Negative: Prison Vouchers

By “Coach Vance” Trefethen

***Resolved: The United States Federal Government should significantly reform its policies regarding convicted prisoners under federal jurisdiction***

Case Summary: The AFF plan offers federal convicts the right to choose which prison they will serve their sentence in. It’s based on the concept of “school vouchers,” where parents are given a (literal or figurative) coupon (voucher) for X dollars funded by taxpayers that they can then use for any school they choose, public or private. This replaces forcing children to go to public schools as they are automatically assigned and allows poor students to afford private schools. The theory is that schools would compete for students and improve their programs to attract them. Likewise, prison vouchers in theory would motivate prisons to reform themselves or find themselves empty and the staff laid off, presumably, when no one shows up.

Key to this case are the arguments of renowned legal scholar Alexander “Sasha” Volokh. He is the big advocate for them, at least in theory. However, his law review article explaining them has a big disclaimer in it. He admits that there are also very good arguments against them, and that he personally does not advocate that the advantages of prison vouchers would outweigh the disadvantages. He says it needs more study and debate. This means both the Affirmative and Negative could ethically and honestly quote Volokh as an advocate or a critic of prison vouchers without violating any rules of TP evidence usage and author’s intent.

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Negative: Prison Vouchers

OVERVIEW

Alexander Volokh can be cited by both sides. He’s discussing the issue, not advocating for or against it

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021

I take these counterarguments seriously, and so I make no strong claims about the bottom-line merits of prison vouchers. If the potential downsides—that prisoners, through their voucher spending, drive prisons to adopt undesirable features in ways that can’t be adequately controlled by the political process—are outweighed by the benefits— such as improvements in prisoner security, health care, and education—then vouchers could dramatically improve penal policy. But this Article is meant to spur further research and debate on the question, not to come down on one side or another.

NEGATIVE PHILOSOPHY

Overall bad idea to let prisoners select their own punishment

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021

In a sense, this is similar to mandated curricula in the school context: just as parents can’t always be trusted to choose the best for their children, so too are prisoners perhaps inadequate selectors of their own best punishment. Imagine how much more we might mandate in the curriculum if the students themselves could make curricular choices. Solving the agency problem by allowing prisoners to choose may exacerbate these negative externalities.

SOLVENCY

1. Questionable net benefits

Power to choose might not do any good, with trade-offs between features. And it might just help prisoners escape

Justin Moyer 2011. (journalist) 29 July 2011 WASHINGTON POST You’ve heard of school vouchers. How about prison vouchers? (accessed 25 Sept 2021)

Though Volokh doesn’t specifically discuss the District, prison choice might affect D.C. convicts more than any other prison population. Scattered throughout 98 federal prisons since [the complex at Lorton closed in 2001](http://www.washingtonpost.com/ac2/wp-dyn?pagename=article&node=&contentId=A55478-2001Nov19), vouchers could enable prisoners from D.C. to choose a location closer to their families than California or Colorado, where some are currently housed. Then again, if Western prisons offer better meals, gyms and educational programming — or better access to drugs, shivs and escape tunnels — D.C. prisoners might want to stay put. Would the power to choose do them any good?

2. Inadequate information

Prisoners would need information about prison conditions to make voucher choices, but the data isn’t available

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

Professor Volokh might counter that his proposal at least will improve conditions by permitting inmates to vote as to the most humane prisons by exercising choice. But getting accurate information about conditions on the ground in any prison facility is truly daunting. In describing the problems of America’s prisons, Professor Volokh’s paper cites the report of the Commission on Safety and Abuse in America’s Prisons, a commission convened by the Vera Institute and composed of corrections experts. Although the commission’s report commends the BJS’s data collection efforts, it also acknowledges that there simply is no information available about many aspects of prison life. The report quotes the BJS chief statistician, Allen Beck, as saying, “The level of assaults is simply not known. I cannot measure well the level of assault using administrative records as they exist today.”

Prisons lie or hide information about their conditions, so no way for prisoners to choose accurately

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021) (brackets added)

Professor Volokh suggests that prison operators could publicize information regarding their facilities. This response mistakes advertising for accurate information. Private prison companies have marketing departments that churn out only positive stories and Internet sites. As the ACLU points out, “no one would know from CCA’s [Kentucky Corrections Corporation of America] website that one of its employees sexually abused multiple female immigration detainees, or that one of its facilities is allegedly so violent that it has been dubbed the ‘gladiator school.’” Private prison companies may be exempt from information-sharing mechanisms such as the Freedom of Information Act and some state records laws. CCA has—unsuccessfully—resisted a request to turn over settlement documents and complaints to the leading publication for prisoner rights, Prison Legal News. Some private prison companies have even sought to thwart efforts by their shareholders to obtain information about issues such as political contributions.

3. Waiting lists

Prisoners wouldn’t actually get to choose, they’d just end up on a waiting list

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

If there is one factor that is readily apparent to prisoners, it is location. Paul Wright, editor of Prison Legal News, suggests that prisoners will have strong opinions that the best prisons for them will be the ones closest to home, so that they can get visitors. However, this suggests that, in a voucher system, there would be long waiting lists for the facilities closest to large population centers—a far cry from a system in which prisoner choice drives improvements in conditions and programmatic offerings. Professor Volokh might counter that prisoner preference for proximity to home would create a push for more prisons to be built near cities. But given the major investment required to build new prisons, and higher land values near cities, it could be a long wait.

4. No market incentive for improvement

Prisons wouldn’t actually compete with better services – not enough market incentives

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

There are also larger structural issues that could inhibit the use of prisoner choice as a means of shaping corrections services. Although Professor Volokh’s proposal is not fully identified with privatization, we can look to the current private prisons system to anticipate potential problems in a market created by prisoners’ vouchers. Professor Richard Culp of the John Jay College of Criminal Justice recently has commented that the private prisons market is an “oligopoly” in which four companies possess ninety-two percent of the market share. He writes that an oligopoly “is characterized by interdependence, avoidance of competition and a rigid attachment to the status quo among the leading firms” —hardly a recipe for competence, let alone innovation.

5. Prisoner “choice” is a myth

Lots of barriers block any real way for prisoners to be given “choices” that make any sense

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021) (brackets in original)

I find it particularly unsatisfying to talk about choice in the context of a criminal punishment system that is inherently coercive and that is marked by persistent, systemic racial and socioeconomic disparity. How are prisoners to exercise choice effectively when their attempts to notify authorities of systemic wrongdoing meet with mockery or retaliation? How are they to do so when they are illiterate, or possess limited proficiency in English? Is choice a realistic concept for the prisoners who have mental illnesses, estimated to be more than fifty percent of inmates? How about for those who are held in segregation? Prof. Volokh argues that "[t]he inmate's family or an appointed legal guardian could make the choice," but this does not address the barriers that non-prisoners face in obtaining accurate information regarding conditions on-the-ground in corrections facilities. Prisoners are not consumers shopping for home mortgages (although we also could debate whether that market worked). They are the dispossessed of our society, held in situations designed to minimize their access to information and their exercise of autonomy.

6. Faith-based prisons don’t work

Link: One of the “advantages” of prison vouchers is that prisoners could choose one that has a religious affiliation

They can’t do that in the Status Quo because it’s a violation of the First Amendment for the government to fund the “establishment of religion.” But when prisoners can choose for themselves, it bypasses this problem and becomes constitutional for the government to allow them to choose faith-based confinement, just like a school voucher program allows students to choose parochial/religious schools with taxpayer money. This may be cited as an advantage of the Affirmative plan, but unfortunately…

The Failure: Faith-based prisons don’t work

Prof. Alexander Volokh 2011. (assistant professor, Emory Univ. School of Law) DO FAITH-BASED PRISONS WORK? Oct 2011 ALABAMA LAW REVIEW <https://www.law.ua.edu/pubs/lrarticles/Volume%2063/Issue%201/2-Volokh.pdf> (accessed 25 Sept 2021)

Faith-based prisons continue to be promoted as promising avenues for reform, chiefly on the grounds that they improve prison discipline and reduce recidivism. (4) However, most of the empirical studies of the effectiveness of faith-based prisons have serious methodological problems and, to the extent they find any positive effect of faith-based prisons, can’t be taken at face value. (5) Those few empirical studies that approach methodological validity either fail to show that faith-based prisons reduce recidivism or provide weak evidence in their favor.

DISADVANTAGES

1. Prison system growth

Link: Voucher plan would create incentive for growth in the prison population

**[Analysis: If prisons get money by attracting prisoners, it gives the justice system an incentive to increase the prison population.]**

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

To be sure, Professor Volokh is not suggesting that prisoners bid to obtain minimum conditions or essential medical care. However, his proposed voucher system, rooted in a faith in markets, takes us one step closer to such a world Moreover—and this is really my greatest concern—if markets are successful, they can grow. And I fear that embracing a market mentality in this area will contribute to the one thing that America really does not need now: more growth in our system of prisons. Professor Volokh does a good job of outlining the problems with conditions in American prisons. But he does not acknowledge the primary condition afflicting American incarceration. That problem has been analogized to obesity: the system is just too big.

Link: Prison vouchers would unleash economic incentives for increased prison growth

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

At what could be a critical turning point, I fear that Professor Volokh’s proposal could kick-start prison growth. Although we cannot say for sure what would happen if a system of “prison vouchers” were adopted, there is reason to believe that it could unleash some powerful forces. The notion of vouchers for prisoners further normalizes the idea that corrections is a market and that prisoners are a commodity. It also creates yet another opening for powerful lobbies with vested economic interests, such as private corrections companies and guards’ unions, to advocate policies that promote incarceration.

Link: Vouchers would increase incentives for growth of incarceration

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

But a “prison vouchers” system can only promote privatization, by opening yet more arenas in which corrections companies will push to compete. Recent studies have shown how private corrections companies contribute to the growth of incarceration in the United States by advocating policies that promote prisons.

Impact: Prison conditions get worse. The very best way to improve conditions isn’t vouchers, but reducing prisoner population

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

The report of the Commission on Safety and Abuse in America’s Prisons proposes a different solution to the problem of poor prison conditions—external monitoring. This is a measure adopted by some other mature democracies, including the United Kingdom and Sweden, and advocated by the American Bar Association (ABA). However, the reform that I would prioritize is simpler—fewer prisoners. The greatest inhumanity of our current system is its sprawling size, producing crushing overcrowding in some systems, and multiplying its effects on families and communities on a scale that is hard to fathom. The ABA is working on a state policy initiative designed to reduce states’ reliance on incarceration. The ABA advocates measures that have been demonstrated to safeguard public safety while reducing prison populations, such as pretrial detention reform, decriminalization of low-level offenses, use of community corrections, and changes to parole. Just when it seems that the United States may be turning a corner, Professor Volokh’s “prison vouchers” proposal runs the risk of reinforcing entrenched interests that have contributed to prison expansion. This is one market that we do not need.

2. Reduced Mental Health Treatment

Link: Many prisoners who need it would avoid mental health treatment by choosing prisons that don’t make them do it

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021

Second, some prisoner preferences may be affirmatively harmful to the outside world. I’ve already mentioned that we may want to force certain prisoners into certain services, like psychological services for the mentally ill. The prisoners likely would not choose this service for themselves; mentally ill prisoners’ distaste for psychiatric treatment would thus be socially negative.

Impact: Human suffering - because mentally ill prisoners suffer greatly without treatment

Samantha M. Caspar and Artem M. Joukov 2020 (Joukov - has served as a prosecutor both in Alabama and in Florida; currently a Ph.D. student at the University of Southern California. Caspar is an attorney with the law firm of Squire Patton Boggs LLP in Cincinnati) Spring 2020 “MENTAL HEALTH AND THE CONSTITUTION: HOW INCARCERATING THE MENTALLY ILL MIGHT PAVE THE WAY TO TREATMENT,” NEVADA LAW JOURNAL <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1815&context=nlj> (accessed 9 July 2021)

Unable to find proper care in penitentiaries, victimized by fellow inmates and guards alike, and incapable of finding any voice in a democratic society, mentally ill inmates have suffered greatly in state and federal jails. Many mentally ill individuals remain untreated after leaving jails or prisons, creating a revolving door within the jails and prisons (where these individuals often return repeatedly, sometimes for want of another place to go).

Impact: Untreated mental illness increases prison violence

WASHINGTON POST 2018 (journalists Christie Thompson and Taylor Elizabeth Eldridge) 21 Nov 2018 “‘NO ONE TO TALK YOU DOWN’” (accessed 7 July 2021) (brackets in original) <https://www.washingtonpost.com/news/national/wp/2018/11/21/feature/federal-prisons-were-told-to-improve-inmates-access-to-mental-health-care-theyve-failed-miserably/>

Untreated mental illness can also contribute to prison violence. While the vast majority of people with a mental illness are not violent, [research compiled in recent years](https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3633-risk-factors-for-violence-in-serious-mental-illness) shows that people with serious psychotic disorders, especially when untreated, can be more likely to commit a violent crime. And mentally ill individuals can be [up to 11 times as likely as the general population](https://jamanetwork.com/journals/jamapsychiatry/fullarticle/208861)to be victimized, researchers have found. “Their symptoms could include delusions, thoughts that other people are conspiring against them,” said Paul Appelbaum, a psychiatrist at Columbia University. “[And] to the extent that they are loud, talking about their delusions, intrusive with other people or hyperactive, they can end up provoking other prisoners into attacking them.”

3. Ongoing criminal activity in prison

Link: Accepting prisoners’ preferences gives prisons an incentive to let them run their criminal operations while incarcerated

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021) (brackets in original)

Prisons may also choose to cater to criminals interested in running their criminal enterprise from within the prison. Prisons could attract such criminals by loosely monitoring incoming and outgoing mail, phone calls, and visits. Cell phone smuggling is a related problem, as “[i]llegal cell phones are used to circumvent supervision of conversations, and can be used by inmates to orchestrate criminal activity, plan escapes, and be a menace outside of prison walls.” Inmates have always been able to plan criminal activity or intimidate witnesses through prison visits by confederates, calls on approved prison phones, and other means, but communication with the outside has its costs. La Nuestra Familia members resort to various methods, including use of the Aztec language, “micro writing,” codes, messages hidden in artwork, and relaying messages sent through paroled members. Cell phones can reduce these costs substantially, and detecting progressively smaller modern cell phones has become more difficult in recent years. To the extent cell phones encourage disorder and violence within the prison, we might expect voucher prisons to police cell phone smuggling. Unfortunately, this may not hold true since the main disadvantages of cell phone smuggling likely flow to people on the outside, such as intimidated witnesses or future crime victims.

Impact: Violence and death. Prisoners use cell phones to commit murder and other crimes

Capt. Robert Johnson 2019 (former Dept of Corrections captain at Lee Correctional Facility in S. Carolina) Column: Cellphones in prison pose threat, but there is a solution 5 Nov 2019 <https://www.dispatch.com/opinion/20191105/column-cellphones-in-prison-pose-threat-but-there-is-solution> (accessed 25 Sept 2021)

Along with serving as a currency behind bars, they are commonly used as tools to plan crimes including violent attacks and smuggling of narcotics and weapons into prisons. Inmates also frequently use these phones to harass victims of domestic violence and intimidate witnesses from behind bars. In North Carolina, a 63-year-old man and father of a prosecutor was kidnapped and extorted thanks to a contraband cellphone. In Oklahoma, a convicted criminal was able to run a multistate drug ring that generated anywhere between $250,000 to $1 million each week in revenue. Others across the country have used cellphones to terrorize a rape victim, extort the girlfriend of an inmate and prey on vulnerable populations by posing as financial institutions asking for money. In perhaps the most horrifying case of all, a 9-month-old baby in Georgia was shot and killed as retaliation against his uncle in a gang dispute. The murder was orchestrated from a prison cell using a contraband phone.

Impact: More crime both inside and outside the prison

Capt. Robert Johnson 2019 (former Dept of Corrections captain at Lee Correctional Facility in S. Carolina) Column: Cellphones in prison pose threat, but there is a solution 5 Nov 2019 <https://www.dispatch.com/opinion/20191105/column-cellphones-in-prison-pose-threat-but-there-is-solution> (accessed 25 Sept 2021)

Contraband phones have been used to plan attacks, sneak weapons into facilities and threaten the general public. Technology that can stop this problem, known as wireless containment systems, is already available. It is up to the state of Ohio to implement these lifesaving technologies before more people are hurt or killed. As a former Department of Corrections captain at Lee Correctional Facility in South Carolina, I experienced firsthand the danger of contraband cellphones within facilities. In 2010, I survived an attempted murder that was ordered by an inmate using one of these very devices.

4. Gangs

Link: Gang members, given a choice, would choose to be in the same prison

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021)

Prisoners’ preferences aren’t always good; we are, after all, talking about (presumptive) criminals. For example, satisfying prisoner preferences may harm society by allowing gang members to serve their sentences together and thus better run their outside criminal enterprises.

Link: Gangs gain strength and prison becomes less of a deterrent to crime. More like a family reunion than punishment!

Prof. Alexander Volokh 2012 (assistant professor, Emory Univ. Law School) “PRISON VOUCHERS” Univ. of Pennsylvania Law Review 1 Jan 2012 <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1048&context=penn_law_review> (accessed 25 Sept 2021)

But self-segregation has negative effects beyond prison. Being around members of one’s own community, and members of one’s own outside criminal community, makes prison less undesirable, and therefore constitutes an amenity that reduces prison’s deterrent value. Further, many gangs, like the Mexican Mafia, La Nuestra Familia, or the Nazi Low Riders, operate on the outside as well as in prison. In fact, various outside gangs may have originated in prison. Thanks to telephone and mail monitoring and other measures, gangs that operate across prisons and in the outside world experience difficulties in communicating. Concentrating gang members in one place would probably reduce these communication costs.

Impact: Death & Destruction. Gang violence is really bad. Example: MS-13

John-Michael Seibler 2018 (director of the Heritage Foundation’s project to counter abuse of criminal law) 4 June 2018 “Gang Violence: Has the Threat Been Exaggerated?” https://www.heritage.org/crime-and-justice/commentary/gang-violence-has-the-threat-been-exaggerated (25 Sept 2021) (brackets in original)

At a 2018 White House roundtable, John Cronan, acting head of the Justice Department's Criminal Division, reported that MS-13 has approximately 10,000 members across at least 40 states and another 20,000 outside the United States, and is responsible for murder, sex trafficking, drug trafficking, racketeering and other crimes. Cronan called MS-13 “probably the most ruthless and violent gang terrorizing our streets today,” recalling the brutal murders of victims that include 16-year-old Kayla Cuevas and 15-year-old Nisa Mickens, both killed in Brentwood, N.Y., and 15-year-old Damaris Alexandra Reyes Rivas, stabbed 13 times in Fairfax County, Va. Jessie Liu, U.S. attorney for the District of Columbia, said in February that federal prosecutors remain “concerned about [MS-13's] international reach, including its violence and drug dealing, and its efforts to recruit young people.”

5. Comfortable prisons don’t deter crime

Link: Plan will have prisoners choosing the most comfortable prisons

If not, then the Plan doesn’t really do anything.

Impact: More crime. Comfortable prisons = more crime

Lawrence Katz, Steven D. Levitt and Ellen Shustorovich 2003. (Katx - Harvard University and National Bureau of Economic Research. Levitt - University of Chicago and American Bar Foundation. Shustorovich, -City University of New Yorkhttps://pricetheory.uchicago.edu/levitt/Papers/prisonconditions.pdf

Previous research has attempted to identify a deterrent effect of capital punishment. We argue that the quality of life in prison is likely to have a greater impact on criminal behavior than the death penalty. Using state-level panel data covering the period 1950-90, we demonstrate that the death rate among prisoners (the best available proxy for prison conditions) is negatively correlated with crime rates, consistent with deterrence. This finding is shown to be quite robust.

6. More escapes

Link: Prisoners could choose private prisons under AFF plan and plan incentivizes more private prisons

Prof. Giovanna Shay 2012. (Associate Professor of Law, Western New England University School of Law) U. of Penn. Law Review “ONE MARKET WE DO NOT NEED” <https://digitalcommons.law.wne.edu/cgi/viewcontent.cgi?article=1227&context=facschol> (accessed 25 Sept 2021)

Professor Volokh takes great pains to point out that he is not advocating prison privatization per se. I can understand why he is eager to distance his proposal from private prisons, since conditions in some of them—like conditions in many government facilities—have been roundly criticized. For example, a recent report by the American Civil Liberties Union (ACLU) describes conditions in a Texas youth facility run by a private prison company, the GEO Group, as “horrid.” Independent auditors sent to monitor the juvenile facility reportedly “got so much fecal matter on their shoes they had to wipe their feet on the grass outside.” Another new report by the Sentencing Project catalogues hundreds of brutality complaints at a Mississippi youth facility that is run by the GEO Group and under federal investigation, as well as disturbing reports of staff sexual abuse at a Kentucky Corrections Corporation of America (CCA) facility housing female prisoners from Hawaii. There is also a troubling “revolving door” between government and private corrections. In one high-profile instance, former Bureau of Prisons Director Harley Lappin left government service after being arrested for alleged drunk driving in 2011; soon afterwards, he began working as CCA’s Chief Corrections Officer. But a “prison vouchers” system can only promote privatization, by opening yet more arenas in which corrections companies will push to compete.

Link & Impact: Private prisons are slack, lack accountability, and allow escapes

Alex Kozinski and Andrew Bentz 2013. (Kozinski – Chief Judge of the US 9th Circuit Court of Appeals. Bentz – attorney; former law clerk to Kozinski) PRIVATIZATION AND ITS DISCONTENTS, Emory Law Journal <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1214&context=elj> (accessed 25 Sept 2021)

So we’re certainly on the way to prison privatization. But private prisons present a troubling accountability problem. This was illustrated by the private prison near Kingman, Arizona. Back in 2010, two convicted murderers escaped from the privately run prison and murdered a couple taking a camping trip. It turns out the private prison was being run like a “day care,” with a broken alarm system and a lax security culture. These problems are likely the result of a lack of accountability. The lack of state control of private schools isn’t such a serious problem because the private schools serve customers who can take their business elsewhere. But with prisons, we don’t have that same mechanism.

7. Unjust

Link: Prison vouchers take the punishment out of prison

Alex Kozinski and Andrew Bentz 2013. (Kozinski – Chief Judge of the US 9th Circuit Court of Appeals. Bentz – attorney; former law clerk to Kozinski) PRIVATIZATION AND ITS DISCONTENTS, Emory Law Journal <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1214&context=elj> (accessed 25 Sept 2021) (Note: “Sasha” is a nickname form of “Alexander” in Russian. “Sasha Volokh” and “Alexander Volokh” are the same person.)

Professor Sasha Volokh has suggested that a prison voucher system might introduce the same sorts of benefits we see with school vouchers. If prisoners could choose where they served their time, prisons would compete for money. According to Professor Volokh, that could increase security, improve the quality of health care, and offer more forms of rehabilitation. But prisoners are not the only constituents served by prisons. In fact, one might more accurately call prisoners anti-customers. The real customers are the people on the outside who will suffer the detriments of poor prison administration. Treating prisoners as the customers undermines the purpose of punishment. An important aspect of punishment is loss of control. If you’re in prison, you’re no longer allowed to eat when you want, go to sleep and wake up when you want, watch TV when you want, have sex and visit with family when you want. Your life is—to a great degree—controlled for you. Prison vouchers ameliorate and undermine punishment by giving prisoners some control over their lives. The prisoner now gets to choose where he serves his time and under what conditions, making the sentence easier to bear.

Link: Prison voucher “competition” for attractive prisons turns the purpose of prison (punishment) on its head

Alex Kozinski and Andrew Bentz 2013. (Kozinski – Chief Judge of the US 9th Circuit Court of Appeals. Bentz – attorney; former law clerk to Kozinski) PRIVATIZATION AND ITS DISCONTENTS, Emory Law Journal <https://scholarlycommons.law.emory.edu/cgi/viewcontent.cgi?article=1214&context=elj> (accessed 25 Sept 2021)

And when it comes to accountability, prison vouchers cater to the wrong customer. If prisons compete for funding based on what prisoners prefer, prisons will start offering amenities that may be inconsistent with the goals of punishment and security. Just imagine: “Come to Paradise Prison! We’ve got the hottest showers in town, bed checks only every other week, and free WiFi access at every bunk.”

Link & Impact: Justice is lost. Abandoning punishment means abandoning justice and the moral foundations of the universe

Dr. Stuart B. Babbage 1973 (PhD theology) “C.S. LEWIS AND THE HUMANITARIAN THEORY OF PUNISHMENT” (Spring 1973) <https://biblicalstudies.org.uk/pdf/churchman/087-01_036.pdf> (accessed 29 June 2021)



Link & Impact: Justice is lost whenever we adopt any goal that looks forward to “what will be the results of the punishment?” rather than backwards at the question of “what punishment does that crime justly deserve?”

**To uphold Justice, the Affirmative has to be able to tell you that these prisoners, based on the crimes they committed, deserve to be given their choice of comfortable prisons. If their justification is anything other than that, then they are acting contrary to Justice and deserve to lose the round.**

Prof. Peter Karl Koritansky 2012 (associate professor of history, philosophy, and religious studies at the University of Prince Edward Island, Canada) Thomas Aquinas and the Philosophy of Punishment <https://books.google.com/books?hl=en&lr=&id=CFZ6DKEw4wUC&oi=fnd&pg=PR7&ots=6Wg7jWFoUM&sig=TAefdc8Zs_mKI5C8DZqn0BCIPPo#v=onepage&q&f=false> (accessed 10 Aug 2021) (Note: Prof. Koritansky is referring to criticism in general of backward looking utilitarianism, but in the article he expresses agreement with this criticism, so this quote is being used consistently with author’s intent.)

