

THE CASE OF THE SUBURBAN EXPANDERS

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A long time ago in a galaxy far, far away ...

Newgarth, the most powerful nation of the planet of Tearth, is staring down the barrel of an impending cataclysm, and it so happens that this impending cataclysm is roughly identical to the impending cataclysm that some commentators¹ contend the United States of America, here on Earth, is presently staring down the barrel of.²

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- 1 See, for example, James Howard Kunstler, *The Long Emergency: Surviving the Converging Catastrophes of the 21st Century* (2005); Richard Heinberg, *Peak Everything: Waking Up to the Century of Declines* (2007); Jeremy Leggett, *Half Gone: Oil, Gas, Hot Air and the Global Energy Crisis* (2005); David Strahan, *The Last Oil Shock: A Survival Guide to the Imminent Extinction of Petroleum Man* (2007); and Dilip Hiro, *Blood of the Earth: The Global Battle for Vanishing Oil Resources* (2007). It is to be emphasised the scenario to be described is only a very rough adaptation of the predictions of these (and similarly-minded) commentators.
- 2 It is intended that the 'Newgarth' mentioned in this paper is the same as that mentioned in Lon Fuller, 'The Case of the Speluncean Explorers' (1948-9) 62 *Harvard Law Review* 616. However, while it seems Fuller conceived of his Newgarth as situated on Earth many years from now, for the purposes of the present paper the reader is asked to conceive of Newgarth as situated on another planet altogether, albeit one almost entirely identical to Earth at the present time (and with an identical history to Earth). That is to say, the reader is asked to conceive of Newgarth as situated on the planet philosophers refer to as 'Twin Earth'. Twin Earth is identical to Earth in every way except for those specified in the context of the particular thought experiment in which the fictional planet is invoked. For the purposes of the present paper, the reader is advised that the Twin Earth on which Newgarth is situated is to be conceived of as identical to Earth in every way except that:
 - (1) the people on the Twin Earth on which Newgarth is situated refer to their planet as 'Tearth';
 - (2) the countries, individuals and peoples on Tearth sometimes bear different names and titles to their counterparts on Earth (for example, the United States of America is known as Newgarth on Tearth);
 - (3) constitutional arrangements on the two planets may differ (though not in ways that are meant to be important);
 - (4) the year is obviously calculated differently on the two planets (ie, 4360 on Tearth is equivalent to 2009 on Earth);
 - (5) the fictional events and cases described in Fuller's 'The Case of the Speluncean Explorers' are non-fictional on Tearth (though, unlike in Fuller's article, they exist alongside the events and cases that have occurred on Earth recently – the problematic implications of which the reader is asked to ignore as unimportant for the purposes of the paper); and, most importantly,
 - (6) Newgarth really is staring down the barrel of the impending cataclysm to be described, while it can only be said that some commentators assert that the United States of America is staring down the barrel of such an impending cataclysm (or at least one similar in nature).

It is intended that the use of the Twin Earth fiction in this paper to frame the problem it addresses will present the circumstances faced by the Newgarthians as not entirely fanciful, but rather as circumstances that may in reality be facing us Earthlings at the present (or a future) time. However, it is also intended that the use of the Twin Earth fiction will emphasise the hypothetical (and sometimes fanciful and simplistic) dimension to the scenario to be described. The use of Fuller's mode of presentation in 'The Case of the Speluncean Explorers' (ie, a range of opinions given by fictitious characters) in particular is intended to distance the writer from the opinions to be given. In the writer's view it is unnecessary (and would be unwise) for him to indicate which opinion he is persuaded by. However, it is to be emphasised that the actual

IN THE OFFICE OF THE PRESIDENT OF NEWGARTH, 4360

The newly-elected President Shipman has called together 11 of his most trusted friends and advisors³ to hear their opinions on a proposal that has been put before him for responding to the impending cataclysm. The nature and scale of the impending cataclysm is much disputed in the public arena, with some commentators denying there is any danger at all in the foreseeable future of anything amounting to a cataclysm, and others predicting a convergence of catastrophes in the immediate-to-near future that will result in unimaginable death and suffering. The vast majority of Newgarthians though – while aware of certain emerging and existing crises that need to be addressed – dismiss the predictions of doom out of hand, and instead assume that a solution (probably a technological one) will be found for their problems before any serious consequences unfold. However, President Shipman, following his election, has gained access to classified information and resources that strongly support the predications of the doomsayers and indicate, undeniably, that there is no realistic hope of a conventional solution being found before it is too late to avoid the worst of what is predicted.

As one would expect, there is still some room to dispute these findings. However, for the purposes of their present meeting, President Shipman has asked his assembled friends and advisors to accept, without question, the accuracy of the following assessment of the situation:

For many decades now, Newgarth has been undergoing a massive suburban expansion, made possible by our access to cheap and abundant oil and gas, and a confluence of other favourable circumstances. Newgarth is now entirely committed to a way of life and an economy built upon a web of technologies, arrangements and infrastructure that depend overwhelmingly on our access to cheap and abundant oil and gas. However, worldwide oil and gas production have peaked and will soon decline steadily. The decline in the supply of oil and gas to Newgarth though will be rapid, since we ourselves only produce a fraction of the oil and gas we currently consume, and it is predicted that our ability to import oil and gas is under imminent threat of being suddenly and overwhelmingly impeded by the actions of governments and terrorist organisations that are much more proximate to the world's major oil and gas reserves. Our own oil and gas production is well past peak, and it is predicted that it will simply collapse under the pressures arising out of the sudden unavailability of imported oil and gas (due, in part, to the difficulties associated with extracting oil and gas from aging reserves, and a failure in recent years to invest in the infrastructure used in production).

The imminent sudden disappearance of cheap and abundant oil and gas from Newgarth will be cataclysmic. The suburban living arrangement will become unviable almost overnight, and an orderly transition to an alternative living arrangement will not be possible for the large parts of the country that do not have the geography and climate to accommodate the sudden need to localise and de-industrialise food production. And, of those regions that could accommodate this need, it is predicted that all of these will

purpose of this paper is not so much to set out a range of opinions on whether the particular proposal to be discussed is justified in the particular circumstances to be discussed, but rather to set out (without getting bogged down in jargon and detail) a range of opinions that roughly represent different underlying theories of justice (or conceptions of the principles to be applied outside the 'circumstances of justice') as applied to a situation of approaching extreme scarcity. It is hoped that by presenting such a range of opinions, an appreciation is gained for how the prospect of extreme scarcity challenges traditional theories of justice.

3 It is to be emphasised that President Shipman and his 11 most trusted friends and advisors are fictional in the sense that their views are not meant to reflect those of any real-world counterpart.

either be already too intensively populated for the transition to be orderly, or would soon find themselves overwhelmed by the influx of displaced persons and foreign immigrants, so that they would face the same problem. A disorderly transition in this context can be taken to mean that the transition that will need to take place will be accompanied by the mass displacement of persons, mass starvation, and a mass proliferation in violence, along with many other disastrous consequences.

It is further predicted that the turmoil that will be caused by the sudden disappearance of cheap and abundant oil and gas will be followed by armed conflict in the Southwest between Newgarthian Huitzilites and other racial groups, resulting in the loss of the region to the Huitzilites. It is predicted that the other regions outside of the Northeast will also become separated from Newgarth. A form of serfdom and explicit institutional racism is predicted to re-emerge in the Southeast under a form of government resembling a theocracy. Similarly, it is predicted that in the Central West a handful of religiously-oriented self-governed groups, not adverse to armed aggression towards other races and religions, will successfully claim large tracts of territory. It is predicted that the Northwest will descend into anarchy due to its vulnerability to foreign invasion (in particular from the Sericans and Huitzilites), and its isolation from the centre of government in the Northeast. The Northeast itself is expected to resort to long periods of martial law in order to re-order daily life and prevent racial conflict within its own confines.

There is no remotely realistic prospect of finding or substituting an alternative form of energy for oil and gas within the given timeframe. On the one hand, there is not sufficient time to make the necessary changes to the infrastructure; and, on the other hand, there is no adequate alternative to oil and gas, or prospect of finding one in the given timeframe. The production of all the existing alternatives to oil and gas depends substantially in one way or another on access to cheap and abundant oil and gas (or at least the stability and infrastructure this access supports). The imminent sudden disappearance of cheap and abundant oil and gas simply makes any large-scale attempt to change to reliance on an alternative form of energy unviable. And the available alternatives cannot anyway be produced on the same scale as oil and gas, or are much less adaptable to be used within the existing infrastructure and suburban living arrangement.

This assessment of the situation (in its full version) was provided to President Shipman by a committee he had secretly assembled for the specific purpose of authoring such an assessment (the so-called Committee to Review and Assess our Position). Upon receiving the assessment, President Shipman passed it on to another secretly-assembled committee charged with bringing back to him a proposal for responding to the impending cataclysm (the so-called Committee to Respond to Unspecified Disaster). President Shipman has asked his 11 presently-assembled friends and advisors to accept – again, without question – the following proposal, which was brought back to him by the last-mentioned committee, as the only alternative to inaction that would change (in a more than trivial way) the fate of Newgarth:

The imminent sudden disappearance of cheap and abundant oil and gas from Newgarth will – unless we take drastic action – result in unimaginable suffering, a mass proliferation of criminal and violent behaviour, and the loss of territory, unity, and (to a large extent) our core rights and freedoms. Starvation and death will be everywhere, and mostly it will only be those willing to kill and steal that will avoid death. The population will eventually come down to a level that can be sustained under the new conditions, and an orderly society will gradually re-emerge. But the disorderly nature of the transition will result in the loss of much that is good that could otherwise have been saved, and very much more suffering, death and violence than would otherwise have occurred.

An immediate orderly transition to a reduced population, a halt to Huitzilite and Serican immigration, and the nullification of the twin threats of Newgarthian Huitzilite separatism and Serican invasion would make possible an orderly, peaceful and relatively painless transition (through major restructuring) to a sustainable and relatively affluent

post-peak-oil-and-gas Newgarthian society that would keep its territory, unity, and core rights and freedoms intact throughout. The removal of these pressures and threats would provide us with the necessary time and security to develop alternative forms of energy, construct the infrastructure needed to generate and utilise these forms of energy, deconstruct the suburban living arrangement and our cheap-oil-and-gas-dependent lifestyles, and achieve the security and solidarity necessary to see us through.

We do have the means at our disposal to achieve the removal of the abovementioned pressures and threats that would make possible the sort of orderly transition to a post-peak-oil-and-gas Newgarthian society just described. Military scientists have developed a highly lethal bioweapon called BW11 that will only infect persons with genetic markers that are unique to Huitzilites and Sericans. If BW11 were deployed in Newgarth, the infection would spread rapidly, killing 95 per cent of the Huitzilites and Sericans living in Newgarth. Clearly the infection would spread beyond Newgarth to Huitzili and Serica. However, there is a vaccine, and, optimally, the distribution of this to Huitzili and Serica would be timed to achieve a 35 per cent reduction of their native populations. This course of action would not only benefit Newgarth in the ways discussed, but would also provide Huitzili and Serica with similar benefits.

The deployment of BW11 would result in a much quicker reduction in world population than inaction. However, it is predicted that, along with all its other benefits, the deployment of BW11 has the benefit of ultimately resulting in a much lesser reduction in world population, compared with inaction (before the world population level becomes sustainable). The deployment of BW11 would, of course, bring death to a different distribution of persons than inaction (and much sooner), but the physical suffering caused by BW11 infection is less severe than that caused by the causes of death that would be most common if the impending cataclysm were allowed to unfold. Moreover, the occurrence of death and suffering (following the deployment of BW11) would be much more concentrated in terms of time, and geographic and social distribution (compared with inaction), and the necessary resources would be free to limit the wider public's exposure to the carnage, so the number of survivors directly affected would be far fewer than would otherwise be the case. Finally, most birds can act as a host for BW11, so its appearance and spread could be made to seem like a spontaneous natural phenomenon, and the suspicion that this government developed and deployed it would be perceived as no more than a conspiracy theory.

President Shipman: The proposal that has been put before me is plainly abhorrent, but it is equally plain to see that, on the face of it, the consequences of failing to implement the proposal would be much worse. Genocide though is regarded as the most heinous and unforgiveable of crimes a state can commit.⁴ Of all the many atrocities in recorded history, there is no question that the Holocaust, and then other instances of genocide, are at the top of the list of 'most evil' in the minds of most people. This government, in particular, has strongly condemned instances of genocide, and even invoked these in some cases as a justification for war and armed intervention. So for this government to itself engage in a form of genocide – and on the scale suggested – would be scandalous, and would appear hypocritical. It would not, however, be engaged in, in this instance, for the reason the crime attracts such universal condemnation – that is, it would not be engaged in for the reason that those discriminated against are regarded as inferior to the rest of us, or as inherently more troublesome, or for any other ideological reason; it

4 The *Convention on the Prevention and Punishment of the Crime of Genocide*, opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951) in its Preamble describes genocide as 'an odious scourge' and 'a crime under international law, contrary to the spirit and aims of the United Nations and condemned by the civilized world'.

just happens that the deployment of a race-specific bioweapon that targets Huitzilites and Sericans is, by far, the means and target of mass murder that would best avert the impending cataclysm.

The Huitzilites and Sericans do represent a real and serious (albeit future) threat to the security of Newgarth, but there is, as yet, no declaration, or even sign, of war or aggression. Moreover, the majority of those that would be killed by BW11 would not be potential combatants, and many would be loyal Newgarthian citizens. Also, predicted Huitzilite and Serican incursions into the Northwest are not expected to be coordinated manoeuvres by the Huitzilite and Serican militaries to acquire territory, but rather desperate bids by armed and unarmed bands to seize provisions or find refuge. And, any actual confrontation with the Huitzilite or Serican militaries in the Southwest or offshore would most probably not be a simple case of countering foreign aggression, but rather a matter of mutually defensive, or reasonably pre-emptive, action for both sides (so great would the level of apprehension be). Overall, the threat the Huitzilites and Sericans represent is not primarily a military one. Rather, the Huitzilites and Sericans represent the simple threat of normal human need and fear in a situation of extreme scarcity. So the deployment of BW11 cannot reasonably be justified as an act of self-defence (according to the usual understanding of the concept). Nonetheless, its deployment is plainly necessary for the preservation of Newgarth as a free and democratic society occupying its current territory, and is further necessary in order to minimise overall death and suffering.

Our situation, in my view, is like that of the spelunkers in the famous *Case of the Speluncean Explorers*:⁵ we have ventured down a path that has trapped us so that we now must choose between the death of the greater number of us and the murder of the fewer.⁶ Of course the respective situations are rather more complicated than that, and no doubt different in important ways, but they also seem to me in essence the same. Though I immediately observe two important differences: the first is that, in the present case, inaction will result, not just in the death of the greater number, and in greater suffering generally, but also in the loss of core rights and freedoms, to varying extents, for the survivors; the second difference I observe is that, as Chief Justice Burnham pointed out in *Spelunkers II*,⁷ the spelunkers had four alternatives to killing one of their number (other than inaction). The spelunkers could

5 Fuller, above n 2.

6 The case tells the story of a group of spelunkers (cave-explorers) trapped in a cave by a landslide. As they approach the point of starvation, they make radio contact with the rescue team. Engineers in the rescue team estimate that the rescue will take another 10 days. The spelunkers describe their physical condition to physicians in the rescue camp and ask whether they can survive another 10 days without food. The physicians think this very unlikely. Then the spelunkers ask whether they could survive another 10 days if they killed and ate a member of their party. The physicians reluctantly answer that they would. Finally, the men ask whether they should hold a lottery to determine whom to kill and eat. No one in the rescue camp is willing to answer this question. The spelunkers turn off their radio, and some time later hold a lottery, kill the loser, and eat him. When they are rescued, they are prosecuted for murder, which in Newgarth carries a mandatory death penalty.

7 Peter Suber, *The Case of the Speluncean Explorers: Nine New Opinions* (1998) 39. *Spelunkers I* is Fuller's 'The Case of the Speluncean Explorers'. *Spelunkers II* is a later hearing of the same case created by Suber.

have: (1) waited for the weakest of them to die of natural causes; (2) consumed inessential parts of themselves; (3) tried the radio again; or (4) waited a few more days.

In the present case, the first option will not help for several reasons, including because, while starvation was the only threat the spelunkers had to address, it is only one of several we must address. The second option, taken literally, will not help for the same reason; though this option may be taken more figuratively as analogous to that of requiring *all* Newgarthians to make some individual sacrifice that is lesser than what would otherwise have to be forced on *some* Newgarthians (and foreigners) to achieve the same result. I have been advised that order and unity may be preserved in Newgarth without deploying BW11 through the imposition of martial law and mass conscription, and the diversion of resources from the justice and health sectors in particular. Most core rights and freedoms would have to be substantially suspended; trials would have to be conducted summarily; those convicted of crimes punishable by imprisonment would have to be executed; and the elderly, sick and disabled could not be cared for by the state. But, whether or not this option should be preferred to the deployment of BW11, I am advised that – at least until things get desperate – there would be too little co-operation and too much resistance in society at large to implement this option, and once things do get desperate the inclination to self-sacrifice will have already been substantially overtaken by a selfish desperation that will be inconsistent with the co-operation necessary to implement the option in question. One need only look at the response to the threat of global warming to see the level of psychological resistance there is to lines of thought and action that would dramatically alter our way of life and require substantial self-sacrifice. Reason alone cannot overcome that resistance, and we cannot afford to wait for desperation to take hold. Historically it has taken a Pearl Harbour or 9/11 to overcome such resistance, but there is no expectation of such an attack on Newgarthian soil at this time, and manufacturing a sufficiently substantial one at this time when the appetite of Newgarthians for war is largely exhausted is likely, in our nuclear age, to lead to consequences more appalling than the deployment of BW11 (or even the unfolding of the impending cataclysm) would cause.

The third option the spelunkers had open to them was to try the radio again. It seems that Chief Justice Burnham believed the spelunkers were obliged to at least ask the medical experts on hand about the viability of the second option. In the present case though, we have already obtained expert opinion about the viability of alternatives.

The fourth option the spelunkers had open to them was to wait a bit longer. The spelunkers were of course waiting for rescue. Some see us, as a society facing an impending convergence of crises, as likewise waiting to be rescued – rescued by technology – but, based on the information we have at hand, it is not rational for us to wait for a technological fix.

It being the case that our present situation is like that that was faced by the spelunkers – and not at all a better situation, but rather one that is worse because of the threat to the core rights and freedoms of survivors and lack of alternative courses of action – it seems that public opinion of the actions of

the spelunkers should be able to be understood as the opinion that the public would have of the proposal to deploy BW11 (if it were consulted, and if it appreciated the true nature of our plight and were able to be impartial and unprejudiced). At the time of *Spelunkers I*, 90 per cent of the public wanted the four defendants acquitted,⁸ and similar support was enjoyed by the defendant in *Spelunkers II*.⁹ Likewise, in the English case of *R v Dudley & Stephens*,¹⁰ which also involved the murder and consumption of one man so that a greater number could live, the public was entirely on the side of the defendants.¹¹ I must tell you that I am inclined to interpret these facts as indicative that the public would support the deployment of BW11 — that is, *if* it were consulted, and *if* it appreciated the true nature of our plight and were able to be impartial and unprejudiced. And, I am inclined to see it as my duty as President to implement, in these circumstances, that course of action which enjoys the support of the majority of the public. So, I must tell you that I am inclined, at this initial stage, to authorise the deployment of BW11.

It appears that when the choice is between the murder of the fewer and the death of the greater number, the majority of the public would endorse the former option. As I say, I am inclined to see it as my duty to implement that course of action endorsed by the majority of the public, which, in this case, appears to be the deployment of BW11. However, I wonder whether my thinking on this issue is too simplistic, and I wonder whether the deployment of BW11 would be consistent with justice. Thus I have asked you here for you to give your opinion on what justice dictates in this situation, and I now invite you to give it.

Congressman Cullen: Can you first clarify something for us Mr President: I can appreciate the clear advantage of not taking a referendum, and generally maintaining secrecy around this issue. Making these considerations public would most probably bring about prematurely the consequences that the deployment of BW11 would be meant to avoid. But you suggest that even if that were not so, a referendum might not deliver a result endorsing the deployment of BW11. I can appreciate that this is due in part to the general lack of knowledge and acceptance of the true nature of our plight, but you suggest that partiality and prejudice would also skew the result. Can you clarify what sort of partiality and prejudice you are referring to Mr President?

President Shipman: Clearly no member of the public could claim to be impartial in relation to the deployment of BW11, since every member of the public would be either positively or negatively affected by its deployment to a significant extent. Whereas only a very limited section of the public that had an opinion about the *Spelunkers* cases¹² were affected by how the spelunkers were judged. While it is perhaps true that anyone may conceivably find themselves in a similar position to that of the defendants in the *Spelunkers*

8 Ibid 26.

9 Ibid 36.

10 (1884) 14 QBD 273.

11 Suber, above n 7, 2.

12 *Spelunkers I* and *Spelunkers II* in Suber, above n 7.

cases or in *R v Dudley & Stephens*,¹³ the likelihood of this is so small that it seems this possibility did not erode the impartiality of the general public. That being so, we should be able to interpret the public's reaction to those cases as indicative of its impartial opinion that murder is justified when it serves to preserve the greater number of lives.

As for the alleged prejudice that would degrade the value of any referendum in the present case, there would inevitably be several prejudices that would incline a not insignificant portion of the public to take an immoral or irrational position for or against the deployment of BW11. For example, racism is not the reason that deployment of a race-specific bio-weapon has been proposed as the alternative to inaction in our situation, but a portion of the public would inevitably endorse the deployment of BW11 for racist reasons. Similarly, a portion of the public would inevitably oppose the deployment of BW11 because they refuse to accept that there is no racist motivation. There would also inevitably be a raft of individuals that would oppose the deployment of BW11 because they refused to accept the truth of the nature of our plight, or because they hold convictions that would lead them to welcome, or be resigned to, the impending cataclysm and the suffering it would entail. The public that judged the defendants in the *Spelunkers* cases, and in *Dudley & Stephens*, were not subject to such prejudices, so it is better to trust their opinion than any opinion the public could be expected to have about the deployment of BW11.

Congressman Cullen: There seems to be a degree of contradiction in your reasoning Mr President. On the one hand you say that you are inclined to see it as your duty to implement that course of action endorsed by the majority of the public, but on the other hand you are searching for an impartial and unprejudiced consensus about the course of action to take. The virtue of a government implementing a course of action endorsed by the majority of the public lies in the fact that the interests of the greater number of citizens are thereby furthered. The interests in question will be partial by their very nature, and very often prejudiced too to a greater or lesser extent. If you attempt to remove the partiality and prejudice from public opinion, then you are no longer acting to further the interests of the majority, and so your action loses the democratic character that its virtue resided in.

Impartiality and unprejudiced reasoning are virtues that are at least as important to justice as majoritarianism, but they are distinct virtues. Indeed, as someone persuaded by John Rawls' theory of justice, I would suggest that impartiality and unprejudiced reasoning are principles more applicable to the determination of questions of fundamental justice, such as questions of rights, than is the principle of majoritarianism. Majoritarianism would seem to be a principle more applicable to the determination of secondary matters, such as the selection of a head of state. It is perhaps an intuition too foundational to be capable of justification that questions of rights should be determined by the requirements of fairness, rather than by the inherently partial and inevitably prejudiced interests of the majority. And I do think we are confronted with a question of rights: should we actively violate the

13 (1884) 14 QBD 273.

right to life of the Huitzilites and Sericans by deploying BW11, or should we passively violate the right to life and other core rights and freedoms of the greater number? This question, like any other concerning fundamental justice, can be answered by reference to Rawls' two principles of justice, specifically the first, which states that:

Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.¹⁴

Rawls' first priority rule adds some important details in the present context. This states that:

The principles of justice are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) a less extensive liberty must strengthen the total system of liberty shared by all, and (b) a less than equal liberty must be acceptable to those citizens with the lesser liberty.¹⁵

Rawls' two principles form his so-called 'special conception of justice'. As you may be aware, Rawls also had a 'general conception of justice', which his special conception built upon. His general conception of justice consisted of one central idea that derived from his original position thought experiment: 'all social primary goods – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any or all of these goods is to the advantage of the least favoured'.¹⁶

Most of you will be familiar with Rawls' original position thought experiment, so I won't set it out in any detail. I'll just say, for the benefit of anyone not familiar with the thought experiment, that these principles Rawls derived are supposed to be those that would be agreed upon by strictly rational and self-interested individuals that are placed behind a veil of ignorance that prevents them knowing any morally-arbitrary characteristic they possess in the society they are planning for. So they do not know their race, religion, social class, gender, skills, talents, and certain other characteristics Rawls thought that knowledge of would lead to partiality. Essentially, Rawls' principles of justice are meant to result from the purely rational choices of hypothetical individuals whose partiality and prejudice have been entirely stripped away. The fact that the choices are purely rational, and not in any part moral, means that agreement is not prevented by the conflicting moral intuitions that one would expect to find in any random group of individuals.

A key (and sometimes controversial) component of the original position thought experiment is that the hypothetical individuals behind the veil of ignorance are risk-averse in the choices they make. This is what leads to the provision within the principles that any departure from equality must be to the advantage of the least favoured. In essence, the hypothetical individuals are supposed to find it most rational to, in a sense, assume they will probably be among the least favoured in society, and so they frame the principles of justice so that they maximise the minimum allotment of social primary goods.

14 John Rawls, *A Theory of Justice* (revised ed, 1999) 220.

15 Ibid.

16 Ibid 54.

The question with which we are faced should be solved with reference to reason, not with deference to the mob. The perennial problem is, of course, that, in respect of questions of justice and morality, reason will lead different persons to different conclusions. So it is the case that Rawls' theory of justice is far from uncontested. But it is, nonetheless, the most influential and prominent theory of justice of recent times. It, furthermore, incorporates many concepts that already have an accepted place in the Newgarthian constitution and in Newgarth's social policy. This is due, in part, to the fact that Rawls' theory of justice is the modern embodiment of liberal and contractarian doctrines that the writers of the Newgarthian constitution drew their inspiration from. So it seems we would be entirely justified in resolving the question before us with reference to Rawls' two principles.

It is my contention that applying Rawls' two principles to the question before us would return the answer that we should deploy BW11. The permissibility of deploying BW11 represents a limitation on the right to life generally, and also – in its actual deployment – an unequal distribution of that right. The right is limited for *all* citizens in that it *may* be violated to protect the right to life of the greater number, and it is distributed unequally in the sense that, while the limitation on the right will apply to all citizens, only some will actually be deprived of their lives if BW11 is deployed. However, this limitation and inequality is permitted by Rawls' two principles because the limitation strengthens the total system of liberty shared by all, and the inequality would be acceptable to the worst off. Our system of liberty would largely collapse if we do not deploy BW11. And, when I say that the inequality would be acceptable to the worst off, I mean that a hypothetical person in the original position, who assumes they will be among the worst off, would accede to the deployment of BW11 because the worst off would die whether or not BW11 is deployed, but less would die if BW11 *is* deployed. So, if the hypothetical person considered their likelihood of being alive under each scenario, they would find that they have a better chance of this if BW11 *is* deployed. And, being risk-averse, they would accede to the deployment of BW11, because their life is a prerequisite to every other good they might enjoy or achieve, and so they would not increase the risk to their life for anything that might be gained by not deploying BW11.

Unsurprisingly, I find Rawls' theory of justice to be the most compelling theory of justice, but even if *you* do not find it more compelling than other theories (and even if you do not accept my argument for adopting Rawls' theory regardless of whether you find it the most compelling), I would suggest that it has a special advantage in the present context because, in applying it, the choice to deploy BW11 is made, in a sense, by hypothetical individuals who do not know their own race. This is an obvious advantage in relation to a choice vulnerable to the charge of being influenced by matters of race.

Justice Jones: It seems to me, Congressman, that you could have arrived at the same conclusion by a much more direct route. If we accept that we are faced with a simple question of rights, then it is straightforward that the right to life requires that BW11 be deployed, since inaction will lead to the greater loss of life.

Attorney General Allitt: You seem to be misunderstanding the notion of a right Your Honour. Rights belong to individuals; they are not aggregate entities. Each person killed by the deployment of BW11 would have their right to life violated, regardless of the fact that greater loss of life would be prevented by deploying BW11.

The invocation of a right as an injunction to action or inaction can do no more than indicate the need to justify the proposed action or inaction against the reasoning that set up the right. Congressman Cullen justified the violation of the right to life represented by the deployment of BW11 by showing that the reasoning that leads Rawls to endorse a right to life, also supports the deployment of BW11.

You seem to have confused the right to life with (what I can only think to call) the principle of the sanctity of life. If the sanctity of life is the overriding concern, then you are right that we should deploy BW11, since the alternative will lead to the greater loss of life. But the principle of the sanctity of life is but one of a number of principles that we could pull out of the air. What about the principle of 'thou shalt not kill'? The application of that principle would clearly speak strongly against the deployment of BW11.

There are in fact a multiplicity of principles that may be invoked in the present context. Some will support the deployment of BW11, others will not. Rawls' theory of justice is a particularly complex working through of certain principles, but at its base it rests on principles no more foundational than others that have been worked through to arrive at competing theories of justice. It seems that in theorising about justice, all theorists that manage to construct a coherent theory of justice must get to a point where they come back to the foundations of their theory and then are reduced to appealing to our moral intuition to tell us that one principle is to be preferred to another. Congressman Cullen dealt with this problem by appealing to the fact that Rawls' theory of justice is the most influential and prominent theory of justice of recent times, and further incorporates many concepts that already have an accepted place in our constitution and social policy. I agree with the communitarian flavour to the argument, but I don't agree with the conclusion.

Rawls' theory of justice is very influential and prominent in academic circles, and it does align with a number of concepts in our constitution and social policy, but that is not enough. Widely accepted ideas and existing practices that are rooted in the social order possess a goodness (because they are rooted in the social order) that is independent of their intrinsic character, and which derives from the social stability they provide, and the corresponding meaningfulness they give to human life. Aspects of Rawls' theory of justice are widely accepted and reflected in existing practices, but the abstract theory, and Congressman Cullen's argument for the deployment of BW11, are far from widely accepted, and their implementation would be entirely out-of-step with existing practices and ideals.

Our society abhors genocide and the killing of innocents. It would eventually come out that our government deliberately deployed BW11, and then we would see the despair and disorder that results from ignoring – to so great an extent – the ideas and practices that tie our society together.

Population control of this sort is so contrary to our accepted ideals of humanity and community that it would fundamentally disturb the social order. We cannot treat people as mere means in this way; not because that is a principle that must not be violated, but because to do so would be so alien to us as a society that it would alienate us from the social order. One need only think how an abhorrent act by a parent for the greater good of the family can sever the familial ties when uncovered. The family may have been worse-off for the parent refraining from the act, but the familial ties would have remained intact. The integrity of the family unit gives meaning and order to the lives of the individual members of the family. The familial ties that uphold the integrity of the family unit are built upon shared understandings and familiar responses and rituals. If a parent fundamentally breaks away from these things, the children will experience some level of despair and disorder until they either reinterpret and reorder themselves in relation to their *new* family unit (new, because the parent's actions have altered the composition of the familial ties), or start to interpret and order themselves in relation to an entirely different group of persons (whether it be a small group, such as another family, or a large and dispersed group, such as the wider community).

When it became known that our government deliberately deployed BW11, the curtain would lift and Newgarthians would see their government, and to an extent themselves, as the moral equivalent of Nazis. The ability of Newgarthians to trust their government will have been shattered, and they will perceive the security of their lives as contingent on some abstract utility. The shock will inevitably bring down the current social order, and our system of rights and freedoms with it, and so entirely defeat the purpose of deploying BW11. Just as the continuity in the integrity of a family unit must be violated by any act of a parent that fundamentally breaks away from core areas of commonality and familiarity, the integrity of a society must be violated by any such act committed by a government. Whatever it is we save by deploying BW11, it will not be the Newgarth *we know*, because integral to the Newgarth *we know* is an absolute prohibition on, and abhorrence of, the sort of genocide, population control, and general selfishness and cowardice represented by the deployment of BW11. But your duty, Mr President, is to save the Newgarth *we know*, for that is the task you are charged with, and it is the Newgarth *we know* that has given you your power, and so you cannot deploy BW11.

Our approach to the impending cataclysm must be based on existing practices and be reflective of accepted ideas and ideals. Our society's conscience excused the spelunkers, and it has accepted the costs of just war, but it will not tolerate genocide and the mass killing of its own citizens. The general public will not look upon the deployment of BW11 as analogically equivalent to the *Case of the Speluncean Explorers*, but will rather judge it categorically as genocide equivalent to the Holocaust. The general public, moreover, are not compelled by reason to excuse their government for desperate acts of self-preservation that they may excuse in individuals. The general public expect highly principled, even heroic, action from their government in times of crisis. They may even expect the impossible; it may not be rational or

reasonable, but these are not the qualities that bind societies together, and so exclusive dedication to rationality and reason does not result in good, successful political leadership.

Our society's conscience prescribes that in the present circumstances we band together, and not turn on our own citizens. If doing so leads to cataclysm, then at least the integrity of our society will be preserved. Even if the territory of Newgarth is fractured, and despotism presides in some regions, at least the communities that exist will retain the sort of integrity that gives meaning to human existence by giving the members of the community a place and identity within the community, and a set of ideals and practices to unite behind.

General Goldstein: Could the despair and disorder that would result, if it came out that our government deliberately deployed BW11, be any worse than that which would result from inaction? You suggest it could, but I see a lot of speculation in what you say, and I anyway understood that we were to accept without question that the deployment of BW11 would result in less suffering than inaction. Moreover, your notion that it would eventually come out that our government deliberately deployed BW11, and chaos would follow, seems much too simplistic. Even in the unlikely event that actual documents confirming that our government deliberately deployed BW11 got into the public arena, I don't see our society suddenly falling apart at the seams. Even if a lot of people wanted to make a lot of noise about the matter, and make a lot of changes, at the end of the day, people are more interested in moving forward with their lives, so they're not going to suddenly start acting in a way that will make it impossible to move forward. Besides, a good shake up may be just what this society needs. It seems that our present ordering of society is, at least in part, responsible for our present dilemma, so disturbing that order may well be a good thing.

Professor Petrov: Our present ordering of society is entirely responsible for our present dilemma. The present social order has given rise to, and supports, an unsustainable and greedy culture that was destined to come to grief. The impending cataclysm is the consequence that follows from the immoral culture that has arisen in recent times. If that consequence is not allowed to unfold, then the culture that led to it will not be disturbed, and the threat of cataclysm will eventually re-emerge.

It is proposed that we deploy BW11 so that we can get back to a point where we are able to do the necessary restructuring to produce a sustainable society that will never again – through its own fault – be threatened with a cataclysm of the sort that is presently impending. But we will never be able to do such restructuring unless the present culture is destroyed by cataclysm. In order to produce a truly sustainable society our present culture of growth and greed must be substantially reigned in. All resources are limited, and, though the deployment of BW11 may make it possible to restructure our resource utilisation so that it can be sustained for many more years, unrestrained growth and greed will eventually lead to another resource crisis. But our present culture with its ideals of democracy and freedom will never permit the necessary restrictions to be imposed that would produce a truly sustainable society. Only by allowing the impending cataclysm to unfold can we lay the

groundwork for the creation of a culture that will support a truly sustainable society. Over the long-run, the unfolding of one cataclysm will be less costly than the repeated culling of large parts of the population.

Lord Letter: You locate the traits that have brought about the impending cataclysm in our present culture, but it seems more likely that they reside in our nature as human beings. Many cultures have experienced resource crises brought about by their own practices. Of course, not all cultures have come to grief in this way, but that could merely be because the circumstances have not manifested during their existence that would lead their inherent traits as human beings to bring about a resource crisis. Or, it could be because they managed to tap into other traits inherent in their human nature that allowed them to avoid coming to grief.

Human beings seem to have an innate desire to accumulate more than they need, and achieve more than is necessary. But human beings are also capable of reigning in this desire by directing their actions according to reason. We did not have the knowledge to know to reign in the practices that led to the impending cataclysm, but once BW11 is deployed, and we are back on steady ground, we will have the knowledge to know how to order our society so as to avoid another resource crisis.

Professor Petrov: It is widely known at the present time that global warming threatens to significantly lessen the quality of life of future generations, but we have, nonetheless, failed to sufficiently reign in current practices to seriously diminish that threat. The reasoning of individuals is shaped by the culture in which they are situated. The present culture is preoccupied with the immediate pursuit of material prosperity, so the reasoning of individuals situated in our present culture orientates itself around this preoccupation. Doubt, for example, invades *reasonable* assessments that would, if listened to, endanger the immediate pursuit of material prosperity. Proposals that would benefit future generations by reigning in the practices of the present generation are, similarly, *unreasonably* held up. So our capacity for reason will not enable us to avoid another resource crisis so long as our present culture persists.

Lord Letter: Maybe there is some validity to what you say Professor, but I still don't see the preoccupation with the immediate pursuit of material prosperity as unique to our present culture, or even unique to a section of cultures. I believe that that preoccupation is universal to all human beings. I'd suggest that it is a trait installed by evolution, and that it has a lot to do with why we are such a successful species. But it is a trait that can be overcome by reason. You may be correct in suggesting that the trait can distort an individual's reasoning, but the fact that the distortion can be recognised by reflecting on one's reasoning, suggests that its influence may also be removed from one's reasoning at the same time.

You seem to believe that a new, better culture will miraculously emerge from the ashes of the impending cataclysm, after the present culture (and its immoral tendency to unsustainability) is destroyed so thoroughly and spectacularly that it is sure to be abandoned. But what are your grounds, Professor, for believing that this new, better culture will emerge? What change in individuals will have made possible this change of culture? Historically,

advancements in culture have followed from developments in the realm of reason, and from the spread of education. And a level of prosperity has been required to facilitate such developments. But you contend that out of the great hardship of the impending cataclysm will emerge an advancement that will not eventuate if relative prosperity is preserved through the deployment of BW11. I find that suggestion most implausible. We must preserve a level of prosperity by deploying BW11. This is a prerequisite for developing a true ethic of sustainability and integrating it into our reasoning. If the impending cataclysm is allowed to unfold we will go severely backward and be thrown back on the very instincts that have so little regard for sustainability.

Professor Petrov: You suggest, Sir, that it is our instincts that are ultimately destructive. If I understand you correctly, you believe that we have a sort of instinctive greed installed in us by evolution that has caused us to be a very successful species so long as resources have been plentiful, but which becomes self-destructive when resources eventually become scarce. But this doesn't seem to explain the sustainable modes of existence of many pre-industrial peoples. In light of this phenomenon, it is surely more probable that cultural constructs are at the root of our tendency to unsustainability. I'd suggest that it is such things as the institution of ownership – particularly private ownership of the means of production – that have produced the tendency to unsustainability.

I cannot be sure that sustainable modes of existence will emerge from the ashes of the impending cataclysm, but I strongly believe that only such a dramatic event could bring about a transition to a culture pervaded by a true ethic of sustainability. Our present secular, democratic culture is unified around the pursuit of material prosperity. This focus on the corporeal must be overthrown if the pursuit of material prosperity is to be reigned in. Our culture must unify around an essentially religious mode of existence that directs our attention, at least in part, away from material progress. And we must give up our obsession with democracy, and allow a wise captain to take control of the ship of state. There is no wisdom in the mob, because the mob cannot deliberate as an individual can. Members of the mob can do no more than cast their vote or shout their preference, and so they must ensure that their singular vote or shout is a loud, clear, and uncomplicated expression of their own self-interest. Tallying such expressions of self-interest is no sort of wisdom, and will inevitably support practices that are unsustainable. If we are to avoid another resource crisis, a culture must appear that is much more religiously-oriented, and much less democratic.

Justice Jones: I'd be willing to go along with Attorney General Allitt's contention that there are a multiplicity of principles that may be invoked in the present context, and there is ultimately no means of arguing for one principle over another, other than by appealing to intuition. But it seems to me that this is only a problem if one is attempting a deontological analysis, which treats the right as prior to the good.

I agree, to an extent, with Attorney General Allitt's argument that I was misusing the language of rights when I said that the right to life requires that BW11 be deployed. But I wasn't, as he suggested, endorsing the principle of

the sanctity of life. I actually had in mind the valuing of life for its utility, and I was trying to move towards a teleological analysis, which treats the good as prior to the right.

A deontological analysis involves an initial determination of what is right; if what is right is then pursued, one will have done what is good. But, because there is no universal agreement as to what is right, deontological analyses often proceed from different principles, resulting in the development of competing theories that can never be reconciled because they diverge at the initial stage where there is little prospect – and no means – of achieving agreement. A teleological analysis, on the other hand, simply maximises the good, and, in doing so, does what is right. There may be disagreement as to what is good, but this is managed by adopting a neutral understanding of the good as simply utility or preference-satisfaction. There may also be disagreement as to what will maximise the good, but if a neutral understanding of the good is adopted, this disagreement will not stem from the initial stage of the analysis, and so will not be irresolvable.

The fact that deontological analysis results in competing theories that can never be reconciled seems like an entirely legitimate form of proof that deontological analysis is erroneous, or at least unreliable. I believe that the attraction to deontological analysis arises from a sort of prejudice we are prone to as human beings (combined with the insatiable desire many thinkers have for complication). The principles from which deontological analyses proceed are really no more than prejudices. The present case is a perfect example. If the impending cataclysm is allowed to unfold, unimaginable suffering and chaos will follow. We have at hand a neat, surgical means of avoiding the impending cataclysm that would be clearly favoured by any utilitarian calculus. And yet, here we are, agonising over whether to utilise that means because we feel that it would be abhorrent to do so. Don't get me wrong; I share the feeling of abhorrence at the idea of deploying BW11. But our feelings should not overrule our rationality. White people in this country used to feel repulsed at the idea of sharing public facilities with black people, but no one would now say that that feeling possessed any moral wisdom; it was simply expressive of an underlying prejudice.

I admit that it is not so easy to see our abhorrence at the idea of genocide on the scale proposed as expressive of an underlying prejudice, but it is nonetheless. The notion of prejudice has a pejorative overtone, but any feeling or judgment formed without proper grounds can be called a prejudice, whether it is widely disapproved of, or widely approved of. My contention is that any principle employed in a deontological analysis is going to be a judgment formed without proper grounds – that is to say, it is going to be a prejudice – which is something that offends against rationality. If a mother is dividing a pie between her two sons, she may apply a principle of strict equality, or she may favour the older, or the hungrier, or the harder working, or the better behaved. Perhaps we think she should apply a principle of strict equality. But why? What are the grounds for that judgment? We might try to adapt Rawls' theory of justice in order to give our grounds for the judgment. If the two sons were in the original position, and did not know such things about themselves as their age and character, they might agree upon an equal

division of the pie, believing that they will thereby receive the maximum amount of pie if they happen to be the least favoured. That is a purely rational choice (if one accepts Rawls' contention that it is rational to be risk-averse in the original position). But the judgment that the two sons should be deprived of knowledge about such things as their age and character in the original position is a moral judgment based on the belief that such circumstances are morally arbitrary. And no proper grounds can be given for that belief.

You may need to think around the issue a bit more, but you will find that in undertaking deontological analysis you ultimately come back to foundational principles that do not rest on grounds, but on some mysterious moral intuition. It could be that our moral intuition is able to perceive (or deduce) moral truths. But this seems doubtful once you observe that disagreements between well thought out theories of justice can ultimately be traced back to differences in what the moral intuition of different theorists tells them. The moral intuition of libertarians tells them that the principle of liberty is of fundamental importance, and so some build up their theory of justice starting with the derivative concept of self-ownership. While the moral intuition of liberal egalitarians tells them that the principle of equality is of fundamental importance, and so some build up their theory of justice starting with the derivative concept of justice as fairness. It could be the case that the moral intuition of libertarians misperceives (or fails to properly deduce) the moral truth, and the moral intuition of liberal egalitarians correctly perceives (or deduces) the moral truth, or vice versa. But it is simply implausible that all theorists, except those that subscribe to a particular theory of justice, have a faulty sense (or faculty) of moral intuition. It is much more plausible that moral intuitions are in fact simply prejudices, and there isn't any mysterious realm of moral truths.

Of course not all prejudices are equal. Being repulsed at the idea of sharing public facilities with other races is generally irrational, since members of other races are generally no more unclean or threatening than members of one's own race; whereas it is difficult to find any irrationality in the complexity of Rawls' theory of justice. The only problem with Rawls' theory of justice is that it claims to rest on principles that are in some sense true – it claims, you might say, to issue from direct insights into what is right. However, there is no right prior to the good of which any insight can be gained. The right is no more than the maximisation of the good, and the good as utility or preference satisfaction is something measurable that is of-this-world, and not of-some-mysterious-realm-of-moral-truths.

The obvious question of course is: what distinguishes the principle of maximising the good from the other principles that have been labelled mere prejudices? My contention is that the principle of maximising the good – unlike the other principles – is purely an aspect (or example) of rationality that doesn't rely on moral claims. Preference satisfaction and utility are measurable features of the physical world that don't require value judgment. They are simply whatever human beings strive for, and are, in that sense, said to be 'good'. So the assessment of what is good involves no moral claims. What is good is simply what is treated as though it is good; if human beings strive for it, then it is good in their view (however it may appear). Maximising the good

is simply rational; the good by definition is that which we want to maximise. There is no moral intuition upon which utilitarianism rests; it rests purely on analytical reasoning – it rests on nothing more or less than rationality.

However, the more rational of our prejudices – which we may call our moral intuitions – need not be rejected. It is just that those of us that seek to know the truth about morality should not believe that our moral intuitions provide any insight into some realm of moral truth; for there is no such realm. But our moral intuitions are, nonetheless, an important part of our nature as human beings that the utilitarian need not condemn. Criticisms of utilitarianism tend to pick on the fact that its crude application is out of step with our moral thinking, which is dominated by moral intuitions. But utilitarianism need not be applied in a crude manner that sweeps our moral intuitions aside in favour of the principle of maximising the good. Because our moral thinking is dominated by moral intuitions, the best way to maximise the good will be to accommodate moral intuitions. Utilitarianism aims to maximise satisfaction, so it would be counterproductive to implement it in a manner that is dissatisfactory. It is entirely consistent with utilitarianism, therefore, to promote such things as a near absolute right to life and prohibition on genocide. But it is my judgment that in this case the deployment of BW11 will, nonetheless, maximise the good. A system of rights and prohibitions underwritten by utilitarianism will, of course, always allow room to ignore those rights and prohibitions in special cases where to ignore them will better maximise the good.

If it become known that our government deliberately deployed BW11 that would certainly eat significantly into the advantage that the deployment of BW11 has over inaction in the utilitarian calculus, but it sounds as though the deployment of BW11 has an advantage over inaction that wouldn't be easy to overthrow. I cannot though give a final judgment on which option the utilitarian calculus would prefer, taking into account the harm that would be done if it became known that our government deliberately deployed BW11. My favouring of the deployment of BW11 has been based on my impression that we were to accept, without question, facts that suggested to me that the utilitarian calculus would favour the deployment of BW11.

Brother Brandt: Certain standard criticisms are made of utilitarianism that I won't repeat because I can see that you will have a response to them. And I can see why you object to deontological analyses, given the difficulty associated with grounding our moral intuitions. But we needn't invoke into existence some mysterious realm of moral truths to ground our moral intuitions in. Our own nature and composition is capable of grounding our moral intuitions. You see, our moral intuitions are products of the workings of our moral psychology. Just as human beings share a common psychology in other spheres – that is to say, in our different sorts of relations to the world we manifest certain common underlying tendencies or approaches to our surroundings that characterise us as human – so too is there a common psychology in the moral arena. This explains the phenomenon of shared moral intuitions.

It seems that you might agree with my analysis thus far, but you diminish the significance of our moral intuitions by calling them 'prejudices' because they seem to you to have no power or significance other than as mere knots in

our thinking and feeling that are only relevant to morality in your utilitarian view because they influence our preferences. But our moral intuitions do have power; for they are expressions of our moral psychology. Our moral psychology has power because it is common to us as human beings, and it is a feature of ourselves that can be developed and perfected. As we develop and perfect our moral psychology we come to know, and give more direct expression to, those qualities that are essential, defining, and common to us as human beings. In doing so, we are pursuing our purpose as human beings – we are flourishing as human beings.

Moral disagreement emerges because of the complexity of our moral psychology, and the differing extent to which people have developed and perfected their moral psychology. Our moral psychology is not compelled to organise itself straightforwardly according to overarching principles. The morality of different sorts of actions cannot be weighed on the one set of scales. Indeed, there is not even a single set of scales reserved for a particular sort of action. Our notions of ‘good’ and ‘right’ are abstractions; morality has no single standard. If we study our moral judgments in practice, we see that there is always something behind the judgment that something is ‘good’ or ‘right’. We can always be pressed to justify why we judge an act ‘good’ or ‘right’. But if we judge an act, for example, ‘courageous’ or ‘compassionate’ we cannot be so pressed – other than in relation to the empirical dimension to the judgment. We may have to justify, for example, our judgment that a soldier who puts himself in danger to rescue a comrade is courageous, in the sense that we must be able to point to (empirical) evidence that the soldier was both aware and fearful of the danger. But if those facts are proved sufficiently then the judgment is justified and it has moral weight, quite independent of its relation to our conceptions of what is ‘right’ and ‘good’, or any scheme by which those concepts are held up in our own minds.

We cannot agree about what is ‘right’ and ‘good’ because those abstractions do not fit with our moral psychology. Our moral psychology is organised around a set of virtues (such as courage and compassion) that do not necessarily align with each other. But these are, nonetheless, the building blocks of morality. This is not to say we shouldn’t maximise the good or adhere to strict prohibitions; it is probably wise to approach appropriate problems in those ways. And wisdom is a virtue. But the moral quality attaches, not to the choices we make, but to the way we make them. It is the development and perfection of our ability to exercise and balance the virtues in the making of our choices that will allow us to flourish. This flourishing is the only thing of moral significance; everything else is just what it is, and no moral significance attaches to it. Whatever judgments are laid upon us for the course of action we take in the present case (whatever that course may be), those judgments have no significance other than for the individuals who make them and use them to guide their own development.

As to what choice we should make in relation to the deployment of BW11, I would like some more time to reflect on this and search my feelings, but my initial impression is that – though it is probably sincerely believed that the deployment of BW11 will alleviate the greater suffering – it seems to me that the proposal to deploy BW11 has been put forward as an easy way out of our

predicament by individuals resigned to predications that they are unwilling to challenge. My feeling is that it would be more virtuous at this juncture to band together in trying to avoid the fulfilment of the predictions of doom. If we fail, then we should all share the same fate. We are not inclined by our nature to kill a part of our communities in order to improve the lives of the survivors, and so acting in such a manner will prevent us from flourishing as human beings.

Secretary Swango: You talk about flourishing, but your understanding of it is most opaque. Human flourishing, however, is most easy to understand. It consists in us multiplying, exercising ever greater control over our environment, extending our lives, making ourselves stronger, faster and smarter, and leading ever happier, richer and more diverse lives. Everyone knows this. Morality is no more than a tool installed in us by evolution to assist our flourishing. It has no significance beyond this. It would be foolish to let our moral qualms deter us from actions that would further our flourishing, such as deploying BW11. If the impending cataclysm were allowed to unfold, scientific learning and technological development would come to a halt, and many recent achievements in these areas would even be lost. Deploying BW11, on the other hand, would put us in an even better position than we are in now to develop and flourish in these areas. So clearly we should deploy BW11.

I recall reading that a certain Joshua Greene has been studying how people respond to two slightly different imaginary ethical dilemmas.¹⁷ In one dilemma, you imagine yourself standing by a railroad track when you notice that a trolley, with no one aboard, is heading for a group of five people. They will all be killed if the trolley continues on its current track. The only thing you can do to prevent these five deaths is to throw a switch that will divert the trolley onto a side track, where it will kill only one person. When asked what you should do in these circumstances, most people say that you should divert the trolley onto the side track, thus saving a net four lives.

In the other dilemma, the trolley, as before, is about to kill five people. This time, however, you are not standing near the track, but on a footbridge above the track. You cannot divert the trolley. You consider jumping off the bridge, in front of the trolley, thus sacrificing yourself to save the five people in danger, but you realize that you are far too light to stop the trolley. Standing next to you, however, is a very large stranger. The only way you can prevent the trolley from killing five people is by pushing this large stranger off the footbridge, in front of the trolley. If you push the stranger off, he will be killed, but you will save the other five. When asked what you should do in these circumstances, most people say that it would be wrong to push the stranger.

17 Peter Singer, *Should We Trust Our Moral Intuitions?* (2007) Project Syndicate <<http://www.project-syndicate.org/commentary/singer21>> at 6 July 2009. The two dilemmas to be discussed here are two variants of a thought experiment known as the 'trolley problem'. The first dilemma discussed is essentially that introduced by Philippa Foot in 'The Problem of Abortion and the Doctrine of the Double Effect' [1967] *Oxford Review* 5. The second dilemma discussed is essentially that introduced by Judith Jarvis Thomson in 'The Trolley Problem' (1985) 94 *Yale Law Journal* 1395.

These judgments are apparently not limited to particular cultures. Marc Hauser has undertaken similar studies and found remarkable consistency despite differences in nationality, ethnicity, religion, age, and sex.¹⁸

Many have puzzled about how to justify our differing intuitions in these situations, given that in both cases, the choice seems to be whether to save five lives at the cost of taking one life. Greene, however, was more concerned to understand why we have differing intuitions in these situations, and so he used functional Magnetic Resonance Imaging to examine what happens in people's brains when they make these moral judgments.¹⁹ He found that people asked to make a moral judgment about personal violations – like pushing the stranger off the footbridge – showed increased activity in areas of the brain associated with the emotions. This was not the case with people asked to make judgments about impersonal violations – like throwing a switch. Moreover, the minority of subjects who did consider that it would be right to push the stranger off the footbridge took longer to reach this judgment than those who said that doing so would be wrong.²⁰

The explanation for these findings is that for most of our evolutionary history we have lived in small groups, in which violence could be inflicted only in an up-close and personal way, by hitting, pushing, strangling, or using a stick or stone as a club.²¹ To deal with such situations, we developed immediate, emotionally-based intuitive responses to the infliction of personal violence on others. The thought of pushing the stranger off the footbridge elicits these responses.²² On the other hand, it is only in the last couple of centuries – not long enough to have any evolutionary significance – that we have been able to harm anyone by throwing a switch that diverts a train. Hence the thought of doing it does not elicit the same emotional response as pushing someone off a bridge.²³

So you see, though our moral intuitions are universal and part of our human nature, this does not mean that they are right.²⁴ Killing by throwing a switch is no better than killing by pushing. The fact that our moral intuitions would indicate otherwise is explained by the morally insignificant fact that while the possibility of killing by means of personal violence has existed for most of our evolutionary history, the possibility of killing by means of throwing a switch has not. The power our moral intuitions have over us is a mere biological reaction installed in us by evolution. These biological reactions may assist our flourishing in ordinary circumstances, but they are ultimately hit-and-miss, and may produce moral intuitions that don't assist our flourishing when applied to circumstances that aren't ordinary. Greene's work, anyway, indicates that most people's moral intuition would favour the deployment of BW11 (at least when it is stripped down to its essential

18 Ibid.

19 Ibid.

20 Ibid.

21 Ibid.

22 Ibid.

23 Ibid.

24 Ibid.

character as an act of killing the smaller group), since the deployment of BW11 is more like throwing the switch, than pushing the stranger, in the ethical dilemmas I described.

Doctor Dyer: I'm not convinced that our dilemma raises any question of justice of the sort you're all trying so hard to solve. Rawls explicitly stated that there are certain conditions that must exist before human co-operation – and therefore justice – is possible and necessary.²⁵ These conditions are the so-called 'circumstances of justice', and included among them is the condition of moderate scarcity. Only under conditions of moderate scarcity is human co-operation – and therefore justice – possible and necessary. If resources are abundant, then co-operation (involving the just and orderly distribution of resources) is simply unnecessary. If, on the other hand, resources are extremely scarce, then co-operation of this sort is impossible, since, as Rawls puts it, 'fruitful ventures must inevitably break down' under conditions of extreme scarcity.²⁶

What we are facing in the impending cataclysm is conditions of extreme scarcity, and we have even been told that it is predicted that – if the impending cataclysm is allowed to unfold – fruitful ventures, in the form of the maintenance of the institutions of a free and democratic society, will not be feasible. If the impending cataclysm is allowed to unfold, then, even here in the Northeast – where conditions will be the most favourable – freedom, democracy and justice generally, will effectively have to be suspended for an indeterminate amount of time. The circumstances of justice will have disappeared, and justice along with them.

Principles and theories of justice can offer guidance only so long as the circumstances of justice are unthreatened. When conditions of extreme scarcity exist or are predicted, other principles and theories must be found and applied, the precondition for which is conditions of extreme (rather than moderate) scarcity. But what, other than justice, ought to be applied? If I were to say that social primary goods ought to be distributed according to desert, or need, or the maximisation of utility, I would simply be saying that justice is thereby furthered. No matter what I say about how human co-operation *ought* to be ordered, I am making a claim about the requirements of justice.

It is a riddle: we seek to know what we *ought* to do, but any answer we give – as an answer to what we 'ought' to do – thereby makes an inherent claim to being aligned with justice (and it seems that we can only find an answer by looking to the requirements of justice), but the circumstances of justice do not exist, so there is no possibility of justice to look to or align with. The solution to this riddle is found in recognising that no answer can be given to the question of what we 'ought' to do in relation to a situation in which the circumstances of justice do not (or will not) exist. Justice is the sole ultimate source of compellability and normativity relating to human co-operation. There are no 'oughts' relating to human co-operation that exist outside the concept of justice.

25 Rawls, above n 14, 109.

26 Ibid 110.

So there is no way we ‘ought’ to act (or choice we ‘ought’ to make), when facing conditions of extreme scarcity, such as the impending cataclysm. The only possible exception being that we perhaps *ought* to act to restore the possibility of justice as quickly (or to the greatest extent) as is possible. But the demands of justice have no influence in *how* we may (or ought) restore the possibility of justice. So in the present context we *ought* to deploy BW11, since that is what it will take to preserve the possibility of justice, and that conclusion is not derived from the demands of justice, but is simply a recognition that the possibility of justice is good and we *ought* to tend toward it where it is lacking.

Alternatively, it may be that it cannot even be said that we ‘ought’ to act to restore or preserve the possibility of justice when it is lacking or threatened, since a situation either exists or threatens to develop in which co-operative attempts to do what we ‘ought’ to will inevitably break down. In order to do what we ‘ought’ to we must be able to. It seems that it is only the case that we ‘ought’ to do what we *must* in order to preserve the possibility of justice if, as I speculated, it is coherent to say that the possibility of justice is good, and we should tend toward it where it is lacking. If it is not coherent to say this (because there is no measure of the good outside of the requirements of justice to use to weight up the good of justice itself), then there is *no* question of what we ‘ought’ to do in relation to the impending cataclysm; it is simply a matter of what we *will* do, and because there is no guidance to be had, it would be irrational to listen to anything in ourselves other than our immediate desire for self-preservation and comfort. Given that none of us in this room are Huitzilite or Serican, we would all clearly favour the deployment of BW11 if we listened to that part of ourselves, and on this analysis we should (or rather, would).

Imam Ishikawa: We cannot escape the question of what we ought to do in relation to the impending cataclysm. The very basis of justice, consisting of the possibility of co-operation, may be threatened, and so theories of justice may fail to have any application, but there has always been a sphere in which we never really attempted to apply theories of justice: the sphere of international relations. For whatever reason, we do not feel ourselves bound (or are unable to be bound) by the requirements of justice at the international level. Whether this comes down to an inability or unwillingness to co-operate to the necessary extent at the international level, or just a disinclination to see justice done between nations, isn’t important in the present context. What is important, is the fact that, despite the inapplicability of theories of justice at the international level, there are, nonetheless, rules that guide our actions at that level.

Even the seemingly inherently criminal and lawless activity of war is guided by laws at the international level. States generally abide by these laws because they regard it as advantageous to do so over the long-run, and perhaps also because they regard them as having some intrinsic merit. War is something that happens from time to time, and it is catastrophic. In the midst of war, and all the desperate chaos and violence it consists of, the laws of war will fail to wield any *intrinsic* power in the eyes of some, given that the state of war already justifies murder. But the laws of war don’t necessarily

derive their power from the claim that the acts they prohibit are *never* justified in a state of war; for these acts may well be justified on occasion. Some prohibitions included in the laws of war may be thought to be absolute and unquestionable, given the abhorrent nature of the acts they prohibit, but, generally, the laws of war derive their power from the recognition that war is not (and should not be) a permanent condition.

Murder and destruction are accepted upshots of war that will not prevent the eventual restoration of peace and resumption of negotiations. But acts that breach the laws of war (though these are not necessarily ordinarily considered worse in nature than murder) are not accepted upshots of war, and, because of their insulting, shameful or cruel nature, they threaten the prospect of future co-operation and a stable peace, and they also threaten to draw other states into the conflict. So usually states find it clearly advantageous over the long run to adhere to the laws of war.

One way to approach the decision whether to deploy BW11, would be to concede that deploying BW11 *would* breach international law, and then assess the advantage to be gained by the breach against, not only the immediate costs in terms of loss of life, but also the long-term implications for international co-operation and peace. Little consideration seems to have been given to these long-term implications, since it has been predicted that the responsibility of this government for the deployment of BW11 could be effectively concealed. But it seems inevitable that at least the suspicion that this government deployed BW11 will infect international relations and create distrust that will hinder international co-operation over the long-term. However, such co-operation will be required to ensure that our present circumstances don't re-emerge.

The assessment just described would not be straightforward to undertake, and I won't attempt to undertake it in this setting, so I can't say whether it would or wouldn't favour the deployment of BW11. I'm inclined rather to move on to another approach to the decision whether to deploy BW11. That approach being to determine *whether* the deployment of BW11 would breach international law. Or rather, I am not so much interested in whether it would breach the letter of the law, since it no doubt would.²⁷ The circumstances we find ourselves in are extraordinary and weren't contemplated by the drafters of the relevant international instruments, so it is warranted to ignore the letter of the law and assess whether the deployment of BW11 is justified within the theory underpinning the relevant international instruments, since, if it were, that would suggest to me that the deployment of BW11 is consistent with the spirit of the law, or would at least not undermine the future of international co-operation and peace.

My view is that if the deployment of BW11 can be justified as permitted by the theory underpinning the prohibition on genocide and the targeting of non-combatants, then its deployment is justified, and the fact that this government deployed it need not be concealed. Of course, it would be counterproductive to announce in advance of deploying BW11 the

27 See, for example, *Convention on the Prevention and Punishment of the Crime of Genocide* opened for signature 9 December 1948, 78 UNTS 277 (entered into force 12 January 1951).

intention to do so, but international relations will ultimately be better for this government claiming responsibility after BW11 is deployed. After all, if deploying BW11 is justified, then other nations will be able to see that our deploying it was justified (however shocked they may initially be by the act). Deception and secrecy will inevitably be suspected (if not detected), and they will, as I've already said, lead to distrust and hinder international co-operation. Deception and secrecy would, furthermore, suggest to other nations that our deployment of BW11 was – and we believed it to be – morally indefensible. If deploying BW11 is justified, and we take responsibility for it, those nations willing to judge us fairly will eventually accept that the deployment of BW11 was an act of necessity. If, on the other hand, we don't take responsibility for the deployment of BW11, its deployment will be judged by the other members of the international community as an abhorrently selfish and criminal means of securing the continuing comfort of the dominant racial groups in Newgarth.

The question remains though: can the deployment of BW11 be justified as permitted by the theory underpinning the prohibition on genocide and the targeting of non-combatants? I believe that the theory underpinning these prohibitions is just war theory. Of course, it is not obvious that just war theory is the theory relevant to the permissibility of deploying BW11, since its deployment would not be an act of war (or a response to one). But it seems that just war theory applies to the use of force generally at the international level, and not just to acts of war. The only potentially justifiable uses of force at the international level that we are familiar with are acts of war – that is, acts of using force against an aggressive or culpable enemy – so the rules relating to the justified use of force at the international level have been framed to relate solely to war. But the present circumstances demonstrate that it may be justifiable to use force at the international level against innocents.

Of course, I recognise the apparent tension between my recognition of the applicability of just war theory and my espousing of the realist viewpoint that the requirements of justice have no application at the international level. But such a position is not unusual. It is similar to the sort of rule utilitarianism that Justice Jones seems to advocate. I recognise that limited forms of justice, such as the application of just war theory, are influential at the international level, but I believe they should be endorsed for reasons of advantage, rather than justice or morality.

Returning, though, to my claim that just war theory can be applied to the proposal to deploy BW11; we don't have time for me to outline the details of the theory, but most of you will be familiar enough with it to know that the deployment of BW11 would appear to breach several of the principles of just war theory. In my view, the most important apparent breaches would be of the requirement of a 'just cause' for using force, and of the prohibitions on targeting non-combatants and on genocide as a *malum in se* (an evil in itself).²⁸

28 See generally Brian Orend, *War* (2005) Stanford Encyclopedia of Philosophy <<http://plato.stanford.edu/entries/war/>> at 6 July 2009.

A 'just cause' is obviously a fundamental requirement of just war theory. The initiation of war (or any other program of force) can never be justified if the reason behind it isn't of the right sort. Just war theorists stipulate that the right sort of reason will have to amount to the resistance of aggression, whether it be aggression towards one's own nation or people, or another nation or people. On this stipulation, there is probably no 'just cause' for the deployment of BW11, since any argument that the threat we face is one of aggression would probably be unconvincing. But it seems to me that just war theorists simply failed to anticipate a non-aggressive threat that might justify the use of force, rather than it being the case that they intended to exclude such a threat as forming the basis of a 'just cause' for the use of force. So the definition of a 'just cause' can permissibly be expanded to include non-aggressive threats. The other rules of *jus ad bellum* (that is, the rules of the circumstances in which force may be resorted to), in particular the requirements that the use of force be a last resort and that the universal goods expected to result outweigh the universal evils, will ensure that the use of force against non-aggressive threats is only justified in circumstances of strict necessity, and when it is the lesser of two evils.

The deployment of BW11 would not then breach the requirement of a 'just cause' laid down by just war theory. But there is no getting around the fact that it would breach the prohibitions on targeting non-combatants and on genocide as a *malum in se*, and would also breach certain other principles of just war theory. So the only way that deploying BW11 is going to be consistent with just war theory is if our present circumstances create an exception to the principles of just war theory that would be breached.

Michael Walzer outlined an exception to the just war principle of non-combatant immunity in the case of a population threatened by a supreme emergency.²⁹ An emergency becomes supreme when two conditions are satisfied. First, the danger must be imminent – the fear of future danger is not sufficient. Indeed, the danger must be so imminent that the state is left with no alternative but to waive the rights of non-combatants.³⁰ The second element of supreme emergency is the nature of the threat. The danger, Walzer tells us, 'must be of an unusual and horrifying kind'.³¹ Nations only face a supreme emergency when defeat would result in the annihilation of a political community or its way of life.

Presuming that supreme emergency creates an exception to *all* the principles of just war theory that the deployment of BW11 would breach (and not just to the principle of non-combatant immunity), it seems that the 'supreme emergency exception' may permit the deployment of the BW11. It is difficult to accept that the danger in the present case is as imminent as it must be under the exception, but the facts we've been told to accept 'without question' suggest that it is. As for the nature of the threat, it is not much like the example that Walzer gave – that being the threat of Nazi Germany to Britain during the Blitz, which allegedly justified the bombing

29 Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (1977) 251-269.

30 *Ibid* 254-5.

31 *Ibid* 253.

of German cities. Indeed, the deployment of BW11 bears a greater superficial resemblance to threat of Nazism to Britain at the time of the Blitz, than does the impending cataclysm. However, it is the impending cataclysm (rather than the deployment of BW11) that most obviously threatens to annihilate our political community and way of life (and perhaps that of other nations also), so it seems that the deployment of BW11 would be justified under the 'supreme emergency exception'.

Though, it may be observed that Brian Orend has added a publicity requirement to the 'supreme emergency exception' that doesn't seem unreasonable.³² Even if discussing the deployment of BW11 with the leaders of Huitzili and Serica, and other key states, in advance of its deployment couldn't bring about a solution that would make it unnecessary to deploy BW11, it would at least confirm that the deployment of BW11 is truly necessary, and may help convince the international community that the deployment of BW11 was an act of necessity. Though, I appreciate that these possible advantages may not outweigh the risk that breaking with secrecy will lead to chaos on the streets, and may provoke Serica (in particular) to war.

Headmaster Holmes: If the deployment of BW11 could be *persuasively* justified as permitted by the principles of just war theory, then your argument, my friend, that it would be to our advantage to deploy BW11, and take responsibility for doing so, would appear reasonably credible. The principles of just war theory are influential at the international level, and actions that are justifiable as consistent with these principles *may not*, for that reason, endanger the future of international co-operation and peace. But you've only managed, my friend, to argue that the deployment of BW11 fits within an exception to the principles of just war theory developed by an academic. Walzer may be the most influential just war theorist of recent times, but that doesn't mean that his 'supreme emergency exception' is sufficiently influential and persuasive in international politics to compel other states to view the deployment of BW11 as something that was justified, and that should not hinder international co-operation and peace.

Your underlying subscription to a form of realism, my friend, means that you are not addressing the justice of the proposal to deploy BW11. I don't believe that our President has called us together on this occasion to hear our opinions on which course of action would be most advantageous. He has better qualified and informed persons at his disposal to make such assessments. You will recall that at the beginning of this dialogue, President Shipman invited us to give our opinions 'on what justice dictates in this situation'. Of course, I appreciate that it is your view that justice has no ultimate application to the choice before us, and just war theory applies only insofar as it is influential and persuasive at the international level and so has to be factored into the assessment of what course of action is most advantageous. But I reject that view, my friend, since it is my view that there are core universal principles of justice and morality that we feel a natural compelling loyalty towards. We may have difficulty agreeing on how to systematise these principles, since our

32 Brian Orend, 'Is There a Supreme Emergency Exemption?' in Mark Evans (ed), *Just War Theory: A Reappraisal* (2005).

comprehension and understanding of them differs, but the fact that we have notions of right and justice that are distinct from our notions of advantage and benefit demonstrates that these core universal principles of justice and morality have a distinct reality.

How could we have notions of right and justice that are distinct from our notions of advantage and benefit if there were no ultimate distinction between the two sorts of notions? Often our sense of right will suggest a course of action that is identical to that which we understand to be the most beneficial, but it is a mistake to say that what is right is ultimately reducible to what is good or beneficial. Equally, it is a mistake to say that our sense of right is mere prejudice, and doesn't reflect any deep truth. One need only reflect on one's own sense of fairness, equality and dignity to know that these concepts have a power independent of the advantage or benefit their application secures us. And how can they be mere prejudices when they possess so much truth? One could attack any scientific theory, I suspect, as resting on certain assumptions or prejudices (however basic and seemingly justified those assumptions or prejudices may be), even though the scientific theory in question may successfully explain certain phenomena. We can't directly observe atoms, but few of us now doubt the truth of atomic theory in light of its explanatory success. Likewise, we cannot directly observe the core universal principles of justice and morality, but postulating the existence of such principles surely does a much better job of explaining our moral behaviour than does utilitarianism. Our inclination towards these principles may be a prejudice of sorts, in the sense that it is indeed an inclination that we are predisposed to, but it does seem that there is ultimately a universality to our moral sense. Those that have no inclination toward the core principles of justice and morality are regarded as aberrations. And, a universal prejudice is no mere prejudice, but a truth, whether it be a truth existing independently of, or dependently on, the existence of human beings.

The universal principles of justice and morality are as real as the universal grammar; one who asks why ought we act in accordance with the universal principles of justice and morality, is like one who asks why ought we speak in accordance with the universal grammar. We may not be as tied into the universal principles of justice and morality as we are into the universal grammar, but, nonetheless, there is no 'ought' of the sort such a person is seeking; our conception of how we 'ought' to act can only be shaped with reference to the universal principles of justice and morality – to ask why ought we act in accordance with the universal principles of justice and morality is to ask why ought we act as we ought to, which, of course, is nonsensical. Even utilitarianism is shaped by the universal principles of justice and morality, albeit by an approach to them that is blinkered, and which refuses to accept the simple truth that there are unquestionable moral truths and inalienable natural rights. The reality is that, whether the universal principles of justice and morality exist independently of human beings, or exist solely as part of our human nature, these principles drive our sense of right and justice.

The principles of just war theory have emerged because they are aligned with our notions of right and justice. Doctor Dyer has effectively floated the suggestion that though breaching the principles of justice (such as the

principles of just war theory) would ordinarily be wrong, when the very institutions of justice are threatened, our loyalty to the principles of justice compels us to violate them. However, that suggestion is clearly incoherent. One cannot be loyal to a set of principles by violating them; that suggestion clearly embodies a contradiction. We will be loyal to the principles of just war theory, and so to our notions of right and justice, by honouring those principles. The ‘supreme emergency exception’ is not a proper part of just war theory; it is an abandonment of the principles of just war theory in the face of adversity. The actual established principles of just war theory are particularly pure expressions of the universal principles of justice and morality. These principles clearly do not favour the deployment of BW11.

The consequences of the impending cataclysm will be catastrophic, but there is no way round the fact that we ought not to avoid them by deploying BW11, since we all know how wrong it would be to treat the Huitzilites and Sericans as a mere means in the way proposed. The consequences of the impending cataclysm will, of course, be worse than the consequences of deploying BW11, but there can be no wrong in omitting to do something so clearly wrong as deploying BW11. If it is our destiny to consume ourselves into cataclysm, then that is our destiny. To try to avoid that destiny by acting in complete opposition to everything we know to be right would be profoundly unnatural. Thus I say to let justice be done, though the heavens may fall (*fiat justitia ruat caelum*). I’m sure that if we just do no wrong and pray hard enough, God will take mercy on us and save us. Yeah ... she’ll be right.

President Shipman: Thank you for your opinions on this matter, my friends. I will take some time now to reflect on your opinions before making a final decision. I will indeed turn to God, but I have to admit that my God doesn’t say much (to me anyway). You’d think that such an omnipotent, omniscient being would pipe up at a time like this. As it is, the only internal voice I presently hear speaking to me is that of Bart Simpson³³ observing: ‘you’re damned if you do, and you’re damned if you don’t’. Perhaps God’s given up on us. I wouldn’t blame him; things surely didn’t need to come to this. We could have helped ourselves if we’d acted more decisively earlier. If only our present situation were a mere fiction – a cautionary tale, set on some distant planet, describing the folly of a nation of short-sighted suburban expanders. If only our downfall weren’t so imminent. If only that were so, we’d heed the caution contained in this tale and act decisively to avoid our present dilemma ... wouldn’t we?

33 The fictional character in the animated television sitcom *The Simpsons* (created by Matt Groening).

