

the defence of infanticide. Whether diminished responsibility will provide the answer is, however, still unclear. Certainly in jurisdictions which do not have this defence (such as Victoria) abolition of the infanticide defence/offence should not be contemplated,

although it could usefully be amended to address some of its anomalies.

**BRONWYN NAYLOR**

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Thanks to Ania Wilczynski for background information.

reported in tabloid style journalism — rather overdone on generalisation and third (fourth and fifth!) party quotes, decidedly short on detail and considered analysis.

Whitton apologises early in his work for the 'Dick and Dora prose' he adopts, something which is in his view necessary to ensure that the text remains accessible to 'judges and lawyers (who) have always seemed to find clarity of thought and utterance difficult, a phenomenon known as *la maladie Anglais'*. Notwithstanding the concessions Whitton makes for my profession I found his language and content lacking clarity of both thought and utterance — a phenomenon I might call *la maladie Whittonais*.

The central thesis of *The Cartel* is that the common law system not only fails to pursue truth but deliberately aims to obscure it. Lawyers have, in Whitton's view conspired with lazy judges over the centuries to develop, extend and preserve a bag of magic tricks designed to undermine the essential truth-seeking nature of a 'proper' legal system. It is a position presented in the most condescending fashion and is based on an unsubstantiated assumption that the vast majority of lawyers and judges are committed to misleading the general public about the real nature of the legal system.

In developing his position Whitton traverses merrily and simplistically through legal history dating back to the 11th century where 'the cartel' of the book's title was formed. This infamous syndicate of 'some two dozen lawyers and untrained and ignorant judges' was solely responsible for perpetrating the greatest crime ever committed — the rejection of the Continental inquisitorial legal system in favour of a common law system. From there and over a period of six centuries, the cartel was able to develop (in apparent isolation from political and historical contexts) the nine so-called magic tricks:

1. The notion that truth is not relevant to justice
2. The development of the jury system
3. The 'grossly excessive' adversarial system
4. The Right to Silence
5. The Rule Against Hearsay
6. The Rule Against Similar Fact Evidence
7. The Confusing Standard of Proof
8. The Christie Discretion and
9. The Exclusionary Rule.

## The Cartel Lawyers and their Nine Magic Tricks

*by Evan Whitton; Griffen Press Pty Ltd; 254 pp; \$29.95 softcover.*

...The world is still deceiv'd with ornament,  
In law, what plea so tainted and corrupt  
But, being season'd with a gracious voice  
Obscures the show of evil.

Shakespeare

If we thought that in going to a court of law, criminal or civil, the truth would be the centre and only matter for consideration — this book will make us pause. Whitton argues that the search for truth is subverted by many powerful forces that impinge upon the legal system.

The extreme adversary system in Australia, England, America and other places, obscures the truth and enshrines a system where the search for truth faces an array of hurdles in the legal system. There is no conspiracy — just a historical set of procedures and practices and obscure laws set in stone, which serve the interests of lawyers and, occasionally, the truth.

Whitton examines such notable legal cases as Sir Terence Lewis in Queensland, John Elliott in Melbourne, the celebrated Lindy Chamberlain trial (the dingo was acquitted), and perhaps the equally notorious OJ Simpson trial in America — and a host of others. His examination of these cases makes compelling reading. Whitton takes the view that our legal system needs urgent review in order to place truth on the throne of justice from which she has been banished. He does not seem confident that his view will be listened to or acted upon.

We may quibble about the style of writing — quick staccato, machine-gun like firing of quotes and facts which tumble from his pen. Whitton moves around the world and through the centuries to find his evidence and present it for our consideration. We may not demur, however, about the incisive research, his fairly stated views of those both favourable and unfavourable to his own views. His arguments are both lucid and compelling.

Even when Whitton is in the area of less substantial facts (how many guilty go free) he makes a reasoned case for his assertion that the current legal system results in significant numbers of guilty escaping justice, and some innocents being jailed.

This book has crucial implications for law and justice in Australia and he makes a solid case for change. Most importantly, however, he demonstrates that unless truth is enthroned in the courts we may expect the common law to be viewed with cynicism by the common man, a corrosion of trust in the legal process, and ultimately a weakening of democracy.

This book is a 'must' for all citizens concerned with broad issues of law and social justice. Lawyers especially will find that an excellent case has been made for a serious examination of their profession.

**PETER LYNN**

*Peter Lynn has worked in the criminal justice system for 30 years and been an adviser to governments on prison matters.*

## The Cartel Lawyers and their Nine Magic Tricks

*Evan Whitton; Griffen Press Pty Ltd; 254 pp; \$29.95 softcover.*

One might have expected more of a five time Walkley Award-winning journalist — or maybe not! Evan Whitton's

*The Cartel — Lawyers and Their Nine Magic Tricks* is a carping indictment of the common law system annoyingly

Whitton makes but passing reference to 'tricks' 4 to 9 inclusive and remains almost entirely focused on the absence of truth and the grossly excessive adversarial nature of the common law system.

To illustrate his central thesis Whitton draws almost exclusively on quotes (without any citations for the purposes of cross-checking) from third party sources throughout history ranging from leading judges and legal theorists to friends and acquaintances.

A particularly notable passage is worth repeating:

Henry Evans, a Chicago psychiatrist who has many lawyers on his couch, said in April 1996 that truth is good for the soul. He said 'It's a cliché to ask what it takes to sleep at night but honesty is most often the answer'. The solution to (lawyers) torment is to change to a system that has truth and justice as the goal.

Who is Henry Evans? Was he speaking about lawyers or the common law system at the time? My mother once told me that 'if you lie your tongue will turn purple'. She was not thinking about lawyers at the time but I am sure that Whitton could have used her quote to support his position.

This may well be an acceptable style of writing for a daily newspaper, it is far from acceptable when one is trying to provide a serious critique of an entire legal system in a book which Whitton immodestly (and ignorantly) lauds as 'the only text offering a critical examination of the law as a whole' and which should be a prescribed text in high schools and law schools.

*The Cartel* therefore largely takes the position that truth is not an important element of the common law system and this is so because 'he said and she

said and they said'. One can only assume that he, she and they are all telling the truth (and are not lawyers)!

On a more serious note, I can only express disappointment at a book which promised so much. Whitton had the opportunity to make a timely, rational contribution to the debate on the future of the common law system. Instead he chose to make a vitriolic and somewhat self serving attack which ignored the historical and political context in which our system of justice has developed. I was neither confronted nor guilt ridden by what he had to say — simply disappointed.

In true Whittonian fashion perhaps the last words should be left to a Queensland lawyer I have never met nor spoken to and whose words I read somewhere once!

Enough. No more. I can't stand the pain of the constant media torture any longer. Tell him to stop. Tell Grand Inquisitor Evan Whitton, I recant. I confess I am a common (or garden variety) lawyer. I admit my misguided mind-set is an obstacle to reform of the law.

I plead guilty ... I repent my having defeated truth for a living. I confess to being a willing member of a centuries-old cartel. I will give up the names of my colleagues if only the torture will stop.

I will burn my 'Nine Magic Tricks' law books. I will promise never to practise law again. And, if the Grand Inquisitor so requires, I will forsake all else to pursue truth and justice as a journalist.<sup>1</sup>

**MERRAN LAWLER**

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**Reference**

1. Confession reported in 'Proctor Hears', (1998) 18(4), *Proctor* 36.

financial rights. In this way the CRJ (as the Editorial claims) 'is a voice for the consumer movement, expressing the concerns of the sector and those of the writers', but not the only voice. It is an important feature of the information landscape for consumers and fits well with other journals including, among others: the Australian Consumers' Association *Consuming Interest*, the Australian Competition and Consumer Commission (ACCC) journal, the Society of Consumer Affairs Professional's *Consumer Directions*, and the bulletin of the Public Interest Advocacy Centre.

The edition of the CRJ under review (March/April 1998) features articles on sexually transmitted debt by Nicola Howell of the ACCC, debt in divorce by family lawyer/academic Dorothy Kovacs, a timely contribution on changes to the Australian taxation system by Don Siemon of the Brotherhood of St Laurence and Jeremy McArdle calling for a new wave of activism following five years of Kennett-driven economic rationalism in Victoria.

The broad rubric of 'financial services' has long been one of the most important areas for consumer advocates. There is a clear need for those people and organisations working to assist consumers to be informed about current issues relevant in this area. Such information needs to be practical and accessible in style and price. The material needs also to be of a high-quality and relevant. This journal fills those needs. For those who work with consumers, teach consumer rights or simply have a strong interest in consumer issues, this journal should be considered compulsory reading.

**CHRIS FIELD**

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**Consumer Rights Journal**

**Financial and Consumer Rights Council; tel 03 9614 5433**

Our rights as consumers are fundamental to our daily existence. Consumer groups aim, very broadly, to alleviate the hardships for consumers caused by a variety of inappropriate practices whilst positively developing consumer protection policies. Current awareness, education and information dissemination are all important parts of successfully achieving this aim.

The *Consumer Rights Journal* (CRJ) is the official publication of the Financial and Consumer Rights Council. The Council is a non-profit, membership-

based organisation with a focus on research, education, policy, advocacy and community development.

In its own words, the CRJ:

contains feature articles relevant to the changes occurring in the consumer society and other consumer issues. These articles are written by people who have detailed knowledge of the area. On a bi-monthly basis the CRJ provides an interview, book review and interesting 'bits and pieces'.

The CRJ has a particular emphasis on financial services and consumers'