human Fertilisation and Embryology Act (HFEA) (2008), more specifically Section 14(4) which imposes a prohibition to prevent the selection and implantation of embryos for the purpose of creating a child who will be born with a “serious disability”, and which was passed with the case of selecting deaf children in
mind (Porter & Smith, 2013). Although an international campaign has opposed the law leading to references to deafness being removed from the explanatory note for clause 14(4), it opened up the question whether deafness falls within or outside the scope of the term “serious disability”. Bryan and Emery (2014, p. 38) describe HFEA as framing deaf people “as inhabiting a negative state of being” and stating “what it expects from the behaviour of Deaf people”.

### Political culture and language policy in Scotland

As of yet, Scotland is a part of the UK. The Scottish Parliament was established in 1999 after a process of devolution and has legislative and executive responsibility for a wide range of domestic public policy while the UK Westminster government retains responsibility for reserved matters such as equality legislation. Scotland has 32 local authorities, which have far-reaching functions, including education and social services.

Scotland has a distinct, more left wing progressive political culture than that of the rest of the UK (McCrone, 2001). It has repeatedly deviated from Westminster on major issues such as free personal care, the abolishment of prescription charges for medicines and tuition fees, and its political agenda is characterised by a pro-European Union (EU), nationalist frame of reference. The Scottish Parliament in previous legislation has advanced the rights of citizens as users of public services (e.g. the 2002 Scottish Public Services Ombudsman Act). In that respect, it is maybe no coincidence that Scotland has been the first part of the UK to grant legal status to BSL, since it distinguishes the country from the rest of the UK, something in which it takes great pride given its nationalist aspirations.

Although English is the main language of Scotland, an estimated 150 other different languages are in use in the country. The Scottish Government often considers them as five main language groups: English, Gaelic, Scots, BSL and community languages (such as Urdu and Arabic), which have been brought to the UK by immigration (Scottish Government, 2007).

Despite changes in the last 20 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. 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. The tendency is more toward “administrative enabling” or “planning-based” models of language planning and language legislation (Dunbar, 2002). The Welsh Language Act 1993, the Gaelic Language (Scotland) Act 2005 and the British Sign Language (Scotland) Act 2015 are examples of this.

### Data sources

For this article I have drawn from a data collection toolkit including interviews, transcripts of parliamentary debates and evidence sessions and posts on a Facebook group set up by the Scottish Government.
The usual parliamentary process for a Scottish Parliament Bill consists of three stages. Stage 1 entails a consideration of the general principles of the Bill by parliamentary committee(s), normally asking members of the public for their input, and a debate and decision on these by the Parliament. Stage 2 entails a detailed consideration of the Bill by parliamentary committee(s), including any proposed amendments. Stage 3 is the final consideration of the Bill by Parliament and a decision whether it should be passed or rejected. At the end of each stage, there is a parliamentary debate.

After lodging the Bill in the Scottish Parliament the Education and Culture Committee (hereinafter “the Committee”) was designated as the lead Committee for the consideration of the Bill. In addition to gathering written evidence, they organised three oral evidence sessions to scrutinise the Bill for which both deaf and hearing experts were invited to sit on a panel. The Scottish Government further set up a Facebook group to invite deaf signers to share their views on the Bill, in BSL. Using a discourse-analytic approach I have analysed the transcripts of these evidence sessions, as well as the official reports of the Stages 1, 2 and 3 debates, and posts on the Facebook group, for any influence of deaf signers’ dual category status on the planning process for the Act. An additional source of data have been interviews with several deaf and hearing experts involved in the process. They were affiliated to organisations in Scotland (e.g. SCoD, Heriot-Watt University or the Scottish Parliament) and in that capacity involved in the Act’s preparations and/or negotiations.

**Steering the bill through the stages**

Throughout the different stages, the Bill and arguments for the legal protection and promotion of BSL in Scotland were subject to a particular set of discourses which led to a specific kind of scrutiny linked to signers’ dual category status and to the specific legislative history of the Bill. Firstly the discourse around educational linguistic rights and the importance of these being addressed in the Bill was very prominent in the Scottish government’s consultation with the deaf community. Secondly, there were concerns over the Bill as a “communication issue” vs. a linguistic minority issue. Thirdly, an important aspect of the Bill’s scrutiny was the discussion of its relation to existing equality and anti-discrimination legislation. These three aspects are discussed below.

**Consultation with the Scottish deaf community and the importance of education**

Throughout the Bill’s scrutiny, the Committee sought to engage directly with deaf BSL signers as a linguistic minority, by making the whole process accessible in BSL. Key documents were translated and the evidence sessions were live streamed on the Internet, interpreted into BSL and English and provided with captions. During those evidence sessions, deaf signers on the panel engaged in direct dialogue with MSPs. Another form this engagement took was the setting up of a Facebook group, administered by the Scottish Government, to invite deaf signers to share their views on the Bill, in BSL. This group was a major step forward in consultation with deaf signers and demonstrates the progressiveness of the Scottish Parliament in engaging with its constituents. In reality though, the group was mostly one-way communication of BSL signers’ outpouring of experiences with oppression and communication barriers.
From the very start James Colhoun, an influential older deaf member of the group, stressed that education for deaf children should be the number one priority for the Bill, reflecting the importance of educational linguistic rights described above. During that time, open meetings were taking place set up by deaf community members to inform deaf people about the Bill. After attending such a meeting, Colhoun posted a message that he walked out because of his frustration concerning education:

We talked so much about education in this group but no one cared to explain to me that education is separate and not in the bill. No one! BDA Scotland is only being positive-positive about the Bill. COVER-UP COVER-UP COVER-UP.3 (Colhoun, 2015a, translated from BSL by the author)

After his post, some group members started explaining to him that while education is not directly in the Bill, it can be added afterwards by being a subject of the National Plan, something Colhoun reluctantly accepted.

It is no coincidence that the primacy of education has been at the centre of much of the debates concerning the Bill. In the UK as well, oralism was the dominant educational ideology in deaf education for much of the twentieth century, prioritising the instruction of spoken language over the use of sign language. Because of these educational policies, deaf people have experienced high levels of internalised oppression and illiteracy, and low levels of educational attainment (Ladd, 2003).

Therefore from the early start, the educational linguistic rights and language acquisition rights of deaf children have been one of the primary aims of sign language recognition campaigns (Ladd, 2003). Indeed, the campaigners knew that the quality of life for their communities depended on maintaining a critical mass of deaf signers and that this in turn depended for a great part – as for any cultural-linguistic minority – on education. Sign language acts often give the impression that recognising a sign language primarily means providing more interpreters, and the BSL Act is no exception (see also further in the article). While access to majority society is indeed an important aim of the campaigns for sign language recognition legislation, the initial aspirations for those campaigns were not about interpreters in the first place, but about education and language acquisition rights for deaf children.

Currently, the primary aspirations continue to be education and language acquisition rights, maybe even more so than ever before. Indeed, the medical discourse has again become increasingly prominent. An estimated 80% of deaf children born in the global North are now receiving cochlear implants (Napier & Leeson, 2016). This development coincides with monolingual education practices in spoken language promoted by doctors and early intervention services and practiced by hearing parents who do generally not receive appropriate advice and information on multilingualism and the cognitive, social and emotional benefits of early exposure to sign language (Humphries et al., 2012).

This medical discourse went alongside with – and functioned as a catalyst for – a discourse emphasising educational inclusion of children with disabilities, which in most cases means that an individual child with a disability is placed within a local regular school. As a consequence in recent years deaf communities have been witnessing the closure of deaf schools. In the UK, the number of such schools has fallen from 75 in 1982 to only 21 in 2016 (Weale, 2016). These schools have traditionally served as spaces for peer contact between deaf children and adults, and thus as crucial spaces for the development
and intergenerational transmission of sign languages and deaf cultures. While deaf children placed in regular schools should receive support measures and/or reasonable accommodations such as sign language interpreters and sign language competent teachers this is often not the case, and many are isolated among nonsigning children. In Scotland, around 80% of deaf children attend mainstream schools without any specialist provisions (Consortium for Research in Deaf Education, 2015). Deaf-led NGOs have traditionally resisted having deaf children swept under the mandate of “full inclusion”, seeing individual placements in local schools as linguistically and socially isolating. The World Federation of the Deaf advocates for deaf children to be taught in groups, or in separate schools or settings through the medium of sign bilingualism (Murray et al., 2016).

This all illustrates the disappointment of Scottish deaf signers with education not being directly addressed in the Act. It also very clearly speaks to the unique legislative history of the Act with the presence of organisations “for the deaf”; mainly hearing-led, charitable bodies with a long history of stepping in to represent deaf people’s “best interests” where they have felt that deaf people could not to so for themselves (De Meulder, 2015a). This representative imbalance with only a minority of BSL signers involved would be inconceivable for other minority languages and might partly clarify why education was not at the forefront of the debates:

I want to know whose idea the Bill was. Hearing or deaf? Which group? […] The organisation must be secret because we don’t know! […] I feel we all should know because I’m sure in the debates, education came up first. I believe that would have been a very different Bill […]. (Colhoun, 2015b, translated from BSL by the author)

It further points to the absence of a well-organised grassroots campaign in active support (or critique) of the Bill, despite responses to the Bill’s consultations which showed that BSL signers need and want to be involved as advisors to the Scottish Government (De Meulder, 2015a).

**Disability/communication issue vs. linguistic minority issue**

During the Bill’s parliamentary scrutiny, a recurring theme was the comparison with other autochthonous languages in the UK, and the wish to see BSL treated as a language, not a communication issue weighed against “other communication needs”. Graham Turner (Heriot-Watt University):

As soon as we talk about comparisons between BSL and Gaelic, we recognise that we are a long way away from asking questions about disability and resources around disability. For example, nobody says: “Can we afford to support Gaelic? If we do so, Makaton” users will be disadvantaged.” That gives us a clear idea of being in different territory altogether as soon as we view BSL users as a linguistic minority. (Scottish Parliament, 2014b, p. 58)

The Bill creating a focus on BSL as a language would emphasise the difference with other legislation focusing on disability or equality aspects or on “deaf communication” issues. Graham Turner (Heriot-Watt University):

It is not a disability issue or a deaf communication issue; it is simply a linguistic minority issue, and the Bill affords us the opportunity to deal with it in such terms. (Scottish Parliament, 2014b, p. 43)
The Scottish Government understood this position, remarking that:

Deaf BSL users consider themselves a distinct language group and not disabled. They have a unique culture, history and life experience as a language minority and feel that action to improve their inclusion in society should be based on exactly the same language approach to other groups, such as speakers of Gaelic or Welsh. (Scottish Parliament, 2015, p. 36)

Clark Denmark, an independent deaf panel member, referred to the dual category status of deaf people:

You heard earlier this morning that the deaf community does not accept the disability label and we see ourselves as a linguistic minority or community. This does not need to be an either/or situation. We are not going to say that we are not disabled; we understand that we cannot hear and that that creates barriers to how we access society. However, that is the secondary issue for us. The Bill recognises that we put our language, identity and culture first [...]. (Scottish Parliament, 2014b, p. 53)

The concerns over this issue originate in previous developments regarding the Bill in which certain organisations and individuals attempted to influence it to include “other communication needs”, for example, lip-reading, hearing aids, subtitling, sign-supported-speech, etc. (De Meulder, 2015a). They are also grounded in wider concerns. In 2013, MP Malcolm Bruce proposed the Communication Support (Deafness) Bill 2013–2014 at the Westminster Parliament, which sought to establish a body to assess provision of communication support for deaf people and to make recommendations. However, it failed to complete its passage through Parliament before the end of the session. The Bill was illustrative of how signers’ dual category status can negatively influence sign language recognition legislation, by taking away attention from linguistic and cultural demands and divert it to “accessibility” and “communication issues”. Countries like 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 communication needs” (De Meulder, 2015b).

In the UK, these practices for a large part have to do with the country’s charity system, where the government has transferred major social responsibilities to nongovernmental organisations. Instead of a direct relationship of engagement between minority language associations and the government, such as occurs for Gaelic and Welsh, deaf signers in the UK have traditionally also been represented by charities for deaf people (Ladd, 2003). Many of these charities have an at least ambiguous relationship with and attitude to BSL, with some even holding an explicit agenda supporting policies which may result in the future eradication of the BSL community, like biomedical research projects such as stem cell technologies. For the southern European countries where this kind of legislation has been passed, this partly seems to have to do with the presence of parent associations adhering to an oralist ideology, which stymie the recognition process and water down its outcomes (e.g. Geraci, 2012; Quer, 2012).

Relating with existing equality legislation

From evidence given to the Committee, it appeared that while everyone agreed with the aim of the Bill – to raise the profile of BSL – there were differing views on whether the Bill was the best way to achieve this. The public bodies suggested that BSL signers are
already protected under existing disability discrimination legislation, primarily the Equal-
ity Act (2010), since employers and service providers have an obligation to make reason-
able adjustments. They saw the requirement to develop BSL plans as an unnecessary
duplication of existing duties under the Equality Act, and therefore opposed the Bill.

This meant that during parliamentary scrutiny, deaf panellists ended up spending a lot of
time having to explain why the Equality Act was not sufficient and not effective. In that
process, the following arguments were proposed:

- The Equality Act labels deaf people as disabled and tries to fit linguistic issues into legis-
lation that is designed for disability. This was acknowledged by the Committee, stating: “[…] it is only right that we treat deaf people as we would any other people who wish to put their language rights into law” (Scottish Parliament, 2015, p. 19).
- There is considerable ambiguity on what constitutes a “reasonable accommodation” because the adjustments deaf people need are often deemed “not reasonable”, particu-
larly when it comes to language issues.
- The very possibility to enforce the Equality Act depends on deaf people having access to the (legal) means to use it. Properly implementing the Act and thus challenging dis-
crimination would mean going to lawyers and launching formal complaints which many deaf people are not able to do given the barriers they already face.
- The Bill is seen as pro-active while the Equality Act is based on a different approach,
with government and public services needing to make “mistakes” first which can then be acted upon by legal means.
- Many deaf people are unsure about what is covered by the Equality Act, thinking it is about racial discrimination only.

Ironically, the very existence of equality legislation has also been one of the reasons why the BSL Act confronted limitations regarding its scope. It had to stay clear from reserved matters on legislation related to equality:

One aim of the Bill is to promote BSL – it can act as a flagship, a symbol for BSL. But it can’t guarantee anything like access to education in BSL. The Equality Act already covers that.
(personal communication M. Griffin, MSP, 17 May 2012)

It was acknowledged that the Bill could work not in replacement of equality legislation but in addition to it, having a different focus and feeding into equality legislation. Liam McArthur, MSP, summarised this very concise:

The clear message is that the situation is patchy, despite the Equality Act 2010, the Disability Discrimination Act 2005, the human rights framework and the range of services that already exist. The deaf community is telling us that there is frustration that the patchiness exists despite those legislative levers – which are, let us face it, significantly more substantial than those proposed in the Bill. The deaf community is saying that the Bill offers an oppor-
tunity to identify and symbolise the importance that we attach to BSL. Then, through the levers in the Equality Act 2010 and the human rights framework, we should start to see a more consistent approach to improving access for the deaf and hard of hearing community.
(Scottish Parliament, 2014b, p. 26)

The relation with existing equality and anti-discrimination legislation and the specific kind of scrutiny the BSL Act was subjected to as a result of this, points to the conflict that exists
between different conceptualisations of deaf signers. It is also worth pointing out that the existence of this legislation was one of the reasons the BSL Act was unavoidably limited in its scope. This means that the disability categorisation can pose limitations on what sign language legislation can achieve. However, disability discrimination legislation, despite its flaws and implementation problems, is still more substantial than the provisions in the Act, and can bring in practical measures to ensure things like equal access and protection from discrimination. On the other hand, as Bryan and Emery (2014) argue, this legislation has largely been about fitting into existing structures through equal access, which for deaf people in almost every case is conceptualised as access to services through sign language interpreters. This brings us to the next section.

**Deaf signers’ dual category status affecting sign language recognition legislation**

The next part will discuss how signers’ dual category status has affected (the implementation of) sign language recognition legislation in general and the BSL Act in particular. Two aspects are highlighted: the interpretation of language rights for deaf signers as the use of interpreters and the dependency argument on which recognition of BSL in Scotland was (also) based. This leads to the argument that it is essential that the protection and promotion of sign languages includes recognition of the multilingual practices of signing communities.

**Access to services: the casualness of sign language interpreters**

In the BSL Act, although not stated explicitly, the assumption is that access to services will be guaranteed through the provision of sign language interpreters. An increase in the number of interpreters was also explicitly seen as one of the aims of the Act. Mark Griffin, MSP:

I hope that if the Bill is passed, the promotion of BSL in the public life will lead to a resurgence of the language and an interest among all people in learning it, which in turn will create an upturn in the number of interpreters who come into the system. (Scottish Parliament, 2015, p. 54)

This interpretation is not unique to the BSL Act. The meaning of “language rights” and the right to access services as expressed through sign language legislation is in most if not all cases understood and implemented as the right to access services through a sign language interpreter. In reality, there is thus no case of bilingual service delivery; it merely concerns service delivery in the majority language, mediated through an interpreter. It is illustrative of their dual category status that the right to access to services is understood and implemented differently for deaf signers than for other language minorities. For Gaelic speakers, the right to access services in one’s own language means having the right to services in Gaelic by personnel competent in Gaelic. It is not understood nor implemented as the right to access services through an English-Gaelic interpreter. However most sign language legislation presupposes, at best, that there will be interpreters or that they have to be made available (a point also made by Reagan, 2010). Although acquisition planning is an important aim of sign language recognition, in most cases this is understood as the need for deaf children to acquire sign language early – which is understandable given
deaf communities’ historic and contemporary situation. However in most cases, in legislation this acquisition planning is not understood as the need to expand the number and proficiency of people using the language, whether it be (deaf or hearing) L1 or L2 signers.

The Scottish Parliament recognised this desirability to access services directly in sign language. Mark Griffin, MSP:

Would it not be fantastic if BSL users could access healthcare and housing advice, report a crime at a police station and get advice from their local authority in their own language because the professional who was delivering the service was deaf or deafblind? (Scottish Parliament, 2015, p. 9)

Jayne Baxter, MSP:

We may also have to encourage more widespread take-up of BSL among employees in front-line services, such as council, jobcentre and health services. (Scottish Parliament, 2015, p. 37)

Nevertheless, the provision of interpreters seems to be perceived as the more logical or achievable option. There might be several reasons why linguistic rights for deaf signers are primarily understood, and sustained, as having access to services through interpreters.

First of all, the dual category status of deaf signers means that their categorisation as disabled persons in public policy is automatically seen as justifying their right to interpreting services, or, reversed, their right to interpreting services is seen as arising from the nature of their disability (a point also made by Wilson, Turner, & Perez, 2012). Also ironically at least in the UK but arguably in most EU countries, the status of sign language interpreting is more secure than that of other public service interpreting provision. Wilson et al. (2012) mention two reasons for this. The number of deaf people remains largely stable and the demand for services correspondingly constant. Also, for other language minorities, public service interpreting has historically been seen as a temporary measure until they acquired the majority language and could manage without interpreter. Another reason is that the dispersed nature of signers would make it difficult to practically implement the right to services in one’s own language by personnel competent in BSL. This is different for, for example, Gaelic speakers, who live in more or less territorially concentrated areas. But even for them, implementation problems have been noted (Walsh & McLeod, 2008). Further, in Scotland, very few professionals can communicate directly in sign language or at least have enough proficiency to deliver services without an interpreter, and there is no clear progression pathway for professionals who are able to do so (Macpherson, 2015). The number of deaf professionals in public services like health care, social care, the judicial and administrative systems, is tiny. Lastly, Deaf communities’ advocacy organisations like the World Federation of the Deaf and the European Union of the Deaf very much see the use, training and provision of sign language interpreters and interpreting services as a major priority of public policy.

However, the sole provision of interpreters is problematic for several reasons (see also Wilson et al., 2012). First of all, the provision of sign language interpreters is lacking almost everywhere, both in terms of quality of the provision as in terms of the potential interpreters per deaf person. In most countries there is a significant shortage of sign language interpreters (De Wit, 2012) and even then the number of interpreters per country highly varies between countries (e.g. 80 registered interpreters in Scotland
against 750 in Finland, for an equal number of deaf people). The Committee was aware of this problem, stating that “there is no point in having good plans if the practicalities cannot be delivered” (Scottish Parliament, 2015, p. 39). Also in many countries remote interpreting services are under-developed or even non-existent, which is especially problematic in countries with many rural areas, like Scotland. Thirdly, for specific services such as health care services, it is crucial to be able to have direct communication with a doctor instead of through a third person and internationally, deaf people have reported fear, mistrust and frustration as their main experiences of health care encounters (Kyle, Reilly, Allsop, Clark, & Dury, 2004).

This demand of signers to access services directly in sign language could be addressed at both the level of policy and practice, rather than in legislation. Policy and practice should take into account the benefits in the long term of one, hearing people learning sign language and two, empowering and enabling deaf people themselves to be educated so they can provide services to their fellow citizens. This entails first of all that hearing (and deaf) children get access to sign language as an optional subject in the national curriculum, and are provided the opportunity to study BSL throughout their school career and in higher education. Currently, Scotland is working towards providing the opportunity for all school age children to learn BSL through the “1 + 2 languages” programme. Secondly, urgent attention must be given to the educational opportunities of deaf children. This seems to be one of the ambitions for the first National BSL Plan. The Scottish Parliament’s Education and Culture Committee also recently finalised a study into educational attainments of pupils with sensory impairments (Education and Culture Committee, 2015), which can contribute to this.

Recognising multilingualism and the role of sign language legislation

Throughout the Bill’s scrutiny, MSPs often justified legislation for BSL arguing BSL is the “only” language deaf people have. Mark Griffin, MSP:

If you feel, as I do, that it is right and proper that BSL, which is the language of a significant proportion of people in Scotland and is the only method of communication that they use, in that they have no opportunity to learn spoken English, should be given priority, we have to put in the resources to match that. (Scottish Parliament, 2014a, pp. 8–9)

The Parliament emphasised that “unlike people who speak other minority languages, many deaf sign language users cannot learn to speak English, as they cannot hear the language” (Scottish Parliament, 2015, p. 7). Despite the Committee stating at several occasions that they wanted to treat BSL signers as any other language minority group in Scotland, in practice they did not always do that, and also justified legislation on deaf people’s perceived monolingualism in BSL. This is again illustrative of how deaf signers’ dual category status influences legislation and discourses. The Gaelic Language Act has not been justified, nor by Gaelic speakers nor by the Scottish Government, by saying that Gaelic speakers have problems using or acquiring spoken English. Gaelic speakers’ efforts for legislative support have been based on the promotion of difference-aware equality, “a desire to participate in British society, without having to sacrifice completely their linguistic and cultural identity” (Dunbar, 2006, p. 191). While deaf signers justify the need for legislation on exactly the same base (De Meulder &
Murray, *in press*), these justifications seem to not been fully understood by policy makers and academics. Dunbar (2006) states that in the UK, the argument for language legislation is most compelling in respect of speakers of minority languages who lack sufficient command of English. Writing in a period before the passage of the BSL Act, he argues that little if any legislative support for other linguistic minorities (than Gaelic speakers) in the UK (e.g. deaf signers and speakers of community languages) is difficult to justify because in many cases those minorities have an insufficient command of English. “Some, such as the hearing impaired, will by definition be permanently dependent on communicative skills in sign languages” (p. 198).

There are several potential problems with what I call these *dependency arguments*. Firstly, they perceive deaf people as functional monolingual in sign language, a view contrasted by reality. Deaf signers live in and among majority cultures and languages, and use these languages on a daily basis with various degrees of proficiency, from basic to (near)-native. Secondly, they make deaf people’s claim for language rights dependent on their ability to “express themselves (fully)” in other languages, or acquire these. Once this is going to be the case, their claim for language rights risks to become redundant. This is a situation already seen in many cases of deaf children (most of them with a cochlear implant) who are subject to monolingual ideologies and do not acquire sign language at home nor at school (Humphries et al., 2012). They may be used to express themselves in a spoken language and therefore, educators increasingly question their “need” for sign language and bilingual education (e.g. Knoors & Marschark, 2012). Thirdly, these arguments fail to observe that for some deaf people, the majority language might be the language they can express themselves more fully in than sign language, which is the case for an increasing number of deaf L2 learners, *and* that there are multilingual deaf people being able to express themselves fully in several modalities of several (signed and spoken) languages. The crucial point here is that sign language recognition legislation needs to acknowledge signers’ multilingualism and the different ways in which they use and identify with several languages in their everyday lives, and not make the right to sign language dependent on signers’ ability to master other languages.

These observations further demonstrate that the legal protection of minority languages: is seldom if ever understood as the protection of multilingualism (citizens’ right to know and use both the minority and the majority language) but as protection of a certain language variety, preferably a defined, codified and acknowledged one. (Laakso et al., 2016, para. 2)

It is not straightforward to recognise what this multilingualism means in different contexts for different language communities. While there is a wealth of literature on multilingualism in spoken minority language communities (e.g. Blackledge & Creese, 2010) for signing communities this research is only just starting, for example, the Multisign project 2011–2016 carried out by the University of Central Lancashire” and research on translanguaging and repertoires across signed and spoken languages (Kusters, Spotti & Swanwick, in press). Deaf peoples’ broad linguistic repertoires often go unrecognised because they are merely seen as not mastering the spoken majority language (cf. Griffin’s statement at the beginning of this part). Secondly, many minority language policies still operate on the “ethnolinguistic assumption”, namely “the idea that there is a simple one-to-one relationship between a normal, monolingual and monocultural subject’s language use and his or her ethnic identity” (Laakso et al., 2016, para. 1). Laakso et al. (2016, para.
1) argue that this ethnolinguistic assumption is now experiencing a revival in emancipatory movements of linguistic minorities, with member of these minorities “ignoring their internal diversity, downplaying the essential role of multilingualism in their everyday life and assuming a monolingual constructed ‘ethnolinguistic identity’”. This is exacerbated by the gap there might exist between linguists questioning the idea of languages as autonomous entities with clear borders, and minorities emphasising the idea of their language as the “real language”, a symbol and carrier of their ethnic identity.

For deaf communities, this seems to play out in different ways in different circumstances. In April 2016, the “Alexander Graham Bell Association for the Deaf and Hard of Hearing”, a powerful oralist NGO in the USA, responded to an article in the Washington Post highlighting deaf model and political activist Nyle DiMarco’s promotion of deaf children’s access to American Sign Language (ASL) and their ongoing language deprivation (Sugar, 2016). While they recognised ASL “as a communication option for deaf children”, they stated it is only “one such option and its use is declining”. According to them, the number of deaf children “who have a need for ASL has decreased dramatically” (Sugar, 2016).

When the letter gained attention, mostly urban, higher educated deaf people from mostly Europe and the USA used Twitter and the hashtag #AGBellLies to demonstrate and promote their multilingualism in several signed and spoken (written) languages, refuting AG Bell’s claims that sign language would limit deaf children’s opportunities:

Where are your evidence-based arguments, #AGBell? MA in education, skilled @ 8 languages. #AGBellLies. (Toura-Jensen, 2016)

@AGBellAssoc I am a filmmaker. South African Sign Language as my first language and I know 9 languages. Stop #AGBellLies. (Jordaan, 2016)

By promoting the role of multilingualism in their everyday lives, deaf people went against assuming a monolingual constructed “ethnolinguistic identity”. It seems that for specific strategic aims this multilingualism can be demonstrated and even promoted, while for other – such as the legal recognition of sign languages – the importance of sign language as the “real language” and the carrier of ethnic identity needs to be emphasised and the proficiency in other languages is, to a certain extent, downplayed.

**Conclusion**

This article has examined the process of policy development of the BSL Act and how ideas about the dual category status of deaf signers have influenced the process. It has demonstrated that sign language legislation and arguments for sign language rights are subject to a very particular set of discourses which subject them to a degree of scrutiny not experienced by discourses for spoken minority language rights and legislation, which points to the political and societal contexts in which sign languages and deaf signers operate. The legal protection of spoken minority languages might be resisted by majority language speakers out of fear or distrust about what this might mean for their privileged position. Language rights for these groups have also been seen as detrimental for their civic participation and inclusion and linked to their ongoing “ghettoization” – something they have in common with some arguments against sign language rights (e.g. deaf children learning
sign language will “confine” them to the “deaf world”, etc.). The recognition of a minority language might also lead to concerns by other minority language speakers in the same country that they will be placed in a zero sum game with competition for resources.

But sign language legislation confronts additional and distinct challenges: it is placed against disability or equality legislation, is justified by referring to signers monolingualism in sign language, implemented through the provision of interpreters, or seen as contrary to measures which try to compensate for or cure hearing loss. Comparison of these discourses leads to the argument that it is essential that the protection and promotion of sign languages includes recognition of the multilingual practices of signing communities.

The development of the BSL Act further illustrates Bryan and Emery’s (2014) point that “the law”, while giving deaf people protection and rights, can still be used by the dominant group to proscribe how and on which terms deaf people should engage with hearing society. Although the Act acknowledges the contribution deaf signers make to society, it still primarily views them as “service users”. However, it has opened up a space within Parliament and has changed the terms of engagement between deaf signers and Scottish public policy and society. This should be fully recognised. By feeding into equality legislation, it has the potential to make this legislation work for deaf signers. But, as the example from the Facebook group demonstrates, it did not come about as a result of community engagement and grassroots language planning. While it can and will indeed act as a flagship for BSL, it remains to be seen if and how much it will change the status quo for deaf signers in Scotland.

Notes

1. A number of researchers are moving away from the practice of using the term “Deaf” vs. “deaf” and only use “deaf” to talk about individuals, entities or theoretical concepts. They do so because the d/Deaf dichotomy is in fact an over-simplification of an increasingly complex set of identities and language practices (Kusters, De Meulder & O’Brien, in press).
3. These are glosses from BSL, that is, using the nearest equivalent to the sign in printed text.
4. Meanwhile a language planning body, the National Advisory Group (NAG), has been established which will advise on the draft National Plan and on draft Authority Plans. Early on there was a consensus among MSPs that the membership of the NAG should consist of a majority of BSL signers. Ten BSL signers have been recruited to the NAG; nine places will be taken by public bodies who are subject to the BSL Act. It is too early yet to evaluate the impact of the NAG on policy formation and the power allocated to it.
5. Makaton is a language programme designed to provide a means of communication to individuals who cannot communicate efficiently by speaking.

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