

Meeting Needs or Protecting Rights: which way for children's services?

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ABSTRACT

The concepts of need and rights are used regularly as organising principles for thinking about children's services in the UK. There is a lack of clarity, however, about how they are related and the implications of this for provision for vulnerable children. This article sets out conceptual and empirical definitions of need and rights, focusing on what each one adds to the understanding of child development. Next, it reports on findings from the application of definitions to data on 234 children selected to be representative of those resident on an inner-London housing estate. The prevalence of and relationship between children in need and children with violated rights are set out. The final section explores the implications of the research for policy and practice, focusing in particular on how the concepts of need and rights can be applied to improve children's well-being. The conclusions have implications for social policy in other areas.

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INTRODUCTION

Children's services in many western developed countries are undergoing far-reaching changes. In England these are evident in the reforms heralded by the Green Paper *Every Child Matters* (DfES, 2003). Central to the proposed changes is a focus on achieving specified outcomes, measured in terms of children's health, safety, economic well-being, enjoyment and participation. It seems sensible to reflect on some of the values that underpin these changes and to note potential contradictions. Need and rights are two underlying concepts and are frequently elided or used in the same breath, even though arguably they pull services in different directions.

CONTEXT

Need and rights in policy and practice

There is a requirement in the UK for services for vulnerable children to be driven by need. In England and Wales one manifestation of this is the *Children Act 1989*, which mandates local children's services agencies to assist children in need – defined as those whose health or development is actually impaired or likely to become so without remedial help (Part III, s.17(10), Schedule 1).

Rights also underpin developments in legislation and guidance in children's services.

The UK government is a signatory to the UN *Convention on the Rights of the Child*

1989 (CRC), which means that its progress in implementing each Article is monitored by an independent body. These developments are symptomatic of the *Zeitgeist* (Kennedy, 2000); from being considered the eccentric preserve of activists, human rights has become the language not only of international diplomacy but also of policy and practice in relation to children. Thus, it imbues the rhetoric around the pursuit of deposed dictators and the justification of war or sanctions against 'rogue states'; there are also now children's rights commissioners in several countries, including Wales, and many local jurisdictions in the UK have recently appointed children's rights officers.

What factors explain the use of and interest in these developments? The focus on need is heightened by evidence from developmental psychopathology about the interaction of risk factors to produce developmental problems. As will be seen later, talking about children's needs is a helpful way of summarising this information and of pointing towards the root causes of difficulties and, in turn, the kind of intervention required to break the causal chains that are operating (Little *et al*, 2004). The perennial requirement to ration limited resources also gives the need perspective pertinence. Since the 1970s, pressure on public spending has meant increasingly that resources are allocated to providers according to the estimated volume of need in their catchment areas (Foreman, 1996) and recently much attention has been paid to need assessments (e.g. DoH, 2000).

The concern with rights is partly a product of moral views about children's entitlements to protection and to participation. Linked to these are the discovery of the 'battered baby' in the UK from the 1960s onwards (Parton, 1985) and reports into the failure of services in child abuse scandals (e.g. Secretary of State, 1974). There is also the growing and powerful influence of service-users. This is reflected to some degree in the

concept of 'partnership' in child protection legislation – the view that parents should have more say in the services that they receive and that children are entitled to express their views in key decisions affecting them. Vociferous campaigning regarding disabilities (Oliver, 1996) and the abolition of corporal punishment (Newell, 1989) have also reinforced the rights perspective, as have theoretical developments in 'childhood sociology'. This is a stream of work in which children are portrayed as active participants in society rather than as passive subjects waiting to become adults (e.g. James and Prout, 1990).

Research on need and rights

The fact that both need and rights drive children's services prompts several questions. What is the prevalence of the conditions to which they refer? How are they related? How well do the policies fit together? Answering these questions is complicated by the contested nature of the concepts, the multiple measures used to assess them and the lack of similar work conducted previously.

Need was described 30 years ago as 'too imprecise, too complex, too contentious to be a target for policy... [it] leaves a lot to be desired both as an epidemiological identifier and also as a basis for evaluating the performance of policies' (Bradshaw 1972: 640). Since then, commentators have interpreted it variously as dressed-up preferences, wants manufactured by capitalism, and a universal basis for the distribution of welfare (Doyal and Gough, 1991). Given this complexity, it is perhaps unsurprising that there is no single reliable figure for the proportion of children in need in the UK. Countless surveys asking service-users and local communities what they need have been undertaken (e.g.

Percy-Smith and Sanderson, 1992) and attempts have been made to calculate ‘need for services’ (e.g. DoH, 2001). However, much of the research is flawed conceptually and each measure has its own idiosyncrasies.

Most research on rights has comprised philosophical discussions about what rights people have and attempts to interpret national and international legislation. There have been fierce debates between libertarians, who argue that freedoms are the only *bona fide* rights (e.g. Nozick, 1974), and defenders of socio-economic rights (e.g. Plant, 1991). The children’s rights movement has prompted discussions about the extent to which children can have rights and, if so, whether they should include self-determination as well as protection (e.g. Holt, 1974). Empirical research on the extent and nature of rights abuses is scant next to these often polemic contributions. Studies often do little more than focus on children suffering extreme hardship or exploitation (e.g. sex workers) or those in contexts associated with abusive relationships (e.g. prison). Others latch onto characteristics that make children disproportionately susceptible to unfair treatment – having a disability, belonging to a minority ethnic group, and so on. There has been no attempt to calculate the proportion of children in a normative population whose rights are violated.

There has also been little work on the relationship between need and rights (for exceptions see Plant *et al*, 1980; Doyal and Gough, 1991, Chapter 6). Further, the implications for children’s services of the similarities and differences between the concepts are almost totally uncharted. This is because, until recently, the confluence of policy and practice factors identified above did not exist (see Axford, 2003).

DEFINITION AND MEASUREMENT

Need

‘Thick’ definitions of need suggest that it is relative to at least four contexts. First are people’s aspirations, with need defined as whatever a person requires to pursue the activities essential to their life-plan (Miller, 1976). Second is the historical period in question. For instance, whereas spending a day washing clothes by hand was once endured unthinkingly, today washing-machines are regarded as necessities in most western societies (Illich, 1999). Third is an individual’s geographic context. Physical circumstances are important insofar as one has no need for a fur coat in Havana or a bikini in Antarctica (Goodin, 1990). Fourth is the *modus operandi* of a given society; the quantity and kinds of food and clothes a person needs depend not just on the local climate but also on what others around them eat and wear (Ware and Goodin, 1990).

By contrast, a ‘thin’ notion of need is objective, timeless and universal. It rests on critiques of relative definitions; for example, that the ‘A needs X in order to do Y’ formulation allows almost anything to be considered a need (Soper, 1993) and that without some goods harm nearly always ensues, irrespective of geography or what others are doing (Goodin, 1990). These goods may be summarised as *autonomy* and *well-being*, since an individual needs both in order to choose and live out any course of action, irrespective of its morality or the context in which it occurs (Gewirth, 1978 and 1982).

Doyal and Gough (1991) effectively link the thick and thin approaches in their theory of human need. Following Gewirth, they identify two *basic* needs: physical health, which is defined in negative and biomedical terms as the absence of serious disease, and autonomy, by which they mean an individual's ability to make informed choices about what should be done and how. In turn, these are dependent on 11 *intermediate* needs – those properties of goods, services, activities and relationships that enhance physical health and human autonomy in all cultures. Among these are adequate nutritional food and water, a non-hazardous work environment, appropriate health care, significant primary relationships and economic security. While all of these needs are universal, the things required to satisfy them – known as *satisfiers* – are culturally variable; nutritional requirements, for instance, may be met by a range of cuisines. In this way, the approach welds philosophical insights with empirical observations.

The theory also clarifies the nature of need in other respects. One is that it distinguishes need from want. A person can need something that they do not want – food for an anorexic teenager – and want or not want something that they do not need – a millionaire's umpteenth car (Ware and Goodin, 1990). However, because needs depend on the way the world is whereas wants depend on the workings of the mind (Wiggins, 1985), a person cannot consistently *not* need what is required in order to avoid serious harm. A further insight is that need covers all aspects of an individual's life; in that sense it dovetails with the ecological understanding of children's development being affected by family and environmental factors (Jack, 2002). Also implicit is the view that needs inter-twine rather than forming a progression across the life-span (Kellmer-Pringle, 1980). Even autonomy is simply relative to age; for a five-year-old it might

mean deciding which toys to play with, whereas for a teenager it might involve choosing a college course or partner.

Attempts to measure need in relation to children have variously looked at what individuals think they need, the response of an agency to need, the cause or context of need and the manifestation or symptoms of need (Sinclair and Carr-Hill, 1996; Sinclair, 1999). Broadly these correspond to the four kinds of need identified in Bradshaw's (1972) typology. First is *felt* need, as in the use of focus groups, opinion-poll style surveys and art and games to find out what families and children want from services (e.g. Thomas and O'Kane, 2000; Braye, 2000). Second is *expressed* need, which involves calculating the demand for welfare services. Social services departments in England and Wales often calculate the local extent of child need by summing the numbers of children at risk of maltreatment, with special needs, in care, or locked-up. Indeed, the official estimate of the proportion of children in need in England is based on the number known to social services departments at any one time (DoH, 2000).

Third is *comparative* need, that is, the prevalence in the wider community of the socio-demographic characteristics of service-recipients. Thus, a child need index is used as part of the formula for determining how central government in the UK allocates funding to local authorities (Carr-Hill *et al*, 1997). It comprises four risk factors associated with relatively intensive interventions or being at risk of maltreatment: lone parent household, rented accommodation, household receiving basic social assistance and household with priority housing need. Fourth is *normative* need – the requirements for healthy development as determined by experts. Included here are audits in which

researchers and professionals elicit evidence of need from case notes on referred families using a specially designed instrument (Little *et al*, 1999).

Are any of these approaches preferable to others? Linking the discussion back to the Doyal-Gough theory (see above), children's needs would ideally be measured as a normative/felt hybrid; in other words, relating the satisfiers that families have to acknowledged standards of what children require for healthy development. All dimensions of children's lives should be considered – living environment, family and social relationships, behaviour, physical and psychological health and education and employment. Further, in order to calculate the proportion of children 'in need' it is necessary, first, to analyse these data for each individual to determine if there is evidence of actual or likely impairment to that child's health or development and, second, to aggregate these judgements. Although there are practice tools setting out the steps to measuring need in this way (e.g. Little *et al*, 2003), it is rarely done.

Rights

A right is a claim to be treated fairly and should usually 'trump' other considerations, such as cost and desert (Dworkin, 1978; Waldron, 1984). Thus, organisations and individuals should assist and forbear as required in order to respect the right-holder's recognised interests and liberties, with the State protecting this agreement. The agreement may concern *moral* rights, namely beliefs about what people ought to have – free speech, adequate nutrition, a safe environment, and so on. *Legal* rights evolve from moral aspirations when parallel duties are specified and the measures to enforce these liabilities are put in place (Nickel, 1987). They are officially recognised entitlements,

such as an amount of social assistance or access to a complaints procedure. An individual's rights are violated when a third party does not fulfil their duty towards them to assist or forbear; as Waldron (1993) puts it, 'rights are *correlative* to duties, so that talking about rights *is* a way of talking about people's responsibilities' (p.576).

Fierce debates surround the content of rights claims. Some have argued that only *negative* rights are valid; that is, traditional liberties such as free speech and religious tolerance (e.g. Nozick, 1974). This is on the grounds that they require third parties merely to refrain from interfering in someone else's life. *Positive* rights, by contrast, demand effort to provide assistance – perhaps in the form of medical care or elementary education. It has been suggested that it is absurd to denote as rights things for which insufficient resources exist, such as decent living-standards in India (e.g. Cranston, 1967). A more convincing perspective holds that negative and positive rights stand or fall together. Responding to the first criticism, securing negative rights may be as costly as upholding positive rights; for example, forbearance has to be imposed through publicly-funded police services (Plant, 1991). Similarly, the point about resource scarcity rests on the flawed assumption that the existing distribution of goods must remain undisturbed: 'the *'ought'* of human rights is being frustrated less by the *'can't'* of impracticability, than by the *'won't'* of selfishness and greed' (Waldron, 1993: 580).

Do children have the same rights? The *protectionist* view is that children are vulnerable and immature and therefore need nurture and protection first and foremost (Franklin, 1995). According to the *liberationist* perspective, children are oppressed rather than inherently dependent and should enjoy full adult rights, including entitlements to vote, have sex, direct their education, and so forth (Holt, 1974). Both views have been

criticised. The former is anachronistic, in that most people acknowledge that children should have some say in decisions that concern them (Fox-Harding, 1991). Equally, unfettered autonomy can put children in danger, and self-determination is arguably a capacity that develops rather than a right to be expressed (Purdy, 1992). Certainly legislation in the UK and the *CRC* seek a happy medium, balancing autonomy with children's best interests – a kind of 'moderate liberal paternalism' (Freeman, 1983).

The justification of rights is contested: what is it about human beings that allows them to claim some basic, universal form of treatment by others and obliges states to enforce such standards? Various views have been forwarded but, linking the discussion back to need, one involves basing rights on *agency* – the capacity to act – and thus on the conditions of such action, namely autonomy and well-being (Gewirth, 1978 and 1982). The obligation of individuals and society as a whole to uphold rights rests on the principle that if one person has a right to have a universal need met then the same must hold for all people: 'if some predicate Q belongs to some subject A because A has quality X then in all other similar cases where there are other subjects who have quality X then they have Q too' (Plant, 1991: 210). It is important to note that this reasoning only works in a community of shared values.

As stated earlier, much work on children's rights is based on philosophical conjecture and anecdote (Fox-Harding, 1991). The implicit assumption is that all children are disenfranchised, economically disadvantaged and subject to degrading punishment and that therefore their rights are *de facto* violated (Franklin, 1989; John, 1996a). This perspective is flawed, not least because it lacks the rigour to determine that those responsible for delivering specific entitlements have defaulted; for example, not all

children are hit. Fortunately the literature does provide pointers towards a more scientific approach to measuring rights abuses.

First is help with deciding if a right has been breached. This involves considering what rights are legitimate, who or what may breach them and how this may happen. For example, the *European Convention on Human Rights* (ECHR) contains only civil-political rights, such as freedom of speech and respect for privacy; judged by these rules, extreme material hardship would not constitute an infringement. Interpretation of the *ECHR* also holds that even if a breached right is attributable to an individual, responsibility may be deemed to lie with the State for its failure either to protect the claimant or to do anything about the issue in question (Kilkelly, 1999). It is also clear from this that violations may occur by *omission* as well as by *commission*, although the former tends to be treated more leniently. Since the *ECHR* takes on legal cases, it has developed explicit guidance as well as a series of principles to guide its application.

Second, the literature reveals ways of codifying rights violations. The judgements recorded in case law, for example, serve as precedents, indicating how an international treaty or national law is, and to some extent will continue to be, interpreted. Thus, two cases taken to the ECtHR suggest that children's rights are infringed by corporal punishment but that they are unaffected by sex education in school (Dale-Risk, 2001). Formal complaints lodged by individuals are another indicator of rights violations. In Norway, for instance, the child ombudsman produces an annual report that counts and categorises complaints by topic – family circumstances, school problems, treatment in institutions, and so on (Fox-Harding, 1991). Then there are Treaty articles that States decline to sign. The fact that the UK government registered reservations against

provisions in the *CRC* concerning immigration and citizenship (Bisset-Johnson, 1994) suggests that children in the UK who are from another country are disproportionately likely to experience rights violations. A further measure is provided by independent bodies that monitor some international rights laws. For instance, in its first report on the UK, the Committee that monitors national implementation of the *CRC* raised concerns about inadequate efforts to alleviate poverty, discrimination against travellers and the treatment of 12-year-olds in custody (Price-Cohen and Wolthius, 1995).

Third, the literature on rights includes aggregate data on rights violations. For instance, the UN *Human Freedom Index* includes a range of indicators, such as rights to peaceful assembly and independent courts and the freedom from unlawful detention or child labour, with each country receiving a score ranging from 0 (poor human rights record) to 40 (good record) (UNDP, 1991). Social indicators are also applied at the country level. Thus, to calculate the proportion of children in the UK whose nutritional rights (6, 24(2c,e), 27 (3)) were infringed, Lansdown and Newell (1994) employed a scientific measure of calorific intake. There is also the official *CRC* monitoring process, which incorporates a series of indicators for each cluster of articles (UNICEF, 1998). Thus, among the indicators for 'Family Environment and Alternative Care' is whether there exists a legal mechanism for the unscheduled inspection of care establishments (Harwin and Forrester, 1999).

The main problem with these approaches is that some of the cases included among aggregate figures may not technically constitute rights violations. A connected drawback is that there is no single figure for the proportion of children whose rights are

violated. These difficulties would be addressed if a logical sequence were followed, whereby individual judgements are codified and then aggregated.

RELATIONSHIP BETWEEN NEED AND RIGHTS

Comparing the concepts

Similarities and differences between need and rights may be summarised against seven dividing-lines. First is the aspect of well-being that is central to each. Whereas need is about agency – the capacity to act in society and avoid harm – rights concern the status that demands and is afforded by proper treatment. A clearer distinction can be made by saying that whereas rights refer to the normative form in which a claim is couched, need often refers to the content of the claim (Waldron, 1993: 576).

Second is the extent to which impairment to health or development are indicators of the concept. This is essentially about whether outputs or outcomes are at stake. Need is concerned with the former, in other words the individual's well-being rather than the services they receive or the policies and procedures that affect them. In contrast, respect for rights tends to be measured in terms of outputs, namely third parties' acts of omission or commission regardless of the effect. By implication, need is a more useful concept when considering the well-being of *individuals*, whereas rights is more suited to capturing *group* welfare.

A third dividing-line is the degree of multi-dimensionality. Need and rights both take an holistic perspective of people's lives but in slightly different ways. Needs are spread

across different areas of life, from adequate shelter and significant primary relationships to physical health and autonomy. Technically speaking, rights can be attached to almost anything but are often categorised under the headings of provision, protection and participation.

Fourth is whether the concept deals with adequacy or rather goes further to assess quality and enrichment. Both need and rights lean towards the former; need *per se* relates to the ability to lead a minimally adequate life – quality only becomes an issue with need-*satisfiers* – and rights are typically attached to basic standards and procedures aimed at protecting against improbable disaster or gross negligence. It can be confusing, though, as rights claims often reflect aspirations about an ideal life.

A fifth point of comparison is the relative contribution of objective conditions and subjective views to how the concepts are measured. Both concepts demand primarily objective assessments, although the satisfiers for need may reflect wants – as will autonomy – and saying whether someone's right to participation has been respected may be somewhat subjective, perhaps requiring the views of the person concerned.

Sixth is how apparent it is when a person's situation constitutes a problem: is the picture clear or fuzzy? Need is more difficult to identify because it requires taking context and likely long-term effects into account. Compared to a rights perspective, where entitlements are often spelt-out clearly and it is evident if they have been upheld, need can also be quite pliable and therefore subject to varying interpretations. This discretion or flexibility in relation to satisfiers is a frequent complaint of recipients of needs-led as opposed to rights-based interventions (e.g. Oliver and Barnes, 1998).

The seventh and final dividing-line concerns the relevance of the antecedents of a given situation. These are less important for need, which can reflect personal deficiency or structural injustice, but for rights they are crucial as a violation can only arise from an the negligence or trespass of a third party (individual or collective); in particular, an individual's predicament cannot constitute a violation of their rights if it is attributable to genetic inheritance, misfortune or personal fault.

Connections between the conditions

It is evident from this discussion that need and rights both bring a uniquely valuable perspective to the analysis of social policy problems. They act as different lenses through which to view child well-being and, by implication, hint at different solutions to *ill*-being. There is also a suggestion that the concepts may point to different groups of children whose situations demand some kind of welfare intervention. Is this the case, or do they stop at portraying the same individuals in different hues?

Certainly being in need is often associated with having one's rights violated, and *vice versa*. This is largely because rights may be regarded as an entitlement to have one's needs met. Consequently, assuming that an individual does have such a claim, and if that claim has been breached by the action or negligence of a third party, unmet need can be an indicator of a violated right. Equally, the violation of a need-based right will, generally, result in unmet need. Moreover, respect for rights is broadly conducive to need-satisfaction (Plant, 1991), just as meeting need is to some extent a pre-requisite for

the exercise of various rights. For example, it is difficult for a person to exercise freedom of speech if they are living in squalor or debilitated by illness (Plant, 1990).

That said, there are several ways in which a person can be in need without their rights being violated. First, the content of their entitlements may be very limited or even non-existent; arguably welfare entitlements are insufficient to guarantee adequate housing, health, economic security, and so forth (Campbell, 1983). Second, the untrammelled enjoyment of rights to liberty may expose individuals to harm; for example, allowing children the freedom to play outdoors unsupervised increases the risk of them getting hurt and so sacrifices their need for health and a non-hazardous environment (Phillips, 1996). Third, in a litigious climate efforts to respond to rights-claims often give rise to reactive responses that overlook or perpetuate need, for instance social workers may place children in care unnecessarily for fear of being sued if the child is subsequently abused at home (Hirst, 1999). Fourth, need arises for reasons besides the action or negligence of third parties, including illness and accidents.

From the opposite angle it is apparent that the violation of rights does not automatically render an individual 'in need'. Sometimes drastic action is regarded as means to an end, for instance the decision to force-feed a person who is on hunger-strike. In the case *T&V v. United Kingdom* [European Court of Human Rights 1999] two boys convicted of murder in an adult court were deemed to have had their rights to a fair trial (Article 6) breached, yet having been placed in secure accommodation with a reasonable standard of education there is reason to think that their needs were met (Little 2002: 1183). Needs may also be met in a manner that leaves structural discrimination intact, for example providing disabled children with special facilities that segregate them from the

wider community rather than making mainstream transport or education more accessible. Context is also an important mediating factor, perhaps best illustrated by the finding that the extent to which children who get hit experience impaired health or development depends on its frequency and if it occurs in a low-warmth/high-criticism environment (DoH, 1995). Thus, one-off actions or incidents in which duty-holders default can constitute rights violations without causing unmet need; they are relatively innocuous.

OVERLAP BETWEEN CHILDREN IN NEED AND CHILDREN WITH VIOLATED RIGHTS

Data and measures

It is possible to explore some of these hypotheses using data from a study of children living in a deprived, ethnically diverse inner-London estate: the area ranks 12th out of 366 in England on the Townsend deprivation index (Gordon and Forrest, 1995) and two-thirds (63%) of children lived in families where English was not the first language. Semi-structured interviews were conducted in Summer 1998 with parents and carers in their homes, with additional data coming from social services and education welfare files. The response rate of 62 percent generated a sample of 689 children that was representative of all children on the estate in terms of age, first language and number of children. The survey instruments collected data on risk and protective factors relating to the child, his or her family and their wider environment, organising the information in terms of living situation, family and social relationships, social and anti-social behaviour, physical and psychological health and education and employment.

Information was also gathered about the use of services provided by statutory and voluntary agencies.

Measures of need and rights were applied to a randomly selected one in three sub-sample of children from the dataset (N=234). Need was measured as actual impairment to health or development and rights violations as serious infringements of any of the '3 Ps'; for example, rape, assault, abuse, war/oppression and being a victim of official negligence or poor practice. Several measures were formulated for both concepts, and these ones were both second choice (the first choice measures were discarded because they identified too many children to make the analysis meaningful). However, the two actually selected did correlate reasonably strongly (0.8 for need and 0.5 for rights, $p < .01$) with at least one alternative.

Findings

Using the selected measures, the prevalence rates for 'in need' and 'rights violated' were 39 and 42 percent respectively. These figures are very different to previous estimations of the proportions of children in need – five percent if based on being known to social services (DoH, 2001) – and those with violated rights – 100 percent according to some prominent commentators in the field (personal correspondence). Although caution is required because of the socio-demographic profile of the sample and the nature of the measures used, these comparisons suggest that using contact with services as a proxy for indicator for need will risk overlooking many children with impaired health or development and that there is unlikely to be empirical backing for viewing childhood as an oppressed state *per se*: some children have their rights intact.

The association between ‘in need’ and violated rights as measured was also explored, using a 2x2 table and the *phi* coefficient (Table 1). The weak correlation (0.126, $p < .1$) reflects the sizeable proportions of (a) children in need whose rights were intact and (b) children with violated rights who were not in need. Relative risk ratios confirmed this pattern, showing that children in need were barely more likely to have violated rights (1.339) and *vice versa* (1.368) (the figures were not statistically significant).

Table 1 Need and rights

	Rights violated	Rights intact	Total
In need	44 (20%)	43 (19%)	87 (39%)
Not in need	51 (23%)	84 (38%)	135 (61%)
Total	95 (43%)	127 (57%)	222 (100%)

To understand why in this analysis the relationship between need and rights is so weak it helps to look at some brief examples, starting with a child in need whose rights were not violated. A four-year-old girl living with her mother, she was suffering from allergies and a urinary problem (impairment to health, therefore in need). Although her home had been burgled recently, thereby infringing her rights to privacy, this did not count as a *serious* breach of her right to protection. Then there are children with violated rights who were not judged to be in need. For example, one 10-year-old girl did not have any health problems, and although she could be quiet and withdrawn the school had no concerns about her (no need). However, she had to share a bedroom with all three half-siblings (two girls aged 13 and 14 years and an eight-year-old boy); the severity of this and the apparent lack of action by the housing agency were deemed to warrant a judgement of ‘rights violated’.

Some of the reasons embedded in these example for the disjunction between need and rights resonate with inferences drawn earlier in the article from other sources: needs sometimes arise for reasons entirely unconnected to how a child is treated, just as inadequate provision does not always impair a child’s health or development.

Considering the distinguishing features of the two conditions as identified using chi-square applied to 60 key variables reinforces the point (Table 2). Those that mark-out children with violated rights concern poor treatment (e.g. forced to leave home country), potentially abusive contexts (two-parent families) and difficulties for which the agency response was often found to be inadequate (e.g. special educational needs); the factors unique to need, meanwhile, relate to children’s behaviour, health and school performance. This disconnect means that the relationship between need and rights is less close than is commonly assumed.

Table 2 Non-shared distinctive factors for need and rights (p< .01)

Distinguishing factors unique to need	Distinguishing factors unique to rights
<ul style="list-style-type: none"> ● Poor relations / no contact with father ● Low warmth / high criticism environment ● Bullied ● Poor relations / no contact with peers ● Isolated ● Anti-social behaviour at home, school or in the community ● Involvement in crime ● Chronic physical health problem ● Depressed, stressed or unhappy ● Physical or psychological health problem ● School exclusion/truancy ● Not achieving potential 	<ul style="list-style-type: none"> ● Who child lives with [two parents] ● Forced by war/oppression to leave home country ● Abuse (physical, sexual, neglect) ● Overcrowded accommodation ● Approached social services for help in past 12 months ● Received help from social services in past 12 months

NEEDS-LED AND RIGHTS-BASED SERVICES

Service styles

Drawing on the preceding conceptual and empirical analysis, this section seeks to identify the *style* or facets of ‘pure’ services aimed solely at meeting need or upholding rights; in other words, the features that those services should exhibit, logically, if they are to be effective as viewed from that perspective. The services may be summarised in terms of what they do and how as well as who they are aimed at.

Need-based services are typically outcome-orientated and thus evidence-based. The concern with averting *likely* impairment means that a focus on need encourages practitioners to embrace techniques that are shown by the evidence to prevent or intervene early in toxic causal chains. They also allow for interventions to be tailored to each child’s situation and thereby lean towards having a personalised, caring element, rather than being ‘one-size-fits-all’. Need-based services encompass material and non-material goods and assistance in all areas of a child’s life – health care and nutrition, advice on relationships, money or furniture, and so on. Significantly, what is provided may be fairly simple, in other words things that are essential to basic survival and well-being. However, the same need may be met by different satisfiers in different circumstances; for example, a brick house and a mud hut both meet the need for shelter.

In theory, need-based services would be for children whose health or development is actually impaired or likely to become so without remedial assistance. In reality, other factors influence the identification of and response to need. For example, there has been

a reaction in health and social care against the focus on expert-defined (normative) need and a trend towards basing treatment decisions on patients' assessments of their needs rather than purely on professional diagnosis (e.g. Foreman, 1996). Other factors that affect whether or not the need is recognised or addressed include the resources at a provider's disposal and constraints imposed by the agency's eligibility criteria. In short, needs-led provision tends to be characterised by considerable flexibility or discretion. Moreover, the apparently conservative nature of need means that it is sometimes marshalled in market economies as a means to ration welfare provision, thereby exerting a downward pressure on the proportion of the population receiving assistance.

Rights-based provision is different in almost every respect. It is characterised by rules and procedures intended to constrain the behaviour towards others of individuals and organisations. More specifically, moral rights tend to evolve into sharply-defined legal entitlements with parallel duties and liabilities clearly specified and measures in place to enforce them (e.g. Nickel, 1987). The duties of assistance and forbearance cover aspects of provision (material goods), protection (preventing interference with personal integrity) and participation (enabling the exercise of individual liberties). Compliance with such requirements is monitored and enforced through various mechanisms. Charters or conventions are harnessed in order to motivate and cajole responsible parties to attain expected moral standards; for example, there are many campaign groups pressing for stronger adherence by national governments to the *CRC*. In relation to legal rights, there is the option of penalising or 'shaming' defaulters, perhaps through litigation – so galvanising duty-holders to act appropriately. These instruments are fairly blunt and uniform compared with the nuanced approach engendered by a focus on need.

They do, however, mean that claimants need not prove their eligibility, desert or neediness, so preserving their dignity.

Most moral rights are held to apply to all people, irrespective of age, gender, ethnicity, actions and so on. When these standards are translated into legal rights, the rules then apply to any child who comes within their orbit and receipt of assistance is *usually* an entitlement; it is not conditional on particular contributions or behaviour (exceptions include those benefits attached to being a citizen of a country). It is noticeable, however, that rights-based measures focus attention on groups of children who are perceived as experiencing or vulnerable to exploitation or unfair treatment of some form. Ethnic minorities, the disabled, sweatshop labourers, child soldiers and so on are regarded as disproportionately likely to have been defaulted against – in the sense of responsible individuals or organisations failing to intervene or forbear appropriately – and also unlikely to be able to defend themselves. In that sense a rights approach betrays a fundamentally negative view of human nature in that it focuses on the evils to which we can be complicit or that we can instigate.

Potential contradictions

It will be apparent that aspects of both needs-led and rights-based provision can be traced in much children's services provision. A question that arises is whether the two approaches are potentially contradictory. Put another way, is it possible that the service style required to meet children's needs inadvertently impairs efforts to uphold children's rights, thereby creating or perpetuating violated rights – and *vice versa*?

Services to meet children's needs can infringe their rights in at least three respects. First, the flexibility or discretion that is innate to responses to unmet need tends to generate guidance (rather than rules) that can be interpreted such that someone who technically is not entitled to assistance receives it (and *vice versa*) (e.g. Donnison, 1982). From a rights perspective this might be perceived as an insecure basis for distributing welfare resources. Second, a needs-led approach promotes attention to children's best interests as viewed from a professional, evidence-based standpoint, and so may be regarded as authoritarian or paternalistic from a rights perspective. In medicine, for example, children with chronic illnesses may have their right to influence decisions about receipt of drugs or surgery overridden by well-meaning adults. This reflects different views of children – passive dependent on the expertise of benevolent adults vs. social actors who need to be empowered to claim and enjoy their freedoms.

Third, the nuanced nature of needs-led responses means that agencies may not intervene in the case of an infant who is smacked by a parent if there is evidence that the incident was a one-off or took place in a generally warm and loving environment. From a rights perspective it might be argued that this constitutes negligence because it leaves the wrongdoer unpunished and the child vulnerable to further abuse. An expert in the aetiology of developmental impairment, however, might contend that such occurrences rarely cause lasting damage, and that removing the child from home or taking action against the perpetrator would be even more harmful. Whereas a rights approach often entails knee-jerk reactions to incidents, a need perspective encourages a more rounded appraisal of the situation.

Similarly, services to uphold rights can create or perpetuate unmet need. One way this happens is when respect for due process – in the form of firm adherence to rules and regulations – takes precedence over rectifying deficits of care. For example, even if a child has glaring health or development problems their situation might not fit specified eligibility criteria for certain entitlements and the duty to address them may lie beyond the provider’s explicit remit. There is also a risk that the rigidity of a rights-orientated approach militates against delivering packages of support that meet children’s needs for affection, warmth, self-esteem and so on. Regulations in the UK aimed at protecting children against abuses of power have arguably turned foster and residential carers into ‘technicians’ who must perform certain tasks and squeezed-out some of the experiential qualities – responsiveness, comfort, appreciation and so forth – that help meet the aforementioned needs (Smith, 1997: 12).

IMPLICATIONS FOR POLICY AND PRACTICE

Assuming for now that both need and rights perspectives contribute to improving children’s well-being, the question is how to minimise the contradictions just identified. This requires services to be more congruent – accordant or fitting together, as in a mosaic of triangles. Four features are important. First, interventions are tailored so that they have the potential to be effective in alleviating a specified condition. Second, those interventions are targeted accurately; that is, they reach children with the condition in question. Third, the interventions do not bring about – or hinder efforts to alleviate – *other* conditions, whether for the child with the original condition or for other children; they complement one another. Fourth, where possible, interventions aimed at alleviating one condition help to address another, thereby achieving some degree of synergy.

It helps to have a practical statement illustrating what this might mean. For example: *meeting need and upholding rights would mean providing evidence-based services to alleviate or prevent impairment to health or development but consulting recipients first so as to enable their participation in the decision about what they receive.* The article provides an underpinning for achieving greater congruence. Clarity about the contours of the two concepts provides a platform for determining the style of interventions that stand to be effective. Describing how the concepts may be measured and portraying their prevalence and overlap in a community of children assists with the accurate targeting of services. And there is primary and secondary evidence of disjunctions between need and rights and how services may contribute to these patterns. The theoretical perspective offered here assists with minimising contradictions.

Of course, the mix of emphases reflected in services must be decided by policy-makers. Focusing on need or rights respectively will affect which children are served, how and why. These decisions are shaped by at least five factors: (a) moral concerns about what children should have and how they should be treated; (b) legal imperatives setting out children's entitlements; (c) scientific evidence about what works, with who, when and why; (d) pragmatic considerations, including the availability of material and professional resources; and (e) public opinion or consumer views, that is, what lay-people think is important to do and their views about the services provided. The respective strength of these factors varies with need and rights: (a), (b) and (e) arguably make services more rights-orientated, whereas (c) and (d) foster a focus on need.

Viewing service provision from this perspective is a reminder that as well as there being good reasons to help children in need, there is often a case to help children who are not in need, just as it may be appropriate to withhold help from those who are in need (Table 3). The same reasoning applies to rights.

Table 3 Factors that shape decisions about providing services for children in need

Factor	(a) Reason for helping CiN	(b) Reason for not helping CiN	(c) Reason for helping non-CiN
(1) Moral concerns	Children are inherently vulnerable and it is incumbent on adults / society to ensure that they achieve and maintain reasonable standards of health and development	Assistance forfeited / not earned (e.g. poor behaviour or failure to pay tax)	Treatment of child unacceptable, even though child has emerged unscathed (e.g. one-off act of violence by parent), or certain interventions considered good practice even though it is unclear how the child's health and development will benefit (e.g. support to express opinion)
(2) Legal imperatives	Statutory agencies required to provide services for children whose health or development is actually impaired or likely to become so without remedial assistance	Rules do not allow it (e.g. housing for asylum-seeking families)	Child has broken law (e.g. one-off crime and needs solicitor at police station)
(3) Scientific evidence	Accumulation and interaction of risk factors over time predisposes some children to social and psychological problems, but proven interventions can break these chains of effect	Condition is terminal (e.g. cancer) or treatment would exacerbate problem (e.g. removing child from family)	Primary prevention programme with entire population (e.g. measles, mumps and rubella vaccinations)
(4) Pragmatic considerations	Focusing on children in need is cost-effective because it means that services can be rationed and targeted	Lack of resources (e.g. only helping most serious cases, referring case to alternative agency)	Resources or service happen to be available (e.g. places at family centre)
(5) Public opinion / consumer views	Children and families often ask for and appreciate support	Assistance refused or not sought (e.g. wary of service-provider, under pressure from partner, alternative support available)	Family requests help, siblings of child in need helped, or child 'progresses through the ranks' (e.g. attended playgroup and now attends after school club)

CONCLUSIONS

This article has looked at need and rights in the context of children's services. It has moved from theoretical perspectives, through measurement and findings to implications for services. It is clear that the concept that drives children's services has an impact on the shape of those services and that the ideas set out here have wider relevance for social policy generally (e.g. provision for the elderly). Two points follow.

First, when evaluating services account should be taken of what they are trying to achieve and how likely they are to be effective against different criteria. For example, viewed logically within a rights perspective, the value of new child protection procedures and regulations should be assessed according to how far organisations and individuals abide by them rather than in terms of improvement to the children's health, behaviour or educational attainment – a need perspective. Such an approach to evaluation not only encourages policy-makers and practitioners to specify more precisely the goals of an intervention, but it also makes evaluations more realistic. Some desired results will be very difficult to achieve with some kinds of intervention. For example, adherence to certain regulations might protect a client's rights but there is no guarantee that it will help meet their needs; freewill, accidents and genetic make-up may conspire to undo any good work done by professionals. Evaluating services in terms of what they can realistically achieve means acknowledging both the value of applying different yardsticks, and also the limits of certain interventions.

Second, although in some respects it is welcome that both need and rights appear currently as policy objectives in the UK – there is value in looking at children’s lives from different perspectives – varied terminology and multiple initiatives bring with them the danger of confusion. There is a risk of using different words to refer to the same phenomenon, whether in discussions between researchers, policy-makers and practitioners, or across administrative and disciplinary divides. There is also the potential for policy-makers to speak with a forked tongue; that is, of enacting initiatives that are inherently contradictory.

So, meeting need or protecting rights: which way for children’s services? Used carefully, need and rights can both act as useful lenses through which to view and understand children’s predicament, and so, hopefully, inform improved services. By implication, it is unhelpful if different concepts become the preserve of particular professions, or if policy-makers (and managers and researchers) abandon one in favour of another. It may not be possible for children’s services provision to be driven by both concepts simultaneously, but to lose either is to see a little less clearly. That said, if the over-riding focus is on improving children’s health and development – as it is in many service settings – then arguably need is king.

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