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Three Illusions of Modern Politics

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Abstract

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Keywords

power, community, political discourse

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JONATHAN CROWE*

Abstract

Modern political discourse is characterised by three pervasive and harmful illusions: the illusions of control, desert and revenge. The illusion of control holds that we can manage our social and economic environment to keep ourselves safe from harm. The illusion of desert holds that in a well governed society people generally get what they deserve. The illusion of revenge holds that it is beneficial and legitimate to punish those who transgress legal and social norms. I discuss the role these illusions play in political debates, drawing on work in social psychology to explain their appeal. I then try to imagine a radically new form of political discourse based on accepting that we are not in control, people do not get what they deserve and coercion is not the answer. I argue that this reimagined politics holds important advantages over the current paradigm.

I Introduction

Politics concerns the distribution of power in a community. More broadly, it is about how a community should be organised and governed, but this discussion typically revolves around the distribution of power. Power, then, is inherently political. It follows from this that politics is everywhere, because no area of social life is free from power. The feminist adage that ‘the personal is political’ is partly aimed at exposing this important fact.¹ No aspect of life is outside politics, because nothing is unaffected by power.

People sometimes claim that a particular topic or event — such as Anzac Day, for example — is ‘apolitical’ or that it is ‘wrong to bring politics into it’.² However, such claims are ill-founded, if they are understood as asserting that the topic or event does not involve the exercise of power. Indeed, claims of this sort typically have the effect of masking existing power structures by silencing critical perspectives. The claim that

* Professor of Law, Bond University. Thanks to Cicely Bonnin for her thoughtful comments on an earlier draft. Versions of this article were presented at the Transnational, International and Comparative Law and Policy Network Conference at Bond University in May 2017 and the Law and Society Association of Australia and New Zealand Conference at the University of Otago in December 2017. I am grateful to all who participated in the discussions.

¹ See, eg, Carol Hanisch, ‘The Personal is Political’ in Shulamith Firestone and Anne Koedt (eds), *Notes from the Second Year: Women's Liberation: Major Writings of the Radical Feminists* (Radical Feminism, 1970).

² See, eg, Michael Owen, ‘Anzac Day 2017: Dawn Service Politicised by Activist’, *The Australian* (online), 25 April 2017 <<http://www.theaustralian.com.au/news/nation/anzac-day-2017-dawn-service-politicised-by-activist/news-story/287f564552a07c65d6e60e5673cc50ed>>.

something is apolitical is, in itself, a political act (and therefore self-refuting).

I use the term ‘political discourse’ in this article to mean, roughly, the ways people in a community think and talk about social organisation and governance. These discussions, as I have said, tend to focus on the distribution of power. Power is pervasive in social relations. However, in a country such as Australia (and many others), political discourse is heavily state-centred. Discussions of power focus strongly on the role of government. This is not necessary; nor, I would argue, is it desirable.³ (For one thing, it masks the role that power plays in interpersonal relationships.) It is, however, a fact of social life.

My topic, then, is the way that people in countries like Australia think and talk about social organisation and, particularly, the exercise of power by government. I want to argue that this discourse is characterised by three harmful illusions: the illusions of control, desert and revenge. The *illusion of control* holds that we can manage our social and economic environment to keep ourselves safe from harm. The *illusion of desert* holds that in a well governed society people generally get what they deserve. The *illusion of revenge* holds that it is beneficial and legitimate to punish those who transgress legal and social norms.

I will begin by discussing the role each of these illusions plays in political discourse, providing examples from recent Australian political debates and drawing on work in social psychology to explain their appeal. I then try to imagine a radically new form of political discourse based on accepting that we are not in control, people do not get what they deserve and coercion is not the answer. I argue that this reimagined politics holds important advantages over the current paradigm.

II The Illusion of Control

The first feature of political discourse that I wish to discuss is the *illusion of control*: the belief that we can control our social and economic environment to protect ourselves from negative outcomes. This belief manifests itself in a variety of ways. First, it manifests itself in the tendency to respond to a harmful or threatening event by demanding a government response to prevent similar things happening in future. The government often responds to this demand by doing something that it claims will reduce the risk of such events, whether or not there is clear evidence that this will be effective.

Second, the belief manifests itself in the tendency to attribute harmful or threatening events to some failure in governance and to assign blame accordingly. This reflects the assumption that because the government is putatively in control of society, it carries the blame for bad things that occur. The pervasive nature of this attitude shows itself in the reluctance of

³ Cf Jonathan Crowe, ‘Law Without the State’ (2014) 30(2) *Policy* 7; Jonathan Crowe, ‘Radicalising Hayekian Constitutionalism’ (2014) 33 *University of Queensland Law Journal* 379.

government officials to respond to such criticisms by disclaiming responsibility or control over the event in question. It is far more common for politicians to shift the blame to someone else, than to simply deny that they are in control.

An example of this aspect of political discourse from recent Australian history is provided by the government response to the global financial crisis of 2008. The Australian government led by Kevin Rudd responded to the crisis by not only guaranteeing deposits held by Australian banks, but also announcing a \$10.4 billion stimulus package, including \$8.7 billion of cash bonuses paid directly to taxpayers. This was followed by a second \$42 billion stimulus package aimed at construction and infrastructure.⁴

The effectiveness of this stimulus package has been widely debated. It has been claimed by some to have saved Australia from the worst effects of the global downturn.⁵ Others have argued that the stimulus package had little overall effect on the Australian economy and therefore represented an inefficient use of taxpayer money.⁶ The fact that Australia fared relatively well during the global crisis is attributed by these critics to other factors, such as continuing strong investment from China.

Our concern for present purposes is not whether the stimulus package was effective — which is a highly complex economic issue — but rather the political discourse surrounding it. The size of the package and the speed with which it was announced shows the pressure the Rudd government felt to be seen to be doing something in response to the global downturn. The option of simply doing nothing does not seem to have been seriously considered — and, if it had, would no doubt have led to severe criticism.

The pressure governments feel to be seen to act decisively in response to an actual or perceived threat is far from unique to Australia. It was famously satirised during the 1980s in an episode of the BBC comedy program, *Yes, Prime Minister*, in the form of what has become known as the politician's syllogism: we must do something; this is something; therefore, we must do this.⁷ The underlying cause of this attitude, I wish to

⁴ See, eg, Steven Kennedy, 'Australia's Response to the Global Financial Crisis' (Speech delivered at the Australia Israel Leadership Forum, Jerusalem, 24 June 2009) <http://archive.treasury.gov.au/documents/1576/PDF/Australia_Israel_Leadership_Forum_by_Steven_Kennedy.pdf>.

⁵ See, eg, Alan Wood, 'Economic Stimulus Was Right Policy at Right Time', *The Australian* (online), 17 December 2009 <<http://www.theaustralian.com.au/opinion/economic-stimulus-was-the-right-policy-at-the-right-time/news-story/2a1902044c8172a20904f95157e478b3>>; Greg Jericho, 'Labor's Stimulus Package Got Us Through a Crisis: Turnbull Saying Otherwise is Silly', *The Guardian* (online), 30 June 2016 <<https://www.theguardian.com/business/grogonomics/2016/jun/30/labors-stimulus-package-got-us-through-a-crisis-turnbull-saying-otherwise-is-silly>>.

⁶ See, eg, Tony Makin, External Paper for the Australian Treasury, *The Effectiveness of Federal Fiscal Policy: A Review*, November 2016 <<https://cdn.tspace.gov.au/uploads/sites/99/2016/10/The-Effectiveness-of-Federal-Fiscal-Policy.pdf>>; David Crowe, 'The Stimulus We Didn't Really Need', *The Australian* (online), 17 August 2013 <<http://www.theaustralian.com.au/national-affairs/the-stimulus-we-didnt-really-need/news-story/a71e4477cb15f1eedfd61251c627a85f>>.

⁷ British Broadcasting Corporation, 'Power to the People', *Yes, Prime Minister* (Series 2, Episode 5) 7 January 1988.

suggest, stems from the human desire to feel a sense of control over our lives and destiny.

The need for control over one's environment has long been identified by psychologists as a basic human motivation.⁸ It is also arguably related to what social psychologists call *action/omission bias*: the tendency to react more strongly to actions in some contexts and omissions in others. The norm theory developed by Daniel Kahneman and Dale Miller proposes that people react more strongly to a negative outcome when they attribute it to abnormal causes.⁹ If the norm in a given domain is to choose action, then people will judge harms resulting from inaction more harshly.

Previous outcomes also seem to have an impact on what people consider it normal to do. If something bad has happened, people consider action a more normal response than inaction and judge people more harshly if they fail to act. Michael Bar-Eli et al describe the implications of this cognitive tendency as follows:

[I]f the economy has been doing poorly lately, the central bank or the government might be tempted to 'do something' and change certain economic variables, even if the risks associated with the changes do not necessarily outweigh the possible benefits. If things turn bad, at least they will be able to say that they tried to do something, whereas if they choose not to change anything and the situation continues to be poor (or becomes worse), it may be hard to avoid the criticism that despite the warning signs they 'didn't do anything'.¹⁰

This analysis suggests that, in the political domain, negative events or threats tend to trigger an action bias on the part of observers. This helps to explain the pressure politicians feel to do something in response to such occurrences.

The idea that state action can enable us to stay in overall control of our social environment is, however, an illusion. It assumes that governments have the knowledge, foresight, skill and resources to effectively control all aspects of society. Friedrich Hayek called this idea the *synoptic delusion*, since it seems to imply that the government has a complete view of what is happening in the community.¹¹ It can also be viewed in terms of what is known as *hindsight bias*: the tendency to see an event as predictable after it has already occurred, regardless of what was known beforehand.¹² In reality, however, a human community is an extremely complex entity, involving many diverse people with their own life plans and preferences.

⁸ See, eg, Lauren A Leotti, Sheena S Lyengar and Kevin N Ochsner, 'Born to Choose: The Origins and Value of the Need for Control' (2010) 14 *Trends in Cognitive Science* 457.

⁹ Daniel Kahneman and Dale T Miller, 'Norm Theory: Comparing Reality to its Alternatives' (1986) 93 *Psychological Review* 136.

¹⁰ Michael Bar-Eli et al, 'Action Bias Among Elite Soccer Goalkeepers: The Case of Penalty Kicks' (2007) 28 *Journal of Economic Psychology* 606, 616.

¹¹ Friedrich A Hayek, *Law, Legislation and Liberty* (Routledge, 1982) vol 1, 14. See also Friedrich A Hayek, 'The Use of Knowledge in Society' (1945) 35(4) *The American Economic Review* 519.

¹² Neal J Roese and Kathleen D Vohs, 'Hindsight Bias' (2012) 7 *Perspectives on Psychological Science* 411, 411.

The level of knowledge and ability needed to oversee all aspects of society is simply beyond the grasp of any human institution.¹³

This is not to deny, of course, that governments can and should perform useful functions in the community. Economics and the social sciences offer significant resources in tracking and explaining what policy initiatives are and are not effective in achieving particular outcomes. However, this kind of evidence-based approach to policy is a far cry from the generalised impulse to act decisively whenever a negative event occurs. It is not wrong to think that governments can have a positive influence on social conditions — but it is wrong to assume that all aspects of social life are within our control.

III The Illusion of Desert

The illusion of control, as I described it above, may strike some people as fairly benign if it only involves the occasional knee jerk policy decision or waste of taxpayer money. However, it has more obviously troubling implications where it extends to the government's treatment of vulnerable or marginalised people. I want to draw a connection here between the illusion of control and a second pathology that I call the *illusion of desert*: the tendency to think that people generally get what they deserve.

I will give two examples of the overlap between these two illusions — both from contemporary Australian politics. The first example concerns Australia's treatment of asylum seekers. Australian governments of all political persuasions have had a policy since the 1990s of mandatory detention for unauthorised asylum seekers entering Australia by sea. This policy has given rise to well documented suffering and abuses, most recently at the offshore detention centres on Nauru and Manus Island.¹⁴

The mandatory detention policy, despite its clear human cost, nonetheless retains wide support in the Australian community.¹⁵ The reasons for this are complex, but I suggest they are related to the illusion of control described previously. Australians feel threatened by various social and political factors that appear beyond their control, including uncertain economic conditions, global instability and the threat posed by terrorist movements. They are therefore susceptible to a narrative that

¹³ For further discussion, see Jonathan Crowe, 'Human, All Too Human: Human Fallibility and the Separation of Powers' in Rebecca Ananian-Welsh and Jonathan Crowe (eds), *Judicial Independence in Australia: Contemporary Challenges, Future Directions* (Federation Press, 2016) 37.

¹⁴ See, eg, Paul Farrell, Nick Evershed and Helen Davidson, 'The Nauru Files: Cache of 2,000 Leaked Reports Reveal Scale of Abuse of Children in Australian Offshore Detention', *The Guardian* (online), 10 August 2016 <<https://www.theguardian.com/australia-news/2016/aug/10/the-nauru-files-2000-leaked-reports-reveal-scale-of-abuse-of-children-in-australian-offshore-detention>>; Roger Cohen, 'Australia's Offshore Cruelty', *New York Times* (online), 23 May 2016 <<https://www.nytimes.com/2016/05/24/opinion/australias-offshore-cruelty.html>>.

¹⁵ See, eg, Paul Donoghue, Mazoe Ford and Clare Blumer, 'Election 2016: Ten Things Vote Compass Reveals About Voters' Views on Immigration', *Australian Broadcasting Corporation* (online), 9 June 2016 <<http://www.abc.net.au/news/2016-06-09/election-2016-vote-compass-asylum-seekers-immigration/7493064>>.

falsely claims these trends can be controlled or reversed by imposing sanctions on a vulnerable group.

The treatment of asylum seekers is therefore an example of the illusion of control. However, it also illustrates the illusion of desert. The political strategy of scapegoating asylum seekers as a way of asserting control over social trends would not work as effectively if there was not also a perception that asylum seekers somehow deserve this treatment. This perception is encouraged in political discourse by the use of terms such as ‘queue jumper’ or ‘illegal immigrant’. More recently, Immigration Minister Peter Dutton has introduced the term ‘fake refugees’ into the political lexicon, saying that ‘[i]f people think that they can rip the Australian taxpayer off, ... then I’m sorry — the game’s up.’¹⁶

The use of the illusion of desert to justify harsh treatment in the name of social control is not limited to asylum seekers. A second example concerns government rhetoric — again, perpetuated to some degree by both sides of politics — about welfare recipients. There is a persistent narrative that people receiving unemployment benefits and other welfare payments are personally responsible for their predicament — if they tried harder to get a job, then they would not be in such a position. This is then used to justify measures ranging from work-for-the-dole schemes to mandatory drug testing.¹⁷

The tendency to believe that people who are suffering or being treated harshly are getting what they deserve, like the illusion of control, can be explained by reference to cognitive biases. The *fundamental attribution error* is the tendency to attribute other people’s actions to their dispositions or character, rather than situational factors. This effect has been widely discussed, although its generality is disputed.¹⁸ It is sometimes thought to be related to the *just world hypothesis*: the assumption that what happens to people is generally appropriate or deserved.¹⁹ The just world hypothesis can also be seen as a form of *outcome bias*: the tendency for judgments about a person’s actions to be distorted where the outcomes are known.²⁰

¹⁶ Michael Koziol, “He Wants Them to Fail”: Lawyers Furious Over Peter Dutton’s “Fake Refugees” Deadline’, *Sydney Morning Herald* (online) 21 May 2017 <<http://www.smh.com.au/federal-politics/political-news/he-wants-them-to-fail-lawyers-furious-over-peter-duttons-fake-refugees-deadline-20170521-gw9moc.html>>.

¹⁷ See, eg, Daniel Peters, ‘The Real Cost of Dole Bludgers: How the Long-Term Unemployed Are Costing Taxpayers a Staggering \$220,000 Each’, *Daily Mail Australia* (online), 22 June 2017 <<http://www.dailymail.co.uk/news/article-4627342/Welfare-reform-Australian-dole-bludgers-cost-taxpayers.html>>; Claire Bickers, ‘Social Services Minister Christian Porter Defends Drug Tests for Dole Recipients’, *News.com.au* (online), 1 June 2017 <<http://www.news.com.au/national/politics/social-services-minister-christian-porter-defends-drug-tests-for-dole-recipients/news-story/e577972a698c047adb9b25dd7220f1da>>.

¹⁸ See, eg, John Sabini, Michael Siepmann and Julia Stein, ‘The Really Fundamental Attribution Error in Social Psychological Research’ (2001) 12 *Psychological Inquiry* 1; Bertram Malle, ‘The Actor-Observer Asymmetry in Attribution’ (2006) 132 *Psychological Bulletin* 895.

¹⁹ See, eg, Melvin Lerner, *The Belief in a Just World: A Fundamental Delusion* (Plenum, 1980); Melvin J Lerner and Dale T Miller, ‘Just World Research and the Attribution Process: Looking Back and Ahead’ (1978) 85 *Psychological Bulletin* 1030.

²⁰ See, eg, Zick Rubin and Anne Peplau, ‘Belief in a Just World and Reactions to Another’s Lot’ (1973) 29 *Journal of Social Issues* 73; Ronnie Janoff-Bulman, Christine Timko and Linda

This belief produces a tendency to blame victims for their suffering and attribute positive characteristics to those perceived as successful.

Studies have noted that the fundamental attribution error appears particularly robust when applied to negative acts by out-group members — that is, members of other races, religions, cultures and social classes.²¹ The tendency to attribute failures by out-group members to character flaws, while successes are attributed to luck or situational factors, is sometimes described as the *ultimate attribution error*.²² Attribution error is therefore seemingly influenced by *in-group bias*: the tendency to judge people with whom one identifies more favourably than people perceived as strange or different.²³

The tendency to think that people generally get what they deserve — particularly when they experience negative events or are members of a different social group — is therefore entrenched in human psychology. It is, however, illusory. The course of a person's life is affected by numerous events outside the person's control. Some of the most decisive elements in a person's life chances — such as, for example, the social status of their parents or what country they are born in — are obviously entirely beyond their influence. It is simply not plausible to think that people generally (or even on balance) receive the life outcomes they deserve. This should be obvious from any serious attempt to reflect upon the kinds of circumstances that lead refugees to abandon their homes and seek refuge in distant countries.

IV The Illusion of Revenge

I have argued that the illusions of control and desert are interrelated, because they both rest on the idea that humans can control their fate and, if things go badly, somebody must be to blame. The third part of this picture that I want to discuss is what I call the *illusion of revenge*: the idea that it is beneficial and legitimate to punish those who transgress social norms. This can be seen as a further extension of the pathology of control: we think revenge enables us to control others and make them behave as we desire.

The most pervasive example of the illusion of revenge in Australia today is perhaps that represented by the carceral state: that is, the systematic government practice of putting people in prison for breaching

Carli, 'Cognitive Biases in Blaming the Victim' (1985) 21 *Journal of Experimental Social Psychology* 161.

²¹ See, eg, Birt Duncan, 'Differential Social Perception and Attribution of Intergroup Violence' (1976) 34 *Journal of Personality and Social Psychology* 590; Janet Swim and Lawrence Sanna 'He's Skilled, She's Lucky: A Meta-Analysis of Observers' Attributions for Women's and Men's Successes and Failures' (1996) 22 *Personality and Social Psychology Bulletin* 507.

²² See, eg, Thomas F Pettigrew, 'The Ultimate Attribution Error' (1979) 5 *Personality and Social Psychology Bulletin* 461; Miles Hewstone, 'The "Ultimate Attribution Error"? A Review of the Literature on Intergroup Causal Attribution' (1990) 20 *European Journal of Social Psychology* 311.

²³ See, eg, Marilynn B Brewer, 'In-Group Bias in the Minimal Intergroup Situation' (1979) 86 *Psychological Bulletin* 307; Donald M Taylor and Janet R Doria, 'Self-Serving and Group-Serving Bias in Attribution' (1981) 113 *Journal of Social Psychology* 201.

legal norms, including non-violent offences linked to addiction and poverty. The normative basis for incarceration has long been debated and views differ on whether it can be justified.²⁴ It is notable, however, that there is no significant current debate in Australian politics about the legitimacy of putting people in prison for breaching the law. This, I think, illustrates the widespread assumption that it is at least sometimes appropriate to punish people for non-socially approved behaviour.

The impulse to punish people for anti-social behaviour goes beyond imprisonment to other aspects of social life.²⁵ The political narrative around welfare recipients discussed previously arguably goes beyond the idea that people are responsible for their reliance on welfare to include the notion that it is legitimate to punish such people for burdening the public purse. The impulse to punish can also be seen in the lack of serious debate over such practices as depriving prisoners of voting rights,²⁶ as well as the discussions that sometimes arise about the supposed leniency of conditions behind bars.

The illusion of revenge, like the other illusions discussed previously, can be explained by reference to cognitive bias. A range of psychological studies have examined what is known as *retribution bias*: the tendency to think that punishing a wrongdoer is justifiable regardless of the consequences.²⁷ The impulse to punish perceived wrongdoing seems to be robust even in cases where subjects are told that the punishment will have seriously harmful long term consequences for society as a whole.²⁸

The carceral state, as is now well documented, has disproportionate effects on vulnerable populations, including racial minorities.²⁹ Aboriginal and Torres Strait Islander prisoners currently represent around 27% of the Australian adult prison population, despite accounting for only 2% of the general community.³⁰ In the United States, African Americans are incarcerated at more than five times the rate of white people, while

²⁴ See, eg, Angela Y Davis, *Are Prisons Obsolete?* (Seven Stories, 2003).

²⁵ For insightful discussion of the relationship between the impulse to punish and social attitudes towards women who defy traditional gender norms, see Kate Manne, *Down Girl: The Logic of Misogyny* (Oxford University Press, 2018) 55–77.

²⁶ The constitutionality of removing the right to vote from prisoners serving substantial jail sentences was affirmed by the High Court in *Roach v Electoral Commissioner* (2007) 233 CLR 162. For further discussion, see Jonathan Crowe and Peta Stephenson, ‘An Express Constitutional Right to Vote? The Case for Reviving Section 41’ (2014) 36 *Sydney Law Review* 205, 223–6.

²⁷ See, eg, John Darley, Kevin Carlsmith and Paul Robinson, ‘Incapacitation and Just Deserts as Motives for Punishment’ (2000) 24 *Law and Human Behavior* 659; Kevin Carlsmith, ‘The Roles of Retribution and Utility in Determining Punishment’ (2006) 42 *Journal of Experimental Social Psychology* 437; Molly Crockett, Yagiz Özdemir and Ernst Fehr, ‘The Value of Vengeance and the Demand for Deterrence’ (2014) 143 *Journal of Experimental Psychology* 2279.

²⁸ Jonathan Baron and Ilana Ritov, *Making Decisions About Liability and Insurance* (Springer, 1993) 17–33.

²⁹ See, eg, Davis, above n 24. See also Traci Burch, *Trading Democracy for Justice: Criminal Convictions and the Decline of Neighborhood Political Participation* (University of Chicago Press, 2013).

³⁰ See Australian Bureau of Statistics, *Summary of Findings: Persons in Corrective Services* (8 June 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>>.

Hispanic Americans are also significantly overrepresented.³¹ These figures arguably indicate an interrelationship between retribution bias and in-group bias, and also provide evidence of systematic racial bias in the legal systems of both countries.

The idea that it is beneficial to punish people therefore seems to be ingrained in political discourse. However, like the other tendencies discussed previously, this belief is open to question. Imprisoning people does not seem like a highly effective way of ensuring compliance with social norms. The percentage of prisoners in Australia who return to jail within one year of release is around 40%.³² Similar recidivism rates have been recorded in other comparable jurisdictions.³³ It is not for no reason that Michel Foucault remarked that '[p]rison is a recruitment centre for the army of crime.'³⁴

I noted previously that studies have shown that the impulse to punish remains stable regardless of the consequences. This perhaps shows that the illusion of revenge reflects a belief not that it is beneficial to punish people, but rather that it is legitimate and desirable to do so. However, the moral legitimacy of retributivism is itself highly questionable.³⁵ Furthermore, there seems to be a form of cognitive dissonance at work here: studies have shown that, when questioned about the rationale for punishment, people tend to cite deterrence and other consequentialist reasons,³⁶ but the intuitive impulse to punish remains even when these factors are removed from the equation.³⁷

Imprisoning someone is a violent and coercive act; as such, it is no surprise that it leads in many cases to further violence. This is how revenge works at an impulsive level: one person feels disempowered and takes revenge on someone else, who then in turn feels disempowered and seeks revenge, which leads to a continuing cycle of disempowerment and violence. It is human to respond to feelings of disempowerment by seeking to reassert control over those responsible. However, this is a destructive rather than creative impulse; it is not something that political discourse should encourage.

³¹ Ashley Nellis, *The Color of Justice: Racial and Ethnic Disparity in State Prisons* (14 June 2016) The Sentencing Project <<http://www.sentencingproject.org/publications/color-of-justice-racial-and-ethnic-disparity-in-state-prisons/>>.

³² Australian Institute of Criminology, *Australian Crime: Facts and Figures: 2014* (2016) <<https://aic.gov.au/publications/facts/2014>> 76.

³³ Seena Fazel and Achim Wolf, 'A Systematic Review of Criminal Recidivism Rates Worldwide: Current Difficulties and Recommendations for Best Practice' (2016) 10(6) *PLoS ONE* 1.

³⁴ Roger Pol-Droit, 'Michel Foucault, on the Role of Prisons', *New York Times* (5 August 1975) <<http://www.nytimes.com/books/00/12/17/specials/foucault-prisons.html>>.

³⁵ See, eg, David Boonin, *The Problem of Punishment* (Cambridge University Press, 2008).

³⁶ See, eg, Phoebe Ellsworth and Lee Ross, 'Public Opinion and Capital Punishment: A Close Examination of the Views of Abolitionists and Retentionists' (1983) 29 *Crime and Delinquency* 116; Neil Vidmar and Dale Miller, 'Sociopsychological Processes Underlying Attitudes Toward Legal Punishment' (1980) 14 *Law and Society Review* 565.

³⁷ See Crockett, Özdemir and Fehr, above n 27.

V Politics without Power

I have argued so far that contemporary political discourse — including, but not limited to, Australia — is characterised by three pervasive illusions: the illusions of control, desert and revenge. These three ideas can be seen as part of an overarching social narrative whereby humans are in control of their destiny, people are generally responsible for their lot in life, and wrongdoers should be punished. I have illustrated the influence of this narrative through examples drawn from Australian politics. I have further suggested that each of these three beliefs is ultimately unsupported.

I want to conclude by briefly suggesting how we might move beyond the current narrative of power and control that dominates political discourse. I suggested at the beginning of this article that politics is about social organisation and that such discussions tend to focus on the distribution of power. I now want to argue that in order to move beyond the narrative of control outlined in this article we need to think about politics in a radically different way.³⁸ The idea that politics concerns the distribution of power suggests that power is a commodity to be traded and exchanged between members of the community. Politics then takes on the appearance of a zero sum game, where one person's gain in power must come at the expense of somebody else.

Theorists such as Foucault and Judith Butler have argued for a more fluid conception of power as something that takes many forms and shifts dynamically across different social contexts.³⁹ I want to suggest, though, that in order to move beyond the narrative of control we need to decentre the role of power in political discourse. We should not think about politics as concerning the economy of power, but rather in terms of what I have described elsewhere as *small justice*.⁴⁰ The foundations of justice, on this view, lie in the ethics of interpersonal relations. Our primary focus should not be on the distribution of power, but rather on recognising the distinct needs and concerns of each individual.

It is useful to draw in this context on the work of Emmanuel Levinas. Levinas's account of both ethics and politics centres on what he calls the *face-to-face encounter* with the other.⁴¹ This is the moment when we confront another person and feel the full weight of their ethical demands. Our initial inclination is to go about our lives in a self-interested way,

³⁸ See also Jonathan Crowe, 'Law's Movement' in Leon Wolff and Danielle Ireland-Piper (eds), *Global Governance and Regulation: Order and Disorder in the 21st Century* (Routledge, 2017) 24.

³⁹ See, eg, Michel Foucault, 'The Subject and Power' (1982) 8 *Critical Inquiry* 777; Judith Butler, *Gender Trouble* (Routledge, 1990).

⁴⁰ See, eg, Crowe, above n 38; Jonathan Crowe, 'Small Justice: The Rights of the Other Animal' in Peter Atterton and Tamra Wright (eds), *Face-to-Face with Animals: Levinas and the Animal Question* (State University of New York Press, forthcoming).

⁴¹ For further discussion, see Jonathan Crowe, 'Levinas on Shared Ethical Judgments' (2011) 42(3) *Journal of the British Society for Phenomenology* 233; Jonathan Crowe, 'Levinasian Ethics and Animal Rights' (2008) 26 *Windsor Yearbook of Access to Justice* 313; Jonathan Crowe, 'Levinasian Ethics and the Concept of Law' in Desmond Manderson (ed), *Essays on Levinas and Law: A Mosaic* (Palgrave Macmillan, 2009) 39; Jonathan Crowe, 'Levinasian Ethics and Legal Obligation' (2006) 19 *Ratio Juris* 421.

pursuing our own interests and desires.⁴² However, when we come face to face with another person it is impossible to continue living in this comfortable way. The other person's gaze engages our attention at the 'primordial' level.⁴³

We have seen throughout this article that the demands that other people place on us are prone to be ignored and distorted as a result of cognitive biases and what I have described elsewhere as forms of *cultural rationalisation*: practices and techniques that enable us to avoid recognising the demandingness of our ethical duties.⁴⁴ Political discourse too often concerns institutional responses to an abstract or threatening other, making it vulnerable to the effects of in-group bias and other cognitive distortions. The other becomes someone to be controlled and punished in order to keep them at bay.

The idea of small justice, by contrast, involves focusing on the other not as an abstract person, but rather as a concrete individual. Politics, on this conception, is not about institutions, but rather about how we treat those to whom we are directly and personally accountable. It does not begin with general social and economic policies that then filter down to nameless persons; rather, it begins with interpersonal relations and then develops organically into a wider social order.⁴⁵ The conception of justice at work in this vision is not the kind of institutional or distributive justice that forms the focus of much contemporary political philosophy; rather, it rests on an *economy of kindness* where institutional questions are subsidiary to the demands of interpersonal ethics.⁴⁶

Small justice, as presented above, does not simply ignore broader institutional questions. However, it sees these as best addressed at an interpersonal level. Levinas emphasises that the face to face encounter does not occur in isolation. Rather, each encounter includes traces of prior ethical experiences. This 'past that is on the hither side of every present' allows the subject to grasp, albeit tentatively and imperfectly, the implications and character of her responsibility for other people.⁴⁷ The seeds of justice are, over time, already sowed through the richness and diversity of repeated ethical encounters. The challenge for justice and law is to recognise the radical potential of this ethical environment.

This understanding of politics is far removed from the political discourse we currently experience in Australia. Indeed, if taken seriously, it would mean the end of politics as we currently know it. Small justice is, in this sense, difficult to imagine. However, this may be part of the point:

⁴² See, eg, Emmanuel Levinas, *Totality and Infinity: An Essay on Exteriority* (Duquesne University Press, 1969) 117.

⁴³ *Ibid* 199.

⁴⁴ See Crowe, above n 40. See also Jonathan Crowe, 'Animal Welfare and the Economy of Kindness' (2017) 42 *Alternative Law Journal* 14, 15–16; Jonathan Crowe, 'Levinasian Ethics and Animal Rights' (2008) 26 *Windsor Yearbook of Access to Justice* 313, 324–5.

⁴⁵ See Crowe, 'Levinas on Shared Ethical Judgments', above n 41.

⁴⁶ Cf Crowe, 'Animal Welfare and the Economy of Kindness', above n 44.

⁴⁷ See Emmanuel Levinas, *Otherwise than Being or Beyond Essence* (Duquesne University Press, 1998) 10. See also Levinas, above n 42, 283.

perhaps what we need is to question the idea that politics is about imagining a particular model of social institutions and then imposing this on the community. Politics, on this view, would be less about control and more about responsiveness and reflexivity. This is politics as a kind of letting go: less about enforcing the law and more about *being* the law by embodying loving and compassionate attitudes.⁴⁸

Imagining politics in this way would involve relinquishing our need to control our social and economic environment. It would involve abandoning the idea that people generally get what they deserve and instead acknowledging the suffering and needs of each person on her own terms and without judgment. It would involve rejecting the impulse to punish people for wrongdoing or seek revenge for feelings of disempowerment, instead asking how to best respond to each person's needs, including the need to achieve social integration and harmony. It involves, in short, cultivating compassion and openness, while rejecting the impulse to dominate and control others. This may seem — and indeed it is — a utopian model. However, it offers a potential escape from our current destructive political discourse, with its themes of control, blame, retribution and, above all, power.

⁴⁸ Cf Crowe, above n 38.