Critical mass and insecurity in minority language policy

Catrin Fflur Huws

ABSTRACT

This article will discuss whether legislation is necessarily effective in terms of changing individual and group behaviours. The central argument is that, although legislation that prohibits specific conduct is likely to impact upon behaviour, permissive legislation will not alter behaviour unless that which is enabled is also facilitated within society. The particular focus of this article will be to argue that the legislation pertaining to the use of the Welsh language in Wales, despite having expanded the domains of language use in an important way, has not shifted the cycle of language non-use that may be identified.

KEY WORDS

Equality – minority languages – bilingual education – language planning - Welsh

1. Introduction

This article will discuss whether legislation is necessarily entirely effective in terms of changing individual behaviour. The central argument is that, although legislation that

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prohibits specific conduct is likely to affect behaviour, permissive legislation, i.e. legislation that allows particular conduct, might not alter behaviour unless practical steps are taken in order to transform entrenched habits. In essence, there is a paradigm in operation that permissive legislation does not shift effectively. The particular focus of this article will be to argue that the Welsh language legislation, despite having expanded the domains of language use[2] in an important way, has not shifted the cycle of language non-use that may be identified. However, the argument posited is equally applicable to other rights-conferring legislation, in particular sex and race discrimination, where equal treatment requirements have not necessarily addressed the underlying causes of inequality.[3] Part I of this article presents a case study, exploring the impact legislation has had on the use of the Welsh language. Part II explains the advantages and the disadvantages of what may be achieved by legislation.

2. The Context

After a long period of active suppression by the State,[4] two indirect consequences of the Second World War led to the re-emergence of the Welsh language in the spheres of education

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[2] G. Schmidt-Rohr, *Die Sprache als Bildnerin der Volker.* (Eugene Diedrichs Verlag, Leipzig, 1932).

[3] C. Seierstad and G. Healy. 'Women's Equality in the Scandinavian Academy: A distant dream?' *Work Employment and Society* (2012) 26 p.296.

[4] R.O. Jones, *Hir Oes I'r Iaith: Agweddau ar Hanes y Gymraeg a'r Gymdeithas.* (Gwasg Gomer, Llandysul, 1997).

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and law. The evacuation of schoolchildren from England to Wales meant that English became the schools' lingua franca, and as a reaction to this, the first Welsh-medium school was established.[5] Since then, a number of Welsh-medium schools have been established, Welsh became a compulsory subject for all schoolchildren[6] and more recently, there has also been a significant increase in Welsh-medium provision in further and higher education.

Secondly, prisoners of war tried before the allied courts in the United Kingdom were permitted to speak their own language, and thus, the fact that Welsh-speakers were not permitted to speak Welsh in courts in Wales came to be viewed as unjustifiable.[7] This led to the enactment of the Welsh Courts Act 1942[8] which allowed any person who considered that he would be disadvantaged by speaking English, to address the court in Welsh. Subsequent legislation[9] established an unqualified right to speak Welsh in legal proceedings and also required public bodies, including those involved in the administration of justice to prepare schemes detailing the actions they would undertake in order to fulfill this obligation.[10]

In 2011, the Welsh Language (Wales) Measure 2011[11] was the first statute enacted by the National Assembly for Wales under the powers conferred by the Government of Wales

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[5] C. Betts *Culture in Crisis.* (The Ffynnon Press, Upton, 1976).

[6] The Education (National Curriculum) (Exceptions in Welsh at Key Stage 4) Regulations 1994 SI 1270.

[7] G.P. Davies 'Statws Cyfreithiol yr Iaith Gymraeg yn yr Ugeinfed Ganrif.' (1998) *645 Y Traethodydd* p.76.

[8] (1942 5 and 6 Geo 6 Ch. 40)

[9] The Welsh Language Act 1993(1993 c.38)

[10] The Welsh Language Act 1993 s5.

[11] (2011 NAWM 1).

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Act 2006.[12] The Measure confers official status on the Welsh language (s.1), but the standard of bilingual service to be provided by public and private organizations (again including those involved in the administration of justice) is to be set out by the Welsh ministers (s.26).

In principle, the situation of the Welsh language should have been improved in a significant way. According to Fishman's[13] original principles for language revitalisation, the introduction of high prestige domains for a minority language should encourage use and inter-generational transfer. Usage in higher education and government is the top tier in Fishman's Graded Intergenerational Disruption Scale (GIDS) model and indicates that reversing language shift has "*by and large succeeded in recreating a natural self-priming mechanism for the reproduction of the language community.*"[14]

Yet, the decline in the number of speakers has not been reversed.[15] Despite the fact that all children are taught Welsh up to the age of sixteen, this does not translate as extensively into usage outside the school environment.[16] In essence, there is one reason for this – in

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[12] (2006 c.32).

[13] J.A. Fishman *Reversing language shift*. (Multilingual Matters; Clevedon, 2001).

[14] F. Grin and F. Vaillancourt, *Language Revitalisation Policy: an analytical survey: theoretical framework, policy experience and application to Te Reo Maori.* Treasury Working Paper 98/6, 1998.

[15] Office for National Statistics (2012) 2011 Census: Key Statistics for Wales, March 2011. http://www.ons.gov.uk/ons/rel/census/2011-census/key-statistics-for-unitary-authorities-in-wales/stb-2011-census-key-statistics-for-wales.html#tab---Proficiency-in-Welsh. Visited on 29 April 2016.

[16] Welsh Government. *A living language: a language for living.* (Welsh Government, Cardiff, 2012).

Bourdieu's terms,[17] Welsh is perceived to have less cultural capital than English, a perception that is then borne out by the fact that the language may be used in a less flexible range of circumstances – speaking a language requires that others are able to understand that language. By definition a minority language is one that only a minority of people within a geographical space understands. This means that the language is perceived as being less marketable as a social tool for obtaining the desired goal, and is caused in part by the entrenchment of language non-use.[18] The more a language is used, the more usable it becomes. Welsh may have regional status according to Lewis and Simons EGIDS scale,[19] but it has less prestige and breadth of usage categories than a language that has national or international status.

Despite there being an apparent equality of opportunity to speak and use Welsh on an equal basis with English, entrenched habits on the part of speakers and behaviours on the part of service providers cause English to be maintained as being the more accessible and advantageous language to use – just as apparently equal opportunities policies in employment are more readily accessed by non-disadvantaged groups.

In the employment context for example, the concentration of women in part time work (where there are fewer opportunities for training and advancement), work in the public sector rather than the private sector, and every day practices within employment

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[17] P. Bourdieu *Ce Que Parler Veut Dire: L'Economie des Echanges Linguistiques.* Paris; Fayard, 1982.

[18] C. Ferguson. 'Diglossia.' *Word (1959) 15* p.325–340.

[19] M.P. Lewis, and G.F. Simons. 'Assessing Endangerment: Expanding Fishman's GIDS.' *Romanian Review of Linguistics* (2010) 55(2*)* p.103-120

that hinder women's mobility means that men are likely to be in more highly paid and highly esteemed roles.[20] Examples of the latter might include situations where women are criticised much more heavily for failing to provide support and feedback (seen as more feminine roles), whereas men are more likely to be able to eschew such responsibilities without sanction, and are thus entitled to focus on more highly esteemed activities within the organisation.

Modood[21] provides a further example of this with reference to Pakistani and Bangladeshi women. Despite employment that prevent sex and race discrimination, the fact that the culture places a great store on motherhood means that childcare responsibilities often puts them outside the employment market or disadvantaged because their commitment as parents means that they cannot participate as effectively in a late hours culture or tasks – often those that deliver significant rewards in terms of praise and career advancement – that involve travelling or absence from home.

If legislation and educational policies are to succeed, they need to address, and alter, existing patterns of behaviour and to challenge institutional attitudes and practices that perpetuate cycles of non-use. That which follows is an explanation of how a cycle of linguistic non-use has emerged in Wales, and how it operates in the administration of justice and the operation of legal education. It will then be possible to evaluate the extent to which the legislation has succeeded in altering this pattern.

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[20] L. McDowell, *Capital Culture*. Blackwell; Oxford, 1997.

[21] T. Modood, R. Berthoud, J. Lakey, J. Nazoo, P. Smith, S. Virdee, and P. Beishon (eds.) (1997) *Ethnic Minorities in Britain*. (Policy Studies Institute, London, 1997).

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3. Part 1: The linguistic Cycle

3.1 The critical mass

Two key factors have been identified as causing language non-use – a reduction in the critical mass of speakers,[22] and the alienating effect of linguistic formalisation.[23] A reduction in the critical mass of speakers prevents the language from being spoken in an unmarked way - unmarked meaning the absence of strategic decision-making regarding which language to use.[24] Monolinguals speak only one language because they are able to navigate their environment solely through the medium of that language and they do so because there is a critical mass of people who also speak the same language.

Bilinguals however are bilingual because there are situations in their lives where it is necessary to speak in language A and situations where it is necessary to speak in language B. Where one of those languages is a minoritised language, by commencing a conversation in one language, the speaker risks not being able to access the service because the listener does not understand that language - the listener does not 'hear' the speaker in the sense that the

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[22] M. McIntyre. *The Revival of Scottish Gaelic Through Education.* (Cambria Press, Amherst, 2009).

[23] H. Ni Ghearain. 'The Irish language and the Law: some status and corpus issues' *Cambrian Law Review (2007)* 38 p.1.

[24] C. Myers-Scotton, *Codes and Consequences: Choosing Linguistic Varieties*. (Oxford University Press, Oxford, 1991).

words spoken by the speaker are meaningless to the listener. The language choice is marked – the speaker must choose either to take the risk of speaking the minority language, and consequently of not being understood and being asked to repeat the information, or to use the language that the listener is certain to understand. Language then becomes a choice – the speaker can switch to using the language of the listener, or can wait until a fellow speaker becomes available.[25]

Such decision-making is also encountered by other marginal groups – essentially the question is does one assimilate or maintain one's difference? Women report having to adopt the long hours culture of their counterparts in order not to be left behind in employment terms.[26] Research has also indicated that people with 'white' sounding names (Emily, Greg) are more likely to be called for interview than people with 'black' or 'Asian' sounding names (Lakisha, Jamal).[27] Like the bilingual person, the non-white person has to choose whether to be proud of his or her identity while realising that it may disadvantage them in employment terms and perpetuating stereotypes, or to assume a more 'acceptable' identity by changing their name and appearance. As with language, the choice is marked – it is made not from personal preference but on a strategic navigation of how to gain favour and advantage.

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[25] Bourdieu, *supra* note xvii.

[26] L.M. Brady, C.L. Kaiser, B. Major and T.A. Kirby. 'It's fair for us: Diversity structures cause women to legitimize discrimination' *Journal of Experimental Social Psychology* (2015) 57 p.100.

[27] M. Bertrand and N. Mullainathan (2004) 'Are Emily and Greg more employable than Lakisha and Jamal?' *American Economic Review (2004) 94*(4) p.991-1013.

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3.2 The language shift

Over time, this type of marked linguistic choice is likely to lead to what Fishman terms 'language shift'[28] – a situation where most speakers of a minority language switch to using the dominant language because the objective of communication is more likely to be attained.[29] Gradually, language shift becomes entrenched[30] and speakers become accustomed to using the dominant language. They then lose fluency in the minority language[31] and do not perceive there to be a significant incentive for inter-generational transfer[32]. This further reduces the critical mass of speakers. The equivalent in relation to the other equalities is that a male-dominated and sexist environment deters women from entering or remaining in that workplace, and therefore reduces the critical mass of people who may challenge and oppose unacceptable behaviours.

3.3 Language revitalisation

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[28] J.A. Fishman, *Can Threatened Languages Be Saved?* (Multilingual Matters, Clevedon, 2001).

[29] C. Myers-Scotton *Social Motivations for Codewsitching.* (Pergammon Press, Oxford, 1994).

[30] Ferguson *supra* note xviii.

[31] W.F. Mackey 'La modification pâr la loi du comportement langagier.' In P. Pupier, P. and J. Woherling, *Language and the Law.* (Wilson and LaFleur, Montreal, 1993) pp.45-54.

[32] D. Morris and G. Williams, *Language Planning and Language Use: Welsh in a Global Age.* (University of Wales Press, Cardiff, 2000).

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A reduction in the number of speakers is often a significant concern for the minority language group, and leads to attempts at language revitalisation[33] usually either in the form of status planning (i.e. elevating the status of the language in particular contexts) or corpus planning (developing contemporary terminology which will facilitate usage in new contexts – science, administration, literature, computing).[34]

Language revitalisation measures often formalize the language however by bringing it into the domain of the individual's interaction with the state. In doing so, it also emphasises that there is a correct way to speak and write and an incorrect way[35] – the correct way being the way that results in good results in formal assessments, and engaging appropriately with representatives of the state and the legal system. This leads to insecurity among those whose use of language is perceived to be incorrect – they fear not being able to use the language with reference to the appropriate formal terms and structures,[36] and therefore fail to navigate the social environment successfully. This linguistic insecurity, coupled with the reduction in the opportunities to make unmarked linguistic choices in informal situations means that there is then reluctance to use the minority language in formal contexts.[37] The equivalent in other equality areas is to introduce measures to develop the participation of excluded groups in

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[33] S. Wright *Language Policy and Language Planning.* (Palgrave Macmillan; Basingstoke, 2004).

[34] J.A. Fishman. *Do Not Leave Your Language Alone.* (Lawrence Erlbaum Associates, New York, 2006).

[35] G. Thomas *Linguistic Purism.* (Longman, London, 1991).

[36] W. Labov. *The Social Stratification of English in New York City*. 2nd edition. Cambridge University Press; Cambridge, 2006).

[37] Fishman, *supra* note xxviii.

high level situations (executive boardrooms) without changing the working culture that deters people from entering the profession in the workplace. Put simply, if men are given more positive coverage in a profession such as politics, whereas women are denigrated, women will not enter politics, and cannot therefore become political leaders.

3.4 Linguistic insecurity

Language revitalisation measures that focus solely on formal domains often inhibit, rather than encourage the use of the minority language, both by ignoring the lower-prestige domains[38] (where intergenerational transfer and unmarked usage is likely to occur) and by fostering linguistic insecurity (unmarked usage is low prestige and therefore not good enough for formal situations). Despite the availability of educational and service provision in a minority language, the take-up rates for higher education and court proceedings in Welsh are lower than in the population at large. In a report by the Welsh Assembly Government (as it was then known) in 2010 for example, 21% of schoolchildren aged 6-7 are assessed through the medium of Welsh as first-language speakers. By the time they are in the post-16 sector, only 10% are assessed in Welsh, and only 7% of students living in Wales receive any of their higher level education through the medium of Welsh. Furthermore Davies and

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[38] S. Grondelaers, and R. Van Hout. 'The Standard Language Situation in the Low Countries: Top Down and Bottom Up Variations on a Diaglossic Theme.' *Journal of Germanic Studies* (2011) *23*(3) p. 199.

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Trystan[39] refer to prejudices hindering students' decision to study in Welsh – the quality of the education received was not doubted, but the student had been advised to study in English because future employers could look unfavourably at a candidate who had chosen to study in Welsh.

There is often reluctance among a number of students to study in Welsh, who express concerns that studying through the medium of Welsh may be disadvantageous if future employment is sought outside Wales;[40] or that they will not acquire professional level competence in English.[41] All of these points to what Newhaiser et al[42] term outgroup bias, whereby the behaviour of another group is seen to be more prestigious than one's own behaviour.

Comparable, but not exact equivalences of this phenomenon is encountered in relation to other inequalities – perhaps most specifically in relation to gender where the undermining of a woman's ability to undertake certain kinds of task (science and technology subjects being good examples) either results in women not choosing to enter into those disciplines, or

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[39] A.J. Davies and D. Trystan. 'Build it and they shall come? An evaluation of qualitative evidence relating to student choice and Welsh medium higher education.' *International Journal of Bilingualism and Bilingual Education* (2011) 14(1) 8-11.

[40] *Ibid.*

[41] G. Williams. 'Legal Education in Welsh' *The Law Teacher* (2005) *39*(3) p. 259.

[42] A-K. Newheiser, Y. Dunham, A. Merrill, L. Hoosain and K.R. Olson, 'Preference for high status predicts implicit outgroup bias among children from low-status groups.' *Developmental Psychology* (2014) *50*(4) 1081-1090.

leaving because they do not feel that the work they do is being taken sufficiently seriously.[43] This creates a cycle – because it is not an environment where women feel welcome or appreciated, where their abilities are overlooked and undermined, women choose not to remain in those working environments, and the environment thus becomes one where the male-only culture is perpetuated.

3.5 Lack of fluency

In the context of languages, the lack of demand for provision means that service providers within those domains do not then develop the required level of fluency in using the language in a professional context. [44] In education, this is manifested by the fact that academic research is evaluated according to its international relevance and impact – an approach that makes research published through the medium of English more valuable in terms of career progression.[45] This means that academics are discouraged from using Welsh

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[43] J. McMillan, and R. Fox, 'Has devolution delivered for women?' British Council Scotland, Edinburgh, 2010).

[44] E.M. Young, *Chwarter i Hanner Nos – A Oes Modd Datrys Picil Addysg Uwch Cyfrwng Cymraeg?* (UCAC, Aberystwyth, 2005).

[45] R.G. Parry (2012). *Cymru'r Gyfraith: Sylwadau ar Hunaniaeth Gyfreithiol.* (University of Wales Press, Cardiff, 2012).

as a language for disseminating research,[46] and inhibits the development of the commentaries and resources that facilitate the use of Welsh by students.

Similarly, low take up means that those working within the administration of justice do not develop professional level fluency.[47] Bilingual provision also suffers from the critical mass problem within the institution – two individuals may interact through the medium of Welsh, but the institution requires provision in English. Therefore, a report may be completed in Welsh, but it must be rendered into English for evaluation by the institution.

This then leads to reluctance to make that active offer of a bilingual service[48] that facilitates increased usage by speakers,[49] creating the perception that using a minority language in high prestige domains is not the norm, and that it is inaccessible.[50] This in turn causes a linguistic cycle within the legal system. If, for example, law students do not develop professional-level fluency, then they cannot then alter the cyclical patterns of language non-use in other domains, such as in the linguistic behaviours of the legal system. Accordingly,

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[46] R.W. Jones. *Methiant Prifysgolion Cymru.* (Institute of Welsh Affairs, Cardiff, 2005).

[47] C.F. Huws. 'Does legislation change perception and behaviour? Attitudes and perceptions of the Welsh language in a legal context.' In S. Pertot, T. Priestly, and C.H, Williams *Rights, Promotion and Integration Issues for Minority Languages in Europe*. Palgrave Macmillan, Basingstoke, 2008).

[48] S.R. Herman. 'Explorations in the Social Psychology of Language Choice' In J.A, Fishman, J,A, (ed.) *Readings in the Sociology of Language.* Mouton & Co, The Hague, 1968) 492-511.

[49] Office of the Commissioner of Official Languages. *The Equitable Use of English and French Before the Courts in Canada.* (Minister of Supply and Services, Ottawa, 1995).

[50] C.F. Huws, *An Empirical Study into the Use of the Welsh Language in the Courts in the Twenty-First Century.* Aberystwyth; PhD thesis, 2005.

despite the creation of new linguistic domains, entrenched linguistic behaviour remains unaltered,[51] in much the same way as social regimes that purport to offer equal opportunities make it more difficult for a person of a specific ethnicity, gender or religious belief to access and participate in effectively.

Such cycles are also seen in relation to other patterns of inequality. The lack of women in fields such as computing means that women are reluctant to enter those fields because they will be the subject of harassment and sexist viewpoints.[52] Similarly, the disproportionate stop and searching of black people by the police leads to higher levels of prosecutions. This is then used as a justification for targeting black people in stop and search operations.[53]

3.6 The impact of legislation

Although permissive legislation introduces a number of new domains for minority language use by creating rights to use a specific language in a new context, legislation does not always succeed in changing linguistic behaviours and attitudes. Language legislation can be very successful in reintroducing a language into a domain from which it has been banned – and the

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[51] P. Gardner-Chloros, (1991) *Language Selection and Switching in Strasbourg.* Cambridge University Press; Cambridge, 1991.

[52] J. Margolis and A. Fisher. (2003) *Unlocking the Clubhouse: Women in Computing.* MIT Press, Cambridge, 2003.

[53] B. Bowling, and C. Philips, Disproportionate and Discriminatory:Reviewing the Evidence on Police Stop and Search.' *Modern Law Review* (2007) *70*(6) p.936.

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right to use Welsh in a courtroom setting as provided in the Welsh Courts Act 1942,[54] and, in particular, the Welsh Language Act 1967[55] are good examples of such initiatives.

However, there is a reluctance to impose behaviour changing legislation on a majority, unless that change in behaviour is endorsed by the majority. Therefore anti-smoking legislation has been enacted because social attitudes towards smoking in public and smoking around children were already in opposition[56]. Despite 45 years of equal pay legislation however, there is still a gap between men and women's pay for equal work[57] because although employers may endorse the ideal of equal pay, they also wish to maximise profits. Changing behaviour of a majority for the benefit of a minority is less likely to succeed. Therefore, despite calls for more extensive minority language rights from speakers in the form of new legislation,[58] the likelihood is that language legislation will focus for the most part on allowing speakers to converse with each other in the minority language, but not compelling majority language speakers to acquire fluency. Accordingly, once an equal treatment policy has been implemented, as is the case in Wales under the Welsh Language

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[54] 1942 5 and 6 Geo 6 Ch. 40.

[55] 1967 c.66.

[56] R.D. Kennedy, I. Behm, L. Craig, M.E. Thompson, G.T. Fong, R. Guignard and F. Beck. 'Outdoor smoking behaviour and support for outdoor smoking restrictions before and after France's national smoking ban' *European Journal of Public Health* (2012) 22(1) 29.

[57] Office for National Statistics (2013) Women in the Labour Market 2013. http://www.ons.gov.uk/ons/rel/lmac/women-in-the-labour-market/2013/index.html. Visited 29 April, 2016.

[58] Cymdeithas yr Iaith Gymraeg (2010) Deddf Iaith Newydd. http://archif.cymdeithas.org/deddfiaith/ Visited 29 April, 2016.

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Act 1993 and the Welsh Language (Wales) Measure 2011 it is necessary to break the cycle of linguistic non-use within the framework of the existing legislation.

Much may be achieved here. For example, the Gaelic Language Act 2005[59] provides comparatively little by way of substantive language protection. However, the Act permits a broad range of activity. '*Securing the status of the Gaelic language as an official language of Scotland commanding equal respect to the English language*' provides considerable opportunities and there is scope within the National Language Plan contained in section 2 to implement a number of wide-ranging strategies for promoting Gaelic culture and education, and the understanding and use of the Gaelic language. Even within a relatively limited Act such as this, if the objectives of the Act are exercised to their fullest extent, there is a great deal that may be achieved. The Welsh Language (Wales) Measure delivers still more by giving Welsh official status in Wales (s1) and creating the role of the Welsh Language Commissioner whose function is to promote and facilitate a regime whereby the Welsh language is treated no less favourably than English (s4), and by requiring the Welsh Ministers to create standards for the delivery of bilingual services by different organisations (s26).

However, in a domain that has for a long time normalised another language, it becomes very difficult to change people's expectations regarding the linguistic norms and

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[59] 2005 asp 7.

their perceptions regarding high prestige languages.[60] Accordingly, it is necessary not only to introduce new domains, but also to ensure that those domains operate in ways that facilitate unmarked language choices. This requires changing the behaviour of both the minority language-speakers, and the monolingual majority language speakers, as Krieger explains with reference to race discrimination, where, in many cases the dominant group is simply unaware of the fact that they are operating in a manner that is prejudicial to the minority group.[61]

The difficulty is that a language rights model does not change the majority group's behaviour – there is no advantage to the majority group in adopting a minority language because they are able to navigate their lives successfully in the dominant language and no disadvantage in the form of a sanction on the individual for non-compliance. An analogy may be seen in the form of disability discrimination legislation, where the dominant group does not perceive a benefit from changing their behaviour because their participation is not restricted. Physical alterations to buildings are therefore more readily facilitated than systemic changes to workforce behaviour that would create a more inclusive environment for a person with a disability. For example, a report by Disability Rights UK[62] on creating inclusive communities reports for example that dividing students into smaller groups to work

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[60] N. Dasgupta, 'Implicit Ingroup Favoritism, Outgroup Favoritism, and Their Behavioral Manifestations' *Social Justice Research Journal* (2004) *17*(2) p.143.

[61] L.H. Krieger. 'The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity'(1995) *Stanford Law Review 47*(6) p. 1161.

[62] Disabilty Rights UK (2014*) Inclusive Communities: A Research Report.* www.disabilityrightsuk.org/policy-campaigns/reports-and-research/inclusive-communities. Visited on 29 April 29, 2016.

on tasks can be more inclusive for a disabled student than a chalk and talk lesson, but an educator may argue that this is difficult to facilitate in situations where some students feel that they are being pulled down by less motivated students, and may also feel that this is difficult to manage in a large class, when some groups may feel that they are being overlooked when the teacher is working with another group.[63] The educator therefore justifies not changing the classroom style.

By the same principle, permissive planning for language revitalisation is likely to operate within a framework that depends on existing speakers (where they exist) and on the extensive use of translation (in itself a form of physical assistance) rather than a change of behaviour within the institution in ways that will facilitate unmarked language choices.

That which requires further consideration is how linguistic behaviour may be changed within the existing legislative frameworks, thus normalising minority language use alongside the dominant language. In order to demonstrate how this may be achieved, the next section will consider how the existing linguistic cycle identified in relation to Wales may be altered within the existing legislative framework.

4. Part 2: Altering The Language Paradigm

Although it may be argued that linguistic dominance relies on individual choice, and that the market will determine the status of a language, it is recognized choice is restricted in a situation where one language is dominant. This requires altering the existing language

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[63] H. Walton, 'Small group methods in medical teaching.' *Medical Education (*1997) 31 p.459.

paradigm in order to facilitate choice. What this article proposes is to identify four key weaknesses in the current approach to linguistic planning, and thereafter to identify how current paradigms of linguistic non-use may be altered.

4.1 Weakness 1: Planning for language use in informal situations

Language planning research[64] has identified a significant dichotomy in language planning strategies. A top down approach emanating from legislation creates an agenda for changing behaviour, by legitimising the importance of equality policies. Accordingly, just as the Sex Discrimination Act 1975,[65] the Race Relations Act 1976[66] and the Disability Discrimination Act 1995[67] caused organisations to consider how their policies were discriminatory, the Welsh Language Act 1993 provided the catalyst for many organisations to think for the first time about what services could be offered bilingually, and how that could be achieved. Organisations that had hitherto presented an exclusively English language public face began to introduce bilingual signage and to provide bilingual greetings in response to telephone calls and to provide bilingual announcements in public spaces. However, top-down policies

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[64] B. O Rourke and P. Castillo. 'Top down' or 'bottom-up': language policies in public Service interpreting in the Republic of Ireland, Scotland and Spain' in R. De Pedro, I, Perez. and C. Wilson,. *Interpreting and Translating in Public Service Settings*. (St Jerome, London, 2008) 33-51.

[65] 1975 c.65.

[66] 1976 c.74.

[67] 1995 c.50.

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have limitations because they exclude less formal registers, and develop linguistic domains on the state's terms.

On the other hand, a bottom-up approach perpetuates the situation where the dominant language is the most accessible, because this is what requires the least effort. Phillipson[68] demonstrates the impact of market forces on language use within the European Union. He argues that although the European Union has 24 official languages, English has become the de facto lingua franca because English is the commonest second language. Accordingly, state representatives who speak English fluently find it quicker to communicate in English as opposed to using their first language and relying on a network of interpreters. The bottom up approach will favour the most direct path to accessing services, and in a situation where one language is dominant, the easiest route will be to use the dominant language.

However, the advantage of a bottom up approach is that it ensures that the linguistic behaviours are more organic – people feel a greater sense of ownership of the language and the way in which it is used. O'Rourke and Castillo[69] refer for example to the way in which the health system has developed multilingual resources at a grassroots level, responding on a hospital by hospital response to what patients and visitors, as well as healthcare professionals require in order to facilitate communication between them and to ensure that people (particularly the very young and the elderly who are more likely to require healthcare

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[68] R. Phillipson. *English Only Europe: Challenging Language Policy.* Routledge, London, 2003.

[69] B. O Rourke, and P. Castillo, P. *Supra* note lxiv.

services, but who are also less likely to be as fluent in two languages as adults) are able to access healthcare services in their preferred language.

That which this article posits is that effective language planning comprise of a combination of these two approaches. As with equality measures, there needs to be a change in institutional practice in a way that outlaws discriminatory behaviour, but there also need to be mechanisms for encouraging minoritised groups to participate.

In Wales, the top down approach to language has already been provided by legislation and educational provision. Consideration should now be given to planning for greater accessibility of unmarked language choices within those domains. There has been a tendency to focus on equality in an organisation's public face, and the draft Welsh Language Standards for the Welsh Ministers, County and Borough Councils and National Park Authorities[70] perpetuate this by focussing on public interfaces rather than intra-institutional practices. Accordingly, bilingual signs, notices and documents are developed, but these only offer a linguistic choice in relatively confined contexts (navigation of spaces, annual reports, website homepage) where interaction with another person is not necessary. Users may make linguistic choices in these contexts, but situations that require interaction with another person are planned less effectively. In higher education, teaching materials may be a more valuable bilingual resource.

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[70] Welsh Language Standards (Welsh Ministers,County and County Borough Councils, and National Park Authorities) Regulations 2015.

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In service situations, the opportunity to discuss or raise queries in the minority language may be more important. By identifying what resources need to be provided bilingually, in the sense of facilitating unmarked language choices, language planning may be directed towards ensuring that these resources are available and accessible in the two languages, so that the end user then has the opportunity to make an unconstrained choice regarding which language to use. This will differ in different contexts, but common examples might include the opportunity to speak one's preferred language at the first point of contact with an organisation and prioritising bilingual delivery in the situation that operates as the main objective of the organisation.

In higher education, this will comprise of developing teaching materials in the minority language, while in the courts setting it is likely to focus on facilitating the use of the minority language in the court process. In order to achieve this, footfall models[71] equivalent to those used by spatial planners are proposed in order to test where having bilingual provision successfully increases usage. Alexander, Cryer and Wood's research[72] explains for example that when deciding when to locate new charity shops, research was undertaken into the location of supporters of the charity, as well as their age and social background demographics. As shoppers were more likely to be young people, and young people with families, the shops were able to focus on supplying products that such people would require –

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[71] A. Namdeo, A. Tiwary, and R. Dziurla 'Spatial planning of public charging points using multi-dimensional analysis of early adopters of electric vehicles for a city region.' *Technological Forecasting and Social Change* (2014) *89* pp.188-200.

[72] A. Alexander, D. Cryer,and S. Wood. 'Location planning in charity retailing", *International Journal of Retail & Distribution Management* (2008) *37*(7) 536 - 550

womenswear, menswear and specifically children's wear and toys. Consideration also had to be given to the store's supply chain – charity shops are supplied by donations. Donors require parking spaces near the shop in order to allow them to deliver donations. However, there was also a need to consider the demographics of the volunteers who run the stores. Demographically, these were people who are more reliant on public transport, and therefore when identifying where to locate charity shops, there was a need to ensure that a balance was achieved between locations with parking (edge of centre or out of town locations) and accessible locations (town centres within a short distance of public transport hubs). In language planning terms, this requires further consideration into delivering services users require, rather than those that may be easily provided. Consideration must be given to providing the types of services that users will be able to access easily in the minority language.

Research into increasing footfall in shopping centres[73] for example has demonstrated that merely making consumers aware of the existence of the shops is not sufficient – customers must have a reason to make the shop their destination. This has its equivalence in language planning in terms of emphasising the value added that using one's preferred language offers the individual, and also in terms of locating materials where service users are

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[73] G. Warnaby, D. Bennison and B.J, Davies 'Marketing communications in planned shopping centres: evidence from the UK') International Journal of Retail Distribution and Management (2005) *33*(12) pp.893-904.

likely to access them.[74] Accordingly, minority language services will not be used if the speaker has to request them or they are less accessible.

In this way it will be possible to increase bilingual provision in contexts where there is high demand, and where increasing provision effectively changes behaviour. For example, in the administration of justice in Wales, the emphasis is currently placed on the Welsh language as a written medium. A Welsh language trial is arranged where a court user completes the forms in Welsh.[75] However, because of the structural differences between written and spoken Welsh,[76] many people will not complete forms in Welsh even though they are fluent speakers of the language. This means that the courts will assume, sometimes incorrectly, that the trial will be conducted in English. In Canada[77] it has been demonstrated that an active (verbal) offer of a bilingual service is more effective in terms of facilitating the use of the minority language because it demonstrates that the offer is sincere (i.e. made by a person who speaks the minority language) and not an offer made for reasons of legislative

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[74] S. Wood, W. Browne 'Convenience store location planning and forecasting – a practical research agenda.' *International Journal of Retail & Distribution Management,* (2007) *35*(4) pp.233 – 255.

[75] C.F. Huws. 'Iaith y llysoedd ac iaith y nefoedd' *Cambrian Law Review* (2007) 38 p.78.

[76] B.M Jones *Ar Lafar ac Ar bapur.* Y Ganolfan Astudiaethau Addysg, Aberystwyth, 1993.

[77] M. Drolet, J. Savard, J. Benoît, I. Arcand, S. Savard, J. Lagacé S. Lauzon, and C-J Dubouloz. 'Health Services for Linguistic Minorities in a Bilingual Setting: Challenges for Bilingual Professionals.' *Qualitative Health Research* (2014) 24(3) p.295-305.

imperative. For example, Robertson, Drury and Cable[78] point to a dichotomy between the rhetoric of multiculturalism in English schools, and the wording of policies have the effect of privileging English and treating a child's home language as a barrier to be overcome. In this context, educational provision in languages other than English is seen as insincere – a nod to multiculturalism, but without any genuine objective of ensuring that other languages have equal value with English. In the same way, poorly translated documents, reluctant bilingual greetings and out of date materials will not give the impression that bilingual provision is sincere, and will perpetuate the norm that English is the preferred language. Accordingly, developing language practices within organisations in such a way that makes it clear that using one's preferred language is an option that is genuinely available is an important first step in terms of changing linguistic behaviour.

4.2 Weakness 2: Bridging the gap between formality and informality

The second matter to address is the need to bridge the gap between formal and informal domains. There may be a reluctance to use Welsh in formal contexts, as Madoc-Jones[79] as identified, where service users express, for example, that the variety of Welsh they

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[78] L.H. Robertson, R. Drury and C. Cable, 'Silencing bilingualism: a day in a life of a bilingual practitioner' *International Journal of Bilingual Education and Bilingualism*. (2014) *17*(5) p.610.

[79] I. Madoc-Jones, 'It's Always English in the Cop Shop': Accounts of Minority Language Use in the Criminal Justice System in Wales' *The Howard Journal of Criminal Justice* (2013) *52*(1) p.91-107.

use is non-standard, and not suitable to be used with establishment figures or people who ae perceived to have a high level of education or social prestige. It becomes necessary to consider the informal contexts in which a person will engage with the service provider. In the administration of justice, facilitating the use of the minority language outside the courtroom may also facilitate the use of the language among court users. Accordingly, advice and support organisations such as the Witness Service, as well as organisations such as the Probation Service and CAFCASS may be instrumental in facilitating the use of a minority language outside a formal setting, and this may have a significant impact on language use within the courts.[80]

Legal advisers may also be instrumental in terms of advising court users of their language rights, and then informing the court of the party or witness's linguistic choice. Solicitors for example indicate that they conduct interviews with clients in Welsh more frequently than they conduct court proceedings. Although the legislation refers to the right to speak Welsh in court proceedings, people will be more likely to do so if their legal adviser is able to facilitate this at the pre-court stage. This requires bilingual legal services to be accessible, and the development of legal services by non-traditional providers and legal service packages by insurance and other companies based outside Wales, as well as the curtailment of the high street firm represents a serious threat to the accessibility of legal services that facilitate access to bilingual legal services.

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[80] *Ibid.*

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In an educational setting there are even more opportunities for informal language planning, although of course, in an educational setting, part of the aim is to develop fluency in the formal registers. Although formal assessment measures students' ability to use a minority language to communicate their knowledge of their chosen subject, it does not necessarily bridge the gap between those who are willing to use a minority language informally, but who are not interested in pursuing their studies through the medium of a minority language. Lecturers often find that students are reluctant to produce assessed work in the minority language at post-compulsory level.[81] This means that although they are instructed through the medium of the minority language, they do not produce material in that language, and their fluency in formal registers is not developed. By introducing informal linguistic spaces for developing subject fluency, it may be possible to narrow, and even to eliminate the gap between a student's social fluency and a graduate's professional fluency.

In law, for example, activities such as negotiating and mooting may be ways of developing subject fluency in a way where students do not feel that they have to make strategic linguistic choices as to what language will maximize their final grade. This is a difficult path to negotiate, as activities that do not contribute to a student's final grade may be perceived as being less important than formally assessed tasks. Accordingly there is a need to provide incentives to participation, without there being a sanction for failure. Encouraging participation in practice-based initiatives, such as law clinics and pro bono work may be crucial here. There is also scope to develop bilingual teaching within the vocational stage of legal training, where there may be increased scope for using both languages in exercises

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[81] Williams, G. *supra* note xli.

involving negotiating, drafting, advising, interviewing and advocacy. By changing language behaviours at an informal level, it then becomes possible to encourage minority use in more formal settings.

Again, the partial scope of the legislation to effect change may be seen. Legislation is able to introduce broad new linguistic domains, but it does not address the specificities of those domains which are again situation and context-dependent. This does not preclude individual organisations from doing so. By facilitating unmarked language choices within a linguistic domain, the domain can become more effectively and substantially bilingual.

4.3 Weakness 3: Identifying low usage domains

Another weakness in current language policy derives from the failure to evaluate in a critical way whether existing provision has succeeded in altering linguistic behaviour. Even though the duty to prepare Welsh Language Schemes forced public bodies to consider what *could be* provided bilingually, that which was overlooked was the need to consider the effectiveness of the provision. Regard must be had to the distinction between production and consumption, particularly in a language. When measuring language fluency, the ability to read and understand a language are regarded as receptive skills[82] whereas the ability to speak and write in a language are regarded as more active. However, reading and understanding a language can be important inputs into production – if we read and hear the words that we

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[82] N.F. Davies, 'Receptive Versus Productive Skills in Foreign Language Learning.' *The Modern Language Journal* (1976) *60*(8*)* 440.

need to use, linguistic fluency develops. However, the reliance on interpreters and translators as the producers of Welsh, while other participants merely consume information through the medium of Welsh does not bilingualise the organisation. This is because those within the organisation merely consume the bilingual material, and because the information produced does not generate the vocabulary that service users require. The bilingual material that is available to read vocabulary is likely to pertain to matters such as the performance of the organisation and not the elements of liability, evidence and judgment that are required in order to give evidence in Welsh.

Again, this is something that must be addressed outside of the legislation. Only an individual organisation – or in many cases a sub-section of an organisation is able to determine what its bilingual resources are at any given time, and to deploy those resources in such a way as to alter behaviour. There is a need to focus on developing vocabulary that participants within the legal process are able to use. Standard forms of sentences and judgments may be significant contributors to changing behaviour within the legal setting as magistrates, judges and legal representatives will then feel more confident to use these in court. Within higher education, developing teaching materials is a significant contributor to facilitating use and changing linguistic behaviour – both the educator and the student will be involved in producing materials rather than merely consuming.

The author's own experience of teaching law in the higher education sector has demonstrated that students' confidence in their ability to produce work through the medium of Welsh has increased as they have used the language more frequently in speaking and writing tasks. Projects such as the Coleg Cymraeg Cenedlaethol's Welsh medium mooting

competition[83] and its undergraduate scholarship scheme[84] have encouraged students to use Welsh in an educational setting, any many have identified that their confidence to do so in subsequent pieces of work has thereafter increased.

Identifying such patterns of behaviour has been essential in relation to anti-discrimination legislation for a long time as the solution proposed here is equivalent to identifying indirect discrimination in that identifying policies that do not change effectively change behaviour requires an understanding of why minority language speakers are less able to participate. Just as a Secretary of State's decision to recover planning appeals relating to caravan pitches within the green belt area is indirectly discriminatory against indirectly discriminatory against travellers, who would be more likely to occupy caravans thus located[85] a linguistic policy that makes one language more accessible than another has the effect of making the minority group less able to participate than a majority group.

4.4 Weakness 4: Using resources effectively

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[83] Coleg Cymraeg Cenedlaethol (2014) Ymryson Cyfreithiol (Moot) yn y Gymraeg. http://www.colegcymraeg.ac.uk/cy/newyddion/cynadleddau/ymrysoncyfreithiol/ Visited on 6, March 2015.

[84] Coleg Cymraeg Cenedlaethol (2014) Ysgoloriaethau Israddedig http://www.colegcymraeg.ac.uk/cy/academaidd/ysgoloriaethauisraddedig/. Visited on 6 March, 2015.

[85] *Moore v Secretary of State for Communities and Local Government* [2015] EWHC 44 (Admin)

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In many organisations, various minority language resources are likely to exist, most specifically its bilingual staff-members. However, institutions often fail to arrange their workforces in ways that ensure that those that are able to work bilingually have the scope to do so. Again, this is a matter of identifying existing resources and maximising their potential. Accordingly, an important step in terms of changing longstanding linguistic behaviours is to consider how to ensure that bilingual staff-members are in positions where bilingual provision is needed, while functions that do not require a multilingual interface are fulfilled by monolingual staff members. There is no intention to suggest that this will necessarily be an easy process – there may be issues of employee satisfaction, changing responsibilities and allocating tasks that may require careful thought. However, the institution itself may be best placed to identify what could be achieved, as each situation may be different.

In the legal setting for example, it is important to ensure that the first point of contact for the court user is bilingual. It is then possible to ensure that all subsequent contact will occur in the user's preferred language – material can be directed towards other Welsh-speaking staff within the institution and arrangements may be made for further Welsh-medium provision such as (within a court setting) organising that a trial takes place through the medium of Welsh, and (within the higher education setting) that a person is allocated to a Welsh-speaking tutor or mentor. Also by facilitating an unmarked use of the minority language in a verbal setting, the alienation effects of linguistic formalisation are minimized.

Similarly, educational establishments may operate in ways that result in the more effective use of resources. Non-speakers of the minority language may be deployed in preparing monolingual materials, thus freeing minority language speakers to prepare

bilingual resources. Furthermore, translation resources may be used in ways that lead to the production in the minority language. Translating annual reports for example may not lead to increased production, but translating teaching materials and providing official forms of wording for charging and sentencing may have a significant impact on usage.

It may be difficult to ensure that all the resources available in the dominant language are also produced in the minority language. Yet, it is possible to produce resources that may be used across subjects and disciplines.

Only an organisation is able to identify what its resources are and how they may be deployed efficiently. Accordingly, although legislation may be extremely effective in requiring equality of treatment to be effected, and to impose sanctions for non-compliance, again maximising bilingualism from the existing resources is something that, necessarily, is only possible at a micro-level.

5. Breaking the paradigm – implications for other equalities

The weaknesses in the paradigm here may also be important in terms of achieving greater equality in other areas. As with linguistic equality, it is necessary to adopt a combination of top down and bottom up approaches. Therefore, it is necessary for organisations to focus more specifically on identifying every day working practices that have a discriminatory effect and eradicating them, as well as adopting equal opportunities policies in terms of recruitment and monitoring of employees. Furthermore there is a need to ensure that there are mechanisms in place to address why people do not participate. Much research

has been conducted into this issue, but very little appears to translate into considerations of how to change working practices. There is also a need to ensure that where gains have been made in terms of changing behaviour that this is then developed – the Welsh and Scottish legislatures have identified for example that the increased parity between male and female AMs and MSPs in the early years of devolution has not continued – although in the early years, there was not a sense that women were taking men's seats, there has been a far greater willingness for men to take women's seats in later elections to the National Assembly for Wales and the Scottish Parliament.[86] It is felt therefore that sufficient steps have not been taken to ensure that Welsh and Scottish politicians remain in politics, and that those who succeeded in those roles were not championed sufficiently as role models.

6. Conclusion

This article has demonstrated that although legislation is extremely important in terms of compelling organisations to introduce new linguistic domains, and by imposing sanctions in respect of continued inequality, that which legislation is unlikely to be able to do is to identify and address the individual and structural assumptions that underpin that inequality. As with other forms of discrimination, linguistic equality requires that those who experience the inequality engage with the process of challenging and changing those assumptions, and

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[86] J. McMillan and R. Fox *Supra* note xlii.

that furthermore, that this is type of engagement is both encouraged and facilitated. As Sheppard[87] explains of race and sex inequality:

> *As we expand the paradigms that shape our thinking about inequality at work, it remains important to understand how manifestations of socio-economic inequalities reveal group-based disparities – in terms of sex, race, national or ethnic origin, disability, social origin, political belief, religion and sexual orientation – and how those disparities are revealed in both the formal and informal sectors of the economy.*

The same is true of language legislation. That is why breaking the cycle of linguistic non-use identified in Part I relies not on legislation, but on language planning within the legislative framework. Permissive legislation only enables if behavioural habits are addressed at the level of individual interaction, and this is not achievable through legislation alone.

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[87] C. Sheppard, 'Mapping Anti-Discrimination Law onto Inequality at Work.' *International Labour Review* (2012) 151 p.1.