



Children in need and children whose rights are violated: Are they the same, and does it matter?

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Abstract

Need and rights both continue to be used as organising principles for thinking about child well-being and children's services in many western developed countries, including England and Wales. As such, it is essential to be able to measure them and understand the relationship between them. Often the phrases 'in need' and 'violated rights' are used as if they mean something similar and refer to the same children, but do they? This article describes an attempt to operationalise need and rights for a population of children living in the community. It sets out results for the prevalence and overlap between children in need and those whose rights were considered to be violated, assesses the strengths and weaknesses of the measures that were developed and considers the implications for policy and practice.

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

Introduction

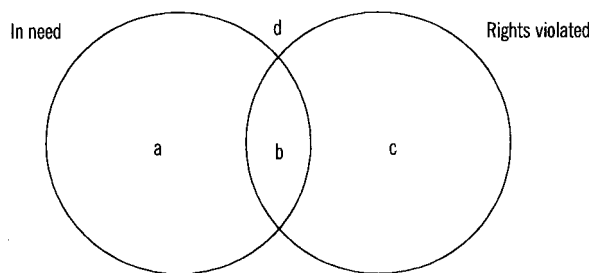
The concepts of need and rights are both the subject of intense debate. Bradshaw (1994) described need as 'too imprecise, too complex, too contentious to be a target for policy... [it] leaves a lot to be desired both as an epidemiological identifier and also as a basis for evaluating the performance of policies' (p. 45). Other commentators have dismissed it as dressed-up preferences or wants manufactured by capitalism or, by contrast, argued vigorously for it being the universal basis for distributing welfare (Doyal & Gough, 1991). In a similar vein, much research on rights entails philosophical deliberation about what rights people have and attempts to interpret national and international legislation. There have been fierce arguments between libertarians, who contend that civic and political freedoms are the only bona fide rights, and defenders of socio-economic rights (Plant, 1991). The children's rights movement has injected a crusading tone into the academic niceties and stirred up discussions about the extent to which children can have rights, and, if so, whether they include self-determination as well as protection (Archard, 2004).

These ongoing debates about definition are reflected in how the concepts are measured. So, there are no reliable figures in England and Wales for the proportion of children in need nationally or in most local authorities. This is despite the legal requirement to identify and assist 'children in need', defined as those whose health or development is actually impaired or likely

to become so without remedial help (*Children Act* 1989, Part III s.17(10), reinforced in the *Children Act* 2004). Numerous surveys asking service-users and local communities what they need have been undertaken and central government has attempted to calculate children's 'need for services'. However, each measure has its idiosyncrasies: there is no consistent approach to operationalising the legal definition of 'in need' (Axford, 2008a; Axford, forthcoming).

The rights tradition generally does not have a strong empirical track record, with much work in the area of children's rights historically based on conjecture and anecdote (Fox-Harding, 1991). Often the implicit assumption amongst academics and advocates is that all children's rights are de facto violated; to caricature (but only slightly), not only are children disenfranchised, economically disadvantaged and subject to degrading punishment (Franklin, 1989; John, 1996a), but also their modern dependence contrasts with the past when they behaved and were treated as adults (Freeman, 1983; John, 2003; Mason & Fattore, 2005). This perspective may serve valuable political and campaigning functions but scientifically it has several weaknesses. It lacks the rigour to determine that those responsible for delivering specific entitlements have defaulted. It often adopts a narrow interpretation of particular rights, for instance focusing on voting as a measure of participation when children may be involved in various forms of decision-making. It sets the baseline too low to make any useful distinction between different degrees of rights infringements. Any hardship experienced by a child is assumed to be the fault of someone or some body or organisation: apparently no account is taken of alternative explanations, for instance accidents or natural conditions. And presumably at some point rights cease to be violated because, for example, the situation of the victim changes or the defaulter makes amends. This, too, is overlooked. International projects to monitor the extent to which national policy and practice uphold rights appear more promising, although as will be seen they also have drawbacks.

Notwithstanding these controversies, need and rights both continue to be used as organising principles for thinking about child well-being and children's services in many western developed countries, including England and Wales (Axford, 2008a). As such, it is essential to be able to be able to measure them and understand the relationship between them. Often the phrases 'in need' and 'violated rights' are used in the same breath as if they mean something similar and refer to the same children, but do they? Is it possible that some children who are in need have not had their rights violated, and that some children whose rights are violated are not in need (Figure 1)?



a = in need but rights not violated; b = in need and rights violated; c = not in need but rights violated; d = not in need and rights not violated

Figure 1
The hypothesised relationship between need and rights

This article builds on an earlier conceptual piece (Axford, 2008b) by describing an attempt to operationalise need and rights for a population of children living in the community. It sets out results for the prevalence and overlap between children in need and those whose rights were considered to be violated, assesses the strengths and weaknesses of the measures that were developed and considers the implications for policy and practice. But first it is necessary to examine previous approaches to measuring need and rights.

Measuring need and rights

Need

Attempts to measure need in relation to children have variously looked at the cause or context of need, the manifestation or symptoms of need, the response of a service provider to need, and what individuals think they need (Sinclair & Carr-Hill, 1996; Sinclair, 2001; Ward & Rose, 2002; Scott & Ward, 2005). Ironically, 'need' often gets lost amidst these impostors. Some clarification can be gained by considering the four kinds of need outlined in Bradshaw's (1972) typology. All refer to ways of identifying need (for a longer discussion see Axford, 2008a).

First is *felt* need, which concerns individuals' subjective views about what they need.

This might involve using focus groups, opinion-poll style surveys and art and games to find out what families and children want from services (e.g. Braye, 2000; Thomas & O'Kane, 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 (e.g. DfES & National Statistics, 2006). 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 comprising risk factors associated with relatively intensive interventions or being at risk of maltreatment has been used as part of the formula for determining how central government allocates funding to local authorities (Carr-Hill et al., 1997). 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 (Little et al., 1999 and 2003) and epidemiological studies of impairment to children's health and development (e.g. Hobbs et al., 2007).

The normative approach to identifying need chimes most closely with recent theoretical work on the subject of need (see Gough 2000 for a summary). Indeed, the others might be viewed as flawed attempts to identify normative need. For example, some children have actual or likely impairment to their health or development but are not in receipt of services (Axford et al., 2003): they would not show up as 'expressed' need. Equally, 'felt' need tends to embrace things that objectively are not pre-requisites for achieving healthy development and avoiding harm – 'wants' (e.g. Ware & Goodin, 1990). At the same time, there is a danger of adopting an oppressive top-down approach and excluding the individual's voice. Ideally, then, children's needs would be measured as a normative/felt hybrid; in other words, asking children and families about their situation and relating the satisfiers to acknowledged standards of what children require for healthy development. This requires that all dimensions of children's lives be considered and that the impact of a child's family and wider environment on their development be analysed (Department of Health et al., 2000; Jack, 2001).

Rights

Children are generally deemed to have had their rights violated on one of three grounds. The first is a difficulty experienced in one or more areas of life. For example, in relation to housing the focus would be on inhabitants of properties that require substantial repair. Much attention is understandably paid to blatant examples of exploitation and oppression, notably street children, child soldiers, sex workers and unaccompanied refugees (John, 1996a, 1996b and 1997; Ennew, 2002; Schimmel, 2006). Second is identifying a characteristic that makes children disproportionately susceptible to discrimination or maltreatment and then assuming that everyone with that characteristic suffers violated rights. Thus, children with disabilities may be segregated from their peers in education or find their mobility restricted by poorly-designed buildings (Jones & Basser-Marks, 1997; Lansdown, 1998). A third perspective focuses on contexts that might be regarded as oppressive, specifically systems that lack the necessary infrastructure for upholding rights – legislation, policy, procedures, organisational structures, and so forth. Some schools, for instance, use punitive punishment techniques or deny children opportunities to influence decision-making, and the care and justice systems harbour various abuses (Franklin, 1989; Fox-Harding, 1991; Jeffs, 2002; Muncie, 2002; Berridge, 2005).

Each approach has strengths and weaknesses (see Axford, 2008a) but the important point to emerge is that it is essential to examine each case on its merits. It cannot be assumed that in every case a particular characteristic or environment results in those so affected suffering violated rights. Moreover, careful consideration is needed of how a particular circumstance or incident arose. This is because a rights perspective puts the emphasis on how fairly or appropriately the responsible third parties treat the individual concerned rather than on that individual's well-being *per se* (Axford, 2008b). A logical approach to determining the proportion of children with right violations therefore involves three steps: (i) deciding if a person's rights have been breached; (ii) codifying a breached right, that is marking it in a public and recognisable way; and (iii) aggregating those judgements. Notwithstanding its limitations, the literature provides some pointers to how this might be done.

The first requirement is to decide whether a right has been breached. Initially this involves agreeing what rights are legitimate. One aspect of this is whether socio-economic *and* civil-political rights count. Some international treaties, for example the *European Convention on Human Rights* (ECHR), contain only civil-political rights such as freedom of speech and respect for privacy; judged by these rules, something like extreme material hardship would not constitute an infringement. Another aspect is whether legal or moral rights are under scrutiny. If it is only the former then the failure to reach standards prescribed by an international law that a country is *not* bound by cannot constitute an infringement. It is also vital to clarify whether acts of both commission and omission can cause a violation. Although rights can be violated as much by the State's failure to intervene as by its interference, attention is often focused on the latter, so that not taking positive steps to facilitate freedom of speech is treated more leniently than concerted efforts to suppress it. In interpreting the *ECHR*, for instance, the European Court of Human Rights (ECtHR) has taken the view that both forbearance and affirmative action are relevant in determining whether or not a person's rights have been infringed. For instance, upholding Article 8 'Respect for Family Life' requires both recognition that the child is part of a family *and* tangible steps to reunite children and parents who have been separated (Kilkelly, 1999). A further consideration when determining if a rights violation has occurred is the set of principles that guides such decisions. This might take the form of explicit guidance concerning the law or treaty in question, precedents set by previous similar cases and consideration of various international standards. For example, the ECtHR takes on legal cases and so has developed explicit guidance as well as a series of principles to guide its application, such as taking into account the particular morality and culture of the country in question (Kilkelly, 1999).

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). Children and their advocates have also taken cases to English courts under the *Human Rights Act* 1998 and asserted their rights to, for example, wear a jilbab in school or receive confidential contraception advice and treatment (Lyon, 2007). 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). Similarly, the Children's Commissioners in Wales and Northern Ireland oversee complaints procedures, investigate individual complaints about rights infringements and produce an annual report (Lyon, 2006). Then there are Treaty articles that States decline to sign. The fact that the UK government registered reservations against provisions in the UN Convention on the Rights of the Child (UNCRC) concerning immigration and citizenship (Bisset-Johnson, 1994) suggests that children in the UK who are from another country, including asylum-seekers, are disproportionately likely to experience rights violations (Aynsley-Green et al., 2008). The independent bodies that monitor some international rights laws provide a further measure. So, signatory states to the UNCRC must report regularly to a panel of experts known as the Committee on the Rights of the Child (Kilkelly, 2006). Against headings such as 'basic health and welfare' and 'special protection measures' they are required to provide evidence both of the number of children in particularly disadvantaged groups and also of the existence of an infrastructure conducive to upholding CRC standards. In its reports on the UK, the Committee has raised concerns about numerous issues, including inadequate efforts to alleviate poverty, discrimination against travellers, corporal punishment and the treatment of young people in custody (Price-Cohen & Wolthius, 1995; Harvey, 2002). Independent bodies adopt a similar approach (e.g. CRAE, 2006).

Third, the literature on rights includes aggregate data on rights violations. For instance, the UN Human Freedom Index comprises 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 (UNCRC articles 6, 24(2c,e), 27(3)) were infringed, Lansdown and Newell (1994) employed a scientific measure of calorific intake. There is also the official UNCRC monitoring process, which incorporates a series of indicators for each cluster of articles (UNICEF, 1998). For example, among the indicators for 'Family Environment and Alternative Care' is whether there exists a legal mechanism for the unscheduled inspection of care establishments (Harwin & Forrester, 1999).

In a children's services context the main benefit of using social indicators as proxies for rights violations is that they provide a wider perspective than the somewhat restricted number of formally recognised infringements mentioned earlier. However, it can still be difficult to judge if a right has been breached, mainly because a hardship or circumstance is not the same thing as a violated right; they *might* be a product of a breached right but, as indicated earlier, this will depend on several factors. Well-being indicators tend not to extend to evaluating in a qualitative way how children are treated and the extent to which they enjoy all of their rights (Kilkelly, 2006, p. 39). Potentially these difficulties would be addressed if a logical sequence were followed, whereby individual judgements are codified and then aggregated.

Method

The findings presented in this article are drawn from a re-analysis of data from a study funded by the UK Department of Health aimed at providing evidence on patterns of need and service-use among children in the community (Axford et al., 2003). The dataset contained information on 689 children and their families living on a moderately deprived and ethnically diverse inner-city housing estate in London. At the time the wider area ranked 12th out of 366 in England on the Townsend deprivation index (Gordon & Forrest, 1995) and two-thirds (63%) of the children lived in families where English was not the first language. The sample obtained represented 62 per cent of the 1,116 children estimated to live on the estate at the time. Tests indicate that although the sample was not representative of children in England and Wales, it was representative of all children on the estate (measured in terms of age, first language and number of children resident).

Data were collected in the period April-July 1998 and covered the child's situation at the time as well as providing a retrospective view of the previous year. In most cases (528 children) the main source was the child's principal carer, from whom information was gathered by way of one-hour semi-structured interviews. The sample was boosted by data from social services and education welfare files on 161 other children from the estate. The two data collection instruments (parent interview and file audit) covered the same topics: risk and protective factors in different areas of the child's life; coping strategies used by the child and his or her family to address difficulties; and services used. In order to aid analysis, information on each child in the sample was then summarised by the original research team on a specially designed form. This covered their situation on the day of interview/referral in relation to their living situation, family and social relationships, behaviour, health, and education and employment. It also captured relevant historical details. In this way information was assembled about aspects of child development, the quality of parenting and the child's wider family and environmental context. For the present study the author then devised and applied measures of need and rights that were intended to avoid the shortcomings of the various approaches discussed earlier and, wherever possible, to embody their strengths. The resulting measures were applied to the dataset by hand using a decision-making instrument that was designed to help the coder (the author) identify and then connect logically important pieces of information regarding each child's situation. Accompanying guidance written by the author outlined the relevant factors to consider for each concept, and the instrument included space for recording the rationale behind each judgement (see Axford, 2003 for examples).

Several measures were formulated for both concepts but the analysis that follows is based on two dichotomous measures. First, a child was judged to be 'in need' if he or she had actual impairment to health or development. This was broken down in terms of: health (physical, mental); behaviour (anti-social/criminal, disturbed); and education/development (educational difficulties, developmental delay, activities/responsibilities inappropriate for a child of that age, and lack of things that indicate good development).

This approach draws in part on the important definition (still relevant today) set out in the England and Wales *Children Act* 1989. It was decided not to use the measure that concerns actual and *likely* impairment to health or development. This is because 84 per cent of the sample were deemed to be 'in need' using this approach, yet subsequent analysis on other data sets using a firmed-up protocol for measuring impairment (Little et al., 2003) indicates lower levels of need. This discrepancy can be explained mainly by a previously over-generous interpretation of 'likely'; children were identified as having likely impairment when, on re-examination, impairment was at most *possible*. Thus, the actual measure selected for need draws on the first part of the definition of 'in need', namely actual impairment to health or development. On a positive note, the selected measure correlated strongly (0.8, $p < 0.01$) with an al-

ternative measure concerning physical health and autonomy (based on the widely-respected Doyal-Gough theory of need).

Second, a rights violation was defined as being a victim of a *serious* violation of any of one's rights to provision, protection or participation; for example, rape, assault, abuse, war/oppression, victim of official negligence or poor practice. This was also not the first-choice measure, which was the violation of any of the so-called '3 Ps' (provision, protection, participation) in the UNCRC, although the two measures did correlate moderately (0.451, $p < .01$). It was decided to select the highest possible threshold on the assumption that there would be broad consensus that cases identified using this measure do constitute 'violations' (a lower threshold would encompass more borderline cases). Owing to the use of secondary data, the information available for determining rights violations had weaknesses (a point discussed later in this article) and, it was felt, could not support the contentious claim, using the purest measure from a theoretical perspective, that 81 per cent of children were suffering the violation of their rights. The chosen measure therefore sticks to the principles underpinning the first-choice measure but refers only to serious violations.

The UNCRC was used as the organising framework for measuring rights for five reasons. First, it relates specifically to children. Second, it incorporates various aspects of children's lives – living-standards, treatment by others, opportunities for self-expression and so on. The various articles can be neatly summarised in terms of provision for children's basic needs, protection from discrimination and all forms of neglect and exploitation, and facilitating children's participation in decisions that affect them (the '3 Ps') (Van Bueren, 1995). Third, signatory states are obliged to transform the moral rights enshrined in the UNCRC into legal rights that are to be realised in practice. Fourth, it describes obligations in terms of conduct rather than result (Hammarberg, 1995), with Article 4 mandating states to take appropriate legislative and administrative steps to implement rights; monitors and signatory states therefore tend to focus on outputs rather than outcomes, for example on the provision of facilities for groups with special needs and on the implementation of mechanisms for eliciting children's views (see Ledogar, 1993; Price-Cohen & Wolthius, 1995; Aynsley-Green et al., 2008). And fifth, the UNCRC has been central to most attempts to measure children's rights. While it continues to be abused and has had a variable – some would say limited – impact on domestic legislation (Archard, 2004; Lyon, 2006; Payne, 2007) it is comprehensive and has high legal and moral standing (Kilkelly, 2006).

It was possible when measuring rights to use data on the following: the child's circumstances at the point of interview/referral, or events in the recent past; how (if at all) individuals and public bodies had caused or responded to these circumstances; and what else caused or perpetuated the circumstances in question. For each child this information was used to decide if UNCRC rights had been infringed. The judgement was based on three principles. First, there needed to be a problem with at least one of the '3Ps'. Second, this problem should be the result of, or have been made worse by, the action (commission) or inaction (omission) of the State, an individual or another third party. The primary reason for the problem should not be biological/genetic make-up, the individual's own self-harming action (or inaction) or accidents or misfortune. Third, the violation should be current; if the person or body that trespassed or failed to provide had made amends, or had been prevented from re-offending, or if the circumstance that followed as a result of the incident in question no longer pertained, the violation was considered void.

Just over a third of the children ($N = 234$) were judged against the two concepts using these decision-making instruments and the summary forms. A sample of this size was deemed to be sufficiently large for the statistical procedures used in analysis; moreover, the decision-making process required exhaustive analysis of each case and it would not have been feasible given the

available resources to apply the measures to all children in the data set. This sub-sample is broadly representative of the 689 children in terms of demographic characteristics and data sources.

Findings

Nearly two-fifths (39%) of children were judged to be in need. For example, Leyla, a 13-year-old girl, was traumatised from having been sexually assaulted a year previously, displayed aggressive behaviour and was underachieving educationally. This information was interpreted as evidence of actual impairment to her health and development. She often had to look after her younger brothers and sisters, which was inappropriate given her age, and her parents had limited parenting skills, relying on presents to demonstrate love. In addition, Leyla had to compete for their affection with seven siblings and her home was chronically overcrowded.

By contrast, Tamsin, a five-year-old girl, was not judged to be in need, despite having some difficulties. She had a minor kidney complaint but was receiving adequate treatment. She had no behaviour problems and was doing reasonably well at school. There were factors which, if left unchecked, were thought likely to cause impairment: her mother struggled to advocate on her behalf because she did not speak good English, and this sometimes made it difficult to obtain adequate medication; the family was also materially deprived, for example they needed a new fridge and wardrobe. However, there was no evidence of *actual* impairment to Tamsin's health or development.

A similar proportion (42%) of children were deemed to have violated rights. Typical of children with violated rights was Kristin, a 13-year-old girl. Following a road accident in which she broke her leg, negligence by the hospital (as reported by a parent) made her condition worse. She had not received any compensation. This was judged to constitute a failure by the authority responsible to uphold the child's right to adequate healthcare.

In contrast, Mahmood, though a victim of crime, was not judged to have had his rights seriously violated. A seven-year-old boy, he had been attacked by other children – a violation of his rights to protection – but the police had dealt with the situation appropriately. He had also been temporarily blinded by bleach in the bath, but this was regarded as an accident rather than negligence by any third party. His rights to adequate provision were being upheld; for example, his family provided good support, he was enabled to participate in activities such as swimming, and he had received counselling for attachment problems. In relation to participation, there was evidence that Mahmood was being enabled to communicate in matters concerning him, for example he received special help at school with reading and writing.

Table 1
The relationship between need and rights in the community studied (numbers of children)

	Rights violated	Rights not violated	Total
In need	44	43	87
Not in need	51	84	135
Total	95	127	222

Although the proportions of children in need and with violated rights were similar, the overlap between them was imperfect (Table 1). Thus, 49 per cent (44/87) of children in need were judged to have intact rights, and 54 per cent (51/95) of those with violated rights were not considered to be in need. Indeed, the two conditions were only weakly correlated (0.126, $p < 0.01$) and relative risk ratios showed that children in need were barely more likely to have violated rights (1.339, ns) and *vice versa* (1.368, ns).

Some brief case studies serve to illuminate this pattern, starting with a child in need whose rights were not violated. Amira, a four-year-old girl living with her mother, 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, Sarah, a 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'.

Of course, there are cases where children are in need and have their rights violated. Nadif, a six-year-old boy living with his parents and older sister, had special educational needs and was struggling at school (in need). His father was severely mentally ill (a 'dangerous schizophrenic' according to the social work file) and had hit and possibly sexually abused the child's sibling. Nadif was hit and verbally abused by his mother. This exposure to danger violated his rights to protection. His rights to provision were also breached on several counts: he was prevented from playing outside by a dispute with the neighbour; neither his parents nor social services had secured sufficient money for him to go on school-trips; and agencies had also failed to re-house his father. Further, Nadif's ability to participate in decisions affecting him was limited. No agency had created a clear opportunity for him to express his opinions, and his parents found it hard to advocate on his behalf because they spoke little English.

Equally, some children were neither in need nor experiencing the violation of their rights. Ferran, a 13-year-old boy who lived with his mother, was healthy and showed no signs of any real difficulties at school, and as such was not regarded as being in need. In relation to his rights, he was being provided with love and care by his family and also enabled to do various activities. His family had been helped by the relevant agencies when necessary (mainly the doctor and the police). His father did not make any maintenance payments, but this was not deemed to be a serious rights infringement. Concerning participation, Ferran's good relationship with his mother indicated that there was some co-operation between them when making decisions, and his mother's limited English had not affected her ability to advocate for him.

Taken together these findings support the conclusions of a previous conceptual article on the relationship between need and rights (Axford, 2008b): while the two often co-exist, needs sometimes arise for reasons entirely unconnected to how a child is treated, just as inadequate attempts to uphold children's rights to provision, protection and participation do not always impair their health or development. Considering the distinguishing features of the two conditions as identified using chi-square applied to 60 key variables from the study reinforces the point (Table 2). Those that mark-out children with violated rights primarily concern poor treatment (e.g. forced to leave home country) 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.

Table 2
 Non-shared distinctive factors for need and rights ($p < 0.01$)

Distinguishing factors unique to need	Distinguishing factors unique to rights
Poor relations/no contact with father	Who child lives with (two parents)
Low warmth/high criticism environment	Forced by war/oppression to leave home country
Bullied	Abuse (physical, sexual, neglect)
Poor relations/no contact with peers	Overcrowded accommodation
Isolated	Approached social services for help in past 12 months
Anti-social behaviour at home, school or in the community	Received help from social services in past 12 months
Involvement in crime	
Chronic physical health problem	
Depressed, stressed or unhappy	
Physical or psychological health problem	
School exclusions/truancy	
Not achieving potential	

Discussion

It is tempting to assume that since need and rights are so similar therefore (a) children in need and children whose rights are violated are the same and (b) services to meet need and uphold rights will also be similar. This article has demonstrated that both are only partially true, which has important implications for policy and practice. But before discussing these it is necessary to acknowledge the strengths and weaknesses of the research.

Appraisal of the research

The sample and data collection methods in this instance may broadly be viewed positively. Data were collected for a sample of children representative of those living in the selected community, including a significant proportion of so-called ‘difficult-to-reach’ families (including asylum-seekers and refugees). Many studies concerning need and rights, by contrast, focus on discrete groups of children defined by a particular characteristic or administrative category, which can give a distorted picture of the nature and level of child well-being. However, the sample does not resemble the UK child population, which restricts the generalisability of the results, and nor does it include children living in institutions. The fact that the original survey did not involve children and young people directly is also a weakness as regards measuring the extent of child impairment and rights violations, although others have also been forced into this position and argued convincingly that alternative methods still have value (e.g. Kilkelly, 2006, p. 42).

The study also developed new measures of need and rights respectively. The measurement of need in children’s services commonly involves calculating the demand for services or ascertaining what people want. Here, information about expert-defined need was gathered for all areas of each child’s life – an approach grounded in theories of need drawn from political philosophy and evidence from child psychology regarding the essential requirements for healthy child development. Further, in an attempt to help provide a meaningful figure for rights violations, the study applied a measure specifying the content of children’s rights and how they might be vio-

lated. The approach drew on philosophical work and international legislation for the content, and case law (albeit from another convention) for the principles that guided decisions. Because there is transparency about the components of the measures and how judgements were made, it is possible for others to criticise, adopt or change them as they choose. Indeed, the extent of the conditions varies considerably, depending on the measure selected: in need (39-84%) and violated rights (42-93%) (Axford, 2003).

Another strength of the research was the novelty of devising an empirical test of rights and applying it to a population; as indicated earlier, work in this area has tended to have a more theoretical, legal and often polemic bent. That said, the endeavour was difficult and flawed, in part owing to the necessity of re-analysing data collected for a separate study. Despite having guidance to follow, certain judgements were consistently difficult to make (see Axford, 2003). This was partly because of insufficient information in the source material. Future such research on rights violations, for example, would benefit from having: more data on the *causes* of problems (to help determine whether the State or another individual were responsible); structured social histories based on a list of potentially stressful life-events (e.g. victim of crime, forced to escape war/oppression); and additional detail on families' interactions with a wider range of children's services (how children have been treated given their entitlements). The method for measuring need has since been firmed-up and is undergoing tests of its reliability and validity (Little et al., 2003).

Implications for policy and practice

The first implication concerns the *targeting* of services. The data reported here suggest that interventions targeted at children in need in the community would miss over half (56%) of those whose rights are seriously violated, and that services aimed at children with seriously violated rights would miss half (50%) of those in need. While neither scenario is likely in reality – for the simple reason that such precise targeting is never going to happen – these figures illustrate the considerable practical significance of the outcome of debates that, at face value, appear purely semantic and theoretical (e.g. 'Should policy be driven by need or rights?'). If the concern is with improving the lives of children in need then such children should be identified in relation to impairment to their health and development, not by some other rubric.

A second and related point concerns the *evaluation* of services. Services to meet children's needs are effective if they have an impact on the child's health or development (drawing on Figure 1, they move children from a and b to c or d). They are not required to demonstrate an impact on the child's rights. Equally, policy and practice to uphold and protect children's rights are effective if they improve the way in which the child is treated – whether in terms of receiving appropriate assistance, or being protected, or being enabled to have their views heard and taken into account indecisions that affect them (using Figure 1, they move children from b or c to a or d). The success of rights-based interventions does not come from their impact on children's needs. Of course, the ideal scenario would be that services meet children's needs (an outcome measure) in such a way that also upholds children's rights (a process measure), although there is a tension between the two approaches that does not always make this easy to achieve in practice (Axford, 2008a, 2008b).

The third implication concerns the *style* of services. A previous article (Axford, 2008b) suggests that services to meet children's needs should pay close attention to the cause of the impairment in question and draw on evidence of what works to prevent or alleviate that impairment. Efforts to uphold children's rights, by contrast, should focus on ensuring that third parties treat the child appropriately, for example by ensuring that proper attention is paid to children's views and dignity. The latter will not necessarily contribute to the former: rights-

based policy and practice will not necessarily help to meet children's needs. As such, it does not make sense to argue that it will, or even that it needs to. To take a contemporary example, the case for banning smacking is primarily a moral one: violence against children is wrong; it infringes their rights to protection. This is not a scientific argument: smacking children does not necessarily cause them harm; it does not automatically render them in need because other factors, notably context, play an important moderating role.

So, to answer the question posed in the title of this article, need and violated rights are different but overlapping phenomena, and, yes, if we are serious about improving child well-being defined in these terms, this does matter.

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References

- ARCHARD, D. (2004). *Children: Rights and childhood* (2nd Edition). London: Routledge.
- AXFORD, N. (2003). *Child well-being from different perspectives: defining, measuring and responding to need, violated rights, poverty, poor quality of life and social exclusion*. Ph.D. Thesis, University of Exeter.
- AXFORD, N. (2008a). *Exploring concepts of child well-being: Implications for children's services*. Bristol: Policy Press.
- AXFORD, N. (2008b). Meeting need or protecting rights: Which way for children's services? *International Journal of Child & Family Welfare* 11, 48-63.
- AXFORD, N. (Ed.) (forthcoming). *Defining and classifying children in need*. Ashgate: Aldershot.
- AXFORD, N., LITTLE, M. & MORPETH, L. (2003). *Children supported and unsupported in the community*. Report submitted to the Department of Health. Dartington Social Research Unit.
- AYNSLEY-GREEN, A., LEWSLEY, P., MARSHALL, K. & TOWLER, K. (2008) *UK children's commissioners' report to the UN Committee on the Rights of the Child*. London: 11 Million. Belfast: NICCY. Edinburgh SCCYP. Swansea: Children's Commissioner for Wales.
- BERRIDGE, D. (2005). Child protection. In: N. AXFORD, V. BERRY, M. LITTLE & L. MORPETH (Eds.), *Forty years of research, policy and practice in children's services: A festschrift for Roger Bullock* (pp. 107-118). Chichester: Wiley.
- BISSET-JOHNSON, A. (1994). What did states really agree to? Qualifications of signatories to the United Nations Convention on the Rights of the Child. *International Journal of Children's Rights*, 2 (4), 399-411.
- BRADSHAW, J. (1972) The concept of social need. *New Society*, 30th March, 640-643.
- BRADSHAW, J. (1994). The conceptualization and measurement of need: a social policy perspective. In: J. POPAY & G. WILLIAMS (Eds.), *Researching the people's health* (pp. 45-57). London: Routledge.
- BRAYE, S. (2000). Participation and involvement in social care. In: H. KEMSHALL & R. LITTLE-CHILD (Eds.), *User involvement and participation in social care: Research informing practice* (pp. 9-28). London: Jessica Kingsley.

- CARR-HILL, R.A., DIXON, P., MANNION, R., RICE, N., RUDAT, K., SINCLAIR, R. & SMITH, P.C. (1997). *A model of the determinants of expenditure on children's personal social services*. York: Centre for Health Economics.
- CRAE (CHILDREN'S RIGHTS ALLIANCE OF ENGLAND- (2006). *State of children's rights in England*. London: CRAE.
- DALE-RISK, K. (2001). Human rights for children: Not yet fully grown. *Representing Children*, 13 (4), 260-272.
- DEPARTMENT OF HEALTH, DEPARTMENT FOR EDUCATION AND EMPLOYMENT & HOME OFFICE (2000). *Framework for the assessment of children in need and their families*. London: The Stationery Office.
- DFES & NATIONAL STATISTICS (2006) *Children in need in England: Results of a survey of activity and expenditure as reported by Local Authority Social Services' Children and Families Teams for a Survey Week in February 2005: Local Authority Tables and Further National Analysis*. www.dfes.eov.iik/rs~atcwav/DB/VOI/v000647/vweb02-2006.pdf [Accessed 16th November 2006].
- DOYAL, L. & GOUGH, I. (1991). *A theory of human need*. Basingstoke: Macmillan.
- ENNEW, J. (2002). Outside childhood: street children's rights. In: B. FRANKLIN (Ed.), *The new handbook of children's rights: Comparative policy and practice* (pp. 388-403). London: Routledge.
- FOX-HARDING, L. (1991). *Perspectives in childcare policy*. London: Longman.
- FRANKLIN, B. (1989). Children's rights: Developments and prospects. *Children & Society*, 3 (1), 50-66.
- FREEMAN, M.D.A. (1983). *The rights and the wrongs of children*. London: Frances Pinter.
- GORDON, D. & FORREST, R. (1995). *People and places 2: Social and economic distinctions in England*. Bristol: SAUS.
- GOUGH, I. (2000). The needs of capital and the needs of people: can the welfare state reconcile the two? In: I. GOUGH (Ed.), *Global capital, human needs and social policies: Selected essays, 1994-1999* (pp. 3-29). Basingstoke: Palgrave.
- HAMMARBERG, T. (1995). Preface. In: B. FRANKLIN (Ed.), *The handbook of children's rights: Comparative policy and practice* (pp. ix-xiii). London: Routledge.
- HARVEY, R. (2002). The UK before the UN Committee on the Rights of the Child. *ChildRIGHT* 190 (October), 3-5.
- HARWIN, J. & FORRESTER, D. (1999). Measuring child rights around the world: The potential of global indicators to monitor the UN Convention on the Rights of the Child. *Representing Children*, 12 (2), 121-135.
- HOBBS, T., LITTLE, M. & KAOUKJI, D. (2007). Using the Strengths and Difficulties Questionnaire (SDQ) to measure the behaviour and emotional health of children in schools in the United Kingdom. *International Journal of Child & Family Welfare*, 10 (3-4), 150-164.
- JACK, G. (2001). Ecological perspectives in assessing children and families. In: J. HORWATH (Ed.) *The child's world: Assessing children in need* (pp. 53-74). London: Jessica Kingsley.
- JEFFS, T. (2002). Schooling, education and children's rights. In: B. FRANKLIN (Ed.), *The new handbook of children's rights: Comparative policy and practice* (pp. 45-59). London: Routledge.
- JOHN, M. (Ed.) (1996a). *Children in our charge: The child's right to resources*. London: Jessica Kingsley.
- JOHN, M. (Ed.) (1996b). *Children in charge: The child's right to a fair hearing*. London: Jessica Kingsley.
- JOHN, M. (Ed.) (1997) *A charge against society: The child's right to protection*. London: Jessica Kingsley.
- JOHN, M. (2003). *Children 's rights and power: Charging up for a new century*. London: Jessica Kingsley Publishers.
- JONES, M. & BASSER-MARKS, L.-A. (1997). Beyond the Convention on the Rights of the Child: The rights of children with disabilities in international law. *International Journal of Children's Rights*, 5 (2), 177-192.
- KILKELLY, U. (1999). *The child and the European Convention on Human Rights*. Aldershot: Ashgate.

- KILKELLY, U. (2006). Operationalising children's rights: Lessons from research. *Journal of Children's Services*, 1 (4), 36-47.
- LANDSDOWN, G. (1998). The rights of disabled children. *International Journal of Children's Rights*, 6 (2), 221-227.
- LANDSDOWN, G. & NEWELL, P. (1994). *UK agenda for children*. London: Children's Rights Development Unit.
- LEDOGAR, R.J. (1993). Implementing the Convention on the Rights of the Child through National Programmes for Action for Children. *International Journal of Children's Rights*, 1 (3-4), 377-391.
- LITTLE, M., MADGE, J., MOUNT, K., RYAN, M. & TUNNARD, J. (1999). *Matching needs and services, 2nd edition*. Dartington: Dartington Academic Press.
- LITTLE, M., AXFORD, N. & MORPETH, L. (2003). *Threshold: Determining the extent of impairment to children's development*. Dartington: Warren House Press.
- LYON, C. (2006). Toothless tigers and dog's breakfasts: enhancing or minimising the rights of children to better protection of their interests (Part 3). *Representing Children*, 18, 111-126.
- LYON, C. (2007). Interrogating the concentration on the UNCRC instead of the ECHR in the development of children's rights in England. *Children & Society*, 21, 147-153.
- MASON, J. & FATTORE, T. (2005). *Children taken seriously: In theory, policy and practice*. London: Jessica Kingsley.
- MUNCIE, J. (2002). Children's rights and youth justice. In: B. FRANKLIN (Ed.), *The new handbook of children's rights: Comparative policy and practice* (pp. 81-96). London: Routledge.
- PAYNE, L. (2007) A 'Children's Government' in England and child impact assessment. *Children & Society*, 21, 470-475.
- PLANT, R. (1991). *Modern political thought*. Oxford: Blackwell.
- PRICE-COHEN, C. & WOLTHIUS, A. (1995). Committee on the Rights of the Child: Eighth session reports of states parties. *International Journal of Children's Rights*, 3 (2), 263-269.
- SCHIMMEL, N. (2006). Freedom and autonomy of street children. *International Journal of Children's Rights*, 14 (3), 211-234.
- SCOTT, J. & WARD, H. (Eds.) (2005). *Safeguarding and promoting the well-being of children, families and communities*. London: Jessica Kingsley.
- SINCLAIR, R. (2001). The language of need: social workers describing the needs of children. In: DEPARTMENT OF HEALTH (Ed.), *Studies informing the Framework for the Assessment of Children in Need and their Families* (pp. 81-137). London: The Stationery Office.
- SINCLAIR, R. & CARR-HILL, R.A. (1996). *The categorisation of children in need*. London: National Children's Bureau.
- THOMAS, N. & O'KANE, C. (2000). Discovering what children think: Connections between research and practice. *British Journal of Social Work*, 30 (6), 819-835.
- UNDP (UNITED NATIONS DEVELOPMENT PROGRAMME) (1991). *Human Development Report*. New York: UNDP.
- UNICEF (UNITED NATIONS CHILDREN'S FUND) (1998). *Indicators for global monitoring of children's rights: Summary report and background papers*. International meeting 9th-12th February, Geneva, Switzerland. New York: UNICEF Division of Evaluation, Policy and Planning.
- VAN BUEREN, G. (1995). *The international law on the rights of the child*. Dordrecht: Martinus Nijhoff Publishers/Save the Children.
- WARD, H. & ROSE, W. (Eds.) (2002). *Approaches to needs assessment in children's services*. London: Jessica Kingsley.
- WARE, A. & GOODIN, R.E. (1990). Introduction. In: A. WARE & R.E. GOODIN (Eds.), *Needs and welfare* (pp. 1-11). London: Sage.

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