

Give Prisoners a Voice to Increase Prison Accountability

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Demetria D. Frank, [Prisoner-to-Public Communication](#), 84 *Brook. L. Rev.* 115 (2018).

If prisons are about keeping prisoners locked in, it is safe to say that they do an equally good job of keeping the public out. Professor [Demetria D. Frank](#)'s article, *Prisoner-to-Public Communication*, explores how prison mail policy does both: The practice of censoring outgoing prisoner mail keeps some speech from ever escaping the prison, and by default, the public is made more ignorant about prison life and conditions. As a result of this censorship, there is less public knowledge and less motivation for greater public oversight of corrections facilities. Frank's remedy for these twin harms is to provide prisoners with an "unqualified and unfettered prisoner-to-public communication" right as a means of validating prisoner voices and increasing the accountability of the executive branch of government.

The issue Frank raises is critical in the age of mass incarceration, where state and federal penal systems rely on prison as a mainstay punishment for felony crimes. This reliance has made the U.S. a world leader in incarceration. With such wide-scale deprivations of human liberty, one might suspect that prisons would be subject to rigorous external accountability, perhaps more so than any other government institution or agency. After all, prisons are total institutions that govern 100% of an inmate's existence and make them 100% dependent on the prison. With so many lives in the hands of government institutions, one might think that prisons would be subject to the most stringent regulatory standards—yet this is not the reality. Instead, prison regulatory standards have been declining, and actual monitoring of them is practically non-existent.

Frank opens with a discussion of a California prisoner who launched the [2018 prisoner hunger strike](#), which the prisoner took upon himself at great legal risk. This prisoner made a cell phone recording that was posted to social media. In the video, the prisoner peacefully urges the outside, free public to examine why prisoners would resort to fasting for so long to protest prison conditions. In one swoop, this prisoner brings Frank's thesis to life: Because the prisoner could not communicate these grievances to the public directly, he had to resort to covert measures—at great risk.

Such a narrative about prison life is important because it underscores the uphill battles that prisoners face in communicating with the public. As the author notes, prisoners "have inside knowledge about prison life and the social circumstances that result in the loss of freedom. Incarcerated people are also likely the best providers of prison accountability." From this perspective, the lack of oversight and regulation of prisons works in tandem with prison policies that silence the voices of prisoners and their critiques of the place they call home.

The author makes several convincing arguments in support of a strong prisoner communication right. The first flows from the fact that prison conditions have worsened substantially in recent decades. As reliance on prisons has soared, prisons have had to deal with overcrowding, underfunding, and recidivism. These problems have worked to the detriment of life inside for prisoners, as well as in their home communities.

Next, Frank gives the reader a sense of the general lack of enthusiasm of courts to override prison decision-making. It begins by describing the "hands off" approach that courts took when dealing with inmate grievances, which dominated most of the country's history. This approach was bolstered by the idea that prisoners were "slaves of the state" and that criminals were subject to "civil death."

Eventually, courts began to intervene on behalf of prisoners and recognize some rights that were retained in prison.

She notes a high point in *Procunier v. Martinez* (1974), where the Supreme Court held that prison regulations that restrict free citizens' access to prisoner speech must further a substantial government interest unrelated to the suppression of expression and must be no greater than necessary to protect the government interest involved. Still, the Court would soon retreat from this bold proclamation, in *Turner v. Safley* (1987), which decided the standard of review for regulations aimed at intra-prisoner speech. This standard moved away from *Martinez*, and instead, asked whether the regulation was "reasonably related" to legitimate penological concerns or were an "exaggerated response" to those concerns.

Frank's central argument is that outgoing prisoner communications should be governed by the more rigorous *Martinez* standard, which required that the regulation further an important and substantial government interest, and that officials do no more than necessary to further the interest. This is more demanding than simply requiring that the regulation be "reasonably related," which, in the corrections context, is practically no standard at all. The author bolsters this prescription by noting that prisoners are politically powerless and are completely reliant on prisons for survival, so they should be granted a right to communicate with the public. This prescription, however, does not propose unlimited communications on behalf of prisoners. Indeed, the right would be applicable only for communications directed to the public, and not communications to other prisoners in other institutions. Moreover, the right would still give way to censorship of prisoner-to-public communications in some cases, such as if they are made for the purpose of forming unions.

Frank's work impressively underscores the payoff for granting prisoners such a communication right. Perhaps most significant is the claim that a robust communication right will open prison doors to greater accountability; if people are able to know about what is actually going on in prison, then that knowledge could lead to greater public interest and could invite more oversight of prisons. The author also suggests that the right can also lead to greater prisoner rehabilitation, and ultimately, greater public safety. The ability to silence prisoners creates disassociation between prisoners and society, whereas the right to communicate validates their voice and provides dignity and self-esteem, which for some, are building blocks for prisoner rehabilitation. At the same time, for the public, increased potential for rehabilitation may lead to reductions in recidivism and social harm.

Taken wholly, this work is laudable for delving into issues that seldom cross the legal scholar's mind, let alone become elevated to something worthy of research and writing. The right to communicate is largely a given for people on the outside, but for prisoners, it may be the only way to cast light on injustices inside. Professor Frank fluidly underscores a timely issue that details why stripping prisoners of communication rights also strips the public of an understanding of what it is getting for its money. If the proposition of giving prisoners more power to communicate gains traction, it would be a step toward taming a policy that unnecessarily deprives prisoners of basic constitutional rights and deprives society of a critical check on the government.

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