

Exposing equality law as it relates to Deaf people: developing Deaf Legal Theory

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Overview

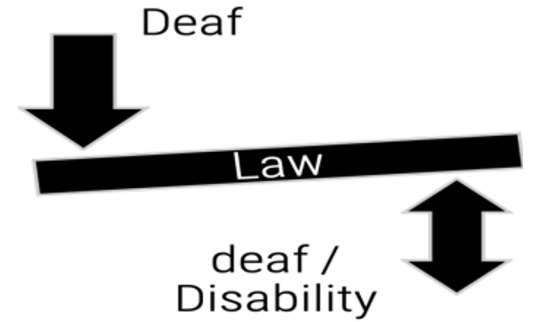


Introduction

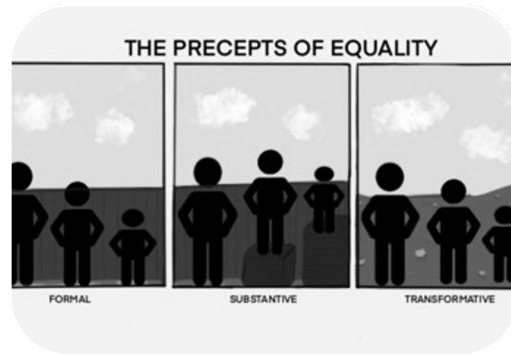
DEAF LEGAL THEORY

EXPOSING INCOMPLETE ASSUMPTIONS

What is Deaf Legal Theory?



The Deaf Legal Dilemma



The Deaf Equality Concepts



Deaf-disabled rights



Conclusions

3 EXPOSING EQUALITY LAW

What is Deaf Legal Theory?

- A new concept in jurisprudence
- Falls within Critical Legal Studies discourse
 - Challenges view that law and lawmakers are neutral and value free
- Law and legal system is 'hearing'
 - Law reflects hearing views
 - Law made to suit a hearing reality
 - Law is patriarchal
- Mainstream law is therefore:
 - 'hearing-subjective'
 - audist
 - 'looks after' deaf people, charity
- Law affords privilege to deaf people who fit within expectations of dominant hearing society – the 'hearing construct'
 - Mainstream education
 - Disability-related benefits
 - Funding for adjustments in workplace
 - NHS-funded cochlear implants and hearing aids

DEAF GAIN

RAISING THE STAKES
FOR HUMAN DIVERSITY



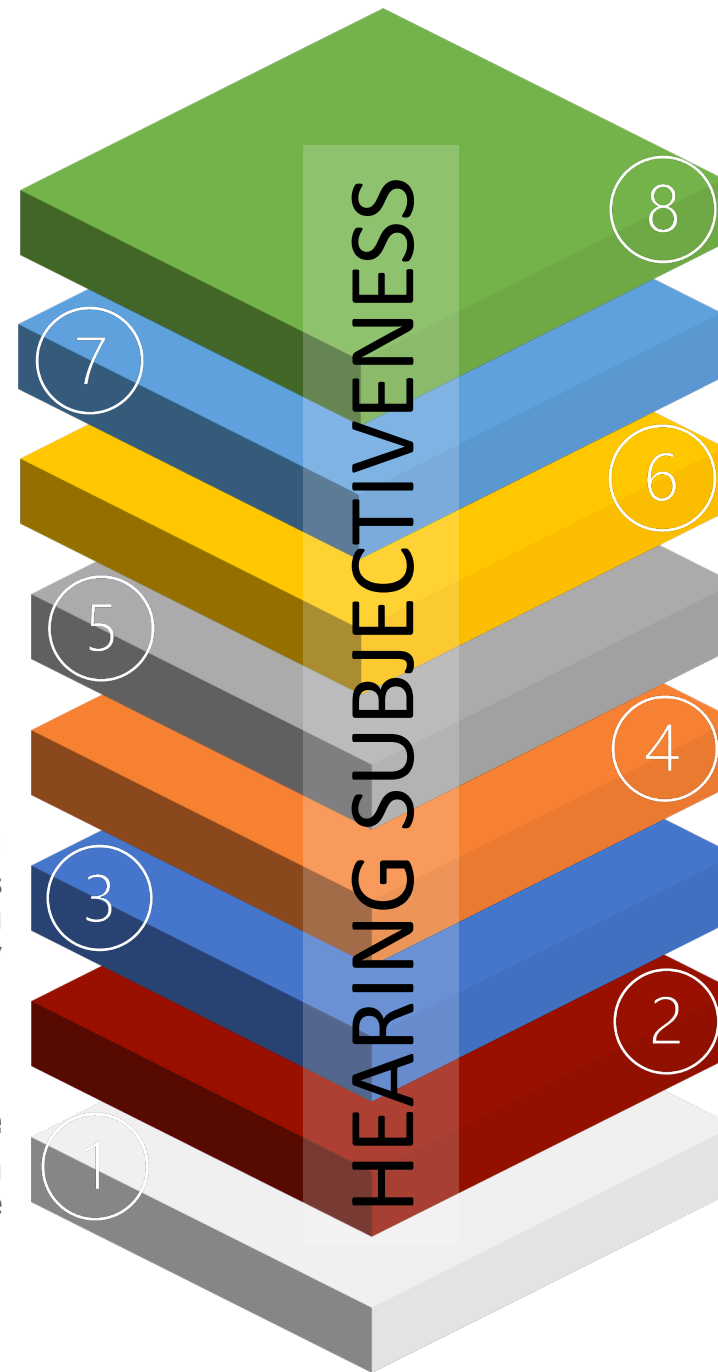
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Afterword by TOVE SKUTNABB-KANGAS

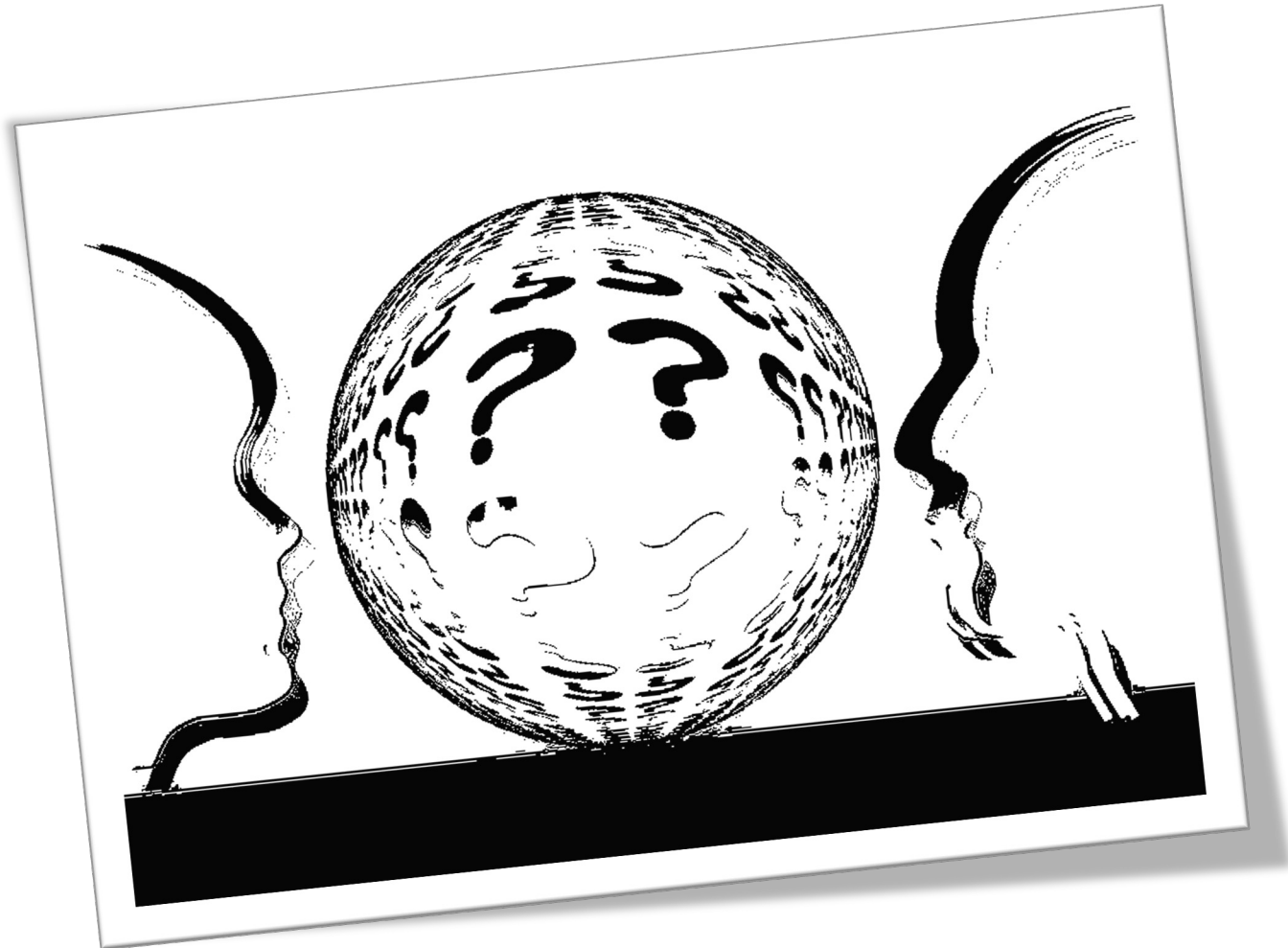
The DLT Method

- 7 Oppression**
Reinforcement of the status quo or new rights?
- 5 Application**
How the law is or should be applied to deaf people (doctrinal elements)
- 3 Participation**
Deaf people's involvement in shaping the law and/or policy
- 1 The frame**
Society's understanding of deaf people



- 8 Lessons**
Lessons to be learnt
- 6 Impact**
Of the law on deaf people and their allies (socio-legal)
- 4 Cultural order**
The imposition of other culture(s) on deaf people
- 2 Assumption**
The manifestation of society's understanding of deaf people

What's the problem?

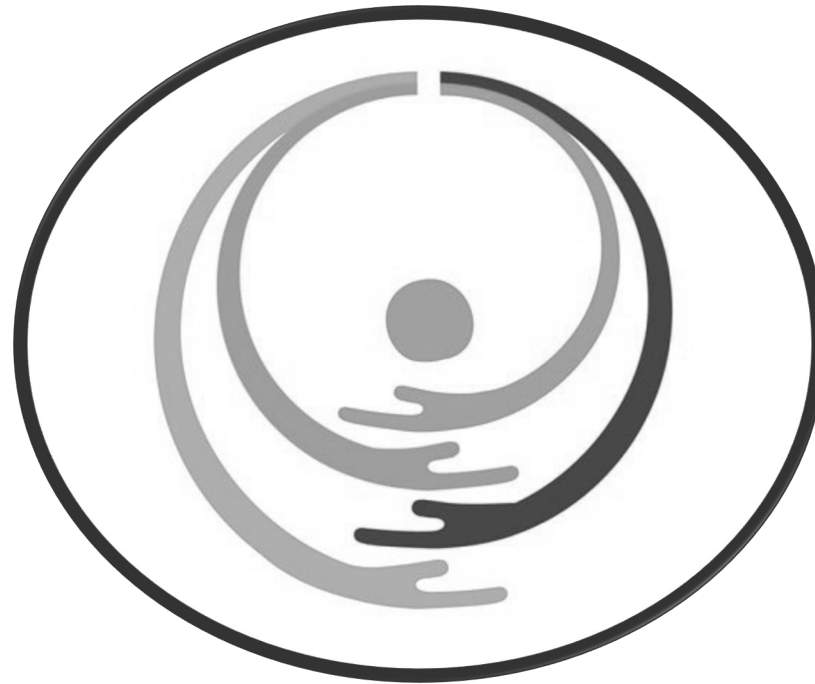


- Number of Deaf people in employment is lower than national average
- Deaf people typically leave compulsory education with a reading age of 8 and less likely to achieve GCSEs (age 15-16) compared to national average due to Government's mainstreaming policy (Milan 1880)
- Deaf people do not have equal access to justice or access to legal advice
- Deaf prisoners experience a "double sentence"
- Deaf people generally have poorer health due to lack of access to health care

Hearing-World



Disabled-World



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

Deaf-World



- A culturo-linguistic group
- Sign Language Peoples
- An ethnic group

Protecting identities



protected

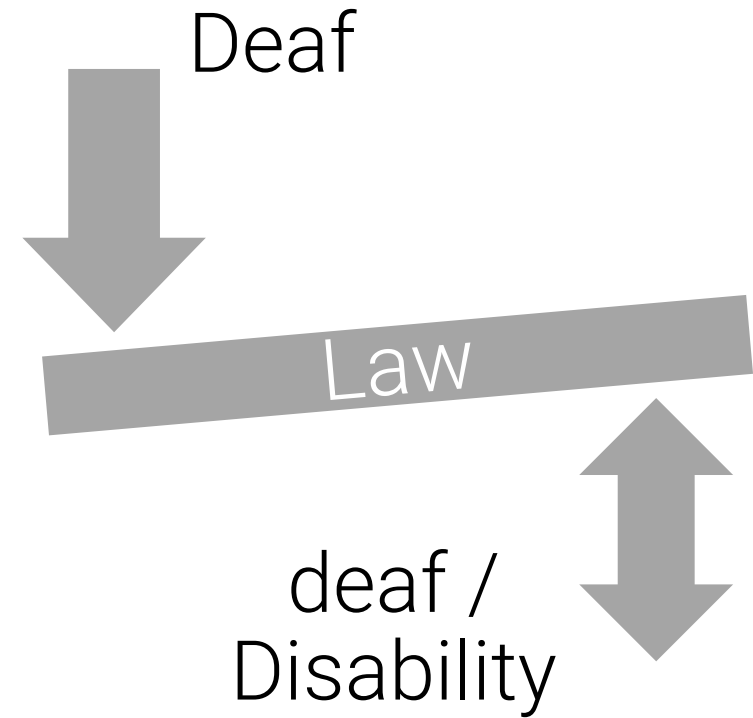
deaf	equality (disability)
disabled	equality (disability)
white	equality (race)
British	equality (race)
Welsh	equality (race)
husband	equality (marital)
father	employment (paternity, social welfare)
lawyer	employment
lecturer	employment
academic	employment

not protected

Deaf

The Deaf Legal Dilemma

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



'The Deaf dilemma: retain some important rights as members of their society at the expense of being mischaracterised by that society and government or surrender some of those rights in the hope of gradually undermining that misconception'

Harlan (2005, p. 297)

Deaf-disabled v language-minority rights

<i>Deaf-disabled rights</i>	<i>Language-minority rights</i>
Enshrined in equality and anti-discrimination law in national disability legislation	Enshrined in legislation that recognises a minority language Implicit (disability) v explicit (language) recognition (De Meulder & Murray, 2017)
Anti-discrimination legislation that ensures fundamental human right of freedom from discrimination can be enforced	Language referred to in various international laws and treaties Sign language recognition law
Require changes in behaviour of individuals and systems and structures of society (Hurst, 2004)	Often tokenistic and no rights Not enforceable
Equality Act 2010 Social Security (Personal Independence Payment) Regulations 2013 European Convention on Human Rights 1950 Convention on the Rights of Persons with Disabilities 2007	European Charter of Regional and Minority Languages 2001 Convention on the Rights of Persons with Disabilities 2007 British Sign Language (Scotland) Act 2015 British Sign Language Act 2022

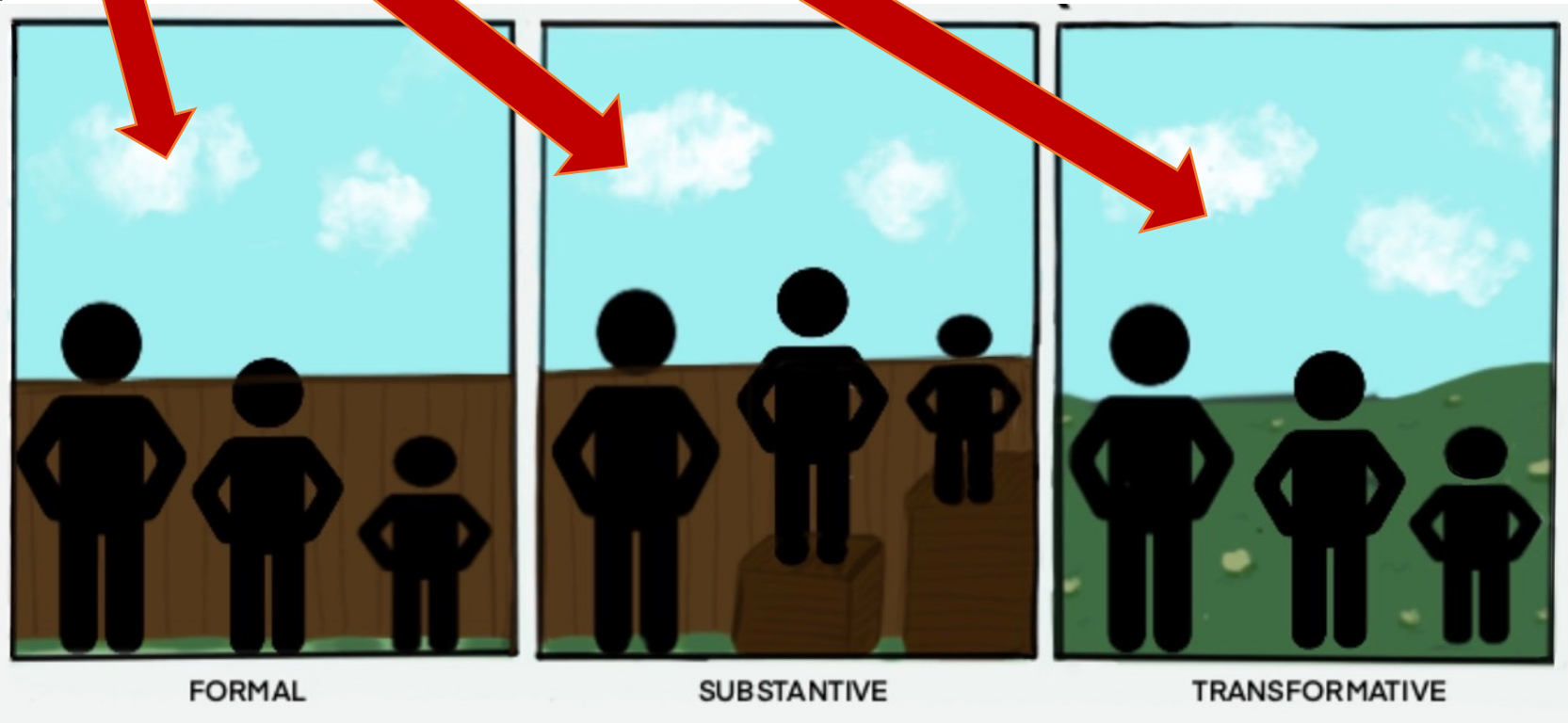
What is equality?

- Equality “lacks precise definition” (McIntyre J, *Andrews v Law Society of British Columbia* [1989])
- *Law v Canada (Minster of Employment and Immigration)* [1999]
 - Abstract nature of the word and abstract nature of the words used to describe them
 - Has an exalted status
- Why?
 - Equality language is general resulting in concepts not quite comprehensive enough . . . open to interpretation = subjective
 - Depends on conceptualiser’s view of society and what it should be (McLachlin)
- No initial agreement among scholars as to what the important questions are (Hellman and Moreau)
- Different analyses of equality may be suited to different protected grounds (Vickers)
 - Fraser suggests that “class inequality is best understood in terms of redistribution, and sexual orientation inequality best understood in terms of recognition“
- Thus question must be: which equality analyses lend themselves more closely to the Deaf-World?





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

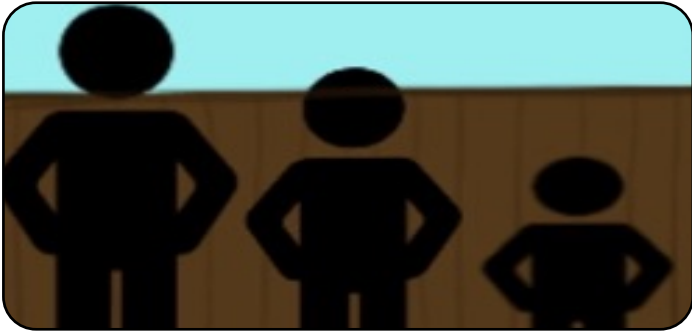


Which equality concepts lend themselves to the Deaf-World?

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

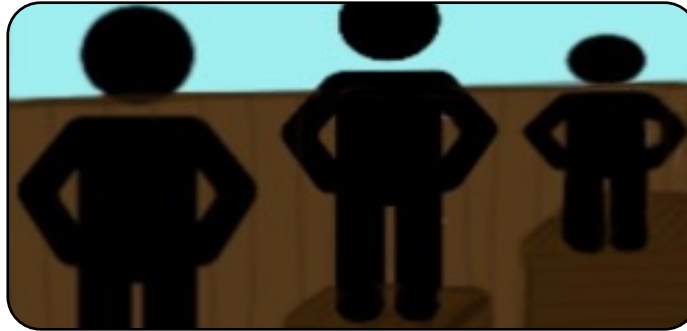


The Deaf Equality Concepts



Formal

- Equal treatment
- Equality of opportunity



Substantive equality

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



Transformative equality

- Social inclusion
- Challenging oppression
- Full participation

Deaf-disabled rights

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

POTENTIALLY
TRANSFORMATIVE
(DIGNITY AND EQUAL
WORTH)

FORMAL
(DIGNITY AND
EQUAL WORTH)



European Convention on Human Rights

Extremely relevant as gives Deaf people various rights, e.g. right to life, right to fair trial, expression

4 cases involving Deaf people

Article 14: protection from discrimination

Limited right, means that only enforceable when other rights are breached

Enforcement difficulties (individual enforcement model)

Equality Act 2010

Reasonable adjustments

Single, one-off adjustments more likely to be reasonable than recurrent ones

Deaf people tend to need recurrent adjustments

Public sector equality duty

Can effect positive change





UN Convention on the Rights of Persons with Disabilities





Refers to national sign languages

Have to exhaust domestic means of redress (individual enforcement model)

Only 34 complaints received to date, 4 related to Deaf people

Applying the DLT method

	The frame Health and medical profession; deafness as an impairment; adjustments as solution	01
	Assumption Medical model of disability; social model of disability; adjustments not language equality	02
	Participation ECHR enacted in 1950 so none; some evidence of consultation for EqA 2010; WFD heavily involved in UNCRPD; (former) equality plans under PSED	03
	Cultural order Hearing v Deaf culture Medical culture	04

	Application Examination of EHCR, EqA 2010, UNCRPD	05
	Impact Minimal impact; PSED shows promise	06
	Oppression Equality law fails to challenge oppression that deaf people experience	07
	Lessons UNCRPD model needs to be directly enforceable; recurrent adjustments issue to be recognised and dealt with	08

Conclusions

- Deaf people have to identify as disabled in order to access their rights = Deaf Legal Dilemma
- The relevant equality analyses to the Deaf-World have been identified
- Precepts of equality are used to identify the effectiveness of equality law
- Formal and substantive equality have shortcomings
- Transformative equality is needed to achieve equality for Deaf people
- There has been an in-depth exposé of equality law through a ***Deaf Legal Theory*** lens
- Need more research to look at whether *language-minority* rights would eliminate inequality

Contact



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