

on the assumption that all people charged with a crime are guilty, that all lawyers are shonky, that all judges are incompetent and that only juries know what they are doing. In some situations this may be true but such a generalisation is unhelpful as the basis for reform.

A lengthy analysis of rules of evidence is illustrated with anecdotes of criminals failing to be convicted because of the hearsay and similar fact evidence rules. However, at no point does Whitton examine the reasons for the existence of those rules and the rights and protections they are designed to preserve. Similarly, Whitton puts forward civil law inquisitorial methods as the magic solution to all of the common law's failings. In theory, the civil law rules he states have potential. However, at no point in the book is the civil law system subject to any scrutiny. Such an analysis may well have found similar problems in that criminal justice system, despite the variation in rules.

This unbalanced analysis of the legal system is contrasted with a strong defence of the right of the media to publish whatever it wishes, without an acknowledgment of the dangers involved in doing so. Whitton appears to be arguing that the real key to justice and democracy lies in journalism. Perhaps it would have been helpful to provide, at this

point, an analysis of the shoddy nature of some journalism and the extent to which it may create bias and misleading material, resulting in the need for restrictive rules of evidence.

Whitton goes on to argue conveniently that the laws of libel should be abolished, after potentially setting himself up for numerous defamation accusations throughout the book. His criticisms of the laws of libel and slander are insightful but again I came away feeling unconvinced and frustrated because of the simplistic level of analysis.

As a final illustration of the horrors of the 'voodoo', Whitton gives the example of 'Azzopardi's Garage fire', a mystery which three different coroners failed to solve. Whitton manages to solve the mystery in the space of two pages. The unashamed bias and assumptions that underlie his conclusion illustrate the reasons for the existence of the rules of evidence that Whitton argues must go.

*Trial by Voodoo* contains some valid arguments and insights. But they are so outweighed by unbalanced and unhelpful assertions that my strongest impression of the analysis is a sense of frustration.

SABINA LAUBER

*Sabina Lauber works in law reform.*

## 'For Their Own Good' A History of the Children's Court and Boys' Shelter at Albion Street, Surry Hills

by Christa Ludlow; *Network of Community Activities 1994; 52 pp; \$7.00.*

*and said, she's lost control again*  
Joy Division

This is a good book to begin with. Along with an historical account of the buildings that make up the Children's Court and Boys' Shelter which were built in Albion Street, Sydney in 1910, Ludlow gives an overview of the ideological and legislative changes that led to the establishment of a juvenile justice system, separated (at least nominally) from the adult criminal justice system. These changes were intended to provide what Ludlow terms a 'New Deal' for children: treating children as individuals in need of care as well as discipline, an increased use of probation; a returning of children to the 'community'; and an

attempt to use institutionalisation/imprisonment as a last resort.

In the foreword to *For Their Own Good*, Barbara Holborrow (Children's Solicitor 1970-1982, Children's Court Magistrate 1982-1994) comments ruefully. 'Why did it always seem to rain and why did the Magistrate always seem to know my client better than I?', evoking the image of the 'repeat offender', but also the welfare-orientated magistrate who would seek/seem to understand the child/client in order to make decisions 'for their own good'. The establishment of the separate court system, dealing with offences committed by children or against children and cases concerning children (including maintenance applications), was accompanied by the establishment of the proc-

esses by which children could be charged with being uncontrollable and the corollary 'offences' of being neglected, and being in moral danger. There was a concomitant rise in the number of children being brought into the system: a 'rise' in delinquency. Ludlow points out that in a more 'humane' system, not only do the numbers increase, but so does the level of surveillance exercised over children and families by probation and welfare officers. As Ngaire Naffine argues in her discussion of the welfare and justice models of juvenile justice,<sup>1</sup> the assumption that new courts meant a new system cannot be sustained and the meaning of 'welfare' as complex, welfare-orientated intervention is still repressive.

The lack of representation for children in the new courts was both an indication of the court's attempt to make the correct decision for the child in a non-adversarial system and a practice that would act to silence the child. Similarly the increasing use of psychological explanatory frameworks was a significant factor in consolidating the links between acting 'for' the welfare of children and acting 'against' juvenile delinquents. As Ludlow's history indicates, the use of institutions increased despite probation being the preferred correctional option: what you get, when the welfare rhetoric is grafted onto the justice system is not a reformed structure but an expanded one: 'The prison remains a stubborn continuous presence, seemingly impervious to all attacks —and in its shadow lies "community control"'.<sup>2</sup>

*For their Own Good* is strongest and most satisfactory when describing directly the history of the buildings, the court, and recounting the experiences of the people involved. Passages quoted from police records, interviews and extracts from texts such as the novel *Come in Spinner* convey the social significance of the court and its physical location effectively. For example, Lewis Rodd's story: "You been down Albion Street again?"

Ominous with disapproval my mother sat in the rocking chair on the front verandah . . . To 'go down Albion Street' was to her not merely a physical descent. It was a descent in moral and religious values.

Or the story told by Nancy de Vries, an Aborigine, of being dragged (literally) through the court charged with being uncontrollable, where uncontrollable equals sexual.

Where Ludlow tries to provide a more critical social history, the limits of space often turn the commentary into sweeping generalisations about social attitudes and motives that occasionally seem to miss the point. While Ludlow recognises that there is a constant problem of 'punishing children for welfare matters', she seems to see this as incidental to the system rather than intrinsic to the ideology of welfare-oriented practice that conflates definitions to see criminality as a manifestation of the neglected child and (almost) all (other) children in need of some kind of welfare intervention.

As a teaching text *For Their Own Good* would perhaps be most suited to

high school students and would be useful across disciplines. The language is clear and straightforward and there are some excellent photographs (that are occasionally spoiled by over explanatory-captions), including a terrific one of a determined Rex Jackson wielding an axe and a striking image of a before and after shot of a boy being dressed for 'boarding out': 'Only the child's wary facial expression has not changed'.

*Look out kid  
Don't matter what you did  
Walk on tip toes . . .  
Bob Dylan*

**MEHERA SAN ROQUE**  
*Mehera San Roque is in the final semester of her law degree.*

*Opinion continued from p.52*

### Special projects

You have a Departmental body called the Special Projects Unit which operates almost exclusively to identify issues you might like to pursue. A report was done within the Unit on a review of the furniture industry in October last year and your predecessor was probably meant to be the beneficiary of its findings.

The report is going back and forth within the Department and the latest is that a brochure for consumers will be prepared. Big deal. If there are problems in the industry get them in front of the courts. Anyhow, why not ask what has happened to the report of the review.

At the same time, throw in a couple of questions about a Supreme Court order to repay consumers a total of \$345,104. The order was made on 28 September 1990 in the matter of *Holloway v Witham* (1990) 21 NSWLR 70 but the money has never been paid. What steps have been taken to collect it? A decision on an unrelated matter in this case is awaited from the High Court but should not the Department be pursuing the money.

### Killer toys

Please do not fall for the trap of getting media coverage about banning some unsafe toy. Let your bureaucrats get their photos in the paper. There are more important issues in product safety where you can have a major impact.

Late in 1994 the Department did a survey of about 80 traders and detected

more than 100 offences relating to breaches of regulations about unsafe products. Those traders have in recent times been re-inspected with the result there has been a very high re-infringement rate revealed. You can ensure the Department initiates major litigation in the Supreme Court on a mass scale to change market place behaviour. This will be more important than a photo-opportunity with some fluffy toy. Ask for an interim report now.

### Some organisation matters

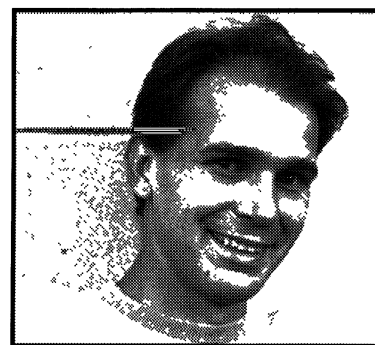
The Office of Real Estate Services and the Registry of Co-operatives have been returned to your administration. Amalgamate all their investigators with the rest of the Department, it will save money and provide the widest possible flexibility in dealing with issues. You might also ask for a cost benefit analysis of the practice of the Real Estate Services Council outsourcing its legal needs to private firms. Perhaps it would be cheaper to use your Department's legal officers. Ask for a report about it.

Finally, consumer problems are not just the difficulties of atomistic individuals requiring a one-off remedy. The market place needs incentives from time to time to operate equitably. Vigorous litigation in the superior courts is one such method.

Yours faithfully

**Peter Wilmschurst**  
*Peter Wilmschurst teaches law at Macquarie University.*

## My name is Adam and I'm prepared to stand up against men's violence



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He is shocked by the results of violence by men on hundreds of thousands of women and children.

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