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The social creation of "vulnerability" to sexual violence of people with learning difficulties

An application of feminist theory

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Abstract

People with learning difficulties in the UK are commonly labelled as "vulnerable" to sexual violence. In this paper I apply the social model of disability to this labelling process and I contend that "vulnerability" is a concept that is socially created and socially creating. Feminist analysis of the process of social role shaping can be usefully applied to the socialisation of adults with learning difficulties into "vulnerable adults". To set the analytical framework for this paper I therefore summarise feminist theory on the socialisation of adolescents into their prescribed sexual gender roles. I outline how we cultivate sexual passivity in adolescent girls and contend that "vulnerability" is inherent to the female gender role we expect adolescent girls to aspire to. I question whether the social creation of "vulnerable" adults is a similar process. I subsequently de-construct the concept "'capacity' to consent" to sexual activity, which is deemed to be a key indicator for "vulnerability" to sexual violence. I highlight that "lack of intellectual 'capacity'" to consent to sexual activity is the social consequence of lack of information on the social meanings of sexual behaviours and their possible consequences, such as sexually transmitted infections or pregnancy. Yet we use the discovery of "lack of 'capacity'" to justify an individual's continued "protection" from information about sexuality and "protection" from opportunities to develop consenting sexual relationships. Our response to "lack of 'capacity'" thus reinforces, rather than limits "lack of 'capacity'".

In current UK policies and legislation, "vulnerability" is understood to be a direct consequence of a person's intellectual impairments. Assuming "vulnerability" of an individual because of who they are allows "victim-blaming" and is ethically not acceptable, as it places the cause for sexual violence in the individual experiencing it. I suggest that "vulnerability" is created by the way society reacts to people with learning difficulties. They are segregated and over-protected from mainstream society and receive inferior levels of information on sexuality. This creates individuals who have low self-defence skills, who lack the social awareness to detect or anticipate potentially violating situations, who have not learned to make decisions about their sexual preferences, who have low self-esteem and who lack sexual autonomy. This creates perfect conditions for perpetrators of sexual violence. I conclude that, if we are committed to give people with learning difficulties the opportunity to increase their self-defence skills to sexual violence, we have to eradicate the concept "vulnerability" altogether.

Content

Introduction

Adults with learning difficulties in the UK are commonly assumed to be "vulnerable" to sexual violence. By applying feminist theory to the process of social role shaping I aim to demonstrate that the "vulnerability" of adults with learning difficulties in the UK is socially created. If we assume "vulnerability" we treat adults with learning difficulties not as adults, but as "vulnerable adults". Their "special" status and treatment reinforce their perceived differences. The label "vulnerable adult" then becomes a self-fulfilling prophecy.

This paper is divided into one introductory chapter, three main chapters and a conclusion. The main chapters are entitled "a feminist approach to social role shaping", "'capacity' to consent to sexual activity" and "theorising 'vulnerability'". All chapters are loosely related to each other. The topics covered in the three chapters will be discussed in relation to each other in the concluding chapter.

I begin this paper by defining who is meant by "people with learning difficulties" and I define the concept "sexual violence". I briefly describe the methodology and research context of this study. Next I give a concise overview of the history of sexuality, the history of people with learning difficulties and the current UK policy context that applies to this population. In the first chapter I provide an overview of feminist theory on gender role shaping with a particular focus on adolescence as the crucial development period. I summarise the feminist criticism on the assumption of biological determinism of sexual roles. Then I describe how adolescent girls and boys are socialised into their gendered sexual roles. In the next chapter I question whether the concept "'capacity' to consent" to sexual activity is at all meaningful. I explore the potential of sex education in enabling children and young people to establish "capacity" to consent to sexual activity, which I contrast with the reality of sex education provision to young people and adults with learning difficulties. I then critically analyse the conceptualisation of the "'capacity' to consent" to sexual activity of people with learning difficulties. Next I discuss the controlling nature of "age of consent" legislation. In the final chapter I discuss the concept "vulnerability", its assumed causalities and consequences. I explore the conceptualisation of "vulnerability" in current UK legislation and policies and I briefly mention professional's dependency on adults they label as "vulnerable". Next I present a list of assumed vulnerability creating variables, which have been suggested in the literature. With reference to this list I argue that vulnerability is socially created. I finally suggest that "vulnerability" must be de-constructed. Concluding I summarise all of the above arguments and relate them to each other. I argue that "vulnerability" is not a helpful concept. The label reinforces "vulnerability" and fails to protect. I suggest that we must abolish the concept "vulnerability" and end the continuing disablement of people with learning

difficulties from developing resistance to sexual violence and becoming autonomous sexual actors.

Setting the context

In this chapter I define the concepts “learning difficulty” and “sexual violence” before I move on to a concise outline of the methodology and research context of this study. Next I give a brief historical overview of the conceptualisation of sexuality from the Victorian era onwards. I conclude with a brief sketch of the dominant stereotypes on the sexuality of people with learning difficulties in western societies, their general history and the current UK policy agenda applied to this population.

Key concepts

People with learning difficulties

By “people with learning difficulties” I refer to individuals who have been labelled to have a “learning disability” by medical professionals. My use of the term “learning difficulty” excludes educational labels, such as dyslexia. The medical term “learning disability” is a descriptive diagnosis of a person who has an intellectual impairment (IQ </= 70) and “social and adaptive dysfunctions” that started before adulthood (University of Newcastle. 2004). Medical professionals see disability as the product of biological determinism. An individual’s inabilities are caused by his/her physical, sensory or psychological aspects of functioning that do not conform to norms established in medical practice. This way of thinking has been termed the *individual model of disability*. The model locates the ‘problem’ within the individual. Medical treatment is often seen to be the ‘solution’ to disability (e.g. Oliver.1990).
The social model of disability challenges the concept of normalcy. Who are medical professionals to decide that some behaviours are “socially acceptable” and some are not? By labelling people with leaning difficulties as “dysfunctional” they justify segregating them from mainstream society. Such exclusion causes *dis*ability (e.g. Oliver.1990).
People with learning difficulties prefer the term “learning difficulties”, because it indicates that they have the potential to learn once difficulties in the learning process are overcome, while disability implies *in*ability to learn (Goodley.2000, Harris.1995). A learning difficulty is an intellectual impairment. Impairments become disabling through barriers in society that prevent individuals from participating fully in what others take for granted (e.g.Oliver.1990), such as education, employment, leisure and family life.

Sexual violence

We commonly use the term “sexual abuse” to describe experiences of sexual violation of adults with learning difficulties (and older adults) and “harassment”, “assault” and “rape” to describe the experiences of non-disabled adults. Differing terminology emphasises the perceived differences between disabled and non-disabled people. This distorts the fact that sexual violence is a similar experience for disabled and non-disabled people. “Sexual abuse” appears to imply taking advantage of someone “helpless” or “innocent”, which patronises the disabled adult. Thus I replace the more commonly used term “sexual abuse” with the term “sexual violence” towards adults with learning difficulties, but I refer to the same concept.
In this paper, I use the term “sexual violence” to refer to unwanted contact and non-contact sexual experiences, including sexual harassment, sexual assault, pressurised and coercive “sex” and rape. A sexual experience is unwanted if a person did not verbally and/or non-verbally communicate consent to the experience or if he was not free to make that choice. For individuals with physical impairments freedom to choose may not only be incapacitated by pressure and coercion. They may additionally be physically unable to escape from unwanted sexual contact or to call for help. People with learning difficulties may lack information on sexuality, which may result in limited awareness of the social meanings of sexual behaviour and their right to refuse participation. If a person who engages in sexual activity is not aware that what he engages in is *sexual* behaviour, he engages in unwanted sexual activity, even if he does not appear resistant.

Methodology and research context

During the past year of studying towards my MA Disability Studies I prepared for my PhD research project, in which I aim to explore the causalities of the high likelihood of people with learning difficulties to experience sexual violence. My aim is to establish effective mechanisms that would enable people with learning difficulties to increase their resistance to sexual violence. I initially intended to design a tool for measuring “vulnerability”. My aim was to identify variables in individuals that would limit “vulnerability”. However, I then realised that the label “vulnerability” places the cause for sexual violence within the individual who experiences it. Labelling people with learning difficulties as “vulnerable” thus originates from an individual model of disability. As a social model thinker I recognised that it would not be sufficient to critically analyse the label “vulnerability”, but that my task must be to dispute it. When studying the social construction of gender roles, feminists explore a similar puzzle. Their conceptualisation of the traditional female gender role as a role of “passivity” and “vulnerability” to male sexual approaches can be meaningfully applied to

the social creation of the "vulnerable adult" role. In preparation for this paper I have therefore studied feminist theory on social role shaping, some academic sources on childhood and sexuality and academic literature, policies and legislation concerned with people with learning difficulties, sexuality and "vulnerability". In this paper I bring these sources together with the aim to develop a coherent understanding of the concept "vulnerability" to sexual violence, as it is applied to adults with learning difficulties in the UK today.

Historical contexts

Sexuality

In 1976 Foucault argued that Victorian values of sexuality continue to dominate western societies. While prior to the Victorian period sexual practices had little need for secrecy, the Victorian bourgeoisie succeeded to carefully confine sexuality and move it into the home (Foucault.1976). Talk about sexuality was silenced, particularly in relation to those who were assumed to be asexual, such as children. Children were viewed as innocent, without sexuality. Such views concealed child sexual abuse (Waites.2005) and "one closed one's eyes and stopped one's ears" whenever children came to show evidence of sexual activity (Foucault.1976:4).

For Victorians sex was associated with sin, sexual desire transformed into discourse. Sex was censored and subject to social control. The sexuality of "mad men and women", criminals, homosexual people and others who were considered to be sexually 'deviant' became scrutinised (Foucault.1976). In the early 20th century, such discourse gave rise to eugenic arguments in relation to the "feeble minded". I will elaborate on this subject below. Non-disabled adults on the contrary were encouraged to procreate, sexual intercourse being a 'racial duty' (Weeks.1989). Women who refused motherhood were subject to harsh criticism.

Havelock Ellis, a British doctor, sexual psychologist and social reformer, saw male sexuality as unproblematic, being direct and forceful, based in the original primitive seizure of the female of the male. Female sexuality on the contrary constituted a "social problem", because through it the race was procreated (Weeks.1989). Ellis thus wrote his influential "*Studies in the Psychology of Sex*" in seven volumes between 1897 and 1928 to address these "problems". Jackson (1987), a feminist academic, contents that Ellis's work made a significant contribution towards the eroticisation of female oppression. Ellis claimed that

> "heterosexual intercourse was essentially a re-enactment of primitive, animal courtship; the male sexual urge was essentially an urge to conquer, and the female sexual urge and urge to be conquered." (Jackson.1987:57)

Female resistance to male sexual advances was thus "not real" and essentially part of the "game", designed to increase male sexual arousal. Ellis completely denies female sexual autonomy. He argued that female sexual pleasure and pain are closely related and that male dominance and female submission are biologically determined (Jackson.1987). Biological determinism is a concept that has been extensively challenged by feminism. I will outline feminist views on this subject in the subsequent chapter.

People with learning difficulties

People with learning difficulties were historically seen and continue to be seen as "problems" in "need" of special treatment and services (Ryan.1987). Throughout history people with learning difficulties were portrayed

> "as essentially being on the outside or, at the very maximum, on the fringes of society. Their humanity has often been denied, they have been seen as a threat and a danger to society, they have been oppressed and segregated." (Parameter.2001:275)

Traditionally the sexuality of people with learning difficulties was conceptualised through two contrasting stereotypes: Firstly, people with learning difficulties were seen as "eternal children", as innocent and asexual. To protect their "natural innocence", information about sexuality was withheld form this population. "Any signs of sexual interest or arousal were ignored, repressed or misunderstood" (McCarthy.1999:53). On the other hand people with learning difficulties were also portrayed as sexually deviant, as sexually menacing and promiscuous, as having urges that are beyond their capacity to control. They were seen as over-sexed and as a potential sexual threat to others. (Parameter.2001, McCarthy.1999, Fairbairn et. al.1995).
Charles Darwin's "Origin of Species", which was published in 1859, its subsequent interpretations and the genetic discoveries of Gregor Mendel gave rise to the science of eugenics (Parameter.2001). Procreation of people with learning difficulties was to be actively discouraged, as they were seen as a danger to the "race" and their "defective" genetic material should not be passed on. Many countries, such as the USA, Canada, Sweden and France introduced sterilisation laws (Parameter.2001). While sterilisation was hardly used in Britain, population control was exercised by means of segregation in residential institutions, which was legally enacted by the 1913 Mental Deficiency Act (Weeks.1989).
The second half of the twentieth century has seen the deinstitutionalisation and community living movement, which was driven by the *normalisation principle*. It was assumed that *integration* with non-disabled people, in other words the adaptation with existing societal norms of behaviour, will lead to greater acceptance of and respect for people with learning difficulties (Parameter.2001).

People were physically moved into the community, but it can be argued that they were still not *included* within society.
Today we understand the above conceptualisations to be based on an individual model of disability: The source for particular "problems" encountered by individuals with learning difficulties was assumed to lie within the individual. Individualistic solutions, such as containment or "*normalisation*", were sought.
In contrast, the social model of disability suggests that the "solution" to disability is social *inclusion*. This is the process whereby society values and embraces all its members. Diversity is celebrated, not stigmatised. The particular needs of all individuals in our society are accommodated, to facilitate their full participation in all aspects of social life (e.g.Oliver.1990). At present, such an inclusive British society remains utopia. The particular learning needs of people with learning difficulties are mostly not accommodated within mainstream society. They consequently remain amongst the most socially excluded groups in Britain. Chappell (1998) argues that the social model of disability is not utilised effectively for people with learning difficulties. She contents that emancipatory disability analysis of our society in the past tended to focus predominantly on barriers to the inclusion of people with physical and sensory impairments, but neglected an analysis of intellectual barriers. In order to fully utilise the social model of disability to benefit all disabled people in Britain, an explicit commitment must be made to include the particular social barriers encountered by people with learning difficulties in our analysis. With this paper I aim to facilitate this process.

The White Paper "Valuing People" (Department of Health (DoH) 2001) sets the current UK policy agenda for people with learning difficulties. It is underpinned by the following key principles: the protection and enforcement of disabled people's legal and civil rights, the promotion of their independence, enabling them to make choices and the inclusion of disabled people in mainstream society. The sexual rights of people with learning difficulties are acknowledged by "Valuing People". The paper instructs that

> "Good services will help people with a learning disability to form relationships, including ones of a physical and sexual nature. It is important that people can receive accessible sex education and information about relationships and contraception." (DoH.2001, Sect .7.39, p.81)

Unfortunately, the subject was only dedicated one paragraph. No recommendations are made on how this should be achieved and no resources are allocated to improve e.g. sex education services. Consequently no formal nationalwide commitment is made to provide learning and development opportunities to people with learning difficulties that would prepare them to establish safe sexual relationships. Some services and local authorities have

however established regional sexual relationship policies, which clearly state that individual's with learning difficulties must be free to choose to have sexual relationships (e.g. NHS Lothian.2004). Such relationship policies ensure consistency in staff responses. In line with such policies, staff interventions are rights-based, rather than driven by individual staff values. It is unfortunate that such policies are needed, since all individuals should be assumed to have the right practice sexual autonomy. Nonetheless people with learning difficulties have historically been denied their personhood. Spelling out their rights in policy guidelines will ensure that persisting stereotypes and assumptions are challenged.

A feminist approach to social role shaping

In this chapter I provide an overview of feminist theory on gender role shaping with a particular focus on adolescence as the crucial development period. I summarize the feminist critic on the conceptualisation of sexuality as biologically determined, before I move on to discuss obstacles in defining sexual violence. Then I describe how adolescent girls in our society are socialised into the feminine sexual role. Next I compare the sexual experiences of non-disabled adolescent girls and women with learning difficulties. I conclude the chapter by outlining the obstacles disabled boys and men encounter in aspiring to their prescribed masculine gender role.

Feminist theory on sexuality

Feminists challenge the belief that men are 'victims' of sexual urges over which they have no control and outline that in our society sexuality is used as a 'weapon' of male power through which men exercise control over women (Jackson.1987). Thus

> "Sexual behaviour is social behaviour; it is not just the consummation of some biological drive." (Jackson.1996:62)

This is confirmed by the anthropological findings of a wide range of possible styles of sexuality within our species. The social meanings that are attached to certain behaviours within any society make such behaviours sexual. McKinnon (1996) defines sexuality as a social process which "creates, organises, expresses and directs desire" (P.182). In our society women continue to be viewed as sexually passive and in general less sexual than men (Jackson.1996). McKinnon (1996) contents that sexuality is for feminists what work is for Marxists; "that which is most one's own, yet most taken away" (p.182). Feminism and Marxism are theories of power and of the distribution of inequality, they exist respectively in a society in which "many work and few gain, in which some fuck and others

get fucked" (p.183). Within this context, "vulnerability" is a socially created and creating attribute of femininity.
Kelly (1996) argues that it is not possible to make a precise distinction between pressurised "sex", coercive "sex" and rape. She places sexual violence towards women in western societies on a continuum, as the boundaries between these categories shift and a woman's understanding of her experience changes over time. Making clear distinctions between categories is difficult in a society where women are portrayed as passive objects of men's desire (Lees.1993) and where there is consequently room for men to describe sexual harassment as "harmless fun" (Kelly.1996:195), which makes it difficult for women to define their experiences as violating. Sexual harassment may be defined as unwanted and unsought intrusions by men into women's feelings, thoughts, behaviours, space, time, energies and bodies (Raitt.1994). It may be difficult to distinguish from socially accepted sexual behaviour since, within conservative heterosexual ideologies, the man 'advances' and the woman 'responds'. McKinnon (1996) argues that women are generally socialised into identifying themselves as passive sexual beings that exist for men, are attractive for men and sexually available on male terms. Women are portrayed as victims of men's sexuality and not as sexual subjects who can negotiate with men (Fine.1988). Women are thus "vulnerable" by nature of their prescribed gender role. Within our society liberation may be achieved by individual woman, who challenge gender role expectations and negotiate their own sexual boundaries, thus become autonomous sexual actors. Sole reliance on self-liberation, within a culture within which women will internalise, to a larger or lesser extend, their expected roles of sexual passivity, will result in the liberation of the most politically aware, while the most disempowered individuals remain oppressed. Such individuals will continue to hold themselves responsible for their isolated experiences of sexual victimisation (Holland et.al.1996). The sexual liberation of women must therefore remain a central issue of discussion on a public domain, reaching out to all members of our society.

Socialisation into the feminine sexual role during adolescence

Until the 1980s research into child-development and youth was almost exclusively concerned with boys. Experts generally assumed that adolescence was similar for boys and girls (Lees.1993). Recent feminist research has unmasked that girls experience adolescence as a life period characterised by "developmental crisis", by "a discourse that depicts each girl's adolescence as her own unique hell" (Ward&Benjamin.2004:21). Adolescent girls are at high risk of depression, declining self-esteem, (Basow&Rubin.1999) eating disorder, self-injury, and attempts at suicide (Pipher.1994). Pipher (1994) contents that this should be no surprise as girls grow into a sexualised, "media-saturated"

culture, within which they face “incredible pressures to be beautiful and sophisticated” (p.12).
When young women, often under the age of consent, begin to engage in sexual relationships, they have limited access to information that would enable them to make informed choices.

> “They usually have information about the mechanisms of heterosexual intercourse and the existence of contraception. They will have ideas about romance, femininity and their bodies, but they may have little emotional or practical information that they can use to define the boundaries of their own pleasure or their own safety.” (Holland et. al.1996:249)

I have outlined above that sexual desire is only partially a bodily process regulated by hormones and that it is also influenced by social processes. Sexual desire is therefore socially constructed. Within patriarchal societies, female sexuality is subordinate to male sexuality. This creates a culture within which adolescent girls are under systematic pressure not to feel, know or act on their sexual desire (Tolman.2002). “Good girls” are expected not to be sexually experimental (Lees.1993). Such values are integral to the female gender role towards which we expect young girls to aspire. Girls in the UK continue to be socialised into being sexually passive. Social control is often exercised by young people themselves. The fear of being labelled a “slut” by their peers rules adolescent girls’ every action (Tolman.2002, Lees.1993). For example, a girl who takes a condom on a date is thought to be oversexed and easily sexually available. Only girls in established relationships are deemed to be fairly safe from being labelled a “slut”. Some girls therefore enter relationships in order to save their reputation (Lees.1993). Some adolescent girls have positive relationships with boys and are able to negotiate for safer sexual practices and sex that fulfils their sexual desires. Other girls trade their personal autonomy for subordination within an unequal relationship.
Tolman (2002) argues that the denial of female adolescent sexuality, as promoted by gender role expectations, leads to girls participating in high-risk sexual activity that ‘just happened’; sexual activity that is often unprotected and was neither initiated, nor planned by the girl. Young women frequently describe such experiences with words like “I just accepted it” or “I let him.” (Holland et.al.1996), implying that they felt a need for sexual compliance to male initiative and also taking personal responsibility for “allowing” sex to “just happen”. Women often see themselves as contributing to pressurised sex, because they have not stopped it (Holland et.al.1996). It is questionable whether “sex that just happened” is consensual. Tolman (2002) gives account of a girl who had sexual intercourse that she did not want. The girl blames herself for the incident. Tolman (2002) comments:

> "Since rape is predicated on a woman not wanting a sexual experience, if Jenny never has feelings of want or desire, how can she know if she has been raped?" (p.65)

A comparison of the sexual experiences of non-disabled adolescent girls and women with learning difficulties

I was unable to locate a published study of the sexual experiences of adolescent girls with learning difficulties in the UK, but I noticed that the sexual experiences of adult women with learning difficulties are surprisingly similar to those of non-disabled adolescent girls. McCarthy (1993) studied the sexual experiences of women with learning difficulties in long-stay hospitals. She describes that:

> "Sex was primarily for men's pleasure and […] the men took their pleasure at the expense of the women's." (p.278)

Sexual activity between men and women with learning difficulties in long-stay hospitals focuses on the men's genitals and is almost exclusively penetrative. Men and women are unaware of the existence of the clitoris and of women's orgasm. McCarthy (1993) interviewed 60 women, but found that there is little variation in their sexual experiences. McCarthy's more recent study (1999) was conducted with the explicit aim to compare the experiences of women living in residential settings and women living in the "community". To her own surprise, McCarthy (1999) found little variation. Experiences of women living in the "community" were similar to those described above.

Most women with learning difficulties do not have a way of expressing their sexuality that is autonomous from men's sexuality. Masturbation is uncommon and generally seen as "wrong" or "bad". Although masturbation amongst non-disabled adolescent girls appears to be more common, the dominant view on female masturbation as immoral also prevails amongst adolescent girls. Female masturbation is hardly openly discussed and is also a rare topic in confidential peer-talk (Tolman.2002).

Some non-disabled adolescent girls are confused about their sexual identity. Few feel able to explore same-sex relationships (Tolman.2002). "Coming out" as lesbian or bisexual contravenes societal norms, which requires confidence and autonomy. Women with learning difficulties appear to lack such autonomy to an even greater extent than non-disabled adolescent girls. McCarthy (1993) did not find any evidence of the women she worked with relating to each other sexually.

> "The fact that the women's sexual experiences are inextricably linked to men means the women have no way of understanding any sexual feelings or experiences outside of that context. Sex, then, becomes

> something that they do not only with men, but for men." (McCarthy.1993:279)

Tolman (2002) describes girls and women who do not know their own potential for sexual pleasures and whose sexuality is repressed to such an extent that they do not feel sexual desires as having "silent bodies". Women who have silent bodies are unable to practice sexual autonomy. Sex is something they passively endure and tolerate, rather than actively enjoy. It is done to a body on which the woman places little value.

I discussed above that many women experience difficulties in describing their experiences of sexual violation as rape. Brown (1991) asserts that this is a particular problem for disempowered women, since

> "One cannot be sexually devalued if one has no value as a sexual person to begin with." (p.65)

The women McCarthy (1999, 1993) interviewed generally placed little value on their own bodies. Yet, in order to develop resistance to male pressures, the development of sexual subjectivity must be a central adolescent developmental task – for both disabled and non-disabled girls - to enable girls to become self-motivated sexual actors and to make responsible choices about sexual behaviour (Tolman.2002). Girls who learn to know their bodies, to access the range of physical sensations that course through one's body, to feel and to act upon their sexual desire, will develop sexual subjectivity (Tolman.2002), which will enable them to protect themselves against sexual activity which they do not want and to participate in safer sexual practices. Unfortunately, the assumption of female sexuality as passive persists within modern Britain and hinders girl's development of sexual subjectivity. As a result

> "Most girls pass into adulthood still unsure of their sexual identity and with a romantic, passive and dependent orientation towards erotic activity. They enter into adult sexual careers governed by scripts which deny them the possibility of a self-defined sexuality […]." (Jackson.1996:72)

McCarthy's studies (1999, 1993) demonstrate that adult women with learning difficulties are unsure of their sexual identities to an even greater extend than non-disabled adolescent girls. This is undoubtedly an effect of the double-oppression they experience, being female and disabled and of their resulting social script of passivity. I discuss the social construction of the sexual role of people with learning difficulties in the final chapter.

Many non-disabled women today defeat traditional gender role expectations by applying feminist values to their lives. Many benefit from peer-talk about possibilities of female sexual pleasures and with this they gain the confidence to explore their own sexuality and to negotiate for their sexual preferences and preferred practices. McCarthy (1993) insists that women with learning

difficulties do not as yet enjoy the benefits of feminism, which has empowered many non-disabled women in the UK to become autonomous sexual beings, to discover their own potential for sexual pleasure and to challenge sexual exploitation.

Masculinity

Feminists have argued convincingly that gender relations within patriarchal societies tend to advantage men and disadvantage women (e.g.McKinnon.1996). Developing a sexual identity is at the heart of the adolescent development task for both, boys and girls and causes dilemmas for both (Corteen&Scraton.1997). Boys, as well as girls, are socialised into their presumed heterosexual identity. Boys are encouraged to conform to their socially prescribed role of masculinity. To be masculine is to be dominant, to be "hard" and to have power. Masculinity involves a denial of weakness, emotions and frailty (Shakespeare et. al.1996). Femininity is to be "soft" and to be subordinate to men. Thus masculinity is constituted in relation to femininity and

> "men can be men only if women are unambiguously women." (Cameron.1985:156)

To preserve patriarchal gender relations, these sex differentiations must be rigidly upheld by whatever means are available (Cameron.1985). Individuals who step outside of such norms are alienated. Accordingly homosexuality continues to have marginal status within modern Britain. The "maleness" of men who "fail" to prove their "hardness" is questioned. When examining the "language of abuse" used amongst young people, Lees (1993) established that boys use words that imply femininity to intimidate each other, femininity connoting weakness, softness and inferiority. Adolescent boys are under vast pressure to "prove" their masculinity and to differentiate themselves from femininity. Mac an Ghaill (1994) found that boys in secondary schools typically experience complex inner-dramas of individual insecurity and low self-esteem. The process of socialisation into their prescribed gender role is thus problematic for boys, as well as for girls. What differs is the outcome: While boys are socialised to strive towards autonomy, girls are socialised towards passivity. However, not all boys succeed in achieving "masculinity". As a result they, like women, but to a lesser extend, will be subjected to disadvantages created by patriarchy.
Within our society the masculinity of disabled men is undermined by the assumption that disability and masculinity are conflicting identities, because the

> "social definition of masculinity is inextricably bound with a celebration of strengths, of perfect bodies." (Morris.1991:93)

Disabled boys and men do not conform to expected masculine behaviour (Shakespeare et. al.1996). Their assumed "passivity" and "dependency" stands as an antithesis to masculinity. Shakespeare et. al. (1996) quote a disabled man who asserts that he is "unable to put over to some people the fact that [he was] male" (p.68). With this he acknowledges that being male puts him at advantage, but at the same time he feels disadvantaged whenever he is not treated as "male", as independent, active and in control. Shakespeare et. al. (1996) assert that

> "[d]isabled men do not automatically enjoy the power and privileges of non-disabled men, and cannot be assumed to have access to the same physical resources. Moreover, masculinity may be experienced negatively in a way which is rare for heterosexual non-disabled men." (p.68f)

Men with learning difficulties are labelled as "vulnerable", despite their gender, which creates conflicts. Nigel, a man with learning difficulties, quoted in Shakespeare et. al. (1996), states:

> "I get mixed messages. As a disabled person I am told to be meek and mild, childlike. Yet as a man I am meant to be masterful, a leader, get angry." (p.66)

Conclusion to chapter

Feminists have convincingly argued that gender roles are not biologically determined and that they are instead socially created. Possessing male sexual organs is not the sole condition one must meet to be considered "masculine". Only "tough" boys and men who have proven their ability to exercise power over "weaker" individual's, namely children, women and men who are less "tough", are "real men".

The traditional female social role within our society is to be subordinate to men. Femininity is defined by male sexual desires. Women were traditionally expected to be sexually passive and at the same time attractive to men and sexually available on male terms. In other words the traditional female social role is one of openness to male sexual approaches; to be female is to be "vulnerable".

If "vulnerability" can be a socially created character trade of femininity, could "vulnerability" also be a socially created character trade of persons with learning difficulties? Are people with learning difficulties socialised into being "vulnerable", like adolescent girls are socialised into becoming "good" women as defined by patriarchy? I will return to these questions in the final chapter. Beforehand I will explore the concept "'capacity' to consent" to sexual activity. In this section I have outlined the importance for adolescent girls to develop

"capacity", in other words to develop the ability to make informed decisions about their sexual behaviour. The next chapter will begin with and exploration of sex education as a facilitator of learning opportunities to increase "'capacity' to consent" to sexual activity.

"'Capacity' to consent" to sexual activity

In this chapter I question whether the concept "'capacity' to consent" to sexual activity is at all meaningful. The ability to understand the social implications of sexual behaviour and its consequences is deemed to be fundamental to "'capacity' to consent". In the first section I therefore explore the potential of sex education in enabling children and young people to establish "'capacity' to consent" to sexual activity, which I contrast with the reality of sex education provision to young people and adults with learning difficulties. Then I critically analyse the conceptualisation of the "capacity" of people with learning difficulties. I focus my analysis on "Behind Closed Doors", a report on the prevalence of sexual abuse amongst this population, which was produced by Mencap, Voice UK and Respond (2001) and I furthermore discuss Mencap's campaign for a *test of "'capacity' to consent"*, which the charity demanded to be implemented by the Sexual Offences Act 2003. Next I briefly mention the main principles of the Mental Capacity Act 2005. Afterwards I outline the history of "age of consent legislation". I conclude with some critical thoughts on the possible motivations behind powerful social groups diagnosing "incapacity" to consent to sexual activity in less powerful members of society.

Sex education

I consider sex education, which encourages the development of sexual subjectivity, to be a central tool in limiting "vulnerability" to sexual violence. Such sex education must be open, informative and non-judgmental of the wide range of possible sexual practices, including homosexual practices and masturbation. Sex education for people with learning difficulties must be holistic. It must not be assumed that their choice is limited by their impairments. This is of particular importance for two reasons: Firstly it enables individuals with learning difficulties to make informed choices about their sexual lives and secondly it increases their resistance to sexual violence. Individuals who know that certain behaviours are sexual behaviours and who are also aware of their right to either consent to or refuse participation in such behaviours are able to exercise control, to be resistant and to detect and anticipate situations that may be potentially abusive (e.g. Hingsburger.1995).

Sex education delivered to young people in Britain generally has been criticised for its reinforcement of institutional heterosexuality and the focus on procreation as the only "natural" objective of sexuality.

> "The centrality of reproduction in the delivery of 'appropriate' sexual knowledge or awareness to children and young people inevitably denies them their immediate feelings and emotions, their pleasures or desires." (Corteen&Scraton.1997:85)

While non-disabled children may be able to access more positive information about the pleasures of diverse sexual practices available to them in peer-talk, many young people with learning difficulties are disadvantaged in their access to peers by the (over-)protected and isolated lives that many continue to life. Sex education is thus even more relevant to this population. It is curious that in reality young disabled people often receive inferior levels of sex education (Priestley.2003).

Children receive confusing messages about sexuality. They are surrounded by a popular culture that is obsessed with heterosexual relations, while they are expected to be passive onlookers (Corteen&Scraton.1997).

> "[A]s adults-in-waiting they need protection. Protection from strangers, protection from evil, protection from impure thoughts, protection from moral degeneration …" (Corteen&Scraton.1997:76).

Meanwhile they receive little information about their physical and sexual development and its broader social and cultural context. Within Britain it is assumed that the family should be the primary site for moral guidance and sexual understanding. However, children are most at risk to experience sexual violence within the family and its extended adult network (Corteen&Scraton.1997). Similarly, adults with learning difficulties are most likely to experience sexual violence by persons they know well. Sex education from an outside body is therefore a vital mechanism in helping young people and adults with learning difficulties to develop resistance to sexual violence.

Non-disabled young people and adults with learning difficulties share some experiences of disempowerment and exclusion from the "adult" world. Both groups are viewed as "incomplete" adults. Children are deemed to aspire to adulthood as their developmental "goal", while adults with learning difficulties are perceived as having "failed" to complete this development. They are portrayed as underdeveloped or incomplete adults (Pristley.2003). Adult social status is characterised by an individual's inclusion in social, political, economic and family life. Adults are assumed to be self-sufficient and those who do not fit this criterion, such as young people, older people and disabled people are defined by their perceived dependence on non-disabled adults. Such social groups are often excluded from exercising full citizen rights and responsibilities (Priestley.2003). Comparing the experiences of young people and adults with

learning difficulties can enhance our understanding of the social control exercised by the dominant non-disabled adult-group and the processes involved in the social creation of "vulnerability". The continuing denial of childhood sexuality and the withholding of information about sexuality imperil young people's potential in forming equal relationships with adults. It disables their capacity to resist sexual contact they do not want and to consent to sexual activity they want (Segal.1990). Hingsburger (1995) applies a similar frame of reference to people with learning difficulties and their disablement from forming equal sexual relationships trough lack of information and over-protection.

The individualisation of the causality of "vulnerability"

> "While the story of rape and sexual abuse of disabled people must be told and while we must find ways to end it, the current focus on sexual exploitation of disabled people can itself become oppressive." (Finger.1992)

"Vulnerability" to sexual violence of a variety of populations, was a particular issue for widespread public debate during the consultation for the Sexual Offences Act 2003. The new act replaces the Sexual Offences Act 1956, which charged "rape" of a non-disabled person with a maximum sentence of life imprisonment (Sect.1), while "intercourse" with a person with learning difficulties carried a maximum sentence of two years (Sect.7). The Sexual Offences Act 2003 introduced equality to survivors of sexual violence before the law, regardless of their impairment. It cannot be denied that this is an entirely positive outcome. However, once one takes a closer look at the act and particularly at the report "Behind Closed Doors" (Mencap et. al.2001), which was very influential to changes in the sex offending law in regards to sexual violence committed towards adults with learning difficulties, one has to question whether the new legislation has the *best interests* of adults with learning difficulties, as defined by this population themselves, at heart.

People often object to my criticism on "Behind Closed Doors" (Mencap et. al. 2001). I am told that the report was well intended, how dare I criticise it. To reply in Hingsburger's (1995) words: The prison of over-protection is build of kindness, by well-meaning individuals who have the welfare of those they imprison at heart. While these are not "bad" people, their kindness should not make them immune to criticism.

I disapprove of Mencap's disempowering 2001 campaign to introduce a diagnostic tool that would detect "'incapacity' to consent" to sexual activity in particular individuals with learning difficulties. Mencap wanted to outlaw sexual activity of individuals labelled as "incapacitated", because of their assumed "vulnerability" to sexual violence (Kramer.2002). The proposed assessment tool to detect "incapacity" would have predominantly relied on an individual's

understanding of sexuality and with this on his level of *intellectual* functioning. Measuring people's level of intellectual functioning and prohibiting sexual activity of those who are most "severely" impaired must be described as disability discrimination. Such an approach does not acknowledge that our society may be responsible for the creation of individuals who lack "capacity". Conceptualising "'capacity' to consent" in this way is in line with the individual model to disability. The "problem" is placed within the individual (e.g. Oliver.1990). Since there is no "cure" for learning difficulties and its assumed inherent "'incapacity' to consent", the only possible "solution" is to protect those whose intellectual impairment places their selves at risk.
At various points in the report "Behind Closed Doors" (Mencap et. al. 2001) it is mentioned that sexual activity between consenting adults with learning difficulties *should* (note: not *must*) be respected and that they have a right to engage in sexual activity. The report even proposes that "abuse" prevention work should be undertaken with people with learning difficulties. This proposal was not transformed into binding policy or legislation, which is not surprising since the main focus of the report is on the "need" for protection. An exploration of opportunities arising from preventative work is neglected.

The Mental Capacity Act 2005 introduces a new approach to the concept "capacity" of people with learning difficulties. It is underpinned by the principles that:

> "(2) A person must be assumed to have capacity unless it is established that he lacks capacity.
>
> (3) A person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success. (Part 1, section 1)

According to the act, inability to make a decision cannot be established merely by reference to a person's intellectual or physical impairments (part 1, section 2).
It will be interesting to see whether the Mental Capacity Act 2005 changes our approach to people with learning difficulties in regards to allowing them to make decisions about their sexual life styles. In line with the Mental Capacity Act 2005 we are now legally prohibited from "protecting" people with learning difficulties from information about sexuality and sexual relationships due to assumed "incapacity". The act clearly states that "capacity" must be assumed and "incapacity" must be proven.

Age of consent vs. "capacity" to consent

Age of consent legislation in Britain was formatted in 1885. It has its roots in the late Victorian middle-class understanding of girlhood as a delicate and innocent

state of life. Victorian women were seen as weaker than men and in special need of dependence (Banks.1981). While middle-class girls were assumed to remain virgins until marriage, working-class girls were portrayed as passive innocents in need of protection. The existence of working-class girl prostitutes challenged the Victorian assumption of girlhood purity and morally offended the bourgeoisie (Waites.2005).
Some scenarios in Victorian pornography generate a fantasy of childhood sexual innocence in opposition to images of adult seduction (Walkowitz.1992). The Victorian increase in the age of consent can thus

> "be seen as reflecting an expanded and fetishised understanding of childhood as a realm of innocence, a product in part of transgressive male fantasies." (Waites.2005:73)

Girls in the Victorian era were given minimal information about sexuality to protect their "innocence". Consequently

> "many girls above the so-called age of consent would therefore not have known what they were consenting *to*, including the risk of pregnancy and sexually transmitted diseases." (Waites.2005:74)

Consent is however only meaningful when informed by relevant knowledge, which was not available to young women above the magical threshold of 16 years. McKinnon (1996) questions whether "consent" can be a meaningful concept if sex is ordinarily accepted as something men do *to* women, who themselves were socialised into sexual passivity. It follows that the Victorian 'age of consent' was more concerned with the protection of middle-class values, than with the protection of young girls (boys were assumed to be physically unable to have sex), because age 16 did not distinguish between those who had "capacity" and those who had none (Waites.2005).
One could argue that age of consent debates up to the current day have been largely influenced by similar concepts. Since the 1970s the British gay movement has continuously campaigned for an equal age of consent to homosexual and heterosexual practices. Their demands were met with public resistance and hostility (Waites.2005). The age of consent to homosexual practices was higher than the age of consent to heterosexual practices. Age of consent legislation was thus a tool to enforce institutional heterosexuality. The distinction in age of consent implied that in our society, homosexuality was seen to be secondary to heterosexuality. The equal age of consent at 16 has recently been introduced by the Sexual Offences Act 2003.

Similarly we could ask whether the debate about people with learning difficulties lacking "'capacity' to consent" to sexual activity is yet an other mechanism for social control. Why do we content that people whose level of intellectual functioning does not conform to norms established in medical

practice and who may not understand all possible consequences of sexual behaviour, such as sexually transmitted infections (STI's), lack "'capacity' to consent" to sexual activity? Would we label non-disabled adults who are not aware of STI's as lacking "capacity" and would we thus attempt to stop them from engaging in sexual activity? Many people with learning difficulties not knowing of STI's or other possible consequences of sexual activity should not be a surprise, since we systematically withhold such information from them. Under such circumstances "lack of 'capacity'" is a meaningless concept. "Lack of 'capacity'" could only be meaningful if it was applied to an individual after all possibilities to share accessible information on sexual practices, their social implications and possible consequences, have been exhausted and the individual continues to have no understanding. However, we commonly use the term "lack of 'capacity'" before such steps were taken. Labelling individuals as "lacking 'capacity'" highlights individual *dis*ability. Desiring love and affection are basic human needs. To assume that people who "lack *intellectual* 'capacity'" to consent to sexual activity also do not have emotional and sexual desires is dehumanising and denies such individuals part of their personhood.

We must question why we feel a need to label those deemed incapable of making decisions about their sexual life styles, such as children, sexual minority groups and adults with learning difficulties. Does the thought of these populations being sexually active offend us? If this was so, would this give us the right to stop sexual activity amongst member of such populations? Is the concept "'capacity' to consent" a new way of exercising population control that is politically accepted in 21st century western societies? And finally: Do we remain a Victorian bourgeoisie that abuses its power by controlling the behaviours of oppressed and marginalised social groups?

Conclusion to chapter

In this chapter I have shown that, when we use the term "'capacity' to consent" to sexual activity of people with learning difficulties, we commonly refer to *intellectual* "capacity". I insist that we must be clear that availability of information about sexual practices and their consequences are the key mechanisms by which an individual can increase his "capacity". Thus, if we withhold information about such issues from an individual, an obvious consequence is that he will lack "capacity". Accordingly "lack of 'capacity'" is the social consequence of lack of information and not a personal attribute. However, we use the discovery of "lack of 'capacity'" to justify an individual's continued "protection" from information about sexuality and "protection" from opportunities to develop consenting sexual relationships. Our response to "lack of 'capacity'" thus reinforces, rather than limits "lack of 'capacity'". This makes little sense. Similarly the motivations behind age of consent legislation must be questioned. I have discussed that the protection of children and young people

was not the main motivation force in formatting and reformatting such legislation.
Individuals who are deemed to lack "capacity" are thought to be "vulnerable" and "in needs" of special treatment and protection (e.g. as outlined in Mencap et. al. 2001). After the exploration of the meaning of the concept "'capacity' to consent" to sexual activity and its use, I will now move on to examine the conceptualisation of "vulnerability" to sexual abuse, for which "lack of 'capacity'" to consent to sexual activity is understood to be a key indicator.

Theorising "vulnerability"

This chapter is the heart of this paper, in which I summarise and scrutinise the conceptualisation of the assumed "vulnerability" of people with learning difficulties. I begin this chapter by exploring how "vulnerability" is conceptualised in current UK legislation and policies and I briefly outline why professionals need "vulnerable" adults. Next I present an extensive list of the range of assumed "vulnerability" creating variables, which have been suggested in the literature. With reference to this list I argue that that "vulnerability" is socially created. Subsequently I suggest that we must stop to give sexual violence committed against individuals with learning difficulties "special status". Instead, I argue, we must understand sexual violence as a phenomenon that occurs in a society within which the misuse of power often remains unchallenged and within which sexual violence is allowed to happen. I conclude that "vulnerability" is not a helpful concept.

Legal and professional definitions of vulnerability

The *Youth Justice and Criminal Evidence Act 1999* portrays disabled adults as "vulnerable witnesses" on grounds of "incapacity". A witness is "vulnerable"

> "if the court considers that the quality of evidence given by the witness is likely to be diminished because the witness (…) has a significant impairment of intelligence and social functioning; [or] (…) the witness has a physical disability or is suffering from a physical disorder". (Part 2, chapter 1, paragraph 16.1-2)

According to this definition, people with learning difficulties and/ or physical impairments are "vulnerable" by nature of their impairment.

The Care Standards Act 2000 defines a "vulnerable adult" to be

> "(a) an adult to whom accommodation and nursing or personal care are provided in a care home; (b) an adult to whom personal care is provided in their own home under arrangements made by a domiciliary care

> agency; or (c) an adult to whom prescribed services are provided by an independent hospital, independent clinic, independent medical agency or National Health Service body" (Part 7, section 80,6).

This definition excludes people with learning difficulties who do not receive services and those who receive non-residential social services that do not include personal assistance, such as day, leisure and education services. According to this definition it is not an individual's impairment that creates "vulnerability", but the fact that he receives health or social services.

The most commonly used definition of "vulnerable" adults amongst UK professionals today was first published in the consultation paper '*Who Decides*' (Lord Chancellor's Department. 1997). It defines a vulnerable person to be someone who

> "is or may be in need of community care services by reason of mental or other disability, age or illness; and who
>
> Is or may be unable to take care of him or herself, or unable to protect him or herself against significant harm or exploitation." (Section 8.7, page.68)

No Secrets (DoH.2000), a central government document that provides adult protection policy guidance, adopts this definition. Local adult protection policies resulting from *No Secrets* have uncritically adopted the same terminology (e.g. Wakefield Metropolitan District Council.2004, Doncaster Metropolitan Borough Council.2004, East Sussex, Brighton&Hove.2000). In line with these policy guidelines, professionals working with "vulnerable" populations understand "vulnerability" to be an inherent characteristic of the population they work with. Doncaster MBC summarises this view on their website with the aim to provide guidance to professionals:

"Vulnerable adults may include people who:

- Are elderly and frail
- (…)
- Have a physical or sensory disability
- Have a learning disability
- Have a debilitating physical illness
- (…)" (Doncaster MBC.2006)

I fundamentally disagree with such a descriptive diagnosis of likelihood of "vulnerability" in these populations. As Abberley (1991) points out, individualising, rather than socialising disability is a political subject: Individualistic causal conceptualisations of sexual violence call for

individualistic solutions, rather than for a challenge of the widespread existence of sexual violence in our society per se.
When Oliver (1990) rephrased the 1986 OPCS survey of disabled adults, which used disabilist language, he changed questions in the manner of: "What is wrong with you?" to "What is wrong with society?" (Oliver.1990:6ff) Similarly, the list of vulnerability provoking character traits above could be changed into social model language:

Adults may be "vulnerable" to sexual violence if:

- They live in a social setting where sexual violence may occur
- They have contact with a person or persons who is/are prepared to take advantage of their position of trust and power (e.g. medical professionals, "care" workers, relatives or informal "carers") and who are prepared to commit sexual violence
- They are disabled from accessing information about sexuality and the social meanings of sexual acts.

Definitions of "vulnerable adults" in local and central government adult protection policies are currently being replaced by a revised definition presented in "*Safeguarding Adults*" (Association of Directors of Social Services (ADSS) 2005), the new national framework for adult protection work. Initially the document appears to be to be linguistically good: The phrase "vulnerable adult" is eradicated. It is explained that

> "the label can be misunderstood, because it seems to locate the cause of abuse with the victim, rather than placing responsibility with the actions or omissions of others." (ADSS.2005:4)

Once we take a close look at the concept that replaces "vulnerable adult" it becomes obvious that the revised linguistics did not initiate a fundamental change in conceptualisation: "Vulnerable adults" are now termed "adults who may be eligible for community care services", eligibility being defined by professionals, not the individuals themselves. This group is defined as:

> "those whose independence and wellbeing would be at risk if they did not receive appropriate health and social care support. They include adults with physical, sensory and mental impairments and learning disabilities" (ADSS.2005:4).

This definition continues to be firmly in line with the individual model of disability, locating the source for "special needs" within the individual, rather than within society. It does not take account of the fact that some needs are created by the way society reacts to and excludes people who have impairments.

The definitions discussed in this section are routed in the individual model of disability. The disabled person is seen as having "special needs" arising from his impairment. The alteration of terminology from "vulnerable adult" to "person who may be eligible for community care services" does not shift the focus away from the individual as the "problem". "Vulnerability" is seen to arise from an individual's personal inadequacy. It follows that protection of such inadequate individuals is our charitable duty. I will now briefly explain why such a view is beneficial to welfare service providers and professionals.

Why professionals need "vulnerable" adults

The creation of dependence on welfare services is vital to ensure their continuing existence. The more "dependent persons" we create the more grandiose societal and human services can we design (Wolfensberger.1989). Let us not forget that, to ensure their continued economic survival, welfare professionals are dependent on disabled people to remain in "need" of their services:

> "In a modern society where the major business is service, the political reality is that the central "need" is an adequate income for professional servicers and the economy growth they portend." (McKnight.1977:74)

Illich (1977) compares professions to priesthoods. He claims that we accept professionals to tell us what we need and to prescribe special services. Within this climate of unambiguous acceptance of professional power, they are able to create the need for their services.

> "Disabled people's lives are often dominated by professionals and services which de-skill us and turn us into passive recipients of care." (Wood.1991:200)

I will argue below that we socially *construct* the idea of people with learning difficulties being "vulnerable" and spread fear amongst families and "carers" of disabled people, who will seek to protect the "vulnerable" individual. We also socially *create* vulnerability by cultivating naïve and trusting individuals and disabling their development of self-defence skills. Both processes justify the existence of "safe" specialised services. We somehow manage to ignore the fact that people with learning difficulties are most at risk to sexual violence in institutional services (McCarthy&Thompson.1996). With this we create perfect conditions to enable the human service industry to flourish.
In this section I provided a brief explanation to establish why the creation of "vulnerable" individuals benefits professionals. I will now move on to explore how we publicly discuss and conceptualise "vulnerability".

Vulnerability creating attributes and processes

It has been suggested that the vulnerability of people with learning difficulties to sexual abuse may be created by:

Personal attributes:

- age
- gender
- cultural and religious background
- level of "learning disability" as defined by medical professionals (e.g. DoH.2000)
- physical impairments (e.g. Kennedy.1996)
- requiring personal assistance with intimate hygiene tasks (e.g. Mencap et.al.2001, Westcott&Cross.1996, Westcott.1993)

Low self-defence skills:

- Lack of information about relevant aspects of sex and sexuality (e.g.Fairbairn et.al.1995, Hingsburger.1995)
- Lack of vocabulary to report sexual abuse (e.g.Westcott.1993)
- Lack of social awareness or education to detect or anticipate abusive situations (e.g. Mencap et.al.2001, Fairbairn et.al.1995)
- Being unaware of one's rights (e.g.Hingsburger.1995, Westcott,1993)
- Limited social judgement, and a resulting lack of "'capacity' to consent" to sexual activity (e.g. Milligan&Neufeldt.2001)

Helplessness:

- Being afraid to challenge the abuser (Mencap et.al.2001)
- Being used to having a lack of choice over what is happening to oneself (e.g.Hingsburger1995, Westcott.1993)
- Being susceptible to coercion, incentives and bribery (e.g.Keilty& Connelly.2001) or unable to non-comply (e.g.Hingsburger.1995)
- Lack of self-esteem (e.g. Hingsburger.1995, Westcott.1993, Brown.1991)
- Feeling helpless and powerless (e.g.Keilty&Connelly.2001)

Environment:

- Institutionalisation (past or present) (e.g. McCarthy&Thompson. 1996, Hingsburger.1995)
- Leading segregated and protected lives (Hingsburger.1995)
- Unavailability of someone who would notice changes in a person's behaviour resulting from sexual violence or whom the individual concerned trusts enough to feel able to disclose experiences of sexual violence (Hingsburger.1995)

- Being discouraged from establishing healthy relationships (Hingsburger.1995)

It is impossible to conclude from the above list that "vulnerability" is an inherent characteristic of people with learning difficulties. "Vulnerability" must instead be seen as a socially created result of our response to individuals with a certain set of personal attributes.

The social creation of "vulnerability" to sexual violence of people with learning difficulties

Humans are born without self-defences, without social awareness of sexuality and without the relevant vocabulary to describe sexual acts. Thus in the beginning of our lives we are all "vulnerable" to sexual violation. Kelly (1996) interviewed non-disabled women who experienced incestuous sexual violence in their childhood. Some women stated that, at the time the sexual violence was taking place, they did not have the words to describe their experiences. They were confused about their experiences and may not have know that what was happening to them was sexual violence. This demonstrates that low self-defence skills are not caused by an individual's impairment. The causalities lie in the way we treat children in general and adults with learning difficulties: By withholding information about sexuality we increase their "vulnerability". Individuals who are protected from sex education

> "become perfect victims because they can't report what they can't say" (Hingsburger.1995:20).

Power imbalances create *learned helplessness*. Individuals who are always discouraged from making their own decisions about basic things, e.g. what foods to eat, will have had little practice to prepare themselves for making "big" decisions, e.g. whether they want to be sexually touched by an other person. Many people with learning difficulties therefore experience difficulties in decision making, not because of an inherent inability, but because of lack of practice (Hingsburger.1995). How should an individual, who has continuously been discouraged from practicing autonomy about the most basic aspects of his life, be able to practice assertiveness when threatened with pressurised sex?
People with learning difficulties are described as *lacking self-esteem.* I argue that this may be caused by internalised negative values about impairments that prevail in our society. Low self-esteem may result from social exclusion and isolation, lack of stimulation and lack of opportunities to gain personal fulfilment and achievements. Those are common experiences for people with learning difficulties.
It is self-explanatory that *environments* are not inherent characteristics of individuals. The fact that many people with learning difficulties find themselves

in similar isolated and segregated social settings is not caused by their inability to adapt to "mainstream life", but by our reluctance to include such individuals and accommodate for their particular needs within our society.
I conclude that only *personal attributes*, such as age, gender and impairments, are inherent characteristics of particular individuals. It has been argued that such characteristics create "vulnerability". We must question the ethics behind such labelling. "Vulnerable" is a label that allows us to lay the blame for sexual violence inside the person experiencing it. We use "vulnerability" to describe a state of being. We conceptualise it as a character trait of persons with a particular set of personal attributes, such as people with learning difficulties.

> "If we believe that someone is assaulted because of who they are then there is no option but to protect them because nothing can be done to alter their state of being." (Hingsburger.1995:26)

Thus, we build a *prison of protection* for people with learning difficulties (Hingsburger.1995). This prison has four walls: protection from sexual information, protection from decision making, protection from relationships and protection from society. To protect people with learning difficulties because of their assumed "vulnerability" will further reinforce their "vulnerability". As I have outlined above, withholding information about sexuality from an individual will disable him from developing intellectual "'capacity' to consent" to sexual activity. The prison of protection reinforces the perceived differences of people with learning difficulties from non-disabled people. Over-protection creates individuals who are desperate for personal fulfilment and affection, who are naïve, who are unaware of their own rights and potential and who thus lack confidence to resist unwanted sexual approaches. Protection does consequently not decrease "vulnerability". Environments that were created to protect "vulnerable" people have been shown to cultivate and conceal sexual violence (e.g. McCarthy&Thompson.1996, Sobsey.1994). Protection has consequently failed in preventing sexual violence. Assumed "vulnerability" continues to be used to justify protection. I therefore conclude that the concept "vulnerability" is not usefully utilised to reduce the risk of people with learning difficulties to experience sexual violence.

Deconstructing the "special" status

Fairbairn et. al. (1995) discuss the ethical issues surrounding sexual violence perpetrated against people with learning difficulties. They find sexual violence against "relatively powerless" social groups particularly morally offensive. The case example of a 16-year old girl with learning difficulties, who was pressured into penetrative "sex" with her stepfather, is subsequently discussed. It is mentioned that she never had sex education, because her birth parents wanted to "protect her from that kind of thing" (Fairbairn et. al. 1995:62). The authors

claim that the stepfather acted morally wrong in pressuring his step-daughter into sexual intercourse and that his moral wrongness was intensified by the fact that his step-daughter had learning difficulties.
I disagree with this kind of conceptualisation. First of all, what happened here was not *sex,* but *rape*. *Rape* is a legally defined crime and can be prosecuted. There is no need for value laden discussions about morals. The girl was raped under the Sexual Offences Act 2003: Her stepfather intentionally penetrated her vagina with his penis and she did not consent to the penetration (part 1, section 1.a-b).

> "A person consents if he agrees by choice, and has the freedom and capacity to make that choice". (Sexual Offences Act 2003, Part 1, section 74)

The girl did not have the freedom to make a choice about sexual contact, because she was never given information on the social implications of sexual practices. She was pressured into sexual activity by a person who abused his position of trust. The young woman was raped and she is thus entitled to seek justice through the judicial system. If this case does not convince the courts, it would be an issue for feminist debate and not a reason for us to talk about moral wrongness of committing sexual violence against a disabled woman. Feminists have argued that in our society sexual violence against women is rarely sanctioned harshly (e.g. Raitt.1994). If we wish to challenge the morals of the above described case example, we should challenge sexual violence per se and not contend that sexual violence against a disabled woman is even worse that sexual violence against a non-disabled woman. Both acts are equally unjust and should thus be sanctioned harshly and prevented by empowering young girls to become autonomous sexual actors, by re-educating men about female sexuality and by taking a zero-tolerance approach to sexual violence.
The young woman in the above case example was excluded from sex education, which disabled her from developing an ability to resist sexual violence. The withholding of such vital learning and development opportunities is negligent and should in itself be prosecutable. It created her "vulnerability".

De-constructing vulnerability

Why should we blame a woman who is raped in a street at night for her experience of sexual violation? Why should we blame her for walking through the streets? Why should we blame her for being alone? Why should we blame her for being a woman? These social processes and personal attributes may have made her "vulnerable", but *rape does not happen because there are women, it happens because there are rapists* (Hingsburger.1995). This woman was raped because the rapist happened to be in the same place at the same time as her. She was raped because the rapist who was in the same place at the same time

happened to have a sexual preference for women. She was raped because the rapist was prepared to commit sexual violence. None of these processes were caused by the woman herself.

We need to stop blaming the victim and start to focus on the violator as the cause of sexual violence. To detect "vulnerability" in individuals by nature of their impairment is "victim blaming". It gives the impression that the person who experiences sexual violence invites or provokes this experience. Once we think in this way, we begin to search for exceptionalistic "solutions" (Westcott&Cross.1996). We focus on individuals as the "problem", as the cause of their risk to sexual violation. Solutions will focus on an individual's inherent inadequacy: Someone is labelled as "vulnerable"? Let us protect him! We will make sure that he is safe from strangers (e.g. outlined in Hingsburger.1995). This approach imprisons the person who is labelled as "vulnerable" and it is fairly unconstructive in protecting him, since most people with learning difficulties are sexually violated by people they know well, namely formal and informal "carers", family members, other service providers and other "users" of services. People with learning difficulties most commonly experience sexual violation in settings that were designed to protect them (e.g.Sobsey.1994). Hingsburger (1995) sums these arguments up by persisting that

> "IT IS NO LONGER AN ACCEPTABLE SOLUTION TO BLAME PEOPLE WITH DISABILITIES FOR BEING VICTIMIZED – THE ONLY ACCEPTABLE SOLUTION IS TO BLAME THE VICTIMIZER. AND GET RID OF THEM." (p.43 [Original capital letters])

Conclusion to chapter

In current UK policies and legislation, "vulnerability" is conceptualised as a direct result of a person's individual attributes. People with learning difficulties are thought to be "vulnerable" by nature of their impairments. Assuming "vulnerability" of an individual because of who they are allows "victim-blaming": It places the cause for sexual violence within the individual experiencing it. We seek individualistic "solutions" to such individualistic "problems", such as protection of the "vulnerable" individual. I have listed a range of assumed "vulnerability" creating variables. I identified that most "vulnerability" creating variables were social processes and that only personal attributes, such as age, gender and impairments are inherent to an individual. I concluded that "vulnerability" must be socially created by the way we respond to individuals who hold particular personal attributes. If "vulnerability" was socially created, the concept "vulnerability" per se is meaningless, because "vulnerability" is assumed to be an inherent characteristic of individuals with

particular personal attributes, such as people with learning difficulties. Inherent characteristics are unchangeable and cannot be socially created. “Vulnerability” being socially created is therefore an anti-thesis. Accordingly I suggest that we must eradicate the concept “vulnerability” altogether and seek explanations for the high incidence of sexual violence committed against people with learning difficulties within the wider society, in the way we marginalise and disabled people with learning difficulties and in the way patriarchy nurtures sexual violence.

Conclusion

I have summarised feminist arguments that dispute theories of biological determinism of sexual gender roles. Feminists content that gender roles are socially created. I discussed how adolescent girls are socialised into their female role identities and that femininity is defined by male sexual desires. To be female is to be sexually available on male terms, in other words to be “vulnerable” to male sexual approaches. “Vulnerability”, the subordination to male sexual demands, is therefore inherent to the traditional female social role we continue to expect adolescent girls to aspire to. “Good” girls do not act on their sexual desires and consequently they do not develop sexual autonomy. As a result, many adolescent girls engage in high risk sexual activity in response to male sexual approaches that was neither planned, nor initiated and sometimes not wanted by the girl. Girls who were socialised into passivity did not learn the skills they need to be able to resist an unwanted sexual approach. Girls who have little respect for their own body and have learned not to feel and act on pleasurable sensations that course through their bodies are more likely to “accept” unwanted sexual approaches. Female compliance to male sexual advances may be motivated by fear of the consequences of non-compliance; it may be a result of confusion or the girl may believe that compliance is part of her “natural” gender role of passivity. The lack of personal autonomy we have socially created in girls determines their “vulnerability” to engaging in unwanted or unplanned sexual activity. I have posed the question whether, since “vulnerability” is a socially created character trade of femininity, “vulnerability” could also be a socially created character trait of persons with learning difficulties. I wondered whether people with learning difficulties are socialised into being “vulnerable”, like adolescent girls are socialised into becoming “good” women as defined by patriarchy.

In order to answer these questions, I explored the concepts “’capacity’ to consent” to sexual activity and “vulnerability” to sexual violence of people with learning difficulties. I ascertained that the concept “’capacity’ to consent” to sexual activity, when applied to people with learning difficulties, is used to refer to *intellectual* “capacity” and should thus be correctly termed as such.

Theoretically, once we established that an individual lacks *intellectual* "capacity", this should encourage us to provide learning and development opportunities to this individual, to enable him to increase his "capacity". Paradoxically, the discovery of "lack of 'capacity'" is commonly used to justify an individual's "protection" from sexual relationships and from learning and development opportunities about sexuality. I have outlined that sex education provided to people with learning difficulties is often inferior to that provided to non-disabled people. This makes little sense, since people with learning difficulties require a higher level of educational input to accommodate their particular learning needs. I then discussed the key motivations behind age of consent legislation. I concluded that the concept "age of consent" has primarily been used to exercise social control and not to protect children and young people. All these findings left me wondering why it is that we feel a need to label certain individuals within our society as lacking "'capacity' to consent" to sexual activity and with this prohibiting them from engaging in sexual activity. I wondered whether the thought of these populations being sexually active morally offends us and whether this was a motivation force behind labelling people with learning difficulties as lacking "capacity". With reference to our past of feeling a need to control and contain people with learning difficulties, we can presume that this is a possible motivation force involved in the labelling process.

Finally I discussed the conceptualisation of "vulnerability". I outlined that, in current UK policies and legislation, "vulnerability" is understood to be a direct result of a person's impairments. I argued that, assuming "vulnerability" of an individual because of who they are allows "victim-blaming" and is ethically not acceptable, as it places the cause for sexual violence in the individual experiencing it. I presented a list of assumed "vulnerability" creating variables and found that, apart from personal attributes, such as age, gender and impairments, none of the "vulnerability" creating variables are inherent to particular individuals. All are socially created processes, which I summarised in the categories "low self-defence skills", including lack of "capacity", "learned helplessness" and "environmental factors".

The answer to the question whether the "vulnerability" is socially created by the way we respond to people with learning difficulties must be yes. People with learning difficulties are socialised into being "vulnerable", like adolescent girls are socialised into sexual subordination. "Vulnerability" is created by the way society reacts to individuals with a certain set of personal attributes. Those who are born with female sexual organs are socialised into sexual passivity and physical and emotional weakness. Similarly, those individuals in our society who have been labelled to have learning difficulties are segregated and over-protected from mainstream society and receive inferior levels of information on sexuality. This creates individuals who have low self-defence skills, who lack the social awareness to detect or anticipate potentially violating situations, who

have not learned to make decisions, who have low self-esteem and who lack sexual autonomy. In other words: We nurture dependence. This creates perfect conditions for perpetrators of sexual violence. Labelled “vulnerable”, we treat people with learning difficulties as such. With this, the label “vulnerability” has become a self-fulfilling prophecy. Tragic personal accounts of the sexual victimisation of individuals with learning difficulties confirm our view of this population as “victims” of their own inadequacy. They encourage us to work even harder to fulfil our “duty” to protect.

“Vulnerability” is not a helpful concept. It is socially created and socially creating. We continue to use this concept to justify segregation, control and over-protection. I have argued that the new term “adults who may be eligible for community care services”, which replaces the term “vulnerable adult” in UK adult protection policies, refers to the same theoretical concept. I therefore suggest that we cannot simply replace the term “vulnerability”. If we are committed to give people with learning difficulties the opportunity to increase their self-defence skills to sexual violence, we have to eradicate the concept “vulnerability” altogether. The concept “vulnerability” serves to exclude and label people with learning difficulties and it increases their “dependency”.

Once we freed ourselves from the concept “vulnerability”, one essential question remains: How will we measure an individual’s potential for self-defence against sexual violence? Risk assessment and the identification of learning and development needs in an individual remain important processes. I suggest that the concepts *assertiveness* or *resistance* can be usefully applied. In contrast to “vulnerability”, assertiveness and resistance are personal attributes that see the individual as active and abled. Assertiveness and resistance are self-defence skills, while “vulnerability” is an unchangeable state of being. An individual who has a low level of assertiveness and resistance can be encouraged to aspire to a higher level. By conceptualising the risk to sexual violence of people with learning difficulties in this way, we understand that all individuals have the potential to learn.

In theory this appears to have “solved” the issue of the social creation of “vulnerability” to sexual violence of people with learning difficulties: If we stop labelling people with learning difficulties as “vulnerable” and start to provide them with adequate information on sexuality and assertiveness training, we can reduce their risk to sexual violence. In practice the realisation of these processes would require a fundamental change of societal structures. To name a few, people with learning difficulties would have to become fully valued members of an inclusive society without being given “special status”. Professionals must be dispossessed of their power to label and prescribe and to create dependency on their services. Sexuality would need to become a subject of open discussion that

is freed from Victorian values. We must take a zero-tolerance approach to sexual violence and understand female sexuality to be equal to men's sexuality. However, the purpose of this paper is not to develop a step-by-step guide for the contravention of the social creation of "vulnerability", but to raise awareness of the processes involved and to provoke questions about the ethics behind powerful individuals labelling people with learning difficulties as "vulnerable" and designing services to "protect" them.

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