DISABILITY, CULTURAL MINORITIES, AND INTERNATIONAL LAW: RECONSIDERING THE CASE OF THE DEAF COMMUNITY

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I. INTRODUCTION

Contemporary trends within the human rights discourse tend to embrace the argument that the Deaf community, with a capital “D,” is an ethnic or linguistic minority group that is entitled to rights of recognition and preservation. Based on linguistic orientation, usage of sign language as a primary language, and the Deaf culture, members of the Deaf community further argue for an inherent right to take an active role in the education and the medical decision-making that concern a deaf child.1 This last contention is founded on the concern expressed by members of the Deaf community that hearing parents have an inherent conflict of interest between their hearing culture and their child’s deafness.2 Thus, it is argued, their decisions may result in an “inappropriate” oralist education and in cochlear implants for their pre-lingual deaf child. Furthermore, these decisions significantly impact “community membership,” and encourage the child’s assimilation into the mainstream hearing culture.3

This paper challenges both arguments. Though it does not doubt the anthropological and cultural characteristics of deaf people who communicate and socialize with one another, this paper questions the rights that are to derive from this social bond. Focusing on pre-lingual, congenital, deaf or hard-of-hearing children, particularly those born to hearing parents, this paper also doubts the status of the Deaf community as a legal minority group under the existing international law framework. Notwithstanding these arguments, however, this paper recognizes the importance of providing a deaf child with linguistic skills of any sort and sign language in particular. Thus, this paper advocates for the development of an independent linguistic right for the deaf child.

This paper will begin with a brief description of the Deaf community and its culture. It will then set up the theoretical discourse about minority groups and will analyze it in the context of the Deaf community. Part III will examine the stance of international law on minority rights, particularly in Article 27 of the International Covenant on Civil and Political Rights (ICCPR),4 and will question the

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2. Id. at 254-55.
applicability of the Article to the Deaf community under these standards. Last, this paper will contend that educational accommodation and exposure to sign language and to other deaf individuals should be encouraged as they are in the best interest of a deaf or hard-of-hearing child and that an independent right to lingual development should be adopted.