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Craig W.J. Minogue

Submission 1

9 June 2002

Chairperson Ms B. Bishop
Legal & Constitution Committee of the Federal Parliament
which is Inquiring into Crime in Australia
Parliament House
CANBERRA ACT 2600

Dear Ms Bishop,

RE: Legal & Constitution Committee which is Inquiring into Crime in Australia

Please find enclosed a submission for the Legal & Constitution Committee which is Inquiring into Crime in Australia.

My submission raises several questions which I feel could assist the Committee in understanding, and putting into context the issues surrounding imprisonment and crime in Australia.

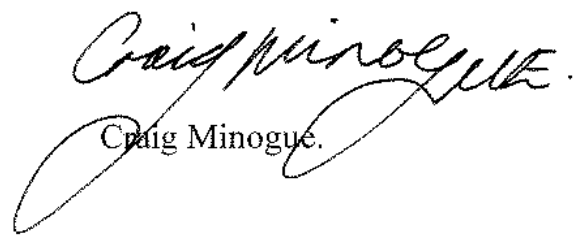
My submission is titled: 'The Magic Bullet: Education & the Answer to Crime in Australia'. A magic bullet is defined by the *Oxford Dictionary* as being any highly specific therapeutic agent, and it is my contention that the problems of crime in our society can largely be addressed if the prison system were to focus on educational and personal development programs rather than punishment and production line work for the profits of private companies in prison industries.

Please feel free to pass a copy of my submission on to any interested person and to quote from it in any of the documents generated as part of your inquiry.

I have enclosed a disk with the my submission saved in *WordPerfect 8* format. There is no need to return the disk to me.

I would appreciate it if I could be placed on a list to receive a copy of the final report of the inquiry.

Yours faithfully,


Craig Minogue.

The Magic Bullet: Education & the Answer to Crime in Australia

a submission

to the Legal & Constitution Committee of the Federal Parliament

Chaired by Ms B. Bishop and which is Inquiring into Crime in Australia

by

Craig W.J. Minogue

7 June 2002

Why should prisoners be allowed to educate themselves?

Prisoners should be directed in education and not exploited in Prison Industries. For a person in custody, especially a person held for a long term, to have the best chance of not re-offending upon release is for that person to have opportunities to do something positive with their lives, to have an enlightened and educated view of the world and their place in it. This would be beneficial to everyone concerned especially the community. And the community should appreciate that it has a vested interest in educating its imprisoned citizens and helping those people find the right path, not simply exploiting them as commercial fodder in slave labour industries.

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Please feel free to make a copy of this submission available to any interested person.

When an person commits a crime the issue for society is, how does it responsibly deal with that person? Does it take a universal approach and “play the ball” and promote the rights of all people, and therefore ask where did we (the society) go wrong? Or does it take an individual approach and “play the person” and simply satisfy the desire for punishment and retribution?

To answer the questions posed above, the facts need to be stated. And the facts are that those who find themselves in prison for committing criminal offences in Australia, and in most places in the industrialised world, are the most disadvantaged and marginalised people in society. In Victoria’s prisons the fact is that:

- ▶ 98% have not completed primary schooling;
- ▶ 94% have not completed secondary schooling;
- ▶ 74% suffer from the public health problem that is drug addiction;
- ▶ 60% were unemployed before entering prison;
- ▶ 63% have been in prison on a previous occasion;
- ▶ 50% are imprisoned for non-violent property or drug offences;
- ▶ 9% commit acts of self-mutilation or attempt to commit suicide when in prison; and
- ▶ 43% of the people in prison are between the ages of 18 and 29.¹

If society does not provide in an equitable manner for all of its people, then it can be argued that criminality is really a form of civil disobedience. Aberrant behaviour of an individual can not be viewed in isolation from the society in which the person comes. Prisons are the site of those that are labelled as criminals, but it should be appreciated that prisoners ‘as a group have higher rates of mental illness, issues of substance abuse, [and] they have frequently undiagnosed physical and mental health problems and little knowledge of disease prevention.’²

There are no hard figures on prisoner health because incredibly, in Victoria, there 'is no system in place ... to review health epidemiological data on the prisoner population.'³ Victoria's prisons have on site medical facilities which include: physiotherapy, psychology, psychiatry, dental, optical, x-ray, ward beds and outpatient services. Despite all this however, so poor is prisoner health that in 1999-2000 Victoria's 2,800 male prisoners attended 2,552 appointments for medical care outside of their respective prisons.⁴

The men, women and children in prison in Victoria are not from outer-space, they come from the community; and they are human beings who are, like it or not, a manifestation of the society from which they come. They should not to be viewed as simply aberrants whose actions are devoid of any connection with the society from which they come. There is no question that these people are seen to have broken the social contract by committing a crime, but, to put it bluntly, it needs to be asked has society in turn failed them?

Returning to the questions posed above, how does society, as it is represented by the laws and the social contract, respond when an individual commits a crime? One thing it does not currently do is look to itself and ask what went wrong, it only looks to the individual, and then it seeks to teach individuals that it is not appropriate to disregard the rights of others, and this lesson is implemented by disregarding the rights of the individual and forgetting about its responsibility. It's a kind of "do as we say, and not as we do" philosophy. The reality is that a person imprisoned under State law, has no definable human rights at Australian law.⁵

In theory, our society is built on the idea that a person is obligated to behave in accordance with the law, because the society has provided a stable environment, education, health care and other services to nurture the individual until that person has come of age; thus the social contract is formed. Keeping in mind the facts detailed above about the standards of education and health of those people labelled as criminals in Australia, one should ask:

- ▶ What place is there for the person who cannot read and write to a level that will allow them to gain and then hold employment?
- ▶ What place is there for the mentally troubled person who spends their lives being turned away from inadequately funded health care and social services?

- ▶ What place is there for a person suffering from the social health problem that is drug addiction?
- ▶ And, for example, what place is there for women who turn to drugs and credit card fraud to alleviate the suffering of a life lived in an abusive patriarchal society?

These questions are not generally asked, and the response of our society to a person committing a breach of the law, is first to forget that the social contract is a two way agreement, and secondly to temporarily house that person in an ever expanding prison system which simply warehouses people for the profit of private prison operators and multi-national supermarket chains who's consumer goods are produced in prison industries.

The committee should ask: Is it any wonder that these people feel marginalised? Is it any wonder that these people believe that they owe little to the society in which they live?

Yes, the individual bears responsibility for his or her actions, but society must be more thoughtful than the individual, it must be looking to the big picture, acting magnanimously and examining the way in which it conducts itself, and not simply focussing on the individual as the cause of all societies ills. Let me say again that the individual has a responsibility, yes, but the society has a corresponding responsibility to not allow their processes to become an instrument of unfair oppression. It needs to be asked if a situation has developed in which the laws have become internally consistent with social justice? And should the laws not hold themselves to the same higher duty that the citizen is expected to meet?

Our society should be about a free association of people with the aim of pluralistic relations and the furtherance of common personal interests. Rather than a society which is primarily interested in its manifestation of the power of the State, the government and the law.

If the media and other groups with a vested interest continue to pressure governments by ill-informed stories about crime and the prison system, then this will have a flow on effect when more no hopers are created and then released into the community.

The society of free people have to ask themselves:

“Do we want prisoners to be made better and more responsible individuals through opportunities in the prison system like rehabilitative and educational programs?” or

“Do we want to help produce individuals who feel as if they have no hope of being treated justly, and who are released from prison with a giant anti-social chip on their shoulders only to commit more crimes?”

Should public policy be making the situation worse and fuelling the anti-social feelings of the few people who are now engaged in criminal activity, or who are currently in prison? Or should public policy be making the situation better by asking what is being done to educate and rehabilitate people in prison so they will be less likely to commit crimes when released?

The questions raised in the above submissions are very real ones which should be considered by the committee. And the answer to all of these questions is simple. Education is the answer, education is the magic bullet that would go a very long way to cutting the high recidivism rate in Australia and protecting the community. A magic bullet is defined by the *Oxford Dictionary* as being any highly specific therapeutic agent, and educational and personal development programs which initiate into the community those who currently are excluded from it, has the potential to be a powerful therapeutic agent against the individual re-offending.

Prisoners need to be given a light at the end of the tunnel. They have to be given hope of a better life, or they will come out of the prison system with a no-hopers attitude, and they will feel no compunction about preying on the community that will not allow them to better themselves. The community has a vested interest in educating, rehabilitating, and justly treating prisoners. It has this vested interest because it is important to demonstrate to prisoners in a very real sense, that they are part of the community, and that they owe a duty to the community to behave lawfully. A productive and contributing member of the community, is a better outcome than an anti-social offender who only takes from the community.

As I said in an opening quote on the cover page of this submission, prisoners should be directed in educational programs as a priority and not exploited in prison industries for the profit of companies like Coles/Myer, K-Mart and Colorific Australia. And it is exploitation, because for all practical purposes prisoners are in an indentured position to private companies through prison industries.

In Victoria, prisoners are paid a maximum gratuity of \$8.25 per working day, 20% of which is withheld for release - with no interest paid. Other pay rates for workers in prisons in Victoria are \$7.50, \$6.50 and \$5.50 per working day. Prisoners do not receive any payment for public holidays or extended (more than 5 days a year) sick pay - even if they injure themselves at work.

It should be noted that an unemployed prisoner receives \$2.00 per day, so the real rate of pay for a prisoner's labour is \$6.25, \$5.50, \$4.50 and \$3.50 respectively per day. And apart from low pay rates, working prisoners are also placed outside the rule of law in relation to labour laws. Under the cover of a letter dated 18 May 1999 I wrote to the WorkCover Authority (Victoria) and asked:

'If I injure myself at work in a prison industry am I covered by WorkCover? Can I make a claim like any other worker?'

Although prisoners are forced by Victorian law to work for the profits of a private companies in prison workshops, John Vitorson the Manager of the WorkCover Advisory Service, in a letter dated 10 June 1999 (his ref 99/1370), advised that:

'In accordance with the section 5 of the *Accident Compensation Act* 1985 prisoners are not workers as there is no contract of service and no worker/employer relationship. Accordingly, a prisoner injured while performing work in prison has no entitlement to compensation under WorkCover.'

WorkCover laws do not enliven a jurisdiction, so if a prisoner wants to be compensated for the loss of fingers or other work related injuries then they have to sue in the common law courts. The problem being that prisoners cannot claim the normal worker/employee relationship. Prisoners cannot, as they are not "employed" as they do not have a choice as to if they work or not.

The requirement in the *Corrections Act 1986* (Vic) that prisoners can be ordered to work puts them in a legal position similar to that of a slave or a child whose parents are making him clean his room. So who has jurisdiction if a prisoner is injured whilst working a machine or driving a forklift? Taking into account the difficulties of a civil damages suit, the practical answer of course is no-one does. And this turning away sends a very clear message to prisoners, and that is that they are outside of the rule of law and outside of the norms of society, and therefore they owe no duty to the society.

The *Corrections Act 1986* (Vic) compels prisoners to work producing consumer goods for private companies when ordered to do so, but educational and rehabilitative programs are optional. So prisoners are forced to work against their will and then they are paid a small gratuity for that forced labour, which is then promptly taken away by the people who pay it, because prisoners have to buy food, bedding, footwear and toiletries from the prison operators.⁶

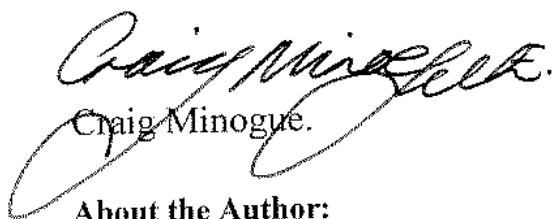
Prisoners object to their forced labour profiting private companies who are exploiting them at the expense of fully paid jobs in the community that require WorkCover and other entitlements. Prisoners do not learn any vocational skills, work ethic or anything else that will be of any use to them when they are released. It needs to be appreciated that prisoners "at work" in prison industries in State run prisons Victoria, play cards over their 1½ hour lunch breaks, have 2 or 3 tea breaks in their 6 hour work shifts, make 20 minute phone calls to friends, relatives and lawyers, sleep under work benches and generally do very little. At present prisoners are simply wasting their time in the glorified chook-pen of prison industries in Victoria.⁷

At Barwon Prison, the main State run maximum security prison in Victoria, the Formed Wooden Products Industry had no work for the prisoners, but the men were still required to go to the industries block and spend the mandatory 6 hours there. In one of these no work periods the Minister for Corrections visited the prison. The men in the Wooden Products Industry were given some wood of the dimensions normally used for the children's toys that were made for Colorific Australia Pty Ltd, and they were told to perform their tasks of drilling, or hammering, or sawing when the Minister visited. On the day in question a prison officer proceeded the Minister through the industries block saying "*The Minister is coming! The Minister is coming!*" And the prisoners drilled, hammered or sawed on cue.

As the Minister moved on to the next stop on the tour, the prisoners all downed tools and when back to the cards, rolling smokes, cups of tea and naps. It was clearly in the prisoners interests to go along with the charade, because few prisoners want more mindless work to do. This is the reality of prison industries in Victoria and I and the experience at Barwon Prison may well be repeated around the rest of the country.

The charade was perpetrated at Barwon Prison because there is a correctional focus on making prisoners work as part of rehabilitating them. The reality is that work practices in prison set prisoners up for failure in the real work force. But if the focus was reversed, and if educational and personal development programs were the priority, then prisoners may well learn through education that they have a place in the community, that they are not unwanted outsiders who owe nothing but contempt for the law and the community which currently excludes them.

Education is the magic bullet that would solve the problem of crime in Australia. And it seems obvious, that for prisoners to have the best chance of not re-offending upon release is for them to have opportunities to do something positive with their lives, and to have an enlightened and educated view of the world and their place in it. The community needs to appreciate that it has a vested interest in educating and rehabilitating its imprisoned citizens and helping those people find the right path, and including them in a more responsible role than as commercial fodder in slave labour prison industries. And public policy makers should be educating the public about these things, as well as educating its imprisoned citizens.


Craig Minogue.

About the Author:

Craig Minogue has survived in the Australian prison system the for the past 15 years. He is an off-campus undergraduate arts student. In addition to his studies Craig has met a need for advocacy services assisting his fellow prisoners with issues associated with access to the Courts, information about the law and educational programs. He has published on human rights and litigated in the Federal Courts in an attempt to establish whether prisoners held under State laws have enforceable protection from human rights violations at law - they don't. As a writer and anti-prison activist Craig attempts to use the legal processes to resolve prison and justice issues.

End Notes:

1. See: the *Statistical Profile of the Victorian Prison System 1995-96 to 1999-2000*. Office of the Correctional Services Commissioner, Department of Justice, Victoria 2001, Table 17, p.36.

The information on drug addiction was taken from Peter Kirby, the *Report of the Independent Investigation into the Management and Operations of Victoria's Private Prisons* Department of Justice, Victoria October 2000, p.11.

2. *ibid.*, (Kirby) p.84, Submission of Forensicare Victoria.
3. *ibid.*, p. 92, Submission of Kevin Lewis, Managing Director, Australasian Correctional Management.
4. *ibid.*, p.86. Data is not available for women prisoners.
5. That Australia is a country with no protection of human rights at law is a trite statement to those who know the true state of the Australian law. However, to be thorough, there is a great deal of evidence to support the claim that there is a dearth of human rights in Australia. In relation to human rights complaints by prisoners not being a justiciable issue at law see: *Minogue v Human Rights and Equal Opportunity Commission* [1998] Vol. 54 *Administrative Law Decisions*, p.389; this judgement was also reported in Vol. 84 of the *Federal Court Reports*, p.438; and Vol. 166 of the *Australian Law Reports* p.29. The appeal in this matter is reported at *Minogue v Human Rights and Equal Opportunity Commission* (1999) Vol. 57 *Administrative Law Decisions* p.23. And see *Minogue v Williams* [1999] FCA 1589, and the appeal of this case *Minogue v Williams* (2000) Vol. 60 *Administrative Law Decisions*, p.366. And see Craig Minogue, 'Human Rights & Excursions from the Flat Lands', *Alternative Law Journal* Vol.25, No.3, July 2000 pp.145-146. In general terms, the following short collection of quotes will illustrate the situation well:

'I take the term 'human rights' to mean the conditions necessary for people to live lives of dignity and value.'*

'Australia is now the only country in the common law world without a system for protecting human rights.'†

'The Constitution says nothing at all about our rights to freedom of expression, to privacy, to health or education, or to any of the basic conditions of a life worth living.'‡

'... both major political parties apparently accepting that States and Territories should be free to enact legislation that breaches international human rights standards.'§

'... I see the Australian Constitution as actively *excluding* most discussion in the area of human rights. It leaves such debates exclusively in the political realm, which is in a sense the least hospitable of all to proposals for the restriction of governmental power.'||

'Human rights are a farmwork for debate over basic values and conceptions of a good society.'¶

* Hilary Charlesworth, *Writing in Rights: Australia and the Protection of Human Rights*, UNSW Press, Sydney, 2002, p.41.

† *ibid.*, p.14.

‡ *ibid.*, p.18.

§ *ibid.*, pp.35-36.

|| *ibid.*, p.40.

¶ *ibid.*, p.50.

6. For example, between 1 November 1996 and 1 February 1997 the following food items were sold to the 240 prisoners who were at Barwon Prison in Victoria: 3189 tins of fish, 1959 bags of rice, 1873 packets of noodles, 1238 tins of baked beans and spaghetti, 1217 dozen eggs, 685 tins of tomatoes, 518 bags of pasta, 274 bottles of pineapple & orange juice, 273 tomato paste twin packs, 233 tins of fruit, 218 bottles of chilli sauce, 161 boxes of cereal, 136 boxes of salda biscuits, 114 bottles of cooking oil and 102 boxes of Cup-a-soup. (There was more but space is limited). The kitchen budget at the time of these figures was \$420,000.00 per year, at the same time the inmates spent \$120,000.00 per year on food. To appreciate the above figures they need to be extended to a 12 month period, and then take note of the weights. Two examples: (1) There were 12,756 one hundred and thirty gram tins of fish sold per year, which is 1,658kgs of fish; and (2) there were 7,836 five hundred gram bags of rice sold per year which is 3,918kgs of rice. When cooked the rice increases in weight by at least 50%. This means that prisoners are supplying themselves with at least 6 tonnes of rice per year at Barwon prison. I am sure that, throughout Australia, prisoner shops and canteens make millions of dollars from this trade in food.

7. In days gone by prisoners were corralled in fenced off areas that prisoners and staff called chook-pens. Little has changed, it just "appears" better now and at least you can kid yourself that its better than the prison yards like the old "D" Division in Melbourne's Pentridge prison which were condemned in 1898 as not fit for human habitation, but which were used until the late 1990's.