“Inmate Rights in America’s Private Prison System”

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Introduction

How does the government protect the rights of private prison inmates? As it stands, private prison inmates may not sue their prison or its guards based on a Constitutional violation. On the other hand, public prison inmates enjoy this right. Whether this difference accounts for an increase in abuse in private prisons will be the focus of this paper. The potential for a difference in prisoner treatment between public and private institutions is significant because the 14th Amendment guarantees equal protection for all citizens under the law. If private prisons can abuse inmate rights without recourse, then private prisons, as an institution, violate the 14th Amendment. This would set a precedent that the government can avoid Constitutional responsibility through privatization. As such, the growth of private prisons pits corporate interest against inmate rights.

Private prisons have significant lobbying power and influence laws to further profit motives. According to Bertrand Russell: "Those who enjoy irresponsible power will inevitably further, if not their own pecuniary interests, at least their own creed and their own prejudices" (Russell 64). It is not far fetched to say that private prisons have a stake in who has political control. One private prison company, Correctional Corporation of America (CCA), admitted in their 2012 Securities and Exchange Commission report that: "The demand for our facilities and services could be adversely affected by the relaxation of enforcement efforts, leniency in conviction... or through the decriminalization of certain activities that are currently proscribed by criminal laws" (SEC 28). Corporations such as CCA will lobby Congress for their own interests (OpenSecrets), and even file *amicus curiae* briefs to federal courts (ACLU). Private prisons are a powerful lobby solely interested in maximizing profit through increased incarceration.

Given the influence of private prisons and their possible threat to inmate rights, this paper will discuss whether inmates in private and public prisons receive similar protections. Essentially,

this paper will compare the different legal routes public and private prison inmates must take and how this difference affects prisoners. Public prison inmates may sue on a Constitutional basis through a "*Bivens* tort," whereas private prison inmates do not have this option and must sue on the basis of personal injury. If a Constitutional (*Bivens*) lawsuit is better for recovering inmate damages, it means that public prisons are better at protecting inmate rights, and vice versa. First, this paper will ask if it is reasonable for private prison inmates to have a different litigative route in the first place. Then, this paper will argue that though in theory, private prisons may have greater or equal protections against abuse, evidence suggests that practically, private prisons are significantly worse at protecting inmate rights.

Method

This paper will first discuss the history of private prisons in the Supreme Court. Three major Supreme Court cases will be covered: *Richardson v. McKnight (1997)*, *Correctional Services Corporation v. Malesko (2003),* and *Minneci v. Pollard (2011)*. *McKnight* will be used to discuss the controversy of whether it is correct practice to have private prison inmates sue through private means instead of through Constitutional means. It will be conceded that, theoretically, private litigation is superior to Constitutional litigation. However, *Minneci* and *Malesko* will be used to frame whether this conclusion is true in practice. The paper will conclude by opening the question of why the discrepancy between theory and practice exists.

Key Terms

Bivens Action - Any violation of federal employee jurisdiction which causes injury to a private party which enables that private party to sue under Bivens.

Federal Bureau of Prisons (BOP) - The BOP is in charge of executing all sentencing charges from courts that fall under federal jurisdiction. In addition, as part of the Executive Branch, the BOP must implement policies set by Congress. The BOP is in charge of overseeing all prisons that fall under federal jurisdiction including private prisons.

Intelligible Principle Doctrine - When Congress delegates its authority to outside entities, Congress must give those entities a clear goal and defined parameters that the entity is allowed to work within.

Liability - For the purposes of this paper, liability is synonymous with "responsibility" for damages.

Nondelegation Doctrine - Congress cannot delegate decision-making or litigative authority outside of Congress. An "intelligible principle" must be used when giving directives and policies to a body outside of Congress.

Public/government Actor - A public actor is any individual or entity that acts "under the color of" the law (Cornell Law).

Public Function - The public function test is the argument used by Scalia in the case *Richardson v. McKnight,* and was first defined by Section 1983. It means that an actor is considered a government actor if the actor serves a role traditionally reserved to the government.

Private Actor - A private actor is any individual or entity that acts outside of the scope of the Constitution, and is not bound by the Constitution.

§ 1983 (Section 1983) - Any entity acting "under the color of" the law that causes damage to another individual is held liable by the Constitution.

Qualified Immunity - Government employees that act within the boundaries set for them by the law are immune to lawsuits arising from fair and reasonable execution of their jobs.

Tort - "A tort is an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which courts impose liability. In the context of torts, "injury" describes the invasion of any legal right, whereas "harm" describes a loss or detriment in fact that an individual suffers," (Cornell Law).

"Under the Color of" the Law - "[S]tate employment is generally sufficient to render the defendant a state actor," (*West v. Atkins (1988)*)

Relevant Cases

Correctional Services Corporation v. Malesko (2001) - Held that *Bivens* does not apply to private entities acting under the color of federal law (Oyez).

Minneci v. Pollard (2011) - Held that prisoners in private prisons cannot press charges for Constitutional violations against private prisons or their employees (Oyez).

Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics (1971) - Individuals acting "under the color of" the state law who violate the limits of their authority are not liable for government immunity under Section 1983. The individual, not the agency must be sued in this case.

Mistretta v. United States (1988) - This case formally defined the "intelligible principle" test with regards to Congressional delegation of authority.

FDIC v. Meyer (1994) - Held that only federal employees and not federal agencies may be sued for damages caused by violations of Constitutional law under *Bivens* torts.

Richardson v. McKnight (1996) - Prison guards in private prisons are not entitled to qualified immunity granted by Section 1983. Prison guards in private prisons are managed by a private company and are therefore held to the standards set by that company. Scalia's dissent held that traditionally the "public function" test was used to determine Section 1983 immunity.

West v. Atkins (1988) - "Held: A physician who is under contract with the State to provide medical services to inmates at a state prison hospital on a part-time basis acts "under color of state law," within the meaning of § 1983, when he treats an inmate," (Justia).

History

America's prison population was not always so massive. Prison populations rose exponentially in 1980 in response to the crack epidemic and Ronald Reagan's stricter drug enforcement policies (Sentencing Project). The increasing demand for prison space needed an immediate fix, as sentencing rates did not seem to be slowing down. Naturally, the government privatized to provide an efficient solution. In response to this demand, the first private prison was created in 1984 by the Corrections Corporation of America (CCA). Now, private prisons account for about 8.5% of all prison population in America (Sentencing Project).

Private prisons are part of a larger trend of neoliberalism. Neoliberalism rationality argues that market forces serve as a catch-all solution to every problem. Reagan implemented this in his presidency when he more than doubled the Department of Defense budget and contracted out

defense fundings to corporations (GovInfo). The "Reaganomics" doctrine held that expanding private sector would improve the economy as well relieve poverty and crime (Bailey et al.). The motivations behind this philosophy are beyond the scope of this paper, but the important takeaway is that private prisons are part of a larger trend of increasing privatization that started after the 1980s.

Despite neoliberal ideological support, private prisons did not come without Constitutional challenges. In general, private companies hired by the government are problematic because the government must address who should be sued if the company causes harm to someone else- whether the company or the government should be sued becomes vague. Private prisons are inherently problematic for this exact reason. So naturally, these liability concerns were brought to the Supreme Court to be answered.

The first case involved in the private prison debate, *Bivens v. Six Unknown Narcotics Agents (1971),* had little to do with private prisons. Rather, future Court cases would use *Bivens* to determine if private prison inmates may sue via Constitutional action. *Bivens* involved federal narcotics agents who arrested the defendant without a warrant. The plaintiff sued the agents for humiliation on the basis of a violation of his 4th Amendment rights. Because the narcotics agents violated the defendant's 4th Amendment rights, the Supreme Court allowed the defendant to sue the agents (Oyez). If the agents acted within their job jurisdiction, then the agents have "qualified immunity" from suit. In that case, the federal agency could be sued instead for a violation of the plaintiff's rights. A *Bivens* action, therefore, was any breach of the Constitution carried out by individual officers that caused harm to some defendant. Also implied was that for *Bivens* to apply in the first place, the individual(s) carrying out the Constitutional violation must be a government

agent. So for example, *Bivens* would not apply to a private company that limits free speech in their offices. Thus if *Bivens* applied to private prisons, their inmates would sue on a Constitutional basis.

The basis for the *Bivens* ruling was Section 1983, the Civil Rights Act of 1871. Section 1983 establishes the "qualified immunity" seen in *Bivens*, which protects individuals who act "under the color of" federal/state law from lawsuits as long as they do not violate any rules or directives given to them. *Bivens* applies when individuals who are covered by Section 1983 immunity violate a rule which would make them liable for damages against some defendant. In short, *Bivens* applies to individuals covered by Section 1983 immunity, and the necessary condition for Section 1983 immunity is that the actor must act "under the color of" the law.

The first major case against private prisons that dealt with these two statutes was *Richardson v. McKnight (1996)*. *McKnight* involved an inmate at a private prison who was placed in extremely tight restraints by guards. The inmate sued the guards, but the guards claimed qualified immunity. The dispute in this case asks the question of whether private prison inmates may sue privately or on a Constitutional basis via *Bivens*. Justice Breyer's majority opinion held that Section 1983, qualified immunity, does not apply to private prison employees thus inmates may not sue via *Bivens*. In contrast, public prison employees receive qualified immunity. Hence, Justice Scalia dissented saying that the "public function test" demonstrated that private prisons ought to have qualified immunity. This case set the precedent for the next two private prison cases.

In *Correctional Services Corporation v. Malesko (2001)* and *Minneci v. Pollard (2011)*, the Supreme Court ruled that private prisons inmates may not sue their prison nor its guards on a Constitutional basis, let alone via *Bivens*. *Malesko* involved an inmate with a heart condition who was placed on the top floor of the prison. Because of his heart condition, he suffered a heart attack and fell while climbing the stairs. He later sued for damages via a *Bivens* action. *Minneci* involved

an inmate who slipped and fell and required a hospital visit. During his visit, he was placed in tight restrains. He sued the guards for violating his 8th Amendment rights against cruel and unusual punishment. *Malesko* held that *Bivens* does not apply to private prison *companies* (Oyez). *Minneci* held that inmates cannot sue private prison *employees* on the basis of *Bivens* or any other Constitutional violation (Oyez). Because of these rulings, lawsuits against private prisons or their employees must be done through private state tort laws (Richards). The rulings of *McKnight, Minneci, and Correctional Services Corporation* define how private prisons are treated by the Constitution today. The following sections will attempt to answer how this Court development has affected the rights of private prison inmates.

Analysis of *McKnight* - Comparing Scalia's and Breyer's Arguments

In order to answer whether private prison inmates should sue privately or through the Constitution, the Court had to address whether Section 1983/*Bivens* applied to the *McKnight* case. If Section 1983 applied, then private prisons would be treated as government actors, which means that *Bivens* applies, and thus inmates can sue Constitutionally. Arguing for the affirmative, Justice Scalia believed private prisons and their employees should fall under Section 1983. For the negative however, Justice Breyer argued that Section 1983 does not apply. This section will outline both sides on where the precedent is drawn, in addition to their theoretical goals.

Unlike Scalia, Justice Breyer believed that court precedent determined the Constitutional status of any government-contracted private organization based on what would produce the most efficient outcome. Breyer explains this in his oral argument: "Earlier precedent described immunity as protecting the public from unwarranted timidity on the part of public officials by, for example, "encouraging the vigorous exercise of official authority" (*McKnight*). This, however, does not make sense if immunity improves efficiency. However Breyer apparently believed,

"Courts may be willing to grant private firms greater leeway where they believe that market pressures play a role equivalent to that of direct constitutional constraints in promoting accountability" (Gillette 502). He believes that inmates would receive protection regardless of whether their pathway to suit was Constitutional or private because private firms do not want to incur the cost of a lawsuit. Basically, Breyer rules on the court precedent of maximizing efficiency, and not a Constitutional line of reasoning.

Assuming this attitude-based theory is true, then arguments for Section 1983 are not relevant. First of all, "The Court found no evidence of an immunity for privately-employed prison guards in 1871" (Morris 510). The Court agreed that Section 1983 has not applied to private prisons before. Second, to make any argument that Section 1983 should or should not apply based a given principle would not make sense. If the Court's goal is to maximize efficiency, then Scalia's argument that "that the Court had routinely determined section 1983 immunity on the basis of the public function being performed" (*McKnight*) is irrelevant if Breyer is looking at *McKnight* from the perspective of privatizing functions in general.

On the other hand, Scalia looks at *McKnight* through a more Constitutional lens. Scalia believes that efficiency is secondary to the Constitution: "First, even in situations which involve private defendants whose interests are essentially commercial, significance should be given to preserving the fairness of the legal process" (Thomas 492). Scalia's precedent is more concerned about the purpose private prisons serve. In this case, he argues via the public function test which, "identifies conduct as 'public' when a private party performs a function that has been 'traditionally the exclusive prerogative of the state'" (Eid 1327). Since prisons have traditionally been a state responsibility, then private prisons ought to be considered under Section 1983.

Assuming Scalia is correct to focus on Section 1983, as opposed to the privatization aspect, his argument would hold true. Scalia's Constitutional argument is straightforward: if private prisons perform a government function, then they should be sued like the government. Also to Scalia's benefit is that Breyer's argument clearly comes with a pro-business, neoliberal bias. From the outset, Breyer considers the protection of inmate rights as an inevitability rather than a priority. Therefore, Scalia's argument is superior for its apparently better intentions and its simplicity.

Clearly, Scalia and Breyer differ in their framing of McKnight. Scalia argues under Constitutional rights, and Breyer argues for privatization benefits. Both are correct within their own logical framework, thus their frames must be compared. If the purpose of this discussion is to determine whether private prisons would protect inmate rights, then definitely Scalia's Constitutional base initially seems more appropriate. However, both frames must also be compared in their expected outcomes and their theoretical protection of prisoner rights.

Analysis of *McKnight* - Why Breyer is (Theoretically) Correct

At first glance, Breyer's efficiency argument seems weak because data suggests that private prisons are not significantly more efficient than public prisons: "The empirical evidence regarding whether private prisons are more cost effective than public institutions, however, is inconclusive" (Pratt et al.). Another study suggested, "No significant recidivism rate differences are found between private and public prison inmates for adult males, adult females, or youthful offender males" (Bales et al.). In this sense, Breyer's argument is faulty. However, private prisons do not incur any extra costs, nor any extra benefit. So why would Breyer favor treating them as private organizations? The answer is simple: Scalia's treatment of private prisons would introduce greater harms to prisoner rights.

More specifically, applying Section 1983 to private prisons would reduce the likelihood for prisoners to receive recovery from prison abuse. One scholar reported that between 1971-1985 that: "Although it appears to provide a mechanism for remedying constitutional violations, its application has rarely led to damages recoveries" (Pillard 66). In addition to lower recovery rates, inmates also receive less compensation under *Bivens* as well: "state law tort action is an adequate alternative that often will provide superior compensation [to *Bivens*]" (Edmundson 1164). Breyer's efficiency argument still holds true: having inmates sue privately is a superior process to *Bivens* suits. Inmates would have a greater ability to sue privately than through *Bivens*; Breyer likely believed this fact would reduce abuse in private prisons that feared losing profit. By exploiting capitalism, Breyer believed private prisons would avoid abuse more than public prisons.

Moreover, applying Section 1983 to private prisons would violate the nondelegation doctrine and a breach of separation of powers. The nondelegation doctrine states that "Congress cannot delegate its legislative powers to other entities" (Cornell). Treating private prisons (that decide changes in sentencing conditions, prison standards, and other policies) as government actors may run afoul of the nondelegation doctrine according to some scholars (Field). Additionally, by applying *Bivens,* the Court is artificially creating remedies for private prison inmates: "The separation of powers doctrine suggests that courts should refrain from fashioning a remedy for plaintiffs like Pollard" (Edmundson 1164). By applying Section 1983, the Court would step into Congressional territory. Ideally, it is Congress' responsibility to fashion appropriate remedies for private prison inmates. So in fact, Breyer's argument is more appropriately tailored to the Constitution than Scalia's argument is.

Breyer's argument is certainly superior in theory- this much will be conceded. However, theory does not mean anything unless it is backed by real-world evidence. The following section

will explore a post-*Minneci* set of evidence which shows that in practicality Breyer's argument does not hold much weight.

Post-*Malesko* and Post-*Minneci* - Breyer's False Predictions

The *Malesko (2001)* decision ruled that private prison inmates have no right to sue their prison *system* for Constitutional violations, and *Minneci (2011)* ruled that inmates have no right to sue prison *guards* for the same. Both *Minneci* and *Malesko* were decided on *McKnight*'s precedent to treat private prisons as private actors. Therefore, the *McKnight* decision is responsible for the status quo of inmate rights, and *Minneci* and *Malesko* are the logical conclusion of *McKnight*. Today, private prison inmates receive fewer legal protections, less access to legal resources, and are faced with more prison abuse. Ironically, the very same "market forces" that Breyer believed would protect prisoners in fact created more abuse.

First, abusive practices must be defined. Abuse is anything which unreasonably endangers or unnecessarily disenfranchises an inmate. As an example of endangerment, in one youth facility: "the Southern Poverty Law Center in 2010 alleges a pattern of horrendous physical and sexual abuse by security staff, use of prolonged solitary confinement, abuse and neglect of mentally ill youth, and failure to provide basic mental health care" (Shapiro 26). Such practices do not exist in public prisons. In fact, disenfranchisement is seemingly encouraged by the BOP: "BOP offers prisoners in its government-operated prisons opportunities to participate in educational and rehabilitative programs… But privately run CAR facilities are not required to offer an equivalent range of programs" (Takei 38). Because this is an example of unequal treatment of prisoners between prison systems, this can be argued to be a 14th Amendment violation. Clearly, private prisons have abuse that public prisons simply do not.

Next, in order to argue that Breyer's decision caused the status quo, *McKnight* must be logically connected to current abusive practices. To deter abusive practices, some method of holding the prison liable must be available. The *McKnight* decision created additional barriers for inmates to sue: now inmates must first exhaust all available remedies and must then show proof of physical injury (Fathi 1455). More barriers to litigation makes it less likely that abuse is not fairly compensated. If abuse is not properly deterred, it will continue for reasons discussed below. Additionally, prisoners may not cite "cruel or unusual punishment" in private prisons as "damages under Bivens are, in many circumstances, the only remedy for constitutional violations" (Pillard 72). By removing the possibility of suit via the Constitution coupled with a "proof of physical injury requirement," abuse such as psychological torment or neglect may not be protected in private prisons. In other words, the *McKnight* ruling created more abuse in prisons by reducing punishments for private prisons and their employees.

Private prisons have higher levels of abuse also because they are motivated by profit and not public benefit. As Hannah Arendt notes: "The moral content of this consent [of the governed] is like the moral content of all agreements and contracts; it consists in the obligation to keep them" (Arendt 92). Private prisons are, at heart, companies motivated by profit. They have no incentive to uphold public benefits unless it is convenient to do so. For instance, CoreCivic does not support drug rehabilitation as an alternative to criminal sentencing, "advocates [sought to] increase the state's reliance on incarceration rather than rehabilitation" (American Bar Association). As another example, assume for a bit that *McKnight* did not create additional barriers to litigation. If a particular prison found that it could cut down on prisoner needs and the money saved from doing so was more than the cost of potential legal battles, the prison would not hesitate to do so. Unless it is financially convenient, private prisons do not act for public benefit.

To maximize profit, private prisons seek kickbacks and immunity from inmate litigation. Prison corporations push for policies which reduce prison oversight: "The BOP Program Statements [regarding attorney visitation] which [have been] now cited do not apply [to CAR private prisons]" (Takei 59). Legal battles are long and expensive, avoiding them altogether by reducing BOP oversight would maximize profit. Naturally, private prisons lobby Congress and the Courts for support of this behavior. CoreCivic, a private prison company, lobbied against "[establishing] procedures for submitting complaints about, and taking actions against, agency employees and contractors for violating such prohibitions and for appealing such an action" (S.842 Congress). Again, prison companies must do what is best for profit, not what is best for the public.

As a result of BOP deregulation and immunity from inmate litigation, private prisons have far higher rates of abuse and mistreatment. For example, the 2016 Department of Justice report on prisons stated: "contract prisons incurred more safety and security incidents per capita than comparable [public prisons]" (Office of Inspector General 1). This difference is because a lack of regulation emboldens private prisons to take cost saving measures at the expense of prisoner safety and rights. One report cited that: "[in] some reports that a single doctor was responsible for overseeing health services for upwards of 2,000 prisoners" (Takei 42). This example is not acceptable under BOP standards- had there been more BOP regulation, this condition would not exist. Because these problems stem from a lack of regulation, it means that, in their natural state, private prisons inherently lead to abuse.

Advocating for greater oversight of private prisons as a solution to the aforementioned abuses leads to greater taxpayer costs. Earlier it was stated: "whether private prisons are more cost effective than public institutions, however, is inconclusive" (Pratt et al.). If this is true, then more oversight would mean that private prison operation cost would go up. Also, if private prisons save

money through abusive practices, then oversight would remove those practices, thus driving operation costs even higher. Moreover increasing oversight means an increase in litigation: "Litigation expenses... against private prison operators… augment the Government's expenses by way of contract pricing increases and a higher degree of liability exposure than would exist under a purely public system" (Anderson 131). In other words, private prisons, if under sufficient oversight to stop abuse would cost more to taxpayers.

Definitely, private prisons do not meet the expectations Justice Breyer laid out in *McKnight*. Without a doubt, they do not meet the same standard public prisons are held to. Breyer's belief that the market would regulate abuse and create better inmate outcomes is simply not true. Private prisons, under the status quo created by *Bivens,* have insufficient incentives from the government for ethical behavior.

Conclusion

The purpose of this paper was to explore the discrepancy in prisoner rights between the litigative routes public and private prison inmates face. The different routes that private prison and public prison inmates must take is a direct consequence of the *McKnight* decision. Though Breyer was theoretically correct, his solution to the *McKnight* case resulted in several problems. As it stands, inmates in private prisons have substantial barriers to recovering damages from prison abuse. Moreover, because of *McKnight*, the BOP does not treat private prisons with the same standards as public prisons. Because of these barriers, abuse is far more rampant in private prison systems than it is in their public counterparts.

So why didn't Breyer's rulings go as intended? First is an over-reliance on government attitudes. One scholar notes an example from another case involving private contractors to distribute welfare: "Could the government have evaded these restrictions by converting existing

welfare agencies into private contractors, operating under the same organizational structure, with the same personnel, budgets and mission? We doubt it" (Gillette 487). This scholar, in particular, assumed that government attitude alone would prevent government contractors from violating Constitutional rights of welfare recipients by refusing welfare to certain populations. This seemed to be the attitude of the Breyer court as well. Clearly, government attitude did not stop private CAR prisons from housing inmates in hallways against BOP standards.

Second, Breyer incorrectly assumed that markets would serve a surrogate role to government regulation. Earlier we proved that private prisons do not prioritize inmate rights because they are motivated by profit. One former private prison inmate cited his experience: "For example, some guys had thousands of ants invade their cells. Sometimes the guards did not get the supplies to rid them. Imagine your bedding is full of ants and you have no way to get rid of them. This added to the frustration and the general sense that the corporation didn't care" (Carceral 224). The author is correct- corporations can't care unless it is financially convenient. Breyer's assumption only makes sense if the government incentivizes good behavior, and as discussed before, the BOP refuses to regulate private prisons.

What can be learned from these two mistakes? In general, attitudinal barriers are fickle and do not stop the government from overstepping its boundaries. Rather, congress should work on creating structural barriers against private prison abuse. That is, instead of allowing the BOP free reign to regulate prisons on an attitudinal basis, Congress should be the one to set specific prison laws to ensure fairness between public and private prisons.

The second lesson is a failure of neoliberal rationality. Relying on the markets for most public services is likely a mistake. First, this opens the door to the unconstitutional behavior discussed previously. Second, in this particular discussion, market want (profit) and public want

(fair treatment) are mostly misaligned. It is true that, in general, the market is superior at producing the most efficient outcome. However, in order to take advantage of this capability without sacrificing inmate rights, the government must set rules in such a way that makes good behavior profitable. Whether this is practical, however, is beyond the scope of this paper.

Considering how easily private prisons have been able to skirt Constitutional responsibility, we see a slippery slope to the government evading the Constitution all together through privatization. As Bertrand Russell aptly points out: "Modern democracies are exposed to certain dangers which did not exist in former times. The most important of these dangers comes from the police" (Russell 66). As it stands, the discrepancy between inmate treatment in private and public prisons runs afoul of 14th Amendment's guarantee of equal protection under the law. If private prisons get away with this legally, then what is stopping the government from, say, contracting a private police force and removing itself from the responsibility of abuse? Is that not the exact relationship between private prisons and the government? Therefore, the government ought to prioritize for the protection of not only inmate rights, but also the rights of citizens against the possibility of future government overreach through privatization. Since *McKnight* has a status as a landmark Supreme Court case, reversing its decision or even taking definite policy stances against it will set a precedent that government contractors are not above the law.

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