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Scotland and the Feminist Framing of Domestic Abuse

Nancy Lombard and Nel Whiting

Abstract

This article elucidates the approach Scotland has taken to tackling the issue of domestic abuse, arguing that feminists were an important driving force not simply in placing the issue of domestic abuse on the public and political agenda, but in successfully establishing the issue as a gender-based problem. The policy and service implications of a gender-based approach has led to Scotland being identified as an exemplar. We illustrate some of the achievements in addressing domestic abuse including the new Domestic Abuse (Scotland) Act (DASA) but argue that for this work to be successful, domestic abuse needs to continue to be conceptualised as a consequence of continuing gender inequality.

Keywords

Scotland, domestic abuse, gender, feminism, DASA

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Introduction

Scotland differs from the other countries in the UK in that feminists have been the driving force not simply in placing the issue of domestic abuse on the public and political agenda, but in successfully establishing the issue as a gender-based problem (Mackay, 2010; Lombard & Whiting, 2015, 2017; Brooks-Hay, 2018). The campaigning influence of the violence against women sector was acknowledged by Scottish politicians when in 2018 the Domestic Abuse (Scotland) Act (DASA) was passed in the Scottish Parliament. Those who had worked in the sector were invited to sit in the gallery to witness the passing of the act and were applauded by MSPs from across the political spectrum (Brooks-Hay & Burman 2018). The DASA has been described as the gold standard in domestic abuse legislation (Brooks, 2018) with Scotland identified as an exemplar for its approach outside the country itself. Writing in 2007, Coy et al. argued that Scotland should be:

...recognised as a benchmark with respect to its strategic approach, its recognition that violence is the cause and consequence of women's inequality and its commitment to enhancing capacity and diversity of provision.

(Coy et al, 2007: 6)

In this article we explore the feminist history and framing of domestic abuse examining how Scotland came to adopt a gender-based approach. We illustrate some of the achievements in addressing domestic abuse but argue that for this work to be successful, domestic abuse needs to continue to be conceptualised as a consequence of continuing gender inequality. We ask the question, can the Scottish criminal justice system provide a feminist response or does it sit in opposition to such aims when it is located within a criminal justice system that continues to disempower women (see also Goodmark, 2018; 2021; Forbes, 2021)? This is discussed in relation to our recent research that looks at the Domestic Abuse (Scotland) Act and women's lived experiences of reporting domestic abuse within the Scottish criminal justice system (Lombard et al, 2022; Lombard & Proctor, 2023).

Terminology: The Importance of a Gendered Definition

Amongst the first priorities of the new Scottish government was policy to address domestic abuse and the feminist framing and terminology outlined above was at the heart of this work.

In 2000, the Scottish Executive published its *National Strategy to Address Domestic Abuse in Scotland*¹, which states:

Domestic abuse (as gender based abuse) ... is associated with broader gender inequality and should be understood in its historical context, whereby societies have given greater status, wealth, influence, control and power to men. It is part of a range of behaviours constituting male abuse of power, and is linked to other forms of male violence. (Scottish Executive 2000: 5)

In so doing, it explicitly acknowledges domestic abuse as an issue which disproportionately affects women, is overwhelmingly perpetrated by men, and is associated with long-held cultural assumptions about the roles of men and women in society. By locating such violence within the power structures inherent in our society, the Scottish Executive (now Scottish Government) adhered to a feminist understanding of the issue which sees this violence as both a cause and consequence of women's inequality in society. The definition also aligned to the UN definition of violence against women (1993) which acknowledges forms of violence directed overwhelmingly at women and girls precisely because they are women and girls, that is to say because of their position in society. It was a radical statement for a government to make, and much work had been undertaken to arrive at that point.

Definitions of violence against women are culturally, historically, and spatially specific (Hester & Westmarland, 2005). Yet often the issue of violence and what to do about it is taken and given to those in authority, who are afforded the 'power of naming' (see Foucault, 1980) and consequently positioned to define the issue for others – historically the power of definition has been afforded to men (Dobash & Dobash, 1979). Hearn and McKie (2009) argue the definition given to an issue provides the discursive 'parameters' within which it is understood and addressed. Those who deal directly with and experience the issues are often best placed to recommend, initiate, and enact change proposals, whilst the government can act as a vehicle for their distribution. Unsurprisingly then, in all societies it is women that have spoken out first about violence against themselves and their children, both in the home and outside of it (Kelly, 1988; Hague, 2021). Bacchi (1999: 165) argues

¹ In 2009 Scotland expanded its strategic focus to cover all forms of violence against women. In doing so, it has continued to draw on the feminist understanding of this social problem. For the purposes of this article we concentrate on work to address domestic abuse.

that it is not simply the 'definition' or 'definer' that is of most relevance but how these labels function in contextualising the issue further in terms of the 'problem representation.' Thus, we can see how the issue of power pervades not only violence and its perpetration, but also its conceptualisation. Feminists in Scotland, we argue, have achieved an unparalleled success (within the UK) in claiming some of that power to name, both in ensuring that domestic abuse was a public issue and, in the terminology, used to discuss it.

Some of this power to name is reflected in the terminology used in Scotland which pioneered the move away from the phrase domestic violence to domestic abuse (while recognising that other jurisdictions within the UK now also commonly use this phrase along with the adoption of 'coercive control'). The adoption of the term domestic abuse was intended to better reflect the range of behaviours enacted by perpetrators to control their partners and any children. It was intended to emphasise that such abuse need not be physical and includes emotional, psychological and financial tactics, all of which are used to create compliance in a partner. It also enables the understanding that children are victims of this abuse even if they do not experience physical violence directed at them. This pattern of coercive and controlling behaviour had been evidenced as far back as 1979 by Scotland-based academics Dobash and Dobash in their groundbreaking book *Violence Against Wives: A Case Against the Patriarchy* (Dobash & Dobash, 1979), which verified what they described as a 'constellation of abuse' women face from perpetrators. This abuse was based around the perpetrators' expectations of being serviced by their wives emotionally, sexually, and practically in relation to domestic labour and child-care including isolation, degradation, mind-games, surveillance, constant criticism and the micro regulation of everyday life such as monitoring dress, food consumption and social activity. Later theorists have developed this work with, for example, Stark (2007: 5) describing this pattern of abuse as 'the micro regulation of everyday behaviours associated with stereotypic female roles, such as how women dress, cook, clean, socialize, care for their children, or perform sexually' (see also Johnson, 1995).

Beyond numerical asymmetry, studies suggest distinct patterns of perpetration and victimisation by gender: violence used by men against female partners tends to be more frequent and severe than that used by women against men; violence by men is more likely to invoke and maintain fear in and control of victims (Johnson, 1995; Gadd et al, 2002; Hester, 2009). Stark (2007: 14) argues that it is gendered 'because it is used to secure male privilege' and that 'there is no counterpart in men's lives to women's entrapment by men in personal life

due to coercive control'. This, as the early Scottish definition acknowledges, is due to the structural gender inequalities which mean women are more likely to earn less, be providing unpaid care, are less likely to have access to secure housing, and are misrepresented and underrepresented in political and media arenas, and thus that they are more likely to feel and remain trapped in their situation. Structural issues are seen (see Forbes, 2021; Myhill & Johnson, 2016) in the gendered reality of the law and criminal justice system which misrecognised the nature of the abuse, focusing on discrete acts of physical violence rather than coercive control (a misrecognition that the DASA sought to address, as we will discuss later in this article).

This is associated with and compounded by the gendered nature of responses from society, responses which hold the woman accountable for the abuse she experiences, especially if she has children and is seen to have 'failed to protect' her children (see Hester, 2011). The gendered nature of domestic abuse lies not simply in what a perpetrator does to his victim, nor what he does not allow her to do, but equally in the gendered responses to her situation, ranging from blame and hostility to an averted gaze to the terrifying lived reality of her situation.

Scotland was also an early adopter of the understanding, again led by feminist activism and academic theorizing, that children are not witness to violence but are victims in their own right, experiencing a range of coercion, control and fear (Hester, 2011; Mullender 1996; Morrison et al. 2013; Katz, 2015). Aligned to the Getting it Right for Every Child (GIRFEC) principles the *National Domestic Abuse Delivery Plan for Children and Young People* was published in 2008. It detailed thirteen priorities for action under the key themes of protection, provision, primary prevention through education, and participation (the engagement of young survivors themselves to best shape the approach). It sought to adopt a holistic approach to addressing domestic abuse, recognising that measures to improve outcomes for children and young people include achieving better outcomes for all involved. This was understood as addressing the needs of the non-abusing parent, explicitly identified as most often be the mother, and dealing effectively with the perpetrator. As such the delivery plan centred the needs of children whilst addressing the victim blaming responses to abused mothers identified by Hester and other researchers.

Implementing the gendered definition across Scotland: The Three 'Ps'

Scotland's approach to tackling domestic abuse identified three focuses necessary to address domestic abuse holistically, through service, policy design, and delivery. These were known as the 3Ps, namely 'protection' (legal remedy), 'provision' (effective service response to women and children experiencing domestic abuse), and 'prevention' (methods to try to stop domestic abuse, occurring or to reduce reoffending). The 3Ps was 'a concept introduced by the feminist organisation Zero Tolerance'¹, again highlighting the Scottish Government's ambition not just to pay lip service to the gendered framing but to draw on feminist methodologies to implement it (Mackay, 1996). We have discussed in our earlier work how the elements of provision, protection and prevention enabled Scotland to prioritise gender as the main explanatory approach to tackling domestic abuse effectively (see Lombard and Whiting, 2015, 2017). Here we focus upon protection in terms of the recent DASA legislation looking at how it frames, or fails to frame the (feminist) gendered model and in doing so will highlight the centrality of women's experiences.

Protection: the criminal justice system

Legal protection in Scotland falls under two branches: criminal and civil. In criminal law, the state takes a case against a party. A civil case is one that is pursued by a private party against another. Both are applicable to domestic abuse and they often overlap and interact, with one study showing that domestic abuse was alleged in 50% of court actions over child contact (Mackay, 2013). Victims may engage with the law when they are called as witnesses to give evidence in a criminal case, or they may apply to the courts for protective orders.

The criminal justice system has been at the heart of initiatives to tackle domestic abuse in Scotland over several decades, with new legislation designed to sanction perpetrators of previously uncriminalised behaviours and improved processes to support victims. These include the criminalisation of intimate image abuse or so-called 'revenge pornography' through the Abusive Behaviour and Sexual Harm (Scotland) Act 2016; special protective measures available for court appearances through the Victims and Witnesses (Scotland) Act 2014; and a positive policing and prosecution approach with an emphasis on arrest and enhanced evidence gathering towards prosecution (COPFS & Police Scotland, 2019). The formal nationwide collection of incidences of domestic abuse recorded by the police began in 1999/2000, another signifier of the seriousness with which the issue was being considered. All this positive work has come about because it has been a collective policy priority.

Alongside this focus upon criminalising offenders, activists and those working in the criminal justice system recognized that there was a need for offenders, witnesses and victim-survivors to be treated efficiently and effectively through the court systems. A joint protocol between the police and COPFS was first launched at a Scottish Women's Aid conference in 2005 and has undergone several iterations to update it. Throughout this process feminists have been at the table, feeding information and helping to shape the protocol. The protocol has been revised on several occasions and the most recent (edition 5, 2019) more accurately reflects the growing understanding of coercive control and the impact on children and young people. The definition highlights the gendered nature of the problem, stating:

... it is acknowledged that domestic abuse as a form of gender based violence is predominately perpetrated by men against women. This definition also acknowledges and includes abuse of male victims by female perpetrators and includes abuse of lesbian, gay, bisexual, transgender and intersex (LGBTI) people within relationships. (Joint Protocol Between Police Scotland and COPFS, 2019: 2)

In 2008 the Scottish Government published *A Toolkit to Aid the Development of Specialist Approaches to Cases of Domestic Abuse*. The purpose was to support local criminal justice partners to identify effective approaches to handling domestic abuse cases. Amongst the core values and principles it promoted were victim and child safety, keeping the victim informed, and offender accountability. Such themes evidence the influence of feminist academic and activist framings of the needs of survivors with the criminal justice system. In Scotland, the decision to prosecute is made by the Procurator Fiscal. In 2013 a National Procurator Fiscal for Domestic Abuse was appointed to review how such cases are handled, and encourage an effective response. The development of such a post was evidence of key statutory agencies in Scotland seeking to effectively engage with the issue and reflect on their own practice, and it also provided opportunities for feminists to continue their engagement with institutions to effect change.

An important part of making the domestic abuse court work was effective support to victims. As a result, ASSIST (Advocacy, Support, Safety, Information, Services Together), a domestic abuse advocacy service that works alongside the police and the domestic abuse courts, was established. ASSIST's role is to reduce victimisation by assessing the risk and increasing the safety of clients at risk of harm from partners or ex-partners. While the service is open to all

victims of domestic abuse, due to the gendered reality of the issue, the overwhelming majority of those supported are women. An evaluation of the system (Reid Howie Associates, 2007) concluded the outcomes for victims were greatly enhanced through the combination of specialist advocacy, specially trained criminal justice practitioners, and reduced waiting times in getting to court. The report also noted a significantly greater number of early guilty pleas by the accused. Subsequently, there have been efforts in other areas of Scotland to replicate the Glasgow court, but this is by no means universal. ASSIST and other similar services that have grown up where domestic abuse courts have been introduced are an example of feminist approaches to domestic abuse becoming embedded in mainstream service provision. The Scottish Government remains committed to supporting the development of court-based advocacy project, and improving the victim/witness experience by drawing on understanding of trauma. While this represents a positive step, at the same time it is important, as outlined above, that independent and third sector feminist voices continue to hold the mainstream to account.

Are victim-survivors empowered within the system?

Research suggests that communication is often not aligned to victims' needs and women often express that they do not feel listened to (Hawkins & Laxton, 2014; Anderson, 2015; Murphy-Oikonen et al, 2022~~0~~; Forbes, 2021). Indeed, many victims have reported feeling revictimised by their engagement with the criminal justice system (Thomson, 2015). Recent Scottish research has also identified the notion of 'tertiary victimisation' whereby waiting for and at court generates compounding trauma; feeling out of control induces further anxiety about court attendance which in turn impacts upon victims' ability to be heard (Forbes, 2021). While many women will have proactively engaged with the criminal justice system, many will not and will find themselves there against their better judgement. Indeed, it is estimated that about one third of incidents reported to the police in Scotland are reported by a third party (Brooks-Hay, 2018). The adversarial approach to justice may turn the court into a 'theatre of shame' where indignities and degradations are reported on and contested (Herman, 2005). 'Private' matters become 'public' but the women's opportunity to tell her story is often prescribed by the process of the system. In addition to the general challenges for victims of an adversarial system, in intimate partner violence cases the focus is less on who committed the offences and more on what was done placing a greater spotlight on the victim and her actions which can make her feel like it is her on trial (Jordan, 2004).

Furthermore, many victims of domestic abuse and stalking will still be in fear of ongoing abuse by the perpetrator and women often seek court action against an offender at the time they physically separate from the relationship, the point at which they are at greatest risk of harm. Some women have also reported that engagement with the criminal justice system provides the perpetrator with another area in which to abuse through counter allegations of abuse, engaging in litigation against her, including child contact claims through civil processes, or elongating court action (Hester, 2009; Morrison et al, 2013). This has variously been described as legal systems abuse (Douglas, 2018), 'paper abuse' (Miller and Smolter, 2011) or 'procedural stalking' (Neilson, 2004). All this acknowledged, engagement with the criminal justice system, however, does offer an opportunity for empowerment and will be, for some women, an empowering experience (Hoyle and Sanders, 2000; Lewis, 2004; Bell, 2007).

Research by Hester (2005, 2009) suggests the women experiencing domestic abuse call the police for two main reasons: for the immediate violence to be stopped and the situation to be calmed down, and because she has identified the need for longer-term protection and measures to be put in place (see also Belknap & Hartman, 2000; Orloff, et al 2003). The women in the first category tended to be satisfied with the police intervention because they been effective in calming the man down and/or had separated the two of them (Hester, 2005). Women with children were more likely to refuse to give statements (Hester, 2005). Whether police made an arrest was only one of many police actions that significantly impacted victims' satisfaction: speaking to victims separately from perpetrators, being understanding, taking time to listen, taking the situation seriously and being respectful were other important determinants of satisfaction (Robinson & Stroshine, 2005).

It is widely acknowledged that there have been huge strides forward in the policing of domestic abuse. Nonetheless, literature still suggests that while some women find engagement with the police to be positive, many do not. Key themes include first responders lacking empathy and understanding of the issue, leading to instances where victims of domestic abuse feel they are not being taken seriously or believed and to the quality of initial investigation being weak, including inaccurate witness statement-taking (Van der Aa & Groenen, 2011; HMICFRS, 2014; Hawkins & Laxton, 2014; Korkodeilou, 2016; Taylor-Dunn et al, 2018). The lack of understanding also led to a minimisation and/or downgrading of the issue, a focus on physical injury to the detriment of coercive control, and ineffective risk assessment (HMICFRS, 2014; Hawkins & Laxton, 2014; Myhill & Johnson, 2016). These were found to be compounded for

BME women (Hawkins & Laxton, 2014). The prosecution of domestic abuse cases remains fraught with difficulty; there has been a mismatch between legislation and process, and what we know about domestic abuse as a course of conduct crime which entraps victims through fear, coercion, and control. The introduction of the Domestic Abuse (Scotland) Act 2018 sought to mitigate this.

Scotland's Gold Standard?: DASA

The Domestic Abuse (Scotland) Act 2018 was introduced to improve how the justice system responds to domestic abuse by aligning the law to the lived experiences of victims in recognising domestic abuse as a course of conduct. It criminalised abuse directed toward a partner or ex-partner, where there exists a pattern of abusive behaviours (two or more incidents) that a reasonable person would think would have caused the victim/ survivor to suffer physical or psychological harm (including fear, alarm and distress) and where the perpetrator intended to cause physical or psychological harm or was reckless as to whether the behaviour would cause such harm. The behaviours can include physical abuse, sexual abuse, isolating the survivor from family and friends, monitoring and regulating the survivor's activities, controlling their money and/or activities, depriving them from their freedom of action, frightening, humiliating, or degrading them, among other things. In keeping with the Scottish and feminist framing of domestic abuse, the new law also recognises the impact that domestic abuse has on children with an aggravator attached where a child is adversely impacted by the abuse. The new offence only applies to conduct that took place on or after 1 April 2019, when it came into effect.

The Crown Office and Procurator Fiscal Service (2021) reported that in the first year of the legislation (2019- 2020), 1,065 charges were reported under the DASA, accounting for 3.5% of all domestic abuse charges reported. This increased to 1,581 charges during 2020-21. Court proceedings were commenced in 96% (2019-20) and 95% (2020-21) of the DASA charges reported. During 2019-20, there were 206 convictions for the new crime of domestic abuse under the DASA. Of the total number of people convicted under the new offence, 204 (98%) were male and 4 (2%) were female.

Two research projects were commissioned to examine the progress made by the new law, two years after its initial implementation (Lombard et al, 2022; Houghton et al, 2022). Houghton et al's work examined how the court process was experienced by women and

children after reporting domestic abuse. They interviewed 22 women and children with their main findings illustrating how the new law better reflects the experiences of victim survivors but that its implementation still focused upon single incidents and struggled with definitions of psychological abuse (findings similar to those of Lombard et al, 2022) They also highlighted that not enough was done to acknowledge the impact upon children and that victims and witnesses were left on the ‘periphery’ of the justice process.

Lombard et al’s (2022) research spoke to twenty-nine women who had made their initial contact with the criminal justice system after the implementation of the DASA. At this time 11 charges of domestic abuse had been made, and five cases had gone to trial. Two perpetrators were found guilty; however, it was not possible to establish the specific crimes of which they were found guilty, only that they were related to domestic abuse. Neither of the perpetrators who pled guilty, nor the perpetrators who were found guilty in court were convicted of the new crime of domestic abuse (as specified in the DASA). Of these four cases, only one participant indicated the perpetrator had been charged with the new crime of domestic abuse (as specified in the DASA). Given the small sample size, the challenging circumstances faced by the criminal justice system (and everyone) at that time with covid lockdowns, and the early time period for bedding in the Act it is hard to draw too many conclusions from this data.

The instrumental efficacy of a piece of legislation is dependent on it being used and understood throughout the criminal justice system. Through the development of the legislation the Scottish Government worked closely with both criminal justice and third sector partners to try to ensure this. But this legislation will face the same challenges in implementation as all work in this area: the attitudes and values of those collecting evidence, analysing evidence, presenting evidence and making decisions about that evidence. An extensive education programme was rolled out through Police Scotland, COPFS and the judiciary to support understanding of the new law and the dynamics of coercive control but our research showed that for victim-survivors it was their treatment by individuals within each service (as opposed to the system as a whole) that determined whether an experience was positive or negative. In particular, women noted that communication (good or bad) with respective agencies was of significance in how they experienced the criminal justice system. It was also evident that regardless of the process

outcome, kind and empathetic treatment could make a significant difference to women's experiences:

Even if the case wasn't going to get to court I think I just needed to be heard more. I felt so dismissed and unimportant in the whole process that it was really difficult to deal with. In these cases, the person who has literally tortured you, has just been vindicated (in their mind) and ultimately given more power and confidence to continue to abuse you or their next victim.

Women who indicated they had a positive experience explained how communication, listening and validation provided this regardless of the process outcome:

The initial police officers believed me and didn't question anything I said (make it seem like they doubted it). Nothing was minimised and nothing was dismissed. It was the most empowering thing that they could have done.

The fact the officer's listened to me, spent time with me and chose the best course of action, while making sure that was okay with me and what I wanted.

All this emphasises that it is vital that individual actors within the system need to move with the legislation's sophisticated framing of domestic abuse and engage with survivors in an empathetic way that reflects this. Currently, champions and pockets of good practice enable some survivors to feel understood within the system whilst others are let down by those who lack understanding and/or empathy.

Overall women reported a sense of alienation and exclusion from the justice process primarily due to a lack of regular communication from respective services. DASA has the potential to excel for survivors, yet our findings suggested that for some women, there are actors and processes within the criminal justice system that undermine its effectiveness for victim survivors. This finding was replicated in the work of Houghton et al. (2022). Women respondents report that perpetrators continue to exploit the processes and procedures of the criminal justice system to further their abuse. Women reported perpetrators were able to breach their bail, interdicts, and Non-Harassment Orders without criminal justice intervention:

Even though he follows his bail conditions he finds ways around it for instance he isn't allowed to come anywhere near my stepdad but sent a friend down to threaten him instead but because it can't be proved that he was the one to send him down there was nothing the police could do, also his family constantly watch and video me and my family and say things to us, (...) and try their best to find ways to bend the rules so there is nothing we can do and we feel powerless.

My husband was not allowed in my street but could have access to me anywhere else making me feel like I couldn't leave home even with bail conditions in place with a non-harassment order it didn't make it any safer.

Often, the case outcome left women feeling like it had been a waste of time, that the sentences (where applicable) were too lenient, their experiences of abuse were minimised, and that they were not valued within the criminal justice system:

The perpetrator got off with the severe charges that have affected me very badly.

I feel our system is a form of sharia law. [...] my word as a woman is worth less than a man who I am trying to jail. This has been my experience in criminal and civil courts. My daughter and I suffered immense financial and physiological abuse by her father and although reported to social services and medical professionals we were ignored.

Some women referred to being left feeling unsafe regardless of the outcome and that the perpetrator was able to continue their abuse:

I feel the perpetrator sentence was far too lenient and (...) he continued to pursue me by other means.

Would have preferred if he had been kept in jail we would all feel safer and then I wouldn't be forced to bring my kids to a contact centre to see him but understand that's not always how it goes.

Overall, we found that with the implementation of the progressive DASA, Scotland continues to lead the way in striving to provide a survivor centred approach to address some of the challenges described in the wider academic literature. The law has been described as ‘a cultural system of meaning as well as a system of instrumental controls’, whereby a piece of legislation, in addition to addressing the behaviour of individuals, has transformative potential through the messages of justice and equality it propagates (Garcia-Villegas, 2018: 20). In other words, legislation can have symbolic power to declare what a society thinks is unacceptable and shift the discursive parameters. In this context, DASA is powerful in moving into law what survivors, activists and those working in the criminal justice system know to be the lived reality of coercive control. Its significance lies in the clear assertion that the criminal law addresses not just physical violence, but the constellation of psychological, coercive and emotional abuse so often drawn on by perpetrators. It also sends an important message to survivors, that a wrong is being done to them and that the criminal law recognises that harm.

Nonetheless, currently, overall women’s satisfactions with the justice process was largely predicated on their positive engagement with individual criminal justice actors. In order for the legislation to impact beyond the symbolic and make an instrumental and material difference to women’s lives, it will be vital that the attitudes and understanding of those working within the system move with the legislation. The Scottish Government convened a Women’s Justice Leadership Panel with a remit to consider what a gender competent justice system would look like. It has also commissioned a ‘knowledge and skills framework’ to support the development of a trauma informed justice workforce, in recognition of the fact that engagement with the justice system can be re-traumatising for survivors. These are positive initiatives that might go some way towards ensuring the workforce moves with the spirit of the law. In light of feminist concerns that an adversarial system can never be trauma-informed, it will be essential that this work does more than change the language practitioners use and that the deep understanding of the impact of trauma is widely understood.

Conclusion

Devolution opened up opportunities to do things differently in Scotland. The use of a feminist-influenced gendered analysis of domestic abuse, which had a noteworthy impact on policy and practice, has set Scotland apart from other jurisdictions within the UK. These differences can, in part, be attributed to the strength and influence of the feminist movement in Scottish political

activism and civic life prior to devolution. It can also partly be explained by the active feminist lobbying of ministers and parliamentarians, and the openness of both to the evidence base, effective engagement with the Government's legislative and policy consultation programme, including giving evidence to parliamentary committees, and the strategic interventions of feminist parliamentarians and ministers who drove policy post-devolution.

Yet despite this praise, and the achievements and developments outlined above, the progress as we have argued previously (Lombard and Whiting, 2015, 2017) remains 'fragile.' The gender analysis remains contested and initiatives often do not have the impact they might, as they are driven in pockets by champions as opposed to being adopted unanimously or deeply embedded in organisational response. It is vital this unique approach is not lost to what is often described as 'gender neutral terms'. The phrase is, in fact, a misnomer: if an issue so overwhelmingly affects one group in society (in this instance, women) it is not neutral to define in a way so to imply that women and men experience it in the same way and in the same numbers. While many who call for such so called neutrality in policy statements may be doing so for good intentions and in the name of equality, they fall into the trap of believing that equality means treating everyone the same. This approach averts its gaze from structural inequalities in society and thereby avoids addressing the very inequity that the initiative was seeking to address. It is an approach detrimental to women and children but one that equally swerves from engagement with the negative impact gender constructs can have on some men's well-being and ignores the gendered nature of domestic violence for the minority of men who do experience it. Scotland has proved radical in the approach taken to domestic abuse in terms of the holistic approach looking at health, education alongside the criminal justice system in tackling but also working to prevent gender-based violence. In doing so it is recognising that challenging and working to prevent gender inequality is where its priorities must first lie.

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¹ This has since been amended to four to include 'participation'.