



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 child well-being and children's services in western developed countries. There is a lack of clarity, however, about what they mean, how they are related and the implications of this for provision for vulnerable children. This article sets out definitions of need and rights, discusses what each one adds to the understanding of child well-being and explores the implications of this analysis for children's services.

Key Words: children, need, rights, services, social justice, well-being

Introduction

Children's services in many western developed countries are undergoing far-reaching changes. In many cases this involves refocusing such services towards achieving outcomes measured in terms of different aspects of children's well-being. It seems sensible, therefore, to reflect on some of the assumptions that underpin these changes, specifically those concerning how child well-being is conceptualised. Need and rights are two underlying concepts and are frequently conflated or used in the same breath, even though – as this article demonstrates – they arguably pull services in different directions.

Need and rights in policy and practice

Welfare state services for vulnerable children have traditionally been driven by some formulation of need. In England and Wales, for example, local children's services agencies are required by the *Children Act* 1989 to assist 'children in need' – defined as those whose health or development is actually impaired or likely to become so without remedial help. This requirement was reinforced by the *Children Act* 2004 and associated guidance, which emphasise the need for early intervention to improve children's physical and mental health and protect them from harm and neglect. There is also reference to children with 'additional needs' (defined as those at risk of poor outcomes) and local agencies are encouraged to measure the level of need locally and use the results as the basis for planning services. A plethora of child and family need audits are now conducted in local authorities using different methods, although their quality varies considerably (Axford, forthcoming).

The concept of rights has also informed developments in legislation and guidance in children's services over the same period. Governments in all western developed countries bar the US have ratified the UN *Convention on the Rights of the Child* (UNCRC). This means that their progress in implementing each Article is monitored by an independent body, and local children's services departments are expected – if not necessarily legally obliged (it depends on the country) – to comply with UNCRC requirements. 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. In the UK and elsewhere the climate created by such developments has arguably contributed to the appointment of national Children's Commissioners and a variety of mechanisms for ensuring that the 'voice of the child' is heard in policy and practice circles, although the force of many such measures is questionable (e.g. Lyon, 2006).

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). Indeed, much attention has been paid to need assessments in children's services in many countries in recent years (e.g. DoH et al., 2000; Ward & Rose, 2002). The perennial requirement to ration limited resources also gives the need perspective pertinence. In the UK, for example, pressure on public spending since the 1970s has meant increasingly that resources are allocated to providers according to the estimated volume of need in their catchment areas (Foreman, 1996).

The concern with rights is partly a product of moral views about children's entitlements to protection and, increasingly, to participation. These were reinforced by 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' – a stream of work that portrays children as active participants in society rather than passive subjects waiting to become adults (e.g. James & Prout, 1997; Mayall, 2002).

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.

Bradshaw (1994) described need 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' (p. 45). Other commentators have interpreted it variously as dressed-up preferences (Goodin, 1988), wants manufactured by capitalism (Illich, 1999) or a universal basis for the distribution of welfare (Doyal & 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 (or, for that matter, other countries). Numerous surveys asking service-users and local communities what they need have been undertaken (e.g. Percy-Smith & Sanderson, 1992; Axford, forthcoming) and attempts have been made to calculate children's 'need for services' (e.g. DoH, 2001; DfES & National Statistics, 2006). However, each measure has its own idiosyncrasies and there is no consistent way of operationalising 'children in need' (Axford, 2008).

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 civil and political freedoms are the only *bonafide* 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 more polemic contributions (see Axford, 2007). Thus, studies tend to focus on children suffering extreme hardship or exploitation (e.g. sex workers) or those in contexts associated with abusive relationships (e.g. prison). They also latch onto characteristics that make children disproportionately susceptible to unfair treatment – having a disability, belonging to a minority ethnic group, and so on. Although there are studies of certain rights exercised in certain contexts, for instance pupils' participation in school (e.g. Parsons, 1999), there has been no attempt to calculate the proportion of children in a normative population whose rights are violated.

Of particular pertinence here is the fact that there has also been little work on the relationship between need and rights (for exceptions see Plant et al., 1980; Doyal & Gough, 1991, Chapter 6), although this has not stopped attempts at making a connection in practice. For example, the promotion of children's rights to participation in the planning, delivery and evaluation of services is predicated partly on the argument that involving service-users helps with meeting their needs (e.g. Sinclair, 1996), even though robust evidence for this link is scant (Kirby et al., 2003). Further, the implications for children's services of the similarities and difference between the concepts are almost totally uncharted.

Defining need and rights

Need

A common distinction in the literature is between thick and thin interpretations of 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). Thus, in Shakespeare's *King Lear* the king's 'need' for soldiers is specific to his role and situation (Ignatieff, 1985). 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 is unlikely to need for a fur coat in Dubai or a swimsuit 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 & Goodin, 1990; Pantazis et al., 2006).

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 seminal book *A Theory of Human Need*. 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 successfully welds philosophical insights with empirical observations, and critiques of it have largely been addressed (see Gough, 2000).

The Doyal-Gough 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 & 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 (cf. Kellmer-Pringle, 1980). Indeed, other lists of needs that are more specific to children are not significantly different (e.g. Berry Brazelton & Greenspan, 2000). 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.

The perspective elaborated here refers mainly to what Bradshaw (1972) described as *normative* need – the requirements for healthy development as determined by experts. He contrasts this with other approaches to identifying need, for example asking people what they think they need ('felt' need) or calculating the demand for services ('expressed' need) (for a fuller discussion see Axford, 2007).

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, although of course 'law and morality do not always perfectly coincide'

(Archard, 2004, p. 56). An individual's rights are violated when a third party does not fulfil their duty towards that individual 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 commentators have argued that only negative rights are valid, in other words 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 very poor countries (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? This is not the place for an extended discussion of this debate but traditionally the protagonists have fallen into two camps (Franklin, 1995; Archard, 2004). The protectionist view is that children are vulnerable and immature and therefore need nurture and protection first and foremost. 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 considered 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 UK legislation and the UNCRC seek a happy medium, balancing autonomy with children's best interests – a kind of 'moderate liberal paternalism' (Freeman, 1983; Verhellen, 1999). Indeed, some research suggests that children themselves adopt a similar stance; for example, they want the right to express themselves without always having the final responsibility for decision-making (O'Quigley, 2000).

Much work on children's rights has traditionally been based on philosophical conjecture and anecdote (Fox-Harding, 1991). Often the implicit assumption in both academic and advocacy circles is that all children's rights are *de facto* violated; to caricature (but only slightly), children are disenfranchised, economically disadvantaged and subject to degrading punishment (Franklin, 1989; John, 1996a), and their modern dependence contrasts with the past when they behaved and were treated as adults (Freeman, 1983; John, 2003; Mason & Fattore, 2005). While this approach helps to challenge outdated stereotypes about children, it lacks strong empirical foundations, which in turn calls into question its value as a basis for planning children's services. This raises the broader issue of the respective added value of the need and rights perspectives.

Comparing the concepts of need and rights

Need and rights are mainly similar in at least three respects. First 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 they are often categorised under the headings of provision, protection and participation.

Second is whether the concept deals with standards of adequacy in relation to well-being 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 third 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.

There are also at least three important differences between the two concepts. The first concerns 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 ('I am entitled to X'), need often refers to the content of the claim (the nature of X) (Waldron, 1993: 576). Thus, to suggest – as some do in a children's services context – that there should be a greater focus on need at the expense of rights (or vice versa) is, to some extent, like saying that we should concentrate less on duties and more on truth-telling; the languages of need and rights are different but potentially compatible (Waldron, 1993). This point is elaborated later in the article.

A second difference is the extent to which impairment to health or development is an indicator of the concept. Need is very much concerned with 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 services they receive or the policies and procedures that affect them. Thus, whether or not the right-holder has suffered or is likely to suffer harm or impairment – central to the concept of need – is largely inconsequential in determining if his or her rights have been breached. So, it would be nonsensical for me to say 'My right to protection has been infringed' if I drive carelessly, wrap my car around a lamppost and end up in hospital with a broken leg; by contrast, we do not wait to assess the long-term damage suffered by a child who is beaten before acknowledging the violation of her right to protection. Indeed, one of the problems of using social indicators to measure rights violations (e.g. Ledogar, 1993; Lansdown & Newell, 1994; Ennew & Miljeteig, 1996; UNICEF, 1998; Harwin & Forrester, 1999) is that hardship or disadvantaged circumstances are not necessarily the same thing as a violated right. They might be a product of a violated right, but this will depend on several factors, including what rights the individual holds and whether or not the individual or public body responsible for guaranteeing the specified right has defaulted (Kilkelly, 2006).

The third 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 since a violation can only arise from 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 personal fault, biological/genetic make-up or misfortune. For example, if a child falls off her bike and cuts her leg, her rights are poten-

tially still intact. She may have been riding dangerously, or had a fit and lost control, or hit a pothole. But if she is knocked down by a drunken driver, or if a passer-by delays calling an ambulance such that the child's situation is made worse, her rights *have* been violated.

Connections between being in need and rights violations

It is evident from the preceding discussion that the concepts of need and rights, while overlapping, both bring uniquely valuable perspectives to the analysis of children's services. They act as different lenses through which to view child well-being and, by implication, hint at somewhat 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 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.

That said, there are several ways in which a person can be in need without their rights being violated. The content of their entitlements may be very limited or even non-existent; historically welfare entitlements have proven insufficient to guarantee adequate housing, health, economic security, and so forth (Campbell, 1983). The untrammelled enjoyment of rights to liberty may expose individuals, to harm; for example, allowing children the freedom to play outdoors unsupervised could be construed as increasing the risk of them getting hurt, so sacrificing their need for health and a non-hazardous environment (Phillips, 1996). Further, in a litigious climate efforts to respond to rights-claims potentially 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). Lastly, of course, 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 a means to an end. In the case *T&V v. United Kingdom* [European Court of Human Rights 1999], for example, two boys convicted of murder in an adult court were deemed to have had their rights to a fair trial breached (Article 6 of the European Convention on Human Rights), 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). Needs may also be met in a manner that, in the minds of some, 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 (Pinney, 2005; Rabiee et al., 2005). Contextual factors, notably the family environment and wider community, are also important because they may moderate the developmental effects of child maltreatment, thereby accounting for some of the heterogeneity in the outcomes associated with abuse and neglect (Zielinski & Bradshaw, 2006; Berry, 2007); the extent to which children who get hit experience impaired health or development depends on its frequency and whether it occurs in a low-warmth/high-

criticism environment (DoH, 1995). Thus, it can be contended that one-off actions or incidents in which duty-holders default may constitute rights violations without causing unmet need.

As indicated earlier, there is little empirical research on the relationship between need and rights, so it is difficult to corroborate such observations. However, one study did measure the proportion of children in a community who were in need and/or whose rights were violated, and concluded that the relationship between need and rights is less close than is commonly assumed (Axford, 2007 and 2008). If this is true, what does it mean for service provision?

Needs-led and rights-based services

Service styles

It is possible to draw on the preceding conceptual analysis and identify the *style* or facets that services exhibit when they are driven more by need or rights (accepting, of course, that 'pure' service styles do not exist in the real world). The services may be summarised in terms of what they do and how, as well as who they are aimed at.

Needs-led services are more likely to be 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 scientific research to prevent or intervene early in the underlying causal chains (see Rutter, 1989 and 1999). The notion of assessing a child's development in the context of their family and wider environments now has a strong foothold in policy and practice in the UK (see Ward & Rose, 2002; Scott & Ward, 2005; Jeffery, 2006), and there are several methods for utilising need data as the platform for service development (for a review see Axford, forthcoming). Such techniques 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, just as a brick house and an igloo can both meet the need for shelter so there are various ways of preventing and treating child maltreatment (e.g. Little & Mount, 1999; Barlow et al., 2006).

In theory, needs-led 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 users' assessments of their needs (felt) rather than purely on professional diagnosis (e.g. Foreman, 1996; Kemshall & Littlechild, 2000). 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. A focus on the presenting problem or on particular administrative categories, and the inclination to attach disproportionate weight to specified areas of expertise, all contribute to some needs receiving more attention than others and a mismatch between the seriousness of need and service-receipt (e.g. DoH, 2001). Thus, the police may focus on a young offender's behaviour and pay less attention to the educational or relational problems at its root. 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 exhibits contrasting emphases. It is more likely to be characterised by rules and procedures intended to constrain the behaviour towards others of individuals and organisations. More specifically, since moral rights can easily be dismissed as unrealistic aspirations, protagonists strive to turn them into sharply-defined legal entitlements with parallel duties and liabilities clearly specified and measures in place to enforce them. The rules and procedures specify duties of assistance and forbearance (for individuals and organisations) and cover aspects of provision (material goods), protection (preventing interference with personal integrity) and participation (enabling the exercise of individual liberties). Charters or conventions are harnessed in order to motivate and cajole responsible parties to attain internationally recognised moral standards; for example, non-governmental organisations have been very influential in Ireland and elsewhere in pressing national governments to adhere more closely to the UNCRC (Keenan, 2007). Further, the compliance of signatory nation states with the UNCRC is monitored more in terms of outputs (e.g. the number of facilities for children with learning difficulties) than outcomes (e.g. academic attainment) (Kilkelly, 2006; Axford, 2007).

In relation to legal rights, there is the option of penalising or 'shaming' defaulters, perhaps through litigation, as a means of galvanising duty-holders to act appropriately. In the UK, for example, English courts have dealt with several alleged infringements of children's rights under the European Convention on Human Rights, which was incorporated into UK law by the *Human Rights Act*, 1998. These relate to a variety of subjects, including the return of looked after children to their families, school exclusion and confidential contraception advice and treatment (Lyon, 2007). Such instruments appear fairly blunt and uniform compared with the nuanced approach engendered by a focus on need: the emphasis is on consistency and rigour and the importance of treating individuals equally. They do, however, mean that claimants need not prove their eligibility, desert or neediness, so preserving their dignity. Indeed, a perceived advantage of rights-based welfare provision is that it enables a person to demand what is their due without having to beg, or express gratitude when it is given and, if their claim is not honoured, to express indignation (Fox-Harding, 1991). So, a child in a foster or residential placement who wishes to contribute to decisions about his care is not required first to explain the value of his opinions: it is his right to express them.

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. Ethnic minorities, 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 as being unlikely to be able to defend themselves.

What happens if these ideas are applied to one of the outcomes desired by children's services in most western developed countries, namely *health*? A need perspective would focus on achieving reasonable physical or psychological health measured in terms of mobility, pain, mood, and so on. The emphasis would be on evidence-based prevention and/or treatment. A rights perspective, by contrast, would more logically be more concerned with ensuring, for ex-

ample, that the individuals concerned receive appropriate treatment, experience reasonable waiting-times and are enabled to contribute to decisions about their treatment. Accordingly, the practice response would be on putting procedures in place for selecting and implementing tried-and-tested treatments (and for providing redress where there is negligence in this respect), and on securing adequate resources and maintaining systems to reduce waiting-lists. Attention would also be paid to developing processes for obtaining patients' opinions, both before and following their treatment.

Potential contradictions

Aspects of both needs-led and rights-based provision as described here can often be traced in children's services. A question that arises is whether the two approaches are 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, compared to a rights perspective, where entitlements are often spelt-out clearly and it is evident if they have been upheld, need can be pliable and therefore subject to varying interpretations. This is because its identification requires taking various factors into account, including context, likely long-term effects and resources available to address the problem (e.g. Culyer, 1995). This discretion or flexibility in relation to satisfiers is a frequent complaint of recipients of needs-led as opposed to rights-based interventions, particularly in the context of disability studies (e.g. Oliver & Barnes, 1998). The guidance (rather than rules) that tends to form needs-led responses 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 is clearly 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 and dependent on the expertise of benevolent adults vs. social actors who need to be empowered to claim and enjoy their freedoms. The underlying tension has its roots in the one of the differences between sociological and developmental psychology perspectives on child well-being, where the former focuses more on political power relations and the latter concerns local and individual interactions, which are more apolitical (Woodhead, 1997; Mayall, 2002).

Third, the nuanced nature of needs-led responses means that children's services agencies may not intervene where they consider that the child's health and development are unlikely to be affected by an undesirable incident or set of circumstances. Thus, a social worker may decide to take no further action 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 wrong-doer unpunished and the child vulnerable to further such treatment. An expert in the aetiology of developmental impairment, however, might counter that such occurrences rarely cause lasting damage, and that removing the child from their home or taking action against the perpetrator would be even more harmful. It might be contended, then, that whereas a rights approach often entails a robust – some would say over-eager – reaction 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 that this may happen is if 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-based approach militates against delivering packages of support that meet children's needs for affection, warmth, self-esteem and so on (e.g. Jordan, 2006). Indeed, Smith (1997) argues that regulations in the UK aimed at protecting children against abuses of power have turned foster and residential carers into 'technicians' who must perform certain tasks. Some of the experiential qualities that help to meet the aforementioned needs, she suggests, have been squeezed-out – responsiveness, comfort, appreciation and so forth. A further way in which respect for rights may generate or prolong need is by allowing the wishes of service-users to dictate the intervention. There is a danger that vulnerable children are encouraged to make decisions about their education and family life without sufficient professional guidance concerning their best interests (Thomas & O'Kane, 2000; Thomas, 2002).

Conclusions

This article has argued that need and rights offer two different and useful lenses through which to view and understand children's well-being. It is unhelpful if either concept becomes the preserve of particular professions, or if one is abandoned by researchers and policy-makers in favour of the other. To lose either is to see a little less clearly and, as such, it is welcome that both appear currently as policy objectives (in some form) in the UK and other western developed countries.

However, using both concepts brings with it the danger of confusion. There is a risk of using different words to describe the same phenomenon. This article has sought to bring some clarity to this issue and demonstrate the so-called 'investigative advantage' of each concept. There is also the potential for policy-makers to speak with a forked tongue and enact initiatives that are inherently contradictory. As indicated in this article, the concept (need and/or rights) that drives children's services has an impact on the shape of those services. How can this tension be addressed?

Need is more useful than rights when it comes to determining the goals of children's services, the target group of children and families to be served and the nature of what exactly is provided. This is because it fits well with a child development perspective. It encourages a focus on outcomes measured in terms of children's health and development. It urges attention to children whose health or development is impaired or likely to become so without remedial assistance. And it cultivates a sober assessment of the evidence of 'what works' when designing services that will address the actual or likely impairment.

A rights perspective is more concerned with process and is therefore invaluable for ensuring that services are delivered with proper attention to the views and dignity of service users. As such it promotes attention to the ethics of service provision, a hitherto somewhat neglected area in children's services (Little, 2002). The force of rights should be used to help get evidence-based services to the children and families who need them; children who meet specified need-based target group criteria are entitled to receive appropriate provision. The fact that the right is based on need should help move away from a situation where flexibility and discretion means that some children in need do not get services while others in serious need get little or nothing (Axford et al., 2003).

In the formulation just described, rights are subservient to need regarding the goals, target group and nature of what is provided, but they are dominant concerning the way in which services are provided (process) and distributed. This balanced relationship between need and rights is designed to gain maximum benefit from both concepts and address the tension that exists between them. This point is best illustrated by considering the alternative scenario.

Thus, if rights were allowed to determine goals, for example, the focus would be on indicators of process, such as the number of children cared for away from home or the rate of formal child protection notifications. If rights were allowed to inform which children get served they would concentrate attention on those who have been mistreated in some way, which would potentially draw in individuals whose well-being is unaffected by the misdemeanour. If rights were allowed to shape the nature of services, then evidence on how best to mitigate risk and promote protective factors would play second fiddle to more moral and political concerns – to the potential detriment of children's health and development. On the other hand, if need had primacy as regards the process of service delivery then proper ethical considerations might be overlooked on the grounds that the end justifies the means. And if need were the main driver for the distribution of services then considerations of desert and resource would be likely to creep in and undermine the goal of needs-led provision.

So, which way for children's services: meeting need or protecting rights? The answer, of course, is *both*, but with some nuances, and the nuances matter.

Acknowledgments

I would like to thank colleagues who assisted with the PhD which this article is based on, in particular my first supervisor, Michael Little.

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