

**“Desert” in social housing:  
Does non-consequentialist moral assessment of an applicant’s past have a legitimate role in  
the allocation of social housing assistance?**

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**Abstract**

After three decades in which needs, rights and egalitarianism have dominated the moral agenda among supporters of social housing, desert is making a controversial come-back. I argue that desert as a moral concept is useful but is secondary to other moral forces, rather than being a primary driving force itself. Its job is to allow us to factor responsibility into our moral interactions with others. Desert suffers from having kept bad company, and I outline the still resonant history of the abuse of the concept when it was dominant in housing and other “poor relief”, but argue this should not blind us to its force. If we have a moral duty to provide social housing assistance, whether on the basis of need, rights or egalitarianism (but not pure utilitarianism), I argue that desert does have a legitimate limited role to play in adjusting the primary duty governing the allocation of that assistance. There are practical difficulties of restraining abuse of the concept of desert. But these are outweighed by the practical problems in ignoring it, as that can bring an allocation system into disrepute as well as leaving us unable to argue convincingly for appropriate restraint, rather than eradication, of the use of desert.

# 1 CHAPTER 1 – WHY IS DESERT AN ISSUE IN SOCIAL HOUSING

## 1.1 Introduction

Mention deservingness and you are liable to trigger an instant cringe in many social housing practitioners and campaigners, as it conjures up the spectre of the “deserving poor”, the “undeserving poor” and the work-house. But the concept of desert, both of good and ill, is showing its face again in social housing (it was always used, though temporarily disguised as “intentionality”), prompted by “anti-social behaviour” dominating the social housing agenda. Now it has been referred to expressly for the first time in the legislation. It also seems to be behind moves by practitioners and government to reward good tenants, beyond just excluding bad ones.

There are broadly three bases on which supporters of social housing reject desert, if they allow morality a place in housing:

- desert itself is incoherent as a moral principle;
- desert has moral force but not in social housing; or
- practical problems militate against acting on the moral force that desert has in housing.

I argue that none of these three stands up against a conception of desert as a second-level moral force latching onto other primary ethical forces such as needs or rights, and adjusting them (rather than “trumping” or being trumped). Despite the cringe, past behaviour and past suffering can have moral relevance, not merely as predictors or influencers of the future, to the adjust of the force of society's duty to help those in housing need (or who have housing rights or a claim to egalitarian treatment in housing). Desert must be engaged with to ensure it is not abused to return to Dickensian judgmentalism or to distract attention from society's immoral failure to ensure an adequate supply of social housing.

I am interested in the arguments of those who have directly ethical qualms about refusing housing to people in need. I therefore assume that society does have a moral obligation to provide social housing assistance (or that the recipients have a moral right to it). I will call that moral force “SHAD” (for social housing assistance duty). I ignore accounts in which no moral issue is engaged (as where for purely aesthetic reasons both homeless people and graffiti are removed from the streets), and accounts in which social housing provision is morally wrong, whether the wrong is against tax-payers (Goodin (1988 p278) outlines a New Right argument that earned wealth should not be taken to provide unearned benefits) or against recipients of the service (some left-wing accounts hold capitalist welfare states to be immoral attempts to delay the revolution and control the lives of the oppressed).

I assume the basis for SHAD is something other than either consequentialism or desert.

I argue that the interesting aspect of desert, as normally conceived, is its non-consequentialist quality. If the basis of SHAD was purely utilitarianism, then I accept I would have to admit this sort of desert could have no place. I therefore assume that the basis of SHAD is not purely utilitarianism, or any other consequentialist principle.

I take it nobody would argue desert should be the primary foundation of SHAD (as opposed to an adjusting factor, secondary to another foundational force). Totalitarian regimes offer good houses as rewards for party loyalty, the UK military allocate their housing according to rank and marital status, and market-enthusiasts might claim deserved wages mean the market allocates by desert. But even these are unconvincing as cases of allocating social housing assistance by desert in the first

place. If desert operates in SHAD, it must therefore be combining with some other principle(s) in housing.

Nor do I seek to argue that desert is the only justification for adjusting SHAD by denying access to social housing or offering preferential access. As well as desert, policy-makers often also use consequentialist grounds such as deterrence, incentivisation or risk-assessment to justify basing these sorts of treatment on past behaviour or suffering. But what I am interested in is the claim that desert has no place in SHAD.

Instead I take it that some other principle founds SHAD. The ethical principles which most commonly appear to be behind policies on allocation are needs, rights and egalitarianism, each of which can be non-consequentialist. I do not pin my case on any one of these three in particular, nor do I seek to establish what is the true best moral justification for SHAD. Instead I argue that a coherent and useful model of desert is compatible with non-consequentialist potential bases, and accounts for how one moral agent's role is affected by the moral agency of others.

Part of the difficulty with this debate is that "moral" tends to be used pejoratively to indicate something illiberal, sexually antiquated and individualistic, whereas "ethics" are what objective professionals have, and "normative" is a word understood only by the few. I will use the words "ethical" and "moral" as synonyms describing a normative element, without the pejorative overlay to "moral".

I consider three aspects of current English practice in relation to SHAD, and examine whether it is legitimate to consider factors based solely on an applicant's past, rather than their likely future behaviour indicated by their past record. I begin with a brief history of attitudes to desert in social housing before looking at how social housing currently operates. I then focus on how I justify the claim that there is a workable concept behind at least some uses of desert, and that it makes a worthwhile contribution to ethical thinking. I then come back to social housing to look at the application of the concept, before testing it against a range of counter-arguments used in social housing to ensure it stands up. The question is not "needs or desert", but whether desert can have a subsidiary role in a needs/rights-based approach to social housing.

## **1.2 "Desert" and "Social housing assistance"**

I look later at what desert actually means, but for now I will use as a working framework the common position from the literature that desert statements generally operate on the basis that a person (DP) deserves some good or ill treatment (DT) from someone else with standing to give it (DS) on the basis of a "desert-base" (DB), where DB is somehow a feature of DP or of their past. For present purposes DS is a provider of social housing assistance for which DP is an applicant, and DT is the favourable or unfavourable treatment given to the application. DB is most commonly the individual's past record of "anti-social behaviour", but can be their time spent waiting in housing need on a waiting list, their commitment to mutual aid in their community, or any other feature of their past or present, whether related to housing or not.

Social housing assistance is the thing deserved for the purposes of this enquiry. Or more accurately, following the classification of B as good or ill treatment, it is the thing which the treatment relates to, so that some people deserve better and some worse treatment in their applications for social housing assistance.

One could look at whether desert limits needs and rights in many other areas of social welfare, but for the purposes of this discussion I will concentrate on current issues in "social housing assistance"

in England. By “social” I mean provision of help which society in general ought to provide, and to which its members are obliged to contribute, largely by taxation, as opposed to voluntary charitable help. I use “assistance” to include some of the types of provision of help with housing which society may be called upon to offer.

I will concentrate on the most basic provision of a roof over someone’s head, which in this country largely means rented accommodation, rather than help with home ownership, and on direct help with that accommodation, rather than with financial assistance for it, even though there is growing interest in desert in those fields now too. I will therefore not deal with the former tax relief given on mortgage interest, or the “right to buy” and related schemes under which tenants of social housing are given public subsidies to enable them to buy their home (the assistance is to enable them to be owners and wealthier, rather than to enable them to be better housed). Nor will I consider the regulation of renting from private landlords, or Housing Benefit, which is the direct financial support given by the social security system to poorer tenants to help them pay their rent, whether to social or private landlords. Questions of desert are currently to the fore in these fields as well. In this discussion I am more concerned with society’s duties to provide or find housing for someone.

I will therefore concentrate on, and use the shorthand “social housing assistance” to refer to, three direct non-cash forms of social assistance with housing: social landlords’ allocation schemes; councils’ housing duties; and schemes setting a differential standard of housing services to be given to those who have obtained a social tenancy. I will also mention eviction, although it is odd to classify it as a service, because it throws some light on exclusionary principles. First I outline the history of attitudes to desert in social housing.

### *1.2.1 History*

The Victorian Poor Laws divided the poor into the deserving and the undeserving, in ways riddled with condescending judgmental hypocrisy, victim-blaming, sexual prurience, and views of a woman’s role as keeping a clean house. The economic drive which led the Victorians to tackle housing was the way the slums bred and spread diseases like cholera which infected their middle class neighbours and impacted on poor law spending. However, the social reformers urged action on slums also on the basis that slums bred and spread infectious “immorality”. Even the anti-reform communist Engels (1845) says of common lodging houses, “What physical and moral atmosphere reigns in these holes I need not state. Each of these houses is a focus of crime, the scene of deeds against which human nature revolts, which would perhaps never have been perpetrated but for this forced centralisation of vice.” Booth’s famous poverty map of London classified people using codes to reflect the causes of their poverty, including crime, vice, drink, laziness and pauper association. Octavia Hill was the leading proponent of housing management, and she valued it as the way to achieve the moral improvement of the working classes. Council housing took off in the twentieth century, but was mainly for the respectable working poor who could afford the rents for decent housing, while the poorest could only afford the private-rented slums.

Then came the Cullingworth Report, advocating need as a replacement for desert

“Our wider conception of ‘housing need’, however, embraces ... social circumstances ... – the fatherless family, the family with a mentally ill mother, and that highly diverse group which are termed ‘problem families’. ... it is not easy for a council to justify to its electorate the rehousing of families in arrears of rent, unmarried mothers or, indeed, any group which does not conform to the accepted canons of good behaviour. Yet these are often the very people (and electors) whose social needs demand attention by local authorities. Unlike others who may be judged to have a stronger moral claim on the local authority, their only opportunity to obtain good housing may be via the local authority. At the same time, to the extent that their mode of life is judged to be inadequate and in need of change, the tenancy of a council house provides a base on which the personal social services can build.”

“there is a danger that applicants are graded according to an interpretation of their desert ... the underlying philosophy seemed to be that council tenancies were to be given only to those who deserved them and that the most deserving should get the best houses. Thus unmarried mothers, cohabitees, ‘dirty families’ and ‘transients’ tended to be grouped together as ‘undesirable’. Moral rectitude, social conformity, clean living and a clean rent book ... seemed essential qualifications for eligibility.”

CHAC (1969) p22 & 33

The charity ‘Shelter’ campaigned using the film “Cathy come home”, in which a mother is ground down by judgmentalism, her housing problems split her from her husband and finally her children are taken into care. The film and report changed the moral agenda so antiquated cruel notions of desert were largely replaced by need, rights or egalitarianism. In the 1970’s homelessness was taken away from Social Services Departments and handed to Housing Departments, as a problem of poverty for which the cure was social provision, rather than of personal inadequacy requiring the therapeutic help of social workers. However, the homelessness legislation continued to apply only where the homelessness was not “intentional” (see below). Council waiting lists had to give “reasonable preference” to a small number of need-categories, but were otherwise a matter of local policy. Henderson and Karn (1987) show “respectable” and “disreputable” categories were still heavily used to allocate inferior houses to inferior applicants (by class, race and gender discrimination), but now under cover of codes used by allocations officers on home visits (home-visits were stopped for that reason but may now be revived).

In the 1980’s and 1990’s desert was revived by the New Right as a reason for seeing social housing and the rest of the welfare state as immoral, amid talk of scroungers, queue-jumping and the dependency culture. Since the 1990’s social housing has been reduced and changed rather than abolished, and desert has been used by governments as a reason to restrict access to social housing, rather than removing it altogether.

"A secure tenancy is a valuable asset, providing a home for life. In the Government's view this has to be earned" DoE (1995) para 3.1

“... the Government believes that local authorities should give priority to ensuring that families, particularly married couples, with dependent children ... have access to settled accommodation. Consideration should also be given to the needs of those who have delayed starting a family because of their accommodation.” DoE (1996) para 29.

The courts seemed to accept that desert had a role –

“It is not unreasonable to prefer good tenants to bad tenants.” Carnwath J in *R v Newham LBC ex p Miah* (1996) 28 HLR 279, at 288

For some time the main targets were supposed armies of teenage girls who got pregnant to jump the housing queue and bogus asylum-seekers who came to this country to abuse the welfare system. Then “anti-social behaviour” came to dominate the housing agenda, and many others, in what Frank Field MP tagged “the politics of behaviour”. Now the government has for the first time explicitly mentioned desert in housing legislation. In allocating social housing a local authority has to give “preference” to people in various categories and degrees of housing need. But preference can be denied to an applicant despite need if

“the authority are satisfied that (a) he, or a member of his household, has been guilty of unacceptable behaviour [which would have qualified for eviction] serious enough to make him unsuitable to be a tenant of the authority; and (b) in the circumstances at the time his case is considered, he deserves by reason of that behaviour not to be treated as a member of a group of people who are to be given preference ...” *Housing Act 1996 s167(2C)*, as inserted by *Homelessness Act 2002 s16(3)*

Furthermore in the guidance to another part of the same Act they brought in the notion of the positively deserving applicant. The council's allocation scheme can set priorities by taking into account

“any behaviour of a person (or of a member of his household) which affects his suitability to be a tenant” *Housing Act 1996 s167(2A)(b)*, as inserted by *Homelessness Act 2002 s16(3)*

“This would allow housing authorities to take account of both bad and good behaviour. Bad behaviour would include unacceptable behaviour which was not serious enough to justify a decision to treat the applicant as ineligible, or to give him no preference for an allocation, but which could be taken into account in assessing the level of priority which was deserved relative to other applicants. An example could be minor rent arrears. Another applicant might be able to demonstrate that he had been a model tenant or that his actions had directly benefited other residents on his estate” ODPM (2002) *Allocations Code of guidance* para 5.23(b)

Supporters of social housing are concerned that we are coming full circle back to the undeserving poor. Desert-opponents point out desert never really went away in social housing allocation, it just avoided being named as such.

“... the homelessness legislation and its antecedents never concerned need. Legislation has always required us to oppress the homeless by making *moral judgments*, not about their housing need, but about *why* the homeless became homeless in the first place.” Cowan (1997) p21, quoted with approval in Cowan and Gilroy (1999) at p 161.

This often leads to an ambivalence about the role of morality in social housing, as demonstrated most clearly in the contrast with the following quotation from the work of the same leading socio-legal scholar of social housing policy and practice

“One of the delegates, a Bakers' Union shop steward, who had lost his job in one of the big mergers of the local bakeries, got up and said, in an Irish accent, ‘It's the morality of housing that we're after. Society is a chain, and the strength of a chain is its weakest link, and the wealth of a society is the wealth of its poorest members’. Tremendously moving.” Quoted by Cowan (1996), and again by Cowan and Gilroy (1999), from Tony Benn *Conflicts of Interest: Diaries 1977-80* (Arrow, 1990).

### 1.2.2 Allocation of housing owned by social landlords

Both councils and housing associations (publicly-funded, not-for-profit and quango-regulated) must have allocation schemes to decide who should be the next tenant of their vacant properties. They have waiting lists with rules on prioritising applicants queuing for available properties. They cover both those wanting transfers from one social tenancy to another, and those wanting social housing for the first time. If no suitable property is immediately available, or if others have priority, you will have to wait. “Hard-to-let” properties may have nobody waiting for them, but social landlords can still exclude undesirable applicants even where that leaves voids.

Appendix 1 shows schemes use several types of factor. They are based primarily on need but with several other factors. They vary greatly in how much priority is given to those who have waited longer. Some priorities are illusory, for example giving large households priority over single people, as they will not be allowed to queue for the same types of property anyway, so real priorities are set by how many of each type are built. Official rules on type of property are now purely about need, but many councils used to grade the properties by desirability and restrict people to a grade to match their unofficially assessed desert (Henderson and Karn (1987) give details of codings used to grade “respectable” and “disreputable”, according to class, race and gender prejudices). Now those in urgent need may still tend to fall into the more frequently vacant less desirable properties, as described above.

The factors are overlaid with pointing, banding or quota systems, with weighting or discounting rules, more or less discretion, and so on. Points schemes are commonest and, while they may have

become over-complex, assume that multi-variant factors can be calculated in to one final score. This is a pluralism which relies on mixing, in contrast to that of Walzer or Miller which require the many principles to be corralled into their separate unique spheres, or that of other communitarians and some relativists who take pluralism to apply between but not within communities.

Councils have a statutory framework for their local rules (see Appendix), and must give “reasonable preference” to certain categories of need, plus “additional” preference in some cases, but now can discount that preference on the basis of past behaviour. Blanket local bans on categories of people were disallowed in 2002 (but the national ban on categories of immigrant was extended). As mentioned in the introduction, this also brought the first explicit legislative endorsement of individual desert as an positive or negative factor. On the positive side, “Mutual Aid” points were used in a scheme in Bradford described in Lemos and Goodby (1999), and North British Housing Aid have had a 15% quota for people likely to make a “community contribution”, while some North-Eastern landlords are looking at bringing back house-keeping assessments for transfer applicants.

### *1.2.3 Homelessness assistance*

Whereas in an allocation someone may wait forever for social housing, the homelessness system produces immediate housing which can be private sector. The current legal duties (extracts in Appendix 2) on homelessness only apply to councils, not housing associations. Applicants have to count as “homeless”, which covers not only rooflessness, but includes being so badly housed that it is reasonable for the person to continue to occupy the property, which should cover anyone at the extreme end of any need for which points are given in the allocation scheme. They must be in “priority need” which means no housing need be given to those who are fit and single, even if they are sleeping in the street. They must not be “intentionally” homeless (see below) and can be passed to another council if they have no local connection.

A council must obtain immediate housing for people who appear to qualify (pending enquiries), irrespective of what is available in its housing stock. This may mean arranging private tenancies, bed-and-breakfast or housing in another council’s area. If the council uses its own properties it cannot give a secure tenancy. It is often portrayed as “queue-jumping”, but if the applicant wants security then they join the waiting list with others, where their needs will generally put them high on the list.

Desert was always there in the homelessness legislation in that applicants do not qualify (beyond immediate housing pending enquiries, plus 28 days grace) if they are “intentionality” homeless. This is defined as “if he deliberately does or fails to do anything in consequence of which he ceases to occupy accommodation which is available for his occupation and which it would have been reasonable for him to continue to occupy”. But “an act or omission in good faith on the part of a person who was unaware of any relevant fact shall not be treated as deliberate”.

It was introduced into the original Bill at the insistence of MPs arguing their councils would be flooded by undeserving “scrimshankers” drawn by opportunities to abuse the system by creating their own need. The definition sounds as if it is morally neutral and not based on desert. Nor is it consequentialist in that it does not involve any risk assessment as to whether it indicates that the person is liable to do something similar again.

One problem is that it does not require any intention to cheat the system. Mere first-time fecklessness will remove the homelessness housing duty altogether.

More significantly it cannot be meant to be taken morally neutrally. As King points out, when a family is overcrowded it is usually caused by their choice to have more children. They may not have done it to get a bigger house, but nor did they necessarily do it fecklessly by not taking contraception, and they may have planned to have a baby for its own sake. But a council or court would in practice not hold them to be intentionally homeless despite appearing to fit the definition. The key point is that we usually approve of having babies and do not feel it deserves a reduction in our duties, and the courts and councils import this into the legislation. There are similar problems in distinguishing between cases where a tenant is illegally (or even legally) evicted by their private landlord, who said he would do it if they asked for their legitimate repairs rights, and cases where burglars in Northern Ireland have been told by the IRA to leave the province or be killed. Subsequent cases have held that a criminal can become intentionally homeless by committing a crime knowing a prison sentence was likely and that would lead to loss of the current home (this ignores criminals' awareness of low detection rates). In each case the law side-steps the issue by saying you did not "cause" the homelessness if what you did was not wrong (or sometimes that it was not reasonable to expect you to forego your rights in order to remain in the house), or that you did cause it if your action was wrong. These all seem better explained by direct reference to desert and whether the person's actions were legitimate or not, rather than to simple causation.

#### *1.2.4 Existing tenants of social landlords*

Social landlords must provide minimum services, such as repairs, but will normally go beyond, such as making improvements by fitting new kitchens. Tenants who break their tenancy agreements can be served with injunctions or evicted if a court believes it is reasonable in the individual case. Courts may also evict on limited grounds to do with reduced need, where the tenant will not move to a more suitable property offered by the landlord. Social landlords can impose a probationary period at the start of a tenancy during which they obtain a possession order without proving any grounds.

Irwell Valley Housing Association has pioneered a growing trend to "gold schemes". The worst tenants are still evicted, but those in less serious breach are given the legal minimum level of services. Those who keep complying with their agreements are given bonuses such as faster repairs, better improvements, cash-back, shopping discounts, and education, training or job opportunities. In some schemes more benefits may be earned by going beyond compliance with tenancy agreement, and positively contributing to the community. Usually these are justified on claimed consequential incentive or deterrent effects, but often supporters say "if we are going to provide more than minimum services, why should we do so for those who do not deserve it".

Eviction seems at first sight to be based not on desert, but on curing the individual landlord's (and their other tenants' & neighbours') problem by stopping ongoing wrongdoing to that landlord. However, there has not been a tradition of risk assessment, looking at whether the tenant's past breaches indicate likely future breaches, and instead courts evict when "enough is enough". So there seems to be an element of desert. Nobody has campaigned against having eviction grounds based on arrears and anti-social behaviour, though that is hard to reconcile with campaigning against allowing those evicted to be refused further housing (at least temporarily). It seems odd to bother evicting someone if you are then going to have to house them again. Certainly they will have to live somewhere, but it is questionable why the social landlord should have to provide it.

#### *1.2.5 Anti-social behaviour*

It is worth expanding here on the very loose term "housing-related anti-social behaviour". It means causing nuisance and harassment to people living and working in the neighbourhood of your home. It is sometimes also used to cover running up rent arrears or otherwise breaching a tenancy agreement, though these are only relevant to tenants, not owners. Rent arrears only affects the landlord directly, rather than other tenants, but accounting systems generally mean arrears leave less

money for services for everyone else. Accusations of anti-social behaviour may just be a question of clashes of equally valid life-styles, or even of prejudice against people whose behaviour is different for cultural reasons, or because of sexuality or mental health problems. Nuisance can include occasional thoughtlessness in making excessive noise, or a series of low-level incidents forming a campaign of racial harassment. It may or may not amount to criminal activity. Sometimes it is directly criminal activity against neighbours, such as burgling other houses on the estate, or posing a risk to neighbours, as with the heated debates over whether paedophiles should be re-housed onto social housing estates on release from prison. In other cases the crimes, such as drugs-dealing, mugging or joy-riding, are not committed against the neighbours, but there is ancillary intimidation of the neighbours as potential witnesses, and the threats of violence or arson may be more or less credible to the neighbour, the housing officers and the police. The intimidation may be specific, or just part of a general culture of not tolerating “grasses” or informants.

### **1.3 Conclusion**

Social housing assistance, like any other organic real-life system, has many bumps and wrinkles, especially at the interface between homelessness, allocations and eviction. It also has historical baggage of vicious use of desert as an excuse for discrimination and inadequate supply. Nevertheless there is a system which broadly makes sense and tempers need with a variety of other factors. Can desert be rehabilitated to serve a non-vicious role as one of those factors?

In the next chapter I will set out some detail on how desert can work as a concept to plug gaps left by other principles acting on their own.

## 2 CHAPTER 2 – DESERT AS A WORKABLE CONCEPT

Olsaretti (2003, p194) reports that a “widespread view, among desert theorists, is that the possibility of developing a unified account of desert is an unachievable and an undesirable objective”. The trouble with desert is that it is so simple – DB simply requires DT, “because it does” – appealing to intuitions at a relatively early stage in the debate.

Rawls (1971) famously attacked desert, partly because nobody deserves the upbringing which gave them the strength of character to choose to do right, and partly as merely dependent on institutions with rules which create legitimate expectations. MacIntyre (1981) revived desert, but of a narrowly communitarian sort (see below). Desert study is now flourishing with collections in Pojman & McLeod (1998) and Olsaretti (2003), which help to contrast approaches based on different, unexplained assumptions.

I should now justify my previous claim that, in relation to ethically interesting uses of the word, desert statements generally operate on the basis that a person (DP) deserves some good or ill treatment (DT) from someone else with standing to give it (DS) on the basis of a “desert-base” (DB), where DB is somehow a feature of DP or of their past.

Like any word, “desert” has a variety of uses. Those seem to centre on a thicker core, going out to a thinner periphery. Common uses include:-

1. DP is deserving.
2. DP deserves DT.
3. DP deserves DT on the basis of DB.
4. DP deserves DT from DS on the basis of DB.

I take it that 1 and 2 both always unpack into 3, in that any statement of deservingness implies at least that someone deserves credit for a credit-worthy feature (or debit for debit-worthy). Another formulation, “courage deserves praise”, or “DB deserves DT”, is just a way of expressing that all DPs with DB deserve DT, and so does not need to worry us. I make the humanist assumption that “this sunset deserves admiration” is not an ethically interesting use, as it does not involve a person’s desert, but is a colourful way to say that qualities of the sunset are what make it admirable. I would not insist 4 is always implied, because we might say an adulterer “deserves” it when he happens to fall unpushed down a man-hole. But I am interested in what treatment we should give others, and how we respond to their misfortunes, so I will have failed if I only show that it would be good if anti-social people’s houses fell down in the wind. Social housing does not come from heaven, and plenty of deserving people obtain their own housing. So DS is crucial to my investigation, as allocation of social housing is about the duties of social housing providers, on society’s behalf, to provide for those who do not have adequate housing from elsewhere.

“Deserve” at its thinnest just means “should be given”. “I deserve respect for my right to have my housing needs met” is an ethical and grammatical use of “deserve”. But it is not an ethically interesting use of desert, because its whole force can be translated into claims of rights or needs, without using desert. Desert seems to do ethical work when it implies a non-consequentialist link between DB and DT. “I deserve [should be given] the benefit because I could make best use of it to increase everyone’s utility” is based on utilitarianism, without needing any help from an ethical principle of desert. “Criminals should be given punishment – why – because they deserve it” seems to involve a claim that there is some force in desert as such. The desert is satisfied in the giving of the punishment, not in any consequences of the punishment. Any useful sense of desert is therefore incompatible with pure consequentialism.

## 2.1 Desert bases

Just before looking at other distinctive features of desert, we should consider desert bases in SHAD.

Each DB either attracts negative or positive DT. It is usually either something that DP was responsible for doing or omitting, or something DP suffered which they were not responsible for. In rarer cases it may be a positive experience requiring a disbenefit, as in “those with unearned income deserve to bear a greater tax burden”, but there is no real equivalent in housing.

It may also be comparative or absolute. Comparative DB is more common in waiting lists where the DT feeds into comparing applicants for a property where the winner is the one who is more deserving/needy or less undeserving/un-needy. Absolute DB is more common in homelessness where the applicant either qualifies or not, irrespective of other applicants (at least in theory).

	<b>Done</b>	<b>Suffered/Experienced</b>
<b>Attracting Negative DT</b>	<ul style="list-style-type: none"> <li>• Faking need, to queue-jump</li> <li>• Deliberately creating/increasing own real need, to queue-jump</li> <li>• Anti-social behaviour, or other housing wrongs, causing the need by leading to eviction</li> <li>• Anti-social behaviour, or other housing wrongs not causing present need, where victims are competing applicants for same housing</li> <li>• Anti-social behaviour, or other housing wrongs not causing present need, where victims are not competing applicants for same housing</li> <li>• Non-housing wrongs (not causing present need) where victims are not competing applicants for same housing</li> <li>• Fecklessly failing to take responsibility to avoid ending up in need</li> </ul>	<ul style="list-style-type: none"> <li>• Lower current need, or previous time in need, (not caused by DP) than competitor applicant</li> </ul>
<b>Attracting Positive DT</b>	<ul style="list-style-type: none"> <li>• Been a model tenant</li> <li>• Sacrificed own housing for some altruistic good (eg offered to move into smaller, lower-demand property when not required to, as when under-occupying after children left home)</li> <li>• Contributed to the community or “mutual aid”</li> </ul>	<ul style="list-style-type: none"> <li>• Now in housing need not caused by DP</li> <li>• Spent time in housing need not caused by DP</li> </ul>

I will come back to why the suffering/experience column is so thin, but would note for now that it seems to be SHAD adjusted for not being caused by DP (and “in housing need” could be replaced by “bearing housing rights” or any other version of SHAD). The absolute element does not seem to work in the suffering/experience column, because “minus” need is not a natural concept and would perhaps mean living in luxury, in which case the person would be highly unlikely to apply for social housing or to be allowed on the list in the first place.

Faking need is the odd one out – if it is found out then there is no “need” to be discounted or over-ruled, and the person may be prosecuted and will have their card marked in any future applications. The others are all about adjusting the response to actual need.

Currently Gold Schemes are non-statutory and can use any criteria.

Homelessness has no equivalent of anything attracting positive DT, nor of suffering attracting negative DT. Intentionality is where an action attracts negative DT, and it would include most of the actions in that quadrant, despite the obvious differences in levels of culpability. It would not cover any wrongs which did not cause the homelessness, however serious they were and even if the person's homelessness puts them ahead of a victim who is on the waiting list but not homeless (so the mugger should stick to mugging in the shopping centre, not their estate). Also it attracts only one response, complete rejection of the application, and withdrawal of temporary housing after a period of grace plus some advice. This makes intentionality appear to be a blunt tool at best if it is about desert. I explained above that it is not in practice operated by morally neutral interpretations of causality (having a baby, being illegally evicted for asking for repairs, etc).

In waiting lists, despite suggestions, the government has not taken up the idea of a direct equivalent of intentionality. This means those turned down by homelessness units as intentional can still apply to go on the waiting list. The DT on waiting lists is more flexible than in homelessness. The applicant can have some points removed or added, and can be suspended temporarily or excluded altogether. The latter is the equivalent effect of a homelessness rejection. But it is only available where the applicant has done something for which they could have been evicted if they had already been the landlord's tenant (so it must be housing-related). It therefore does not include much of the fecklessness factor (the court has to be convinced it is reasonable to evict, not just that you have caused the problem), nor does it include deliberately increasing your own housing need. It is therefore more sophisticated than intentionality, but still has oddities.

## **2.2 Linkage to responsibility**

Normative desert is intuitively strongest (closer to the thick core) when involving assessment of responsibility for the past. My most obvious deserts are based on good or bad actions for which I was responsible – in housing, my anti-social behaviour or my community work. However, Feldman (1999) attacks the linkage with responsibility and with time.

We also sometimes say those who have suffered deserve some good DT, although they are not responsible for their suffering – in housing, those who have waited longest in housing need (“time-in-need” or TIN) deserve priority over those who are currently in the same degree of need but have suffered only a shorter time.

Feldman points to references to those who have been unfortunate deserving some good luck, but this seems to be a colourful analogy with an anthropomorphic or religious concept of Lady Luck, as discussed above. Finally he refers to statements that everyone deserves some respect in virtue of being a person. Those seem to be bound to lose no force when translated into “persons should be respected”, without assistance from desert.

More tellingly Feldman suggests suffering might deserve good DT where it is at least somebody's responsibility, so in housing say that of a victim of racial harassment. But he points out parents of a child who died through illness deserve at least sympathy, even though the death was nobody's responsibility. However, we surely do not say they *deserve* sympathy if they killed the child (and perhaps we say they deserve no, or less, sympathy to the degree it was their fault).

So perhaps desert based on suffering is where you are not responsible for it (while desert based on actions is only where you are responsible). I appreciate a certain amount of strain is involved, but “the parents deserve sympathy for the child's death” must translate to “the parents deserve sympathy for their suffering because they were not responsible for the child's death, they did what they could and did not harm her”. Otherwise it becomes “child bereavement deserves sympathy”, in which desert does no work – it is merely that “we should generally sympathise with parents of dead children”. In fact the full statement might be “we should generally sympathise with parents of dead

children, but they deserve that sympathy only where the death is not their fault, as with these parents”. Desert in this case is parasitic on the primary obligation of sympathy, which it does or does not adjust.

Even this weak link with responsibility is all the housing-desert proponent needs. Remember nobody is saying all entitlement to housing is driven by desert, only that needs (or rights, equality, or whatever else is the main driver of SHAD) must make room in at least a minority of cases for some adjustment on account of desert. Accusations of parasitism are therefore not a problem unless they mean that all relevant desert claims can be boiled down into needs or other claims

It seems reasonable to class this as a weaker sense of desert, but one in which the responsibility of the agents is still the key. In social housing the primary duty would be SHAD, based on needs (or rights or egalitarianism). “Applicants deserve help with their housing need” adds nothing to “we should help those in housing need”. When desert does add something here, the work it does is to imply the need is not the person’s fault. It is more distinctively about desert to say “people deserve full help when they suffer housing need which they have not brought on themselves” or “those who cause their own need deserve less help with it”, which is what is behind “intentionality” (and it catches even the feckless who are not otherwise acting wrongly). This explains why the “suffering column” in the table above was thin and dominated by need, as the primary factor, modified by the secondary desert-importing factor of the need not being caused by DP. The other basis for saying the needy do not deserve help would be because of a virtuous or vicious action or omission for which they are responsible – “muggers deserve to be sent to the back of the housing queue”. The two can be combined “if you become homeless by being evicted because of your anti-social behaviour then you deserve no/less help”.

This still needs refinement, though, to cope with the points made above about intentionality – the family who plan another baby which causes their own over-crowding, and the tenant who asks for legitimate repairs despite knowing the landlord has a consistent record of illegally evicting those who do so. We do not simply think you deserve your misfortune if it is caused by an action you took deliberately. In the illegal eviction case we might be tempted to accept lawyers’ reasoning that the landlord’s illegitimate act is the sole cause of the homelessness, not the tenant’s legitimate act which caused the landlord’s act. But in the over-crowded family even that slippery move is not available. Nor do I think we can refine the position to saying you deserve less where you *wrongly* bring your need on yourself. The problem is accounting for fecklessness. One might argue, against liberalism, that it is morally wrong not to look after yourself, even in ways which do not harm others, if you are going to call for help afterwards or even if you should know that you have no right to expect the rest of us to stand and watch you suffer. You may have the right to commit suicide in private, but if you try to electrocute yourself in front of me you are surely responsible for my injuries when I try to stop you (even though I know of your settled wish to die). So perhaps failing to sort your own housing out properly is immoral when you know or should know that we will not feel able to stand by and leave you homeless (reflected by the sense in which the pejorative “irresponsible” includes not looking after oneself). The trouble is that it is then strange to use that immorality as justification for doing precisely that – we hold you intentionally homeless for your fecklessness and leave you to fend for yourself. One answer is that fecklessness is at the lowest end of the scale and should not be met by a complete refusal of homelessness assistance but by some discounting of priority for permanent housing on the waiting list. However, on balance I think it seems preferable to refine the proposition further and say that you deserve less help when you brought about your claim for that help yourself without having a reason which is morally adequate. We then do not have to characterise simple careless neglect of one’s own needs as immoral (and cast around to find reasons not to treat as immoral the ascetic hermit fasting in a cave and not wanting to be bothered by anyone). We just have to say there are no positive morally acceptable reasons for doing it, whereas there are morally acceptable reasons for having a baby even if it will

lead to over-crowding (though the government seemed to hark back to past times when they wanted to give priority to those who hold off having children till they have adequate housing), or for demanding repairs even if it will lead to eviction.

The desert element therefore always seems to be a secondary feature adjusting the primary moral drive, which in this case is SHAD and so is probably need/right-based. It might be argued that retributive punishment is about primary desert, but even there I would characterise the issue in these terms. What is ethically peculiar about retributive punishment is the infliction of suffering without counter-balancing benefits. The primary moral drive, that society should not normally inflict suffering, is adjusted by the secondary desert factor, which is based on DP's responsibility judged on the various moral principles behind the various crimes (what DP did must be wrong on some non-desert principle).

In social housing, on one side your desert consists in an increase or reduction in the moral force of your need based claim-for-help to reflect some relevant act or omission for which you were responsible, and on the other your desert consists in an reduction or increase in the moral force of your need-suffering based claim-for-help to reflect the degree to which you were responsible for the need or suffering. You are more deserving of help with needs you did not cause and you are less deserving of help with needs you did cause. You are also less deserving of help with your needs if you have caused some relevant wrong, and more if you have caused some relevant good. That relevance seems clearest where you have damaged or improved the prospects of meeting others' equivalent needs. If you slandered me yesterday, you are less deserving of my help clearing your name of someone else's slander today. Even if you have damaged others, rather than me, you are less deserving of my help, especially where my job is to try to help all those others as well as you. So social housing providers find their housing obligation reduced in respect of someone who worsens the housing needs of others (and/or themselves) or tramples the housing rights of others. Housing-related anti-social behaviour can greatly affect the quality of a neighbour's home life, and victims of harassment are treated as being in housing need on most waiting lists (those fleeing violence are now treated as in "priority need" for homelessness under reg 6 Homelessness (Priority Need for Accommodation) (England) Order 2002 – see Appendix 2). That is why it is an obvious DB for the DT of reducing the claim to housing from social housing providers, and especially when in competition with other people in housing need who were or could be victims of that behaviour.

### **2.3 Secondary nature**

The secondary nature of desert helps with some of the debates about whether desert is institutional (Rawls 1971), parasitic, community-dependent (MacIntyre 1981) or otherwise not a full member of the club of primary moral forces. It follows from my argument that desert is secondary but nevertheless does distinctive work. It is not parasitic in the way Olsaretti (2003) accuses compensatory desert of parasitism, namely of adding nothing to the parasitised concept and being translatable entirely into that concept. It is not purely institutional or community-dependent in the sense that the primary duties from which DT deviates, and the moral forces on which DB is judged, can be independent of community agreement or of whether any institution has been set up to decide on them. Where it may be institutional, but there is not space to enquire further here, is in how the proportional correspondence is set up between DB and DT (see below on proportionality). It is perhaps likely that there is no pre-institutional rationalisation for the number of points in a housing allocation scheme which are deducted or added for desert, and their weighting against levels of points given for types of need. That would fit with the idea that national legislation sets up the mandatory framework but leaves local policy discretion to decide on the point-weightings. That does not seem to detract from the usefulness of desert

Even where pure ethics allows for more than one principle the approach to mixing them tends to be all or nothing. In social housing practice the main example would be where previous negative

behaviour deserves a permanent bar from the waiting list, despite any needs or other points accumulated, or where positive behaviour is an essential pre-condition for entry onto the waiting list as with committing to Mutual Aid in the Manningham HA scheme. The two main examples in pure ethics would be Dworkin's trumping and Nozick's side-constraints. Goodin argues that needs trump desert. Pojman argues that equality trumps desert.

Applied ethics, dealing with the complexities of the real world in more intimate detail, is less frightened of mixing principles. So in medical ethics it is common to find several deontological principles held out with no unifying factor. The model offered by housing allocation points schemes is "discounting", where one factor reduces or increases the strength of another rather than edging it out of the way entirely. In some versions this can be limited to "tie-breaking", brought in only where the needs are equal, but not otherwise. In others it will push one of the applicants down or up by a certain amount, with a view to their comparison with others or on later occasions (rather than the simple two applicants for one house full stop).

The problem to a pure ethicist is how to find a non-arbitrary way to discount one factor against another. It requires a common measure or otherwise we end up not comparing like with like. But in applied ethics it is possible to see the problem from the other end. Is there any strong enough justification for not setting a discount rate which mostly produces intuitively satisfying results? In housing, even without importing desert factors, no allocation scheme could work unless we agreed that very different kinds of personal need have to be weighed against each other. In fact no allocation scheme runs solely on needs anyway, however varied, but they all include an element for the better administration of the scheme and social utility, such as where someone under-occupying high-demand property wants to move to a smaller lower-demand place. So this in itself is not a reason to exclude desert.

Two obvious such ways to mix are either by adding or subtracting points, or by operating time-limited suspensions. Elster, looking at the moral approaches institutions claim to be following in allocating social resources and burdens, is less queasy than most about such mixing. Dwyer's empirical work with welfare state service-users, seems to show they accept mixing.

## 2.4 Time

Feldman's other target is what he calls the "received wisdom" that a DB must always be in the past to be effective – desert is always backward-looking, and DB precedes DT. Sher (1987, p176) coins "antecedentialism" to capture the perspective shared with consequentialism that what is interesting is the link between one state of affairs and the next, only looking backwards instead of forwards. I have already argued that a consequentialist approach is inconsistent with any useful idea of desert (and see below on utilitarianism), so DT cannot be justified on the basis that it causes DB.

Feldman suggests prizes, rewards, punishments, compensation, reparation and cases of bad luck fit this claim that DB always precedes DT. Against the claim he cites the idea that desert is often based on an idea that a misfortune should be counter-balanced by a piece of good fortune, but he argues that it cannot really make a difference which of these comes first. He gives examples of a sick child deserving a charity's Disneyland trip because the child is going to suffer badly, or soldiers deserving honours because they have volunteered for a suicide mission which has not yet set off. He rejects the "desperate manoeuvres" of trying to set DB as the current illness or the act of volunteering. He suggests that where two sick children have suffered identically but one is going to get better while the other will die, then the latter is more deserving of the charity's favour, and must be so by virtue of the future greater suffering, not of the past equal suffering.

I discuss below a modified version of Williams' "Jim and the Indians" scenario, in which the captain of the soldiers deserves to be shot, rather than an innocent Indian, because he is planning

unjustifiably to murder an innocent Indian, and shooting him is the only way to stop it. The justification cannot be consequentialist, because one person will be shot either way, so there is the same global utility outcome (assuming this was the captain's last atrocity before retiring to tend tomatoes), and seems to be desert based on the captain's intentions. This might seem to back up Feldman's case.

Feldman suggests the misconception is down to over-association of desert with punishment, where we have reasons which are not central to desert for insisting that the punishment cannot precede the crime.

He offers a refinement of the idea which he claims also does not work – where DB must be “already settled” at the time the desert arises. So the child's prognosis is settled, or the suicide mission is fixed, and that gives the desert before anyone dies. He attacks this with a counter-example of an innocent passenger deserving an apology from a customs officer *before* the officer goes through the private belongings. I leave aside the idea that this may just be a question of the officer's lack of knowledge meaning the uninspected passenger should be treated as innocent, but that if the passenger was really guilty then it turns out after the inspection that they did not deserve the apology. Feldman says the officer is not *compelled* to check these bags – the passenger has been chosen at random and officers can change their minds – so “already settled” does not do the job.

I would suggest this has something to do with the conception of free will shared by almost everyone except determinist philosophers (even the scientists have gone off to quantum mechanics and chaos theory – but there is no room for that debate here, so I need to make another assumption, but see below at on determinism). Moral agents have responsibility for their actions and omissions when they act of their own free will. If it is inevitable that I will do something, then I am not responsible for it. The captain will only be responsible for shooting the Indian (and the officer for searching the bags) if he could, but does not, change his mind. If they were acting under hypnosis, or some mechanical force, they would not be responsible for what they did. So you are not fully responsible until you have freely done it – and once it is in the past you cannot change it. But it is part of what it is to be responsible that, until you do it, you might choose not to do it. So you can be judged for your intention before you carry it out, not in spite of but because of the fact you might change that intention – fair enough your culpability or praiseworthiness will be slightly less before you do the deed, but there is some there already which can form a desert-basis.

If the housing officer could be satisfied that you already intended to harass the neighbours when you move in, then she could justify holding back your application because of your desert, and not just on the consequentialist ground that she was stopping the harassment. Even if it turned out you would have no neighbours to harass, you would be less deserving of priority than your innocent equally-needy competitor for the next house. It is just that such intentions are rarely expressed and extremely difficult to prove before the event, so such desert judgments are not common in practice. So the strong, but not invariable, link between desert and the past is further evidence in favour of a responsibility-based conception of desert.

## **2.5 Responsibility of each agent**

I am arguing that the ethically significant form of desert is what accounts for adjustments to how you should otherwise have treated a person, based on the degree to which they, or others, are responsible as moral agents for their part in the scenario. I should therefore now explain what I mean by responsibility. I will also pause to argue that this responsibility-sensitive system, of desert adjusting need, has the virtue of avoiding major problems inherent in both consequentialism and Kantian deontology. What I want to argue here is that the duties of each agent in a scenario can be affected by the attitude of any of the other agents in it.

I deal below with Goodin's (1998) distinction between "blame" and "task" responsibility. First we need to distinguish two meanings for "being responsible" – one is just that you are liable to be appraised morally for what you do, the other is that you are recognising that you are liable to be appraised and you are acting as you should in the light of that. The opposite of the first is not being responsible for your actions, as where they are forced on you by something external. The opposite of the second is being "irresponsible", as where you act as though there were no consequences of your actions and nothing you would be responsible for. I am using "responsibility" in the first sense. This is similar to Scanlon's (2000) "responsibility as attributability" which is about whether someone is "properly subject to praise or blame" for their action. He contrasts it with "substantive responsibility", which is about "what we owe to each other" based partly on the "Value of Choice".

Neither classical consequentialist positions nor Kantian deontological positions seem to account for the common sense approach to the question of the effects of other's duties. The problem is best encapsulated in a pair of classic scenarios, one a famous own-goal of deontology (but illuminating nevertheless) and the other which in some ways is equally damaging to both but which I will consider as shining a light on consequentialism.

### *2.5.1 Kant and the axe-murderer*

Kant (1996) gives the example of an unbending duty not to lie, as an instance of not using others as means rather than ends. An innocent man, chased by a sane but determined axe-murderer, bursts into your house and hides. Next the axe-murderer bangs at the door demanding to know if the fugitive is in your house. If you lie convincingly he may move on and the fugitive lives. For Kant you must not lie because that would fail to respect the axe-murderer as a moral agent with his own duty to act rightly, and you would be using him as a means to save the fugitive. You must not kill anyone, but you are not doing so by failing to lie even though the consequence is their death. Kant's problem is that very few people's intuitions would stretch far enough for this.

### *2.5.2 Jim and the Indians*

The second scenario is Williams' (1988 p34) case of Jim and the Indians. Jim is a tourist in a jungle who stumbles on a village where the dictator's soldiers have rounded up the local Indians and are about to shoot ten innocent villagers. Their captain, who Jim has every reason to believe, says that in honour of his visit, they could kill only one villager, but only on condition Jim pulls the trigger. Williams criticises consequentialism for unhesitatingly telling Jim to pull the trigger in a cut-and-dried case of one death versus ten.

### *2.5.3 Common point*

What is common here is that the well-meaning agent is faced by someone intent on doing wrong to an innocent victim, and the agent has to decide how his normal duty to the innocent relates to his knowledge of the wrongful intentions of the other. In either scenario surely one answer is "ideally the captain/ axe-man should desist".

### *2.5.4 Consequentialism*

Consequentialism's problem is it does not tell us who should have the burden of producing the best overall result if several people can do so at equal cost. Can I stand by because I expect someone else to shoulder the burden, so I do not need to? Goodin uses a utilitarian argument that a person's "blame" responsibility is not a guide to "task" responsibility, which should go to the person now best able to produce the best result. A ground-floor shop-keeper should put out her awning to break the fall of the man who has, with no blame on her, fallen out of a window in her building, as she is now his only hope. He admits perhaps the man should buy her a new awning later, but insists that

does not change what she should do now. Society can help those in housing need when they can no longer help themselves, so society should help irrespective of whether the needy caused their own need. Again he accepts that perhaps we could reclaim the cost from the needy once they have recovered and are able to pay, but he claims people with such problems rarely recover enough to afford to pay the disproportionate cost of rescue.

However, what if the man were to set up a standing order for the monthly cost of a new awning and insist she should save him on the first of every month even though she warns him she has had enough. She cannot get the police to stop him. He is not mad but over-estimates her tolerance and the chance that she is bluffing – she does not put out the awning. He dies, which is a vastly disproportionate penalty (see below on disproportionate penalties) for his folly, but did she kill him (is she responsible for his death) and should she not have?

One of the advantages of rights and needs approaches is that recipient need not humbly beg for charity, but can claim entitlements openly and without embarrassment. If need or rights are the sole criterion in SHAD, then surely the needy person should be able to say openly “I know I have been evicted from my last three homes for nuisance, but I am once again in real need as I am completely homeless. Thank goodness it is unthinkable just to leave me on the street like the bad old days.” Surely this undermines “task responsibility” as insensitive to desert.

What consequentialism really tells us in Williams’ and Kant’s cases is not normally brought out, perhaps as too obvious – the captain and the axe-murderer should please everyone by giving up murder. For some reason, despite the requirement that consequentialism must go for the best overall result, and despite the fact that neither the captain nor the axe-murderer are any less sane, or any less of an agent, than the person in the questioner’s spotlight, we fail to take the properly impartial consequentialist perspective of the calculator in the sky. If the captain and the axe-murderer were robots then consequentialism would tell us that the humans should do something. It would tell us that the best result would be if the robots broke down, because it would not even qualify as interesting, let alone useful, as an ethical theory unless it told us what human agents should do or at least how they should be. Consequentialism’s problem is not telling us how to distinguish between the captain/ axe-murderer, the robot and ourselves, in predicting the future or allocating duties to act. If I should neutrally factor in the wrong-doers’ intentions as if they were robots or wolves, then why can I not equally legitimately factor in the fact that I/Jim feel(s) selfish today and cannot be bothered doing the right thing instead of whatever is least effort? This is a more serious flaw in consequentialism than the one where we toss a coin to see which of two people should take an action which either could do, or where the voluntarily incapable free-ride off the involuntarily capable. The axe-man and the captain are both cases where it is absolutely clear they are the person most able to produce the best outcome, rather than the one on whom the spot-light has been rigged.

### 2.5.5 *Kantian deontology*

The consequentialist’s embarrassment shows that the wrong-doer’s responsibility must be relevant in some way. But Kant serves as the warning against going too far the other way, or too simplistically (not an easy accusation to make against Kant admittedly). One queasiness about Kant’s answer is the Pontius Pilate aspect –people duck their responsibilities with platitudes, and we can imagine the fugitive’s relatives being disgusted with the truth-teller’s lame answer. One can even see it in Kantian terms: you should not use the fugitive as a means to keeping your hands clean. Kant seems to see the answer as “Yes, the axe-murderer should not murder, and that is why my duty not to lie is unaffected, end of problem”.

### 2.5.6 *Conclusion - Twisting Jim and the Indians*

One way to take my point further is to ask what would happen in Jim’s scenario if the captain gives Jim the gun, sees Jim hesitate, then takes his eye off Jim to aims at the first Indian (assume the rest of the gang have left). At the last moment before the captain pulls the trigger, Jim has a third option, to kill the captain, thus saving all the Indians (assume Jim will have to kill him to stop him).

Kantian deontology is unmoved. Killing is still wrong, so Jim should stick to not killing, irrespective of the captain's intentions. Consequentialism now has a new difficulty. Jim must still not allow ten deaths, but his other two options are equivalent in each involving one death (assume again no subsequent consequences – the captain retires tomorrow), so he may as well toss a coin. It must be at least strongly arguable that Jim must shoot the wrong-doing captain rather than an innocent Indian. The captain deserves it and the Indian does not. This is not to say Jim should work out the overall moral standing of each Indian and the captain before picking the least deserving. There is a sense in which the captain's current wrong actions give a basis in desert which is not there with the Indians given their innocence in this affair (their previous adulteries etc seem irrelevant).

This example also shows that, even assuming murder deserves life imprisonment rather than death, Jim should shoot the captain now although he would not do so as punishment after the captain killed the Indian. This is because before the captain shoots Jim is effectively choosing who should die where one person must die, whereas once the captain has fired nobody has to die so it is purely about punishment. This can be related to the difference between choosing which of two applicants for one house should remain homeless, and deciding to use homelessness as a punishment.

### 3 CHAPTER 3 – KEY ARGUMENTS AGAINST DESERT IN HOUSING

Our model of desert in social housing is then one in which the main duties are based on needs (or perhaps rights, or socialist egalitarianism), but desert comes in to take account of the moral agency of each of the players. It adjusts those duties by degrees, rather than replacing them, and can be used as a decider in tie-break cases of equal need. The next task is to check whether this account enables desert to defend itself against the most cogent or common arguments made against it.

In a field which is extremely sparsely populated compared with medical ethics, individual attention can be given to the writers who bear on the most directly relevant issues. There are two major writers whose contrary views must be engaged with:

- Goodin (1988) offers the most detailed philosophical defence of the welfare state, apparently applicable to social housing. He argues desert has no place in social welfare, where he claims “needs trump deserts”.
- Cowan (1997) offers the only extended treatment of deservingness in social housing, but does so from a socio-legal perspective influenced by post-modern social constructionism. He is more concerned to look at how governments divert attention from inadequate supply, than at why desert would not be a legitimate factor.

There are also three “false friends”, who appear back something like desert in housing but turn out not to.

- King (2003) offers the only extended philosophical treatment of social housing. He argues for a right to housing, but not necessarily social housing, and for a place for responsibility in the justification of that right, in a way similar to that used by desert-proponents. But he parts company with desert-proponents in concluding that “criminality, harassment and abuse must be dealt with, but not through housing policy. This is an entirely inappropriate use of housing policy, which should be concerned with the provision, maintenance and, where necessary, the management of a stock of dwellings, and nothing more.”
- The main philosophical writer on social justice to advocate a role for desert is Miller (1999). But he appears to develop Walzer’s theme of separate spheres of justice, and to reserve desert for wages, with social housing apparently being governed by either need or equality. On that account it would constitute an injustice to bring in desert outside of its legitimate sphere. However, he does not draw this out explicitly and it is therefore difficult to engage with.
- Finally there is Deacon (2004 forthcoming), who offers the main philosophical analysis in favour of action against anti-social behaviour in social housing, but couches it in terms of “conditionality”, a concept borrowed from US social security debates, rather than desert as such. Conditionality is more directly about using benefit sanctions to make claimants comply with their obligations to society in return, rather than being based on claiming those who do not comply deserve the sanctions. He reviews three defences of conditionality: contractualist; paternalist; and communitarian mutualist. The debate is more about whether and why claimants owe such duties in the first place, than what is the result of failing to comply. He admits that the paternalist justification is particularly hard to apply to housing, as work can be pictured as being in the claimant’s interests, whereas desisting from anti-social behaviour is more obviously about the interests of others. He offers a useful charge sheet against conditionality, which can also be more easily read over to desert – it blames the poor for their poverty, and it visits the effects on children.

As I mentioned in the introduction, one argument against desert which I will not tackle here is utilitarian. If utilitarianism is right then my account of desert would be incompatible with it, as I am looking for non-consequentialist accounts of desert. I should mention that a utilitarian approach is

used by the only article in the housing literature applying philosophical approaches to desert and need in social housing (Fitzpatrick and Stephens 1999). However, they attempt to encompass desert by arguing for it to be factored in solely on the basis of society's utility gain in its feelings on seeing desert rewarded. This is normally seen as a "cheat" in traditional utilitarian terms, because it leads to problems of how to take account of feelings of people who want a non-optimal outcome, or who positively want a bad outcome. If all feelings are taken into account then we would have to count a racist majority's satisfaction in seeing an ethnic minority removed, or any non-utilitarian's satisfaction in seeing utility not being maximised. If only valuable feelings are to be taken into account, then it becomes circular, as utilitarianism must value any feelings which will lead to maximised utility. So the feelings do not add much when they support rewarding positive desert, and if they support penalising negative desert then they are only valuable to the extent that that punishment happens to be justified by consequentialist considerations rather than by non-consequentialist desert.

### **3.1 Children suffer**

Deacon (2004) offers as one of the hurdles for justifying conditionality the problem that the children of applicants are often the ones who suffer even though the justifications do not apply to them. However, this could be rephrased as saying they do not deserve to be homeless because of their parents (in housing it is often the other way round – parents who cannot control their children do not deserve to be homeless). The point though is that the force of the argument is that the "innocent" third party is undeserving of penalties, and children are not normally seen as responsible for their actions, at least at a young age. Just as a court considers the effect on an offender's children before passing criminal sentence, so it considers those effects before evicting. Equally we ought to tell social housing providers to look at all the members of the household and weigh up their responsibility for the problem, so that in some cases an undeserving adult could be saved by their deserving children.

While intentionality masquerades as not being about desert, it insists on looking only at the applicant, and remains an all-or-nothing test. That means an innocent adult can apply and be found unintentional, on the basis of having thought their partner was spending the money on rent rather than gambling. But it also means that the courts have decided children cannot apply in their own right (as otherwise no household with small children could ever be found intentionally homeless), and so their innocence does not come into it at all.

Desert therefore offers a way to improve on intentionality, to cope with this objection which is not open to other justifications of exclusion but does not leave us having to house everyone who has children no matter how much they exploit that status.

### **3.2 Goodin and "task responsibility"**

Goodin (1988 p296) argues desert has no place in social welfare, and that "needs trump deserts", on the basis of a distinction between "blame responsibility" and "task responsibility". He gives an example of a man falling from a window and a shop-keeper being able to put out her awning to cushion his fall – he is to blame, but only she can get him out of trouble, so she should do so. If a concentration-camp guard breaks his wrist beating prisoners, the next prisoner in line might be best placed to help, but we would not normally see that as conclusively meaning the prisoner must help. I do have a responsibility to help if your problem was wrongfully caused by me. I may have a duty if it was not caused by anyone, but my duty may be reduced or extinguished if it was caused by you. The more you were in breach of your moral duties in causing your own problem (from the camp guard down to the falling man, via the man who repeatedly jumps), the more my duty will be discounted. The mildest breach is generally where you have failed to look after yourself in such a way that you should realise I could not stand by and so you would be putting me to unnecessary

trouble. The only way to make sense of this is by using desert as a factor overlaid on top of the prima facie duty to help, in order to account for degrees of fault by the various parties.

Goodin also uses the example of two people brought to hospital from a car accident, where we feel the hospital should treat both the same irrespective of who caused the accident. This seems only to work on the question of immediate urgent treatment, and only for the doctors as professionals. It is less obvious why the tax-payer should fund the treatment of both, and in fact we do set up systems for the NHS to recover some costs from the guilty party afterwards. Where the need is lower and less urgent, and the degree of fault is greater and more readily discernible, then the effect of desert on the prima facie duty to help is greater. Medical examples are like other therapeutic services (like social services) in that healthy people generally do not see unnecessary medical treatment as a benefit, whereas a free house generally will be a benefit even if it is not needed (as would be social security benefits or education). There is therefore more scope for fault in deliberately trying to obtain unnecessary services.

### **3.3 Determinism**

This is not the place to enter into the debate on free will, determinism and compatibilism. I will assume therefore the common-sense view that we do have free will and are responsible for some of our actions. There remain two related objections to desert.

One is that criminality and anti-social behaviour are caused by poverty, not by the individuals. There may be a statistical link, and people who might not otherwise rob may be driven to do so by dire need or lack of other life options. But many poor people, including the victims of poor criminals, have the same poor background and do not resort to crime or anti-social behaviour. In particular they do not try to get ahead by robbing or cheating their fellow poor (see the points about socialism and “scabbing” below). Poverty may excuse some cases, but it is not a sufficient explanation and it does not help where one poor person pushes ahead of another, or puts their enjoyment above others’. In applications for social housing, the person abusing the system or indulging in anti-social behaviour is not thereby building more houses and is just taking the house, or the peace, from the equally poor and needy innocent person.

A more serious objection is that anti-social behaviour and rent arrears may be caused by mental health problems or by inability to control other household members. It may just be a question of a clash of cultures or simple racism (complaints about the smell of curry from next door). But each of these merely demonstrates that those people do not deserve to be treated as responsible for the problem, because it is not their fault. A system of adjustments for desert does need to investigate causes, just as the underlying needs-based system investigates needs. If anything this would be a practical rather than a principled objection.

Rawls (1971) offers a more fundamental objection to desert. You may be responsible for your actions but you are not responsible for, and do not “deserve”, your upbringing and other factors which gave you the strength of character to do the right thing now. Desert will fail because it cannot go all the way back. This might work in a system wholly based on desert, but is less forceful where desert is given its naturally parasitic function. It also fails to recognise desert as a matter of degree – the further back the desert can be traced, the greater the corresponding adjustment, all other things being equal. These two points can explain our reaction that Rawls is taking his point too far.

### **3.4 Needs/rights/Universalist arguments**

A rights culture took off in social housing with the Housing Act 1980 “tenants’ charter”. The idea of a tenant’s right to respect for their home is now well-entrenched even among those who proclaim need or egalitarianism as the main criterion. In law the right to keep an existing home has to some extent been promoted at the expense of the right to obtain a property to make into a home. So councils can no longer move their tenantry around like cattle whenever household sizes change or demand and standards change. A couple whose children have grown up cannot be made to move into a one-bed flat to make way for a family with children on the waiting list, and instead they can

stay in the three-bedroomed house where they spent twenty years bringing up their children and being part of the community,.

The philosophical basis for housing rights has not been much explored. Waldron (1993), in an exercise in demonstrating that all “social rights” are not necessarily subordinate to all “liberty rights”, argues for priority on the basis that next after a right to exist must come a right to exist somewhere. So it is wrong to leave the street homeless with nowhere to carry on essential functions of life like eating, sleeping or even urinating. He is less convincing when he claims this means a right to housing as traditionally conceived. He argues that rights to use of public facilities in parks and shopping malls are too vulnerable to removal to be appropriate to the priority of the right. But it is not clear that his argument justifies a right to anything more than the facilities of a prison-camp or a workhouse. Those facilities are not public or subject to withdrawal, but they are communal amongst those subjected to having to live there and are only for them (and indeed compulsory for them).

King (2003) has written more than anyone else on applying philosophy to housing. He looks to found a right to housing in the need to have a place to flourish in private, in a libertarian account which is not necessarily friendly to social housing.

The point of philosophical rights and needs is that they are meant to be so fundamental as to brook no opposition. The trouble with these arguments is that they assume our duties are limited to the minimum and that there is a problem if we then go below that. In fact we should be providing not only basic shelter but something viable as a home to people with neutral desert. If we are to have prisons then we must accept that only the shelter duty is inviolable (even prisoners are not to be put in tents in winter), whereas the right to make a home with your household is forfeitable. A system of desert in social housing should be graded and proportionate. Rights and needs advocates may or may not be correct to argue that a desert system should never leave anyone without even the minimum shelter. But if the minimum is prison-style shelter, then a desert system can go a long way in withdrawing services before it hits a clear minimum. Rights or needs will not preclude desert in the way sought by rights/needs-advocates.

### **3.5 Socialism**

Socialists could argue SHAD is based on the immorality of capitalist exploitation which results in inadequate housing. It is even more immoral for those who benefit from exploitation to divert blame to the poor by seeking an excuse in the poor’s minor immoralities. Theft by exploited people from capitalists or from the capitalist state is, if not morally justified, then at least neutral or distinguishable from other theft, as repatriation of what capitalists stole off the exploited in the first place. Solidaristic anti-capitalist action is the better way to achieve global repatriation, but does not rule out individual theft. People on benefits are poor as a result of the immoral exploitation which makes tax-payers rich. Tax-payers immorally refuse to fund benefits properly, and the meanness of the benefits system is one of the most immoral aspects of an exploitative system. Most people who cheat on their benefits do not become rich by doing so, but make up their standard of living to something more like what the benefits system should be funding anyway. There is therefore nothing particularly wrong in such fraud, and although it might be better to join in fighting for better benefits for everyone, it is hard to blame those who struggle to survive for not doing so.

However, even here desert seems to come in. In socialist trade unionism “scabbing” is doubly wrong because it is not only to join in the capitalist wrong of exploiting workers, it is also a betrayal of fellow workers and a rejection of the collective solidarity which is the only hope of justice overall. In the taxation-welfare sphere the equivalent would be stealing from other poor people (rather than say banks or shops), or plaguing them with drugs or intimidation, instead of joining in efforts to fight to tax the rich and distribute equitably among other poor people as well as yourself. There is an equivalent of “scabbing” in the double immorality of those who seek to alleviate their

poverty by making worse the poverty of others, both oppressing and betraying those with whom they should have solidarity. Those who burgle from others on their own estate are the most obvious example, also those who commit crimes against non-neighbours but then intimidate their neighbours into silence, or those whose enjoyment of drugs, alcohol, or loud music, is taken without regard to the nuisance caused to their neighbours. Labour local authorities have in many cases persuaded tenants associations that the local authority is a non-profit landlord, which represents the best that socialists can currently achieve, and that housing budgets are fixed by other forces, so that those who do not pay their rent (or make individual compensation claims for disrepair) are reducing the amount of money available for everyone else. So rent arrears and even disrepair claims (involving costs and achieving benefits which cannot be given to everyone) can be seen in the same light. Similar arguments can be applied to allocation of social housing. If supply is limited and not everyone can have what they want or need, then everyone should take an equitable share of the problem caused by the shortfall, rather than pushing their maximum claim at the expense of others. Those who exaggerate or worsen their needs to obtain housing are therefore effectively stealing it from those with greater needs, and those who plague neighbours with anti-social behaviour are frustrating socialist efforts to improve workers' lives. Desert is therefore compatible with this account.

### **3.6 Arguments related to punishment theory**

Several arguments against using desert to deny housing rely on treating this as punishment. This may have some weight when considering an absolute and permanent exclusion from a waiting list, but it is more problematic in tie-break cases. Where there is one house and two people, we would not say that the less needy one was being punished by being refused the house. Where their needs are equal and both are positively deserving, but one more so than the other, it would still not be sensible to say that the less deserving was being punished. Punishment is appropriate where a type of wrong generally deserves the same reaction for its own sake. In social housing we are not allocating by desert in the first place, but by need, rights or other factors, with an adjustment for desert. What we are doing is deciding between two candidates where one has to lose, which is very different from saying that everyone whose desert is the same as the losers should be refused housing. Punishment analogies are therefore often misplaced.

A system of criminal punishment is an oddity in moral philosophy. It calls for explanation because it involves deliberately inflicting evils which would otherwise be wrong to impose. For a consequentialist, this means that the world is left worse off as the direct result of punishment, so it cannot be justified unless there are further consequences whose benefit outweighs the disbenefit of the punishment. This motivates some of the major philosophical defences of punishment – deterrence, incapacitation and reform. All of them suffer from the common problems of consequentialism – it may sometimes be overall better to punish the innocent, inflict disproportionate penalties on the guilty, or punish on the basis of crimes people might commit in future.

The main deontological alternative is retributivism.

#### *3.6.1 Punitive housing policy singles out the poor*

One charge against government policy is that officials admit that anti-social behaviour occurs in all housing sectors, but focus their efforts on the social rented sector. Anti-Social Behaviour Orders can be taken out against anyone irrespective of housing status, home-owner, tenant, homeless, and are therefore not unfairly discriminatory. Measures aimed solely at tenants, such as eviction, and measures aimed solely at social housing applicants such as refusal of entry on the register, are targeted at one sector of the community, generally the more disadvantaged. For fairness they should be dropped or accompanied by other measures which recognise anti-social behaviour by home-owners, but this is not done (action on high Leylandii hedges was private members). This causes particular rancour where various houses on an estate have been bought under the right to buy. The

excuse that it is easier to control social tenants is not good enough, and it shows that really such moves are part of a programme of stigmatising the poor and blaming them unfairly for their own problems and the problems of society.

This accusation is most justifiably targeted against use of the social welfare system as a tool of the criminal justice system, one of the worst examples being the new policy of denial of social security benefits to those who breach community sentence orders imposed for criminal offences, as discussed in McKeever (2004). So far nobody has suggested refusing social housing purely as a part of a sentence for a criminal offence. It illustrates the difference between saying here is an opportunity to inflict some pain on you as punishment, so we will take it despite the lack of a connection, and here is something we were going to do for you for our own reasons, now should we pause to consider whether your crime, or the need to punish you for it, have a bearing on whether we should do it. In some cases it might be that we are positively looking for a punishment and housing provides a handy means, but in others it is just that the desert generated from the crime affects the claim to the good which is our primary concern.

In housing we are not seeking to explain a punishment system where the punishments are brought in for their own sake as something society would not otherwise do. We are just trying to allocate a good which we want to give out and are not giving for the sake of rewarding or punishing the applicants. And trying to decide, in some cases, which of two people should have one house, so that inevitably one of them will face the disbenefit, even in cases where they are equally deserving.

The person is not being punished. We would want to see punishment whether or not the person needed or wanted social housing. We are not doing anything worse than we do to people with less need. It is unfortunate when we only have one house for two people. If it was disproportionate then it would be equally disproportionate to give the house to someone with 100 points and refuse it to the one with 95 points, a mere 5% difference in what is very great need in both cases. If it was punishment then we would be punishing you for having a high level of points but being unlucky enough to be up against someone with more. We cannot refuse housing to people who do not apply for it, and we cannot give one house to two households. We are therefore looking for principles on which we will only judge social housing applicants and on which some of them must lose

### *3.6.2 King and alternative ways of reacting to desert-bases*

In retributive theories of punishment one question is whether crime deserves “hard treatment”, or just public condemnation. In social housing perhaps the desert-basis only calls for mere praise or blame, or perhaps separate action in the criminal courts, rather than adjustment of social housing assistance duties. King’s right to housing has a place for responsibility in its justification but he concludes that the private nature of housing (as the space in which you have your liberty to do as you please) means “criminality, harassment and abuse must be dealt with, but not through housing policy. This is an entirely inappropriate use of housing policy, which should be concerned with the provision, maintenance and, where necessary, the management of a stock of dwellings, and nothing more.” This is similar to medical arguments that doctors should not play God, but should treat all patients, and leave executing the guilty ones to the courts.

Socialists may argue the capitalist state has no moral standing to judge the deserts of the poor. But the attitude to “scabs” shows that workers betrayed are seen as having the standing to judge other workers.

Are there cases where I may be entitled to be satisfied that a wrong-doer has got what he deserves if a rock happens to fall on his head, but I may not be entitled to drop the rock myself? The fact that DP deserves to suffer seems not to lead necessarily to the conclusion that everyone else has the moral standing to impose that suffering. The weaker form of this claim is based simply on the

problem of whether others can be sure of knowing enough to decide the guilt and the level of punishment, or that a free-for-all would lead to anarchy, or that institutional rules should be followed which set out conventional allocations of roles which pick up force from our having agreed to them or some other source. Stronger forms claim that even where I know the facts and nobody would be led astray nor any institutional rule violated, I may still not have the standing to impose the suffering myself. One version is where I am equally guilty of the same wrong or worse, but am hypocritically ignoring that. The strongest form is where it is none of my business, as with concerns about private landlords evicting for domestic violence.

However, it seems perverse to argue that social housing providers are not the right people to look into how applicants ended up in housing need and what damage or benefit they may have done to others in housing need. What is required then is that DB should always be something relevant to housing. Even so there might be a role for a non-housing DB, if it works by a proxy, such as taking account of criminal convictions. Then the key judgment has been made by a separate body with the moral standing to do so, in this case the court.

### 3.6.3 *Disproportionate*

Desert is often accused of producing disproportionate results – denying fundamental needs because of slight moral deficiencies. In medicine, Harris(1985) argues that using desert to decide between patients would be equivalent to imposing a death penalty for minor differences in moral worth. In welfare, Goodin (1988 p294), quoting Churchill, focuses on the disproportionate direness of calamities brought on by minor fecklessness. Perhaps the worst housing example is intentionality in homelessness, where mere fecklessness can lead to a family remaining unassisted in extreme housing need once their initial emergency housing is up. But in reality the need should be reflected in the waiting list points, where fecklessness does not yet produce a discount (only positively wrong behaviour seems to do so). The problem therefore is just one of better setting the system to reflect the actual desert.

Disproportionality is a natural concern of desert because desert is normally, particularly in the context of punishment, linked with the idea that what is deserved should be proportionate to the basis of the desert – “the punishment should fit the crime”. Sometimes the “lex talionis”, or “eye for an eye” principle is set up as an aunt sally. It soon runs into trouble with squeamishness in crimes such as rape or torture, and into trouble with logic in crimes such as blackmail. Of course in reality all societies now operate criminal sanctions which are not of equivalence, but do vary by the gravity of the offence. They can be criticised as using an arbitrary measure, but again only by those who would rather do nothing than apply a rule of thumb.

Goodin also uses an argument based on probabilities which relies on the idea that someone who takes chances and is unlucky with them deserves only the proportion of their suffering which represents the probability. What he is missing is that that would only apply, if at all, where they are the only ones to suffer (he uses car accidents in which they hit someone else). The car-driver has no right to treat other people’s lives as factors to be fed in to a probability equation and set against his benefit in going faster.

All that this shows is that the social housing system is going too far, and breaching desert principles, when it inflicts penalties which are greater than deserved. Intentionality is far too all-or-nothing, and tries to disguise its moral element behind weasel concepts of causation and reasonableness. Instead it should be repackaged as desert and should produce a proportionate range of responses rather than simple refusal.

Going back to Jim and the captain, where Jim has the chance to shoot first. Shooting the captain afterwards could only be justified as punishment, and would be too severe. Shooting him before is

justified as saving the Indian where one or the other had to be shot, and the choice of the captain is justified because the Indian's innocence leaves normal non-killing duties intact whereas the captain's guilt means he does not deserve the benefit of those duties.

1. Neither Jim nor the captain nor the Indian should normally kill people.
2. Either the Indian or the captain will die.
3. Jim's decision will settle which one dies.
4. The Indian is not threatening to kill anyone, so as an innocent in this situation he does not deserve any discount against his claim not to be shot.
5. The captain is threatening to kill and as the guilty party in this situation he does deserve a discount against, rather than extinguishment of, his claim not to be shot.
6. That discount makes enough difference to justify the choice of shooting the captain now, even though it would not be enough to justify shooting him later when nobody has to die and there is no need to weigh one person against another.

This can be applied to anti-social behaviour and social housing waiting lists. If there are two homeless people and only one house, we will have to leave one of them homeless even though that is something we would normally avoid. One of the two has neutral desert, but the other has been responsible for anti-social behaviour. That difference can justify leaving that person homeless even, where it would not do so if there were two houses.

Goodin's counter-example is the car crash caused by one driver, where both are taken to hospital but with what is available either life but not both can be saved. Goodin claims we would not want the doctors to choose which to treat by who caused the accident. But many people would disagree, and of those who would agree many would limit it to cases where it is safer to have doctors and police not making quick and final judgements about who was at fault. If I as a non-medic witness an accident in which I am sure that one selfishly dangerous driver has caused it, both are in the same position, but I can only give my limited assistance to one, I would imagine I would feel justified in wanting to help the innocent driver rather than the guilty.

If I see a mugger and his unexpectedly strong victim struggle and fall into the path of a lorry, where I can only pull one away, I cannot be supposed to be neutral about which gets run over, so I am bound to save the victim even though I do not generally believe in death for muggers.

#### *3.6.4 Restoration arguments*

Restoration is most fully set out in punishment theory. But if criminals deserve punishment then restoration could explain desert, and if wrong-doing housing applicants deserve less favourable treatment in allocations, then perhaps restoration could explain why. But then any problems with restoration could affect housing too.

The criminal is obtaining an unfair advantage and the proper balance should be restored via punishment. This works most easily in theft and other offences where the criminal is using illegitimate means to obtain something that everyone else is trying to obtain legitimately, so the criminal is cheating to get ahead. One problem with restoration is that it only explains the civil justice system, not the criminal justice system. If all you do is make the criminal give the stolen item back to the owner, and perhaps pay their costs of hiring a replacement in the meantime (or interest), then you are simply doing what the civil justice system would do whether the taker had acted intentionally or just negligently, with no marker of the dishonest intent. The English civil system works strictly on the basis of compensating the plaintiff for their loss, without regard to the defendant's gain, but exceptionally allows exemplary damages where the wrong-doer has calculated that he will profit more by the wrong than the other party has lost and the court feels a deterrent effect is needed or a marker of the additional wrong. One of the main examples of a statutory version of this happens to be in housing where a landlord who illegally evicts a long-term tenant

from a low-rent home will see the value of the property go up through having vacant possession far more than the tenant's costs in finding another home.

But there are problems with restoration where the unfair advantage is taken to be what the criminal gained directly. So if we do not all want to torture others, then in what sense has the torturer gained an unfair advantage. Restoration theorists therefore tend to focus solely on the element of gaining an advantage by not sticking to the rules. The trouble then is that the severity of the case would vary solely with the degree of cynical selfishness shown in the rule-breaking, rather than in the harm done.

These problems would be relevant to use of restoration arguments to justify applying desert to cases where need is self-inflicted. For example, where two people in equal need are after the same house (or the same medical treatment), why should it not go to the one who has worked for their community rather than the one who has spent their time plaguing their community (eg with racial harassment, burglary, or non-housing-related serious crimes), where neither's need is caused by their good/bad activities?

However, for the reasons above, a housing system is not necessarily vulnerable to these criticisms of restoration, because it is not punishing as such. Instead some aspects are purely restorative. If you have cheated me of my place in the queue then you should be put back behind me. It is more relevant where there are two people and two houses, but the wrongdoer is treated as deserving a permanent bar. The weaker the connection between the wrong-doing and the person's position on the housing list, the more a restoration argument runs in to the same problems as it does in criminal punishment.

### **3.7 The practical problems in doing so are not fatal**

A set of practical objections include that desert is impossible or uneconomic to gauge accurately, or prone to bias, or brings the whole system into disrepute.

Accuracy is a problem raised by Hume (1751). But in any area of applied policy a solution is to insist on objectively measurable proxy tests, such as a criminal conviction or an eviction. Desert-checking would be uneconomic if there were so few really non-deserving applicants that it was better to spend the little money on housing them rather than the greater money it costs to detect and reject them. But that does not apply where two people are going for one house, and proxy tests can save much effort.

One charge against allowing desert into welfare is that it is the beginning of a slippery slope where, by agreeing to discuss the minor moral failings of the poor, we will end up in a right-wing fantasy world and never get the agenda back to the real issues. Political attention will be diverted from more important moral issues of tax-payers' failures, and tax-payers will be led to assume accepting that all need is the result of fecklessness, so it risks losing public support for SHAD. But ignoring the concerns of those who suffer from anti-social behaviour is more likely to lead to a loss of faith in SHAD.

Another version is that if you allow bureaucrats to assess desert you will end up with them slipping into judgmentalism and prejudice. A social welfare system which openly incorporated desert would have to use safeguards to ensure its staff did not slip into judgmentalism, and the attitude that success indicates virtue while failure must be related to vice. In housing the omens for legal regulation are not good. Loveland and many studies since have shown that homeless persons units are relatively untroubled by the minutiae of the legal safeguards which are meant to hedge intentionality against judgmentalism. Instead a culture of suspicion arises in which applicants are seen as playing clever games to get round the system, while the staff, with one hand tied behind

their backs, are trying to catch them at it. Currently many of the assumptions are racial, based on the idea that immigrants coming here to sponge off our housing are also more adept than locals at lying. Previously the assumptions were gender and class-based, and revolved around whether a woman kept a clean house or was slovenly. Those ugly attitudes are still around and are particularly strong in small rural communities. But openly confronting desert must be a more practical approach than trying to deny its relevance when we know housing officers will use the vacuum to bring in their own versions.

The Cullingworth Report, quoted above, argued that for those whose “mode of life is judged to be inadequate and in need of change, the tenancy of a council house provides a base on which the personal social services can build”. This is a consequentialist argument, which does not necessarily mean there is no forceful element of desert, but suggests it should be discounted in cases where its practical consequences are undesirable. The point though is that if the undesirable life-style is not the person’s fault, then desert will not stop them being housed. If it is their fault but they should be supported into changing, then desert still has a role. It means they do not deserve ordinary council housing where they can make already difficult lives worse for their innocent and needy neighbours, but that they should be given some form of separate supported provision such as the Dundee Families Project where their second chance does not have to affect others (or perhaps it should be in a middle class area where the misery caused will leave the neighbours still comfortably off). Otherwise the innocent poor are being made to shoulder an undeserved part of the burden of supporting the guilty poor.

The most extensive coverage of deservingness in housing is in Cowan’s *Homelessness: The (In-)Appropriate Applicant* (Cowan 1997), but the treatment is focussed on the history of policy in the legislation and takes a somewhat post-modern social constructionist approach in avoiding the question of whether there is real relevant desert which is being wrongly exploited or whether the desert claims are purely fabricated. He reviews the extensive research evidence that councils handling homelessness applications either ignore the legislation or cut it to fit the resources they have been able or willing to make available (reflecting the question of whether needs are dependent on resources which also arises in community care). He develops an argument that “defining the ‘appropriate applicant’ involves a consideration of two related themes: first, the applicant must be, in the opinion of the person(s) administering the legislation, morally deserving; second, ‘deservingness’ is given a further statutory overlay, which relates it to the supply of available accommodation” (Cowan 1997, p22). Including this second element, by focussing on appropriateness rather than just deservingness, ensures that “the true nature of the housing crisis, deliberately obfuscated by central government, becomes more apparent” (ibid). He seeks to “discard the historical and ideological baggage that has led some people to describe the homelessness legislation as ‘needs-based’ or as observing the distinction between the deserving and the undeserving. Both of these are outlandish myths ... What appears to be the crucial emphasis is upon whether the applicant is appropriate or not. That, in turn, requires consideration of the applicant’s moral blameworthiness, the supply of accommodation, and the use the applicant will make of an independent tenancy” (Cowan 1997, p40). This creates a method of grading applicants relative to each other to prioritise them for access to the reduced supply of housing. However deserving or undeserving you are, you will be housed or rejected depending on whether or not there is a property left over for you after housing whatever number of people happen to be more deserving, or less undeserving, than you. Later in the book he turns to the “inappropriate applicant” where he claims the government manipulated discussion away from an indefensible housing shortage by “constructing the types of person which society believes are so morally blameworthy that the issue of supply becomes irrelevant”. This absolute, rather than relative, inappropriateness would justify rejection of applicants even where supply outstripped demand, and justify rejection from the waiting list rather than just from the homelessness provisions (so it goes further than providing a mirror image of those who, in theory at least, must be housed as homeless irrespective of supply).

He documents the deviousness of the setting up of single mothers and asylum-seekers for this role, and the attempt to include squatters, travellers and beggars. His book came out before anti-social behaviour took over the agenda, and therefore he avoids the question of whether there is real harassment which justifies exclusion of the perpetrators. He looks at racial harassment but only from the question of the housing of the victim, not the housing of the perpetrator. In later work (Cowan and Gilroy, 1999) he turns to the ultimate anti-social behaviour, child abuse, but treats it as an issue of using the “homelessness legislation as a vehicle for marginalisation” of paedophiles, rather than a question of whether there really are paedophiles and whether they deserve social housing. Tantalisingly he finishes the book, talking about himself and a former co-author, by touching on the question of whether there is real and relevant desert “Neither of us could be described as ‘New left idealists’ – people can become homeless through their own fault – but the system conspires against so many people. Penalising those people and excluding others is the response of the politically arrogant.” (Cowan 1997, p215)

#### 4 CHAPTER 4 – CONCLUSION

Desert seems to have survived the commonest counter-arguments, and to merit a place as a factor in a non-utilitarian allocation of social housing assistance. The concept of desert I have outlined seems to match common views of non-philosophers. It avoids trying to explain all of morality, and allows other ethical forces to be adjusted to take account of the fact that any interesting ethical question involves several agents whose responsibilities affect the position of the person trying to decide what to do. In social housing it explains why it can be wrong to have to prioritise applicants solely by their need, without regard to how they came to be in that need, or more importantly whether they have advanced their own interests by trampling on the housing needs of others. It is an inherently graded concept, and it adjusts the primary principles rather than necessarily trumping them. So it does not require us mean-heartedly to leave feckless unfortunates on the street, but it does allow special treatment for those who use social housing as an opportunity to terrorise people more vulnerable than themselves. It needs to be fed with desert-bases, and it is up to us to ensure that illegitimate discrimination and prejudice are not substituted for proper judgments. Those who are disturbed by the anti-social behaviour agenda, and by its hi-jacking to make sweeping reductions in rights and provision, should not be frightened of a moral element in social housing. It is essential to recognise a moral duty to provide housing, so as to put some force into attacks on those who reduce provision and to avoid bad faith when asked to deal with real cases of harassment and abuse. Oppositionists need to give up arguments built on denying desert a legitimate moral role, and instead focus on building principled and practical arguments against abuses of the concept. Openly switching to a principle of desert would give an opportunity to iron out inconsistencies in the current approaches to intentionality and waiting list discounting or exclusion, and to ensure that objective and justifiable rules were set out instead of the current ad hoc efforts to pretend intentionality is not about moral appraisal.

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