

tion of Australia, argues that in some cases moves toward privatisation are simply ill-conceived responses to union involvement in public prisons ('The Industrial Issues of Private Prisons'). The private prison workforce, constituted under enterprise agreements, is by ACM's own admission casualised and relatively untrained.

The defence of private prisons in Moyle's book is put by Debra Diplock and Wayne Calabrese, who are, respectively, the General Manager of Human Resources and Chief Executive Officer at ACM. Their reassurances to the public include statements such as '[i]n general, the major reasons for the privatisation of prisons can be summarised in three words: Cost, Culture and Innovation . . .' Or this: '[At Junee] a well-integrated process of community liaison by both the government and ACM ensured the concerns of the local residents were addressed and resolved . . .' It can be commented that alarmist fears of a totalitarian 'corrections-commercial complex' may well be justified.

And it slowly becomes clear from *Private Prisons and Police* that there is not even any reliable evidence, in Australia or from overseas, that private prisons save money. Their *raison d'être* is false. Any favourable comparisons between private and public prisons, in America or Australia, have been loaded (as between, most notably, Borallon and Lotus Glen in Queensland), although this does not prevent Steve Macionis of the QCSC from claiming an 'outstanding success' for Borallon. As one American author comments on the prison industry, '... there is some reason to fear that, instead of being competitive like the trash collection industry, it will be competitive like the nuclear submarine industry — which is to say, not at all'. Further, it is generally agreed to be next to impossible for a government to switch contractors. Allan Brown's essay ('Economic and Qualitative aspects of Prison Privatisation in Queensland') is an excellent examination of the pitfalls of cost comparisons between the public and private sectors. And of the surrounding ethical questions. In the end, the argument goes, it is impossible to draw a meaningful distinction between the *allocation* and *administration* of punishment (how do you categorise decisions relating to parole or routine discipline?), and to have American multinationalists allocate punishment in Australia, as is the case now, is intolerable.

By contrast, any points that are aduced in this collection in favour of privatisation (leaving aside the offerings of Diplock and Calabrese) are speculative. Indeed, it is possible, as Chan points out, that privatisation could improve access to information but there is apparently no evidence of this. Nor is there evidence of any improvement of conditions for inmates. And what do the inmates themselves think? It is a shame that Moyle's book does not contain anything written by a prisoner representative, although he shows the extensive results of his research into prisoner attitudes towards the Borallon management, including his opinion that the most vulnerable workers at Borallon are the inmates: 'a business approach had compelled the exploitation of cheap labour'. There is no broad skills training for prisoners. Moyle suggests the possibility that in the management contract there are no performance criteria relating to recidivism rates, rehabilitation of inmates, reduction of violence levels within centres, and the provision of amenities. Borallon might be better than Boggo Road, but there is no general criterion on which it could be said that private prisons are clearly superior to public ones; and there are many criteria on which they are worse.

## Trial by Voodoo

*By Evan Whitton; Random House 1994; 369 pp; \$17.95*

There is no doubt that we of the common law could learn some lessons from the European civil law inquisitorial system. However, Evan Whitton's attempt to argue away any virtue in the common law in favour of the introduction of the civil law model is largely unsuccessful. The calibre of his statement that 'The civil law and the common law are so different that one must be wrong' sums up the quality of argument in this book.

The main purpose of the book is to expose the most fundamental flaw in the legal system — that it is not interested in the truth and that it does not seek it. The 'voodoo' of the title refers to the procedure and rules that conceal relevant evidence, obscure the truth and tilt law in favour of the individual against the community.

Whitton's analysis is mainly of the criminal law, based on anecdotes gathered during his work as a journalist. His interest seems to have been fuelled by the belief that a large number of corrupt

All this is apart from the fundamental ethical problem presented by the privatisation of punishment that no amount of research can dispute or qualify: if the state is going to sentence criminals, then it should have the courage to oversee their punishment. Any attempt by government to absolve itself of managing prisons is hypocrisy, especially so in an environment of 'three strikes and you're in' law and order policy. Corrective service bureaucracies, and the public at large, must face the unpleasant fact that prisons are, for better or worse, places where the authorities of the state coerce criminals. The balanced presentation of academic research is gently persuasive in Moyle's book, but at a certain point it needs to be said: privatisation is a wrong move. The only solution to the expense incurred by public prisons is to stop putting people in them. There is no improvement offered by private prisons that cannot be effected from within the public system. If we withhold judgment for too long before deciding whether or not we want private prisons, the decision will surely be made for us.

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individuals exist in our society, and cannot be caught by the common law legal system. He argues that the answer lies in expanding the use of Royal Commissions in the style of the Fitzgerald Inquiry. Fitzgerald QC, in heading that inquiry, took on a role akin to a European civil law inquisitorial judge and suspended many of the prohibitive rules of evidence. In doing so, he was able to get to the bottom of systemic corruption and uncover the truth. Such a feat, Whitton argues, is not possible under the current restrictive rules of 'voodoo' that pollute our criminal law system.

Whitton does make some very valid criticisms of the Australian legal system. Such criticisms are always welcome, particularly when combined with interesting journalistic anecdotes. However, the arguments throughout the book are so unbalanced and generalised that I often found myself fiercely defending the Australian criminal justice system — a stance I do not often take. Whitton's arguments tend to be based

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.

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## '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.