

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.

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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 Anglaise*'. 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.*

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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