Sherwood-Johnson, F. (2012) **Constructions of vulnerability in comparative perspective: Scottish protection policies and the trouble with 'adults at risk'**

Abstract

This paper places Scottish Adult Support and Protection (ASP) policy in the context of debates about the nature of 'vulnerability' and its usefulness as a defining concept in law and social policy. It examines the construction of 'adults at risk' in ASP policy, using a comparison with the construction of children in Scottish child protection policy, on the one hand, and women in Scottish domestic abuse policy, on the other, to illuminate the nature of the vulnerability that ASP considers itself to be addressing. It then problematises this construction, drawing both on the social model of disability and on an ethic of care. It concludes that current ASP policy remains underpinned by unhelpful assumptions about disabled people, older people and people with mental or physical health problems. A more inclusive understanding of vulnerability would be more empowering to these people and others, in policies concerned with mistreatment and abuse.

Points of interest

- This article looks at why Scottish adult support and protection (ASP) policy sees some disabled people, in some situations, as more vulnerable to harm and abuse than other people.
- The article compares what ASP policy assumes about this type of 'vulnerability' with what Scottish domestic abuse policy assumes about affected women, and what Scottish child protection policy assumes about children.
- Ideas about vulnerability in ASP policy are more similar to ideas about children in child protection policy than ideas about women in domestic abuse policy. However, there are differences between ASP and child protection as well.
- ASP policy could say more about oppression.
- The three policies, and their separation from each other, are based on the idea that some people are 'vulnerable' and some people are not. It might be more helpful to challenge that idea.

Introduction

Over recent decades, there has been increasing professional, research and policy concern with the safeguarding of adults considered to be more than ordinarily vulnerable to mistreatment or abuse. Scotland terms this field of activity 'adult support and protection' (ASP), and is currently unique in the UK in having established for it a specific, underpinning legislative framework, namely the Adult Support and Protection (Scotland) Act 2007 (the ASPSA). As it passed through the Scottish Parliament, there were heated debates over the need for this legislation and over its parameters. One such debate focused on the definition of the people to whom it would apply (Patrick and Smith, 2009). This paper concerns that debate, and the adequacy of the solutions that Scotland has found to it. It examines constructions of 'adults at risk' in Scottish ASP policy through a comparison with constructions of children and young people in Scottish child protection policy, on the one hand, and constructions of women in Scottish domestic abuse policy, on the other. This helps to illuminate current Scottish policy understandings of 'vulnerability' in respect of ASP, and to situate these understandings relative to wider debates about the nature of vulnerability and its usefulness as a defining concept in law, policy and professional practice across the UK and elsewhere. There is no assumption that the three policies relate to essentially similar phenomena, and in particular, there is no implication that some adults can be treated 'like children'.

There is growing Scottish and UK evidence about the prevalence of violence and other mistreatment against disabled people, older people and people with mental health problems (Disability Rights Commission and Capability Scotland, 2004; O'Keeffe et al., 2007; Sin et al., 2009). This is one important part of the context for what follows. Another important part is the nuanced range of ways in which policies are interpreted by practitioners and experienced by people thought to be at risk (Johnson, 2012; Mackay et al., 2011). The intention here is not to deny the existence of violence and mistreatment, then, nor the need for some response, nor the multitude of levels at which any given response might be evaluated. Nonetheless, ASP policy is understood to be a significant and contestable framework within which various stakeholders address certain issues, and its particular formulation of these issues is the focus here.

The paper is divided into five main sections. The first section outlines recent debates about the concept of vulnerability. The second section sets out the Scottish policy definition of an 'adult at risk of harm', the term for a person to whom ASP applies. It traces the development of this definition out of earlier ideas about 'vulnerable adults', drawing connections with debates about vulnerability and adult protection and safeguarding

elsewhere. The third section is the longest and is further subdivided. It develops the comparative element of the paper, concluding with a summary of the nature of the vulnerability that policy attributes to 'adults at risk', and hence the nature of the problem that ASP sets out to address. The fourth section critiques this construction, drawing on principles of the social model of disability, on the one hand, and an ethic of care, on the other. A concluding section then summarises the implications of this critique for further debate and policy development.

Vulnerability in policy, law and practice

A number of concerns have been raised about the ways that 'vulnerability' is invoked in social policy, law and the practice of various professions. These might be grouped for present purposes into three main themes. The first relates to meaning. 'Vulnerability' is a term that can mean many things (Daniel, 2010; Fawcett, 2009). Indeed, there are debates over its proper meaning: for instance, the extent to which it describes a quality of individuals versus a quality of situations (Wishart, 2003), or the extent to which it can be considered mutually exclusive with prejudice or 'hate' in explaining crime against disabled people (Roulstone et al., 2011). However, it is often used by professionals and policy-makers in nebulous ways and without definition (Brown, 2011). This is worrying given that there can be practical consequences of being judged to be vulnerable in this type of context (Hasler, 2004; Roulstone et al., 2011).

Second, debate has focused on specifically *who* should be judged to be vulnerable for the purposes of a state response. In the context of English and Welsh legal judgements, Dunn et al. (2008) demonstrate extensions of the concept beyond those judged to lack mental capacity to those judged to be under constraint or duress, as well as those whose present, capable decisions are judged to threaten their autonomy in the longer term. These 'situational' factors have been associated with vulnerability both in the presence and in the absence of 'inherent' factors (Dunn et al., 2008, p.239) thought also to contribute to vulnerability, and Dunn et al. (2008, p.241) caution that the concept thus defined is 'potentially infinite in scope and application'. Meanwhile, the association of vulnerability with some 'inherent' factors has itself been strongly challenged. For instance, Hasler (2004) argues that 'vulnerability' is one major vehicle whereby impairment comes to be associated with the need for professional 'care', which marginalises disabled people and excludes them from decision-making. Some people with learning difficulties and their advocates are particularly strong proponents of these arguments in respect of ASP or safeguarding (Hollomotz, 2009; Hough, 2012; Wishart, 2003). Specifically, they reject being categorised as vulnerable and/or in need of protection, because they associate this with deficit,

paternalism and stigma (Brown, 2011). This in turn connects with arguments that vulnerability has a significant subjective component (Spiers, 2000), and that people's own views of themselves and their situations are therefore relevant to its definition (Dunn et al., 2008).

The third area of critique concerns the status of vulnerability as an exclusionary category at all. For instance, Fineman (2008) argues that US social policies based on assumptions of a 'liberal subject', namely a rational, independent and invulnerable actor, with supplementary policies for those judged to fall short of this standard, are fundamentally flawed because they fail to connect with the realities of the human condition. She argues instead that all people experience vulnerability to a greater or lesser degree in different situations and across the life-course. Therefore, a 'vulnerable subject' would provide a better basis for conceptualising our responsibilities to each other and as a society (Dodds, 2007; Fineman, 2008). There are strong links here with ideas about inter-dependency and an ethic of care, which have been drawn upon to challenge the particular conceptions of autonomy and independence that underpin some UK social policies (Anderson and Honneth, 2009; M. Barnes, 2011; Ferguson, 2007), as well as some perspectives arising from the independent living movement (Kittay, 1999; Reindal, 1999).

'Vulnerable adults', 'adults at risk' and the ASP system

During the refinement of the ASPSA, policy-makers engaged to a degree with the first and second of these groups of issues. Local authority-level policies that preceded the ASPSA in Scotland were usually targeted at 'vulnerable adults', similarly to approaches elsewhere in the UK. This concept could itself mean different things, but was often interpreted to refer to whole groups of people: for instance, all disabled people, all people over a certain age, and/or all people accessing community care services (Hasler, 2004; Slater, 2005). The ASPSA applies instead to 'adults at risk of harm', a concept developed to be less stigmatising and more contextualised than 'vulnerable adults' was understood to have become. An 'adult at risk' is a person over 16 who is a)unable to safeguard themselves; *and* b)at risk of harm from the actions or inactions of others or themselves; *and* c)more vulnerable to harm because 'they are affected by disability, mental disorder, illness or physical or mental infirmity' (ASPSA s.3(1)). The Scottish Government contends that this definition avoids assumptions about inherent vulnerability and the stigmatising labelling of groups because all three parts of the definition must be met for a person to be judged to be an 'adult at risk' (Scottish Government, 2009b). It emphasises that '[s]omeone could have a disability but be able to safeguard their well-being etc. …It is the whole of an adult's particular circumstances which

can combine to make them more vulnerable to harm than others' (Scottish Government, 2008b, p.12).

To be clear, ASP is not solely about incapacity to make decisions, as Scots law defines this. Incapacity with respect to the relevant decisions is not a necessary condition to be judged to be an 'adult at risk' (Patrick and Smith, 2009). Being 'affected by disability, mental disorder, illness or physical or mental infirmity' *is* a necessary but not a sufficient condition. Or, to put this another way, Scottish policy understands there to be something specific about people 'affected by disability, mental disorder, illness or… infirmity', which renders them exclusively susceptible to the type of vulnerability at issue. However, it is for ASP professionals to determine whether this vulnerability is in fact a factor in any given case.

'Adults at risk' in comparative perspective

In its current ASP policy, then, the Scottish Government has made some attempt to engage with criticisms of earlier assumptions about vulnerability, as set out above. However, except that it coincides neither with mental incapacity nor with any other label traditionally attached to people by policies and services, the precise nature of the vulnerability understood to affect 'adults at risk' has still not been made clear. Furthermore, the assumptions of predecessor policies, themselves based on patchy empirical foundations, have been built on and refined with remarkably little comparison and cross-fertilisation of ideas from related fields (Bowes and Daniel, 2010; Johnson et al., 2010).

This section seeks to infer more about Scottish policy understandings of vulnerability in an ASP context, therefore, by:

a) examining the construction of an 'adult at risk', including as evidenced by the provisions thought appropriate for the protection and support of 'adults at risk'; and

b) comparing this with the construction of children and young people in Scottish child protection policy, on the one hand, and women in Scottish domestic abuse policy, on the other.

In drawing this comparison, there is no implication that these policies should approximate to each other. Neither, however, are they assumed to refer to necessarily different and discrete types of problem (see, for example, Humphreys and Absler, 2011; Thiara et al., 2011). The comparison is of three frameworks for understanding and for professional practice. Professionals, policy-makers and others tend to view a situation through one such framework at a time, not least because of the divisions that exist in policy and service

structures and professional remits and roles (Daniel and Bowes, 2011; Johnson et al., 2010). Given this, and given that all policies inevitably construct problems and the people affected by those problems (Bacchi, 1999), comparison is a powerful medium for rendering explicit the ways this has been done.

Inherent characteristics, dependency and power in relationships

This subsection explores ideas about vulnerability and inherent characteristics, dependency and power, first in child protection policy and then in domestic abuse policy. ASP policy is then situated relative to the poles that these points of comparison set up.

The Scottish child protection system is underpinned by an understanding of childhood as an inherently vulnerable state (Brown, 2011; Daniel, 2010), in counterpoint to the assumed norm of the 'liberal subject' (Fineman, 2008). This is demonstrated by the existence of child protection as a state activity at all, and by its potential applicability to any person under a specified age, notwithstanding some variations in the upper bounds of 'childhood' in different aspects of the law (Daniel, 2010; Scottish Government, 2010). The vulnerability of children and young people is associated with characteristics assumed to be integral to childhood. These comprise: a)a greater susceptibility than adults to harm as a consequence of mistreatment; and b)a necessary dependence on adults, particularly parents, for care and control (Daniel, 2010). Evidence of the latter assumption lies in the broader Scottish policy and legislative framework for child care and support as set out in the Children (Scotland) Act 1995. This legislation places primary responsibility with parents to 'safeguard and promote [their children's] health, development and welfare', and requires the state to support parents in this role. Child protection activity is triggered by the occurrence or threat of 'significant harm' (Guthrie, 2011), most frequently associated with failures in parental care, for instance abuse or neglect, and/or failures in parental control, for instance where children misuse substances or become involved in crime (Daniel, 2010; Scottish Executive, 2002; Scottish Government, 2010). The need for parental and/or state control, then, is related in turn to a perception that children may make unwise decisions or put themselves at risk (James et al., 2008).

The construction of women in Scottish domestic abuse policy is in many respects the polar opposite of this, epitomising ideas about the 'liberal subject' (Fineman, 2008). Domestic abuse is defined in Scottish policy as the physical, sexual and/or mental/emotional abuse of women by male partners or ex-partners (Scottish Executive, 2000, p.5). It is understood to be part of the broader problem of Violence Against Women, which is 'a consequence of

continuing inequality between men and women, and …is also a barrier to achieving equality' (Scottish Government, 2009d, p.1). No other factors are deemed causative of domestic abuse except this inequality, as manifested in sexist social attitudes and structures, combined with individual men's misuse of the power these confer (Scottish Executive, 2003, p.6). Unlike children, women subject to domestic abuse are not understood to have inherent characteristics that render them more susceptible to harm and/or less able to defend themselves than others. They are not considered to be unusually prone to put themselves at risk, nor to be ordinarily dependent on care in their relationships with men. This means that parents as perpetrators, in child protection, are seen as behaving unacceptably, in the context of broader power hierarchies that are benign and unremarkable; that is, adults' power over children is not itself a problem (V. Barnes, 2011). By contrast, male partners as perpetrators, in domestic abuse, are seen as behaving unacceptably, in the context of broader power hierarchies that are also unacceptable, and that contribute to and help legitimate their actions.

Three broad points of contrast between constructions of children in child protection policy and constructions of women in domestic abuse policy might be summarised from the above, then, against which to compare constructions of 'adults at risk' in ASP policy. The first relates to whether individuals are considered inherently more susceptible to harm than others. The second relates to whether individuals are considered necessarily dependent on others, such that imbalances of power in their relationships with others are not understood to be problematic in and of themselves. The third relates to whether individuals are considered more prone than others to put themselves at risk. The understanding of vulnerability in ASP policy is unequivocally more similar to child protection than to domestic abuse policy with respect to the first and third of these. 'Adults at risk' are understood to be 'more vulnerable to being harmed' as a direct consequence of being 'affected by disability, mental disorder, illness or …infirmity' (ASPSA s.3(1)(c)). Presumably, given their grouping, these are all intended to refer to inherent characteristics. 'Harm' for ASP purposes can include that arising from the actions or inactions of the individual themselves (ASPSA s.3(2)(b)), similarly to the assumption in child protection policy that a child may put themselves at risk, but contrasting with a premise of domestic abuse policy that judgements should not be passed on the woman's actions and decisions: for instance her decision to remain in or return to an abusive relationship (Scottish Executive, 2000).

Whether 'adults at risk' are constructed as more than usually dependent on others for care is somewhat less clear. Discussions of adult safeguarding and ASP have historically focused extensively on conceptions of vulnerability in the context of care-giving relationships and environments, and these remained a major focus of ASPSA implementation activities

(Scottish Government, 2009a). However, ASP policy is quite clear that 'harm' is not confined to these relationships and settings, and can in fact be perpetrated anywhere, by anyone. This raises questions about the basis for considering 'harm' a unified phenomenon; and child protection policy and domestic abuse policy model two alternative potential explanations for this. Child protection policy centres on parenting, as we have seen; however, this is not to the exclusion of the possibility that other adults could abuse. The unifying factor is children's *inherent* vulnerability, and possibly an extension of the duty to care for children to all adults, albeit in a weaker form than applies to primary carers (Daniel, 2010; Scottish Executive, 2002). On the other hand, domestic abuse and broader Violence Against Women policy sees men's violence against women as unified by structural oppression, rather than by any *necessary* imbalance of power between women and men. It therefore designates work with individual abusers and victims/survivors as 'secondary prevention' and emphasises the over-arching importance of 'primary prevention' that 'aims to change societal attitudes, values and the structures which produce inequality' (Scottish Executive, 2003, p.5). ASP policy again seems more similar to a child protection than to a domestic abuse policy perspective on vulnerability when viewed in this light, given its focus on individual interventions as opposed to structural transformations (Scottish Government, 2008b). Moreover, assumed effects of disablism, ageism and related oppressions seem unlikely explanations for imbalances of power between 'adults at risk' and the vast range of potential 'harmers' as envisaged by ASP policy, given that ASP relates to selected disabled, ill and older people and not to broader groups. Rather, any imbalances of power seem assumed to be inevitable, or at least not to be amenable to state-led transformation.

Responses to harm and abuse

This subsection examines the ways each policy constructs responsibilities for responding to instances of harm and abuse, including the role of the state, and the understandings of vulnerability implied by these constructions. Poles for comparison are again set up by examining first child protection policy, then domestic abuse policy, before ASP policy is situated relative to these.

The Scottish state, via the child protection system, assumes responsibility for responding to actual or potential 'significant harm' to children and young people. It has greater powers in this than either parents or children themselves. In respect of parents, this is because child protection concerns are often associated with failings in parental care and control, but are less easily associated with structural failings within the present system (Daniel, 2010). That is, the state conceptualises itself as having numerous positive responsibilities to provide for children, and to some degree control them (Scottish Government, 2011), but as separate

from 'the problem' when child protection concerns arise (Baldwin and Spencer, 2005). Children's own lack of decision-making powers within the child protection system stems from the policy assumption that children's 'best interests' are paramount in decisions made about them, but that their views and wishes may not coincide with these. Notwithstanding this, children are constructed as having a developing capacity to formulate a view, which must be given weight in accordance with their age and development (Guthrie, 2011).

In individual instances of domestic abuse, by contrast, policy assumes that affected women will find their own ways forward (Hearn and McKie, 2010). Professionals should facilitate women's access to the available supports and legal remedies (Cull, 2003; Guthrie, 2011), but should avoid 'assumptions or judgements about what they should do' (Scottish Executive, 2000, p.37). Additional principles underpin professionals' roles where children are involved, but this moves the discussion back to situations viewed through a child protection and not a domestic abuse policy lens (Humphreys and Absler, 2011). Like any victim of crime, women subject to domestic abuse also have less than complete control over the responses to their situation of law enforcement agencies (ACPOS and COPFS, 2008). However, given that criminal prosecution plays a small part in securing the welfare of most women subject to domestic abuse (Cull, 2003; Hearn and McKie, 2010), routes to safety and recovery are still placed by policy largely in women's own control. In this, again, we see the assumption of a liberal subject, whose autonomy is best supported by non-intervention (Anderson and Honneth, 2009; Fineman, 2008). Additionally, Scottish domestic abuse policy explicitly *includes* the state in its conceptualisation of factors that disempower women, for instance through exhortations in its professional guidance to '[e]xamine the structure of the service and seek means of service provision which do not support male violence by perpetrating *[sic]* inequality'; and '[a]ddress the cultural attitudes amongst staff which support male violence' (Scottish Executive, 2000, p.40). This debars the state from also assuming the 'benign intervener' role that it assumes in child protection work.

ASP policy again bears an initial similarity with child protection policy in the above respects, and an initial dissimilarity with domestic abuse policy, in that it requires Scottish councils to inquire into concerns about 'harm' to a suspected 'adult at risk'. These inquiries are not subject to the invitation or consent of the affected person, though consideration of their views is an important principle at this and other stages of the ASP process (Scottish Government, 2008b). Also like child protection policy and unlike domestic abuse policy, professionals are expected to lead the process of considering responses to ASP situations, through a standardised structure involving initial referral discussions, investigations, case conferences and protection plans (Joint Improvement Team, 2007; Scottish Government, 2008a). Guidance does not consider it problematic for ASP professionals to assess situations

and recommend solutions in the course of implementing these processes; these functions are presented rather as a matter of routine (Joint Improvement Team, 2007). This all seems to suggest that the nature of the vulnerability of the 'adult at risk' may limit their ability to consider their own options, know what is best for themselves and/or to bring this about. Certainly when compared with domestic abuse policy, which rejects as a matter of principle the privileging of professionals' means of problem-solving over affected women's own (Scottish Executive, 2000), this appears to be the implication. Furthermore, the central role accorded to the state in delivering ASP is incompatible with any suggestion that its policies and services may be a *part* of the problem, at least when delivered as the state intends (Johnson, 2012). This again aligns ASP more closely with child protection than with domestic abuse policy.

One major difference from child protection policy, however, is the formalisation of the right of a suspected 'adult at risk' to decline involvement in ASP processes. Specifically, in addition to the right to decline a medical assessment which is shared with certain children, suspected 'adults at risk' may decline to be interviewed as part of ASP inquiries or investigations, and may also decline most proposed interventions, if they are judged to have capacity to do so. Notwithstanding this, three 'protection orders' exist for short term removal of 'adults at risk' and longer-term 'banning' of perpetrators through the sheriff courts, which usually require the person's consent but can be granted without it, if consent can be shown to have been withheld due to 'undue pressure' applied by the perpetrator or by someone else (Scottish Government, 2008b). Like considerations of a child's 'best interests', then, considerations of 'benefit' to an 'adult at risk' can over-ride their stated wishes in certain circumstances. The rationale for this is that coercion, fear and misplaced trust or loyalty can disable people from protecting their own interests, including their autonomy in the longer term (Dunn et al., 2008; Patrick and Smith, 2009; Scottish Government, 2009c). However, no comparable state powers exist in relation to domestic abuse, where similar arguments could equally be made (Anderson and Honneth, 2009; Choudhry and Herring, 2006). The additional, inherent vulnerability of 'adults at risk' is presumably considered to justify the distinction here. Additionally or alternatively, other factors may prevent the application of these arguments to domestic abuse policy, despite their equal relevance. Such factors are revisited in the discussion below.

Summary

The preceding subsections have used a comparison with constructions of vulnerability in two related fields of policy to clarify the construction of vulnerability in Scottish ASP policy.

They have shown that people judged in their present circumstances to be 'adults at risk' are understood by ASP policy to be vulnerable in the sense that:

a) they are more prone to being harmed than others;
b) they may put themselves at risk;
c) where harm is perpetrated by third parties, they lack power relative to those parties; and
d) they need more help from professionals than others to assess their situations and formulate ways forward in response to harm. This legitimates more powers for professionals to override considerations of consent than exist for other adults; however, the baseline assumption remains that consent is required to implement any intervention.

Current Scottish policy proceeds on the basis that this vulnerability is caused by factors inherent to 'disability, mental disorder, illness or physical or mental frailty', but only as these affect particular individuals in particular situations. A blanket association is not drawn between vulnerability and specified conditions or impairments.

Discussion

This paper now critiques the construction of vulnerability in Scottish ASP policy, as outlined above. It contends that, despite revisions in its approach to issues of adult vulnerability with the introduction of the ASPSA, ASP policy still makes unhelpful assumptions about disabled people, older people and people with physical and mental health problems. During the passage of the ASPSA itself, this contention tended to be met with counter-arguments at significant cross-purposes. Therefore, it is important to pre-empt some potential misunderstandings of the critique offered here. First, this critique is not based on a challenge to assumptions that *all* disabled, ill and older people in *all* circumstances are to be considered vulnerable in the ways outlined above. It recognises that policy does not make these assumptions. Second, this critique is not based on the contention that *no* disabled, ill or older people are ever vulnerable in this way. The evidence does not exist to support this argument and, indeed, ASP responses based on an assumption of vulnerability have already been found helpful by some people (Mackay et al., 2011). There are real dangers in idealising concepts like 'independence', 'autonomy' and 'choice' in movements intended to improve social services, in such a way that those people least able to aspire to these ideals are further disempowered (Ferguson, 2007; Fyson and Kitson, 2010). A blanket denial of vulnerability would fall into this trap, and is not the present intention.

The intention here, rather, is merely to contend that no adequate explanation has yet been offered for associating the potential to experience the above type of vulnerability with people 'affected by disability, mental disorder, illness or …frailty', as opposed to another grouping of people, whether narrower or broader. An example of a narrower grouping would be people lacking mental capacity to take the relevant decisions. An example of a broader grouping would include people who are not impaired or ill, but who misuse substances, for instance, or whose self-esteem and confidence in their abilities to effect change has been ground down by years of domestic abuse (Choudhry and Herring, 2006). Not only have the particular parameters of ASP policy been left unexplained, however, but the assumption appears to be that they require no explanation. This lends weight to contentions of the Disability movement that the state, via medical and welfare professionals, draws links between impairment and vulnerability with insufficient analysis of the basis for so doing (Hasler, 2004; Oliver and Sapey, 2006). Furthermore, the argument that exclusion, stigma and disempowerment are amongst the effects of this (Fawcett, 2009; Hollomotz, 2009) renders problematic the assumption that state officials are well-placed to tackle problems of vulnerability and harm, because they are not complicit in those problems (Johnson, 2012). Indeed, even allowing that vulnerability cannot be defined in the abstract, and that each situation must therefore be judged on its merits, the exclusive power of state officials to make these judgements is rendered problematic from the perspective of the Disability movement and its less benign and consensual model of society.

A related way to account for the lack of clarity in ASP policy conceptualisations of vulnerability is to appreciate the interplay between official ideas that policy-makers are prepared to articulate and defend and other ideas, prevalent in wider society, to which they presumably also have regard. If widespread public opinion associates abuse of a disabled or older person with inherent vulnerability to which welfare professionals must respond, for instance, but considers that domestic abuse is a different type of problem, in which women are freely able to 'just leave' (Murray, 2008), considerable pressure is exerted to construct these things differently in policy responses. Anticipation of differential public censure of state inaction should tragedies occur might be envisaged to be a factor here. Conversely, there would likely be much greater public consternation, and more widespread demands for justifications and assurances of safeguards, if 'disability, mental disorder, illness or …frailty' was removed as a criterion for more directive state intervention in situations of violence, harm and abuse.

Perhaps, however, this is precisely the debate that we need to have. To be more specific, if no definitive reason can be articulated for including 'disability, mental disorder, illness or …frailty' as a criterion for ASP intervention, perhaps we need to consider what the policy

would look like, should it be removed. One conclusion from this exercise might be that ASP is paternalistic and detrimentally counter to liberalism. The policy might then be re-defined within stricter bounds. For instance it might be confined to situations where adults lack capacity, as was the wish of some campaigners during the passage of the ASPSA. This is probably a simplistic solution, however, given the very real concerns that proponents of ASP policy and others have raised about situational as opposed to inherent vulnerability (Dunn et al., 2008), and the questionable equation of non-intervention with respect for human rights in circumstances where individuals are disempowered relative to their abusers and by their abuse (Choudhry and Herring, 2006; Fyson and Kitson, 2010; Patrick and Smith, 2009). The contention here is not that these issues do not exist, then, but that attempts to delimit the groups to whom they might apply distort them and sidestep their full import.

This brings us back to the idea of vulnerability as something that unites us, rather than as something that divides us (Dodds, 2007; Williams, 2001). It connects with proposals to re-shape whole swathes of social policy, by rejecting the myth of the 'liberal subject' and the opposition between 'independent' individuals whose 'autonomy' is best supported by being left alone, on the one hand, and individuals who need support or care, on the other (Anderson and Honneth, 2009; Fineman, 2008; Kittay, 1999). Policies re-shaped in this way would take networks of care and responsibility as their baseline (Sevenhuijsen, 2000), reversing the need to root provisions for support and/or protection in the construction of groups or individuals who are 'not like us' (Hasler, 2004, p.230). The practical implications of these ideas would touch every level of society, and are well beyond the scope of this paper. They also need more extensive debate. This is particularly so given their tensions with certain ideas and strategies of the Disability movement (Morris, 1997; Williams, 2001), and potentially also the Violence Against Women movement. However, the shortcomings of all three of the policies discussed above, especially when viewed in comparative perspective, add weight to calls for further exploration of such models.

Conclusion

This paper has examined the construction of vulnerability in Scottish ASP policy through a comparison with the construction of children and young people in Scottish child protection policy, on the one hand, and women in Scottish domestic abuse policy, on the other. It has found that ASP is identical neither to child protection nor to domestic abuse policy in its construction of vulnerability; however there are more similarities with the former than the latter overall. The rationale for this is unclear. Hence the findings of the paper support related work that promotes a comparative and lifespan approach, as one means of interrogating policy and refining its assumptions (Bowes and Daniel, 2010; Daniel and

Bowes, 2011; Johnson et al., 2010). Such an approach has implications for all three of the policies discussed; however the focus here has been on ASP.

The paper has challenged the power of ASP professionals in a number of respects. One important challenge has been to the exclusive prerogative of professionals to identify vulnerability in respect of suspected 'adults at risk'. This sits uneasily both with a social model of disability and with understandings of vulnerability as a subjective experience (Spiers, 2000). One practical, micro-level implication is that people's own views must be heard, not merely when deciding how to respond to vulnerability and harm, but also when deciding whether and in what sense to consider a person vulnerable at all (Dunn et al., 2008). At a broader level, much more collaborative work needs to take place with disabled people, older people and people with mental health problems to design and deliver services, beginning with fuller exploration of the ways, if any, that individuals and groups consider themselves to be vulnerable or 'at risk'. An oppression perspective, similarly to the domestic abuse policy model, might perhaps appear in these accounts more extensively than it does current ASP policy (e.g. Roulstone et al., 2011; Thiara et al., 2011).

At the broadest of levels, an ethic of care perspective and an acknowledgement of universal vulnerability has been proposed as a useful corrective for future policies concerned with protection from violence, harm and abuse. Specifically how this would look requires further debate. This is a proposal at the political level, importantly (Lloyd, 2006, p.1179), because the difficulties with ASP identified in this paper have been at the political level. Whilst the ways people experience ASP services are significantly affected by the relationships they negotiate with ASP practitioners and by the judgements of those practitioners on the ground (Mackay et al., 2011), the structures within which this takes place constrain these interactions in particular ways. These structures ought therefore to be based on more equitable assumptions.

References

ACPOS, & COPFS. (2008) In partnership, challenging domestic abuse: Joint protocol between Association of Chief Police Officers in Scotland (ACPOS) and Crown Office and Procurator Fiscal Service (COPFS) from http://www.crownoffice.gov.uk/sites/default/files/Publications/Resource/Doc/13547/0000559.pdf.

Anderson, J., & Honneth, A. (2009) Autonomy, vulnerability, recognition, and justice. In J. Christman & A. Anderson (Eds.), *Autonomy and the challenges to liberalism* (pp. 127-149). Cambridge: Cambridge University Press.

Bacchi, C. L. (1999) *Women, policy and politics*. London: Sage

Baldwin, N., & Spencer, N. J. (2005) Economic, cultural and social contexts of neglect. In J. Taylor & B. Daniel (Eds.), *Child neglect* (pp. 26-42). London: Jessica Kingsley.

Barnes, M. (2011) 'Abandoning care? A critical perspective on personalisation from an ethic of care', *Ethics and Social Welfare,* 5(2), 153-167.

Barnes, V. (2011) 'Social work and advocacy with young people: Rights and care in practice', *British Journal of Social Work,* Advance Access published online October 5, 2011, doi:10.1093/bjsw/bcr142.

Bowes, A., & Daniel, B. (2010) 'Introduction: Interrogating harm and abuse: A lifespan approach', *Social Policy and Society,* 9(2), 221-229.

Brown, K. (2011) ''Vulnerability': Handle with care', *Ethics and Social Welfare,* 5(3), 313-321.

Choudhry, S., & Herring, J. (2006) 'Righting domestic violence', *International Journal of Law, Policy and the Family,* 20, 95-119.

Cull, L.-A. (2003) Domestic abuse: social work practice and the law. In D. Baillie, K. Cameron, L.-A. Cull, J. Roche & J. West (Eds.), *Social work and the law in Scotland*. Basingstoke: Palgrave Macmillan.

Daniel, B. (2010) 'Concepts of adversity, risk, vulnerability and resilience: A discussion in the context of the 'child protection system'', *Social Policy and Society,* 9(2), 231-241.

Daniel, B., & Bowes, A. (2011) 'Re-thinking harm and abuse: Insights from a lifespan perspective', *British Journal of Social Work,* 41, 820-836.

Disability Rights Commission, & Capability Scotland. (2004) Hate crime against disabled people in Scotland: A survey report from http://www.leeds.ac.uk/disability-studies/archiveuk/DRC/Hate%20Crime%20report.pdf.

Dodds, S. (2007) 'Depending on care: Recognition of vulnerability and the social contribution of care provision', *Bioethics,* 21(9), 500-510.

Dunn, M. C., Clare, I. C. H., & Holland, A. J. (2008) 'To empower or to protect? Constructing the 'vulnerable adult' in English law and public policy', *Legal Studies,* 28(2), 234-253.

Fawcett, B. (2009) 'Vulnerability: Questioning the certainties in social work and health', *International Social Work,* 52(4), 473-484.

Ferguson, I. (2007) 'Increasing user choice or privatizing risk? The antinomies of personalization', *British Journal of Social Work,* 37, 387-403.

Fineman, M. A. (2008) 'The vulnerable subject: Anchoring equality in the human condition', *Yale Journal of Law and Feminism,* 20(1).

Fyson, R., & Kitson, D. (2010) 'Human rights and social wrongs: Issues in safeguarding adults with learning disabilities', *Practice,* 22(5), 309-320.

Guthrie, T. (2011) *Social work law in Scotland* (3rd ed.). West Sussex: Bloomsbury Professional

Hasler, F. (2004) Disability, care and controlling services. In J. Swain, S. French, C. Barnes & C. Thomas (Eds.), *Disabling barriers - enabling environments* (2nd ed., pp. 226-232). London: Sage.

Hearn, J., & McKie, L. (2010) 'Gendered and social hierarchies in problem representation and policy processes: 'Domestic violence' in Finland and Scotland', *Violence Against Women,* 16(2), 136-158.

Hollomotz, A. (2009) 'Beyond 'vulnerability': An ecological model approach to conceptualizing risk of sexual violence against people with learning difficulties', *British Journal of Social Work,* 39, 99-112.

Hough, R. E. (2012) 'Adult protection and 'intimate citizenship' for people with learning difficulties: Empowering and protecting in light of the No Secrets review', *Disability and Society,* 27(1), 131-144.

Humphreys, C., & Absler, D. (2011) 'History repeating: Child protection responses to domestic violence', *Child and Family Social Work,* 16(4), 464-473.

James, A., Curtis, P., & Birch, J. (2008) Care and control in the construction of children's citizenship. In A. Invernizzi & J. Williams (Eds.), *Children and citizenship* (pp. 85-96). London: Sage.

Johnson, F. (2012) 'What is an 'adult protection' issue? Victims, perpetrators, and the professional construction of 'adult protection' issues', *Critical Social Policy,* 32(2), 203-222.

Johnson, F., Hogg, J., & Daniel, B. (2010) 'Abuse and protection issues across the lifespan: reviewing the literature', *Social Policy and Society,* 9(2), 291-304.

Joint Improvement Team. (2007) *Working together to improve adult protection: Risk assessment and protection plan*. Edinburgh: Scottish Government

Kittay, E. (1999) *Love's labor*. New York: Routledge

Lloyd, L. (2006) 'A caring profession? The ethics of care and social work with older people', *British Journal of Social Work,* 36, 1171-1185.

Mackay, K., McLaughlan, C., Rossi, S., McNicholl, J., Notman, M., & Fraser, D. (2011) *Exploring how practitioners support and protect adults at risk of harm in the light of the Adult Support and Protection (Scotland) Act 2007*. Stirling: University of Stirling with East Dunbartonshire, Falkirk and Perth & Kinross councils

Morris, J. (1997) 'Care or empowerment? A disability rights perspective', *Social Policy and Administration,* 31(1), 54-60.

Murray, S. (2008) ''Why doesn't she just leave?': Belonging, disruption and domestic violence', *Women's Studies International Forum,* 31(1), 65-72.

O'Keeffe, M., Hills, A., Doyle, M., McCreadie, C., Scholes, S., Constantine, R., Tinker, A., Manthorpe, J., Biggs, S., & Erens, B. (2007) *UK study of abuse and neglect of older people: Prevalence survey report*. London: Comic Relief/ Department of Health

Oliver, M., & Sapey, B. (2006) *Social work with disabled people* (Third ed.). Basingstoke: Palgrave Macmillan

Patrick, H., & Smith, N. (2009) *Adult protection and the law in Scotland*. West Sussex: Bloomsbury Professional

Reindal, S. M. (1999) 'Independence, dependence, interdependence: Some reflections on the subject and personal autonomy', *Disability and Society,* 14(3), 353-367.

Roulstone, A., Thomas, P., & Balderston, S. (2011) 'Between hate and vulnerability: Unpacking the British criminal justice system's construction of disablist hate crime', *Disability and Society,* 26(3), 351-364.

Scottish Executive. (2000) *Scottish partnership on domestic abuse: National strategy to address domestic abuse in Scotland*. Edinburgh: Scottish Executive

Scottish Executive. (2002) *"It's everyone's job to make sure I'm alright": Report of the child protection audit and review*. Edinburgh: Scottish Executive

Scottish Executive. (2003) *Preventing domestic abuse: A national strategy*. Edinburgh: Scottish Executive

Scottish Government. (2008a) The Adult Support and Protection (Scotland) Act 2007 Part 1: Guidance for Adult Protection Committees from http://www.scotland.gov.uk/Publications/2009/01/06115617/8.

Scottish Government. (2008b) The Adult Support and Protection (Scotland) Act 2007: Code of practice for local authorities and practitioners exercising functions under Part 1 of the Act from http://www.scotland.gov.uk/Resource/Doc/259161/0076850.pdf.

Scottish Government. (2009a) Adult protection training framework from http://www.scotland.gov.uk/Topics/Health/care/adult-care-and-support/legislation/ASPtraining/ASPdiagram.

Scottish Government. (2009b) *The Adult Support and Protection (Scotland) Act 2007: "What it means to me". Report of a user and carers conference*. Edinburgh: Scottish Government

Scottish Government. (2009c) Adult Support and Protection Act frequently asked questions from http://www.scotland.gov.uk/Topics/Health/care/adult-care-and-support/legislation/ASPFAQ.

Scottish Government. (2009d) *Safer lives: Changed lives. A shared approach to tackling Violence Against Women in Scotland*. Edinburgh: Scottish Government

Scottish Government. (2010) *National guidance for child protection in Scotland*. Edinburgh: Scottish Government

Scottish Government. (2011) Getting it right for every child and young person from http://www.scotland.gov.uk/Topics/People/Young-People/gettingitright.

Sevenhuijsen, S. (2000) 'Caring in the third way: The relation between obligation, responsibility and care in Third Way discourse', *Critical Social Policy,* 20(5), 5-37.

Sin, C. H., Hedges, A., Cook, C., Mguni, N., & Comber, N. (2009) *Disabled people's experiences of targeted violence and hostility*. Manchester: Equality and Human Rights Commission

Slater, P. (2005) 'Elder abuse, adult protection and social care: Developments in New Labour policy', *Journal of Adult Protection,* 7(3), 33-37.

Spiers, J. (2000) 'New perspectives on vulnerability using emic and etic approaches', *Journal of Advanced Nursing,* 31(3), 715-721.

Thiara, R. K., Hague, G., & Mullender, A. (2011) 'Losing out on both counts: Disabled women and domestic violence', *Disability and Society,* 26(6), 757-771.

Williams, F. (2001) 'In and beyond New Labour: Towards a new political ethics of care', *Critical Social Policy,* 21(4), 467-493.

Wishart, G. (2003) 'The sexual abuse of people with learning difficulties: Do we need a social model approach to vulnerability?' *Journal of Adult Protection,* 5(3), 14-27.