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### Civil Disabilities: The Forgotten Punishment

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# Civil Disabilities: The Forgotten Punishment

BY NEIL P. COHEN AND DEAN HILL RIVKIN\*

THE CONDITIONS in the Nation's prisons, long a dormant area of active social concern, have recently come under sharp public censure and penetrating legal scrutiny. As the result of this increased interest, correctional officials have brought about some progressive reforms which have kindled the ancient hope that the recidivism rate will decline. Unfortunately, those who harbor such beliefs often overlook the superstructure of statutory and regulatory disabilities that adversely affect the criminal offender's rehabilitation both during his time in prison and, perhaps more crucially, after his release. These "civil disabilities," imposed by every state and the Federal Government upon many convicted offenders, may deprive these persons of such privileges as voting, holding public office, obtaining many jobs and occupational licenses, entering judicially enforceable instruments, serving as a juror or fiduciary, maintaining family relationships, obtaining insurance and pension benefits, and many others. Despite the widespread enactment of civil disability laws, until recently there had been no comprehensive study of the extent and effect of civil disabilities in the United States.

In an effort to examine this virtually virgin area of peno-correctional law, the *Vanderbilt Law Review* published a comprehensive survey and evaluation of the civil consequences of a criminal conviction.<sup>1</sup> The results of this study, partly summarized below, emphasize the neglect and lack of commitment the public, through its elected representatives, has shown toward the rehabilitation of convicted offenders. This oversight is especially significant today since many convicted criminals are young offenders being punished for their encounters with drugs, civil rights, or the military. This group will join all other ex-convicts in being forever shackled with the stigma of their conviction until a massive restructuring of the collateral consequences of

criminal conviction is undertaken by the courts and legislatures.

Civil disabilities are not the product of American jurisprudence. Convicted persons were saddled with civil disabilities in both ancient Greece and Rome. English law, reflecting a Roman heritage and certain fiscal and philosophical considerations, imposed civil disabilities through "attainder." The attained criminal generally forfeiting his civil and proprietary rights, became "civilly dead." American jurisprudence blindly followed the English tradition and adopted a host of civil disability laws. Thirteen states retain various parts of the concept of civil death, including, in some states, the general loss of civil rights. Every other state and the Federal Government have enacted specific disability provisions that deprive convicted persons of various rights and privileges.

Every convicted person, however, is not within the purview of the civil disability laws. Most such statutes are applicable only when the offender has been "convicted" of a crime. This requirement may pose problems when judgment and sentence have not been imposed and when the offender appeals his conviction. Similarly, civil disability laws apply only to certain crimes. While perhaps most provisions apply to convictions for a "felony," others require the offense to be an "infamous crime" or a crime "involving moral turpitude." The use of such broad classes of crimes presents two problems. First, it may be difficult to ascertain whether a particular crime is within a certain class of crimes. Secondly, the class may include more crimes than are necessary for that particular disability. In an effort to avoid these problems, some disability provisions specify the exact crimes for which the statute is

<sup>1</sup> As already stated, the material for this article was primarily drawn from the 302-page study published as the October 1970 issue of the *Vanderbilt Law Review*. Entitled "The Collateral Consequences of a Criminal Conviction," this exhaustive project lists, categorizes and evaluates the civil disability laws and related judicial developments in all 50 states, the Federal Government and numerous model acts. Readers interested in a more complete treatment of the subject, including the many details and exceptions necessarily omitted from this article, should consult the *Vanderbilt Law Review* study. Copies of the *Vanderbilt* study can be obtained for \$2.30, including postage, by writing the *Vanderbilt Law Review*, Vanderbilt School of Law, Nashville, Tenn. 37203.

For purposes of this article, the terms "offender," "convicted offender," "criminal offender," "criminal," and the like generally refer to persons who have been convicted of a serious crime. Terms such as "prisoner" and "convict" refer to offenders who are incarcerated. "Ex-convict" refers to offenders who have been released from a correctional institution.

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applicable. Civil disability laws also present difficulties when the offender was convicted of a crime in another state. Although most states do not distinguish between in-state and out-of-state convictions, a few states apply their civil disability laws only to persons convicted in that state. The wisdom behind the latter view is questionable since convicted burglars, for example, present the same threat to the people of a certain state no matter where the conviction occurred.

#### ***Loss of United States Citizenship***

Despite the common belief that the deprivation of United States citizenship is one of the many disabilities resulting from a criminal conviction, the convicted criminal probably does not lose his national citizenship. Congress has only provided for denationalization for conviction of serious crimes involving antigovernment behavior, and even these narrow provisions are presumably unconstitutional in view of several recent Supreme Court decisions. Criminal conviction also will rarely affect an offender's right to obtain a passport. The passport application merely requires an applicant to list his conviction for antigovernment crimes such as treason, and the passport office makes no independent check of an applicant's criminal record.

#### ***Loss of Right To Vote and Hold Public Office***

In most states, citizens convicted of serious crimes are technically disfranchised in state and federal elections both during and after confinement in prison. Even where a prisoner is not legally disfranchised he may still be unable to vote because of his inaccessibility to voting machinery, including the absentee ballot. Although the provisions denying convicted citizens the privilege of voting have generally withstood constitutional attack, recent cases, elevating the right to vote to a preferred right in our system of government, subject this disability to serious constitutional doubt. Irrespective of the constitutional challenges, the disfranchise provisions, often disqualifying harmless ex-offenders, are subject to criticism for their part in preventing the convicted offender from assuming his role as a responsible citizen with a stake in the society in which he lives.

Criminal conviction may also disqualify a citizen from holding public office. Although the United States Constitution does not disqualify a convicted person from holding federal office,

numerous federal statutes exclude persons convicted of certain crimes from holding such positions. It is questionable, however, if many of these federal statutes will withstand judicial scrutiny since Congress may not be able to supplement the qualifications contained in the Constitution.

As a general rule, a person with a criminal record stands a better chance of qualifying for a federal office than for a state or local office. In most states citizens convicted of serious crimes are directly or indirectly ineligible to hold all or most state offices. Often these provisions require automatic forfeiture of offices held at the time of conviction, although a few states require that the convicted incumbent be impeached before his office must be vacated.

The provisions making convicted citizens ineligible for public office are designed to protect the public rather than to punish the criminal. Considering the overly inclusive application of these statutes, however, the same end could be accomplished by more specific statutes that impose this disability only when the conviction was for a crime indicating that the offender would threaten the public if permitted to run for a public office. Such provisions would provide the public with the protection it needs while allowing most released offenders to participate in the civic culture. It is also arguable that the United States should adopt the Swedish system of permitting informed voters to elect the candidate of their choice, irrespective of his criminal record.

#### ***Loss of Employment Opportunities***

It is no longer disputed that an important factor in the convicted offender's tendency to commit postrelease crimes is his difficulty in finding legitimate employment commensurate with his ability and financial needs. Much of this discrimination is the result of prejudices of private employers who may even refuse to hire an individual because of arrests not leading to conviction. The private employer may also refuse to hire an ex-convict for a position requiring a fidelity bond because many fidelity insurance companies refuse to bond ex-offenders.

The ex-convict faces an even greater barrier in retaining or obtaining employment requiring an occupational license than he does unlicensed employment. The rapidly increasing number of occupations requiring such licenses aggravates this problem. Today, for example, occupational licenses are required for everything from barbers

to minnow dealers.<sup>2</sup> Laws of the Federal Government, every state, and countless municipalities exclude the offender convicted of a serious crime from holding many of these licenses. While many of the provisions directly disqualify persons convicted of certain general or specific crimes, other provisions may indirectly disqualify ex-convicts by requiring that the applicant possess "good moral character" or practice "professional" conduct, standards subject to potential abuse against ex-convicts.

Governments, despite their attempts to rehabilitate convicted persons, also often refuse to hire ex-convicts. Both federal and state statutes prohibit persons convicted of certain crimes from holding various routine governmental positions. Sometimes the provisions do not require criminal conviction—an applicant's "immoral conduct" is a sufficient ground to deny him employment. Of course, a criminal conviction may constitute immoral conduct.

These provisions, barring many ex-offenders from private, licensed, and public employment, desperately need re-examination. For example, a law that permits a city to refuse to hire an ex-convict as a tree trimmer because of his criminal conviction does nothing but detract from efforts to rehabilitate convicted offenders.<sup>3</sup> It certainly does not protect the public from any significant threat. Public employers must begin to set an example for private employers by hiring and training ex-convicts. In addition, private employers should be encouraged to employ ex-offenders through such federally sponsored programs as fidelity bonding and tax-incentives, and licensing standards must be made more realistic and specific. If anything, in many cases the public is overprotected and actually harmed by unnecessary or excessively restrictive licensing provisions that do not require a determination of the suitability of *this* individual for *this* license.

### Loss of Judicial Rights

Frequently, the American judicial system convicts the criminal then reminds him of the conviction whenever he voluntarily or involuntarily becomes a participant in that system. In a few states, for example, the prisoner cannot bring a suit in his own name. Even where he can maintain a suit in his own name, often he must sue

through a personal representative who is appointed to protect the prisoner's interests.

Although prisoners in some states lose their capacity to sue during imprisonment, in all states suits can be maintained against prisoners. In most states, however, the prisoner is not permitted to appear personally to defend himself. Many states authorize the appointment of a trustee to manage the affairs of prisoners. In these states the trustee can sue in the prisoner's behalf. Taking a surprisingly modern approach to this problem, Arkansas provides by statute that judgment cannot be rendered against a prisoner until a defense has been entered for him by a retained or appointed representative.<sup>4</sup>

In some states, criminal conviction may substantially impair the offender's right to execute and enforce valid legal instruments, including wills. For example, a few states, adhering to a strict view of the ancient civil death concept, deny the convict the right to enter all or certain contracts, or prohibit him from enforcing the contracts he makes. These statutes do nothing but frustrate the inmate's successful rehabilitation as is illustrated by the fact that in some of these states it is questionable if a convict could enter a legally enforceable contract for a correspondence course to improve his education.

Just as criminal conviction does not usually impair the offender's right to contract, it also rarely makes him incompetent to serve as a witness in a judicial proceeding. If his conviction is for perjury or a related offense, however, in a few states he is *automatically precluded* from testifying. Even when the convict can testify in court, his conviction is usually admissible to impeach his credibility. Perhaps it would be best to limit the use of a criminal conviction for impeachment purposes to crimes involving a falsehood or breach of trust.

Although many criminal convictions are the result of a jury verdict, in most states an offender convicted of a serious crime is not permitted to serve as a juror. A few states even disqualify persons under indictment for certain crimes. The statutes often follow no logical pattern. In Pennsylvania, for example, some counties disqualify from jury service persons convicted of a "felony," while other counties bar persons convicted of a crime involving "moral turpitude."<sup>5</sup> The courts disagree whether a new trial is required when a jury contains an ex-offender who should have been disqualified from jury service.

<sup>2</sup> *E.g.*, Okla. Stat. Ann., tit. 29, § 822 (Supp. 1970-71).

<sup>3</sup> *Atencio v. Rossmiller*, Civil No. C-1493 (D. Colo., January 13, 1970).

<sup>4</sup> Ark. Stat. Ann. § 27-833 (1962).

<sup>5</sup> *E.g.*, Pa. Stat. Ann., tit. 17, §§ 1252(c), 1279(c), & 1333 (1962).

Just as the criminal offender may have difficulty serving as a juror, he may also be disqualified from serving as a court-appointed fiduciary, such as an executor, administrator, trustee, testamentary guardian, or guardian ad litem. Unlike the juror qualification statutes, the former offender under this disability is usually disqualified because of the judge's wide discretion in making or approving the appointment. It is submitted that too many judicial officials automatically exclude ex-convicts from these positions of trust, irrespective of the circumstances and the evidence of rehabilitation.

#### *Loss of Domestic Rights*

Perhaps nothing is as detrimental to the rehabilitative efforts of correctional personnel as the disintegration of the prisoner's family. Unfortunately, present laws and practices discourage convicted offenders from obtaining or retaining strong family ties. Some state statutes even attempt to prevent certain offenders from beginning families. For example, a few states, evidently assuming that criminal tendencies are congenital, prohibit the marriage of habitual criminals.<sup>6</sup> Moreover, the laws of at least nine states authorize the sterilization of specified offenders.

Similarly, most states make criminal conviction or imprisonment a ground for divorce. An offender's conviction may also cost him his children. Even if his parental responsibilities are not lost as part of a divorce decree, a parent's incarceration may bring him within the purview of state statutes authorizing the termination of parental rights if a child is found neglected or dependent. In some states a parent's criminal conviction may also permit the adoption of his children without his consent.

Although it is submitted that incompatible families should not be forced to stay together, it must be recognized that the state has an interest in promoting the family ties of convicted offenders. The laws should focus on methods of encouraging, not discouraging, these ties. A start in this direction can be achieved through variations of work release and family visit programs where prisoners and their families are permitted to live together under appropriate conditions. Increased use of family counseling would also help. These efforts will be only of limited success, however, until the existing statutory scheme is

altered to reflect the important and neglected policy of preserving the prisoner's family relationship.

#### *Loss of Property Rights*

Criminal conviction may cost the offender his property as well as his family. Modern statutes that affect the offender's property rights had their origin in the common law concept of attainder which resulted in the forfeiture of the convict's land and chattels. Paralleling restrictions on attainder in the United States Constitution, a large majority of the states have substantially abolished the feudal doctrine. Consequently, in the United States, property divestment upon criminal conviction is a limited and almost nonexistent practice. At least three states, however, have enacted express divestment statutes which restrict the life convict's retention or inheritance of property. Theoretically, these statutes are designed to protect the life convict's creditors or spouse.

The convicted person's capacity to acquire property by inheritance is governed entirely by state statutes of descent and distribution. As a general rule, the convicted offender retains the right to inherit from anyone. The major exception to this rule is contained in "slayer's statutes" which preclude an offender from inheriting from the person he is convicted of feloniously killing. In addition to the rule that the killer cannot inherit from his victim, some jurisdictions do not permit a spouse guilty of abandonment or non-support to inherit from the innocent spouse. Of course a prisoner may suffer from a technical reading of this type of statute.

Many convicts lose their home, land, and other property since they are unable to supervise their business interests while in prison. As a result of this financial loss, they are subject to severe rehabilitative setback. They may suffer the psychological frustrations that result from their inability to control what is rightfully theirs and therefore lose some incentive to return to the outside world. One method of circumventing this restriction on a convict's economic activity and alleviating the resulting hardship on the prisoner and his family is through the appointment of a representative to act for him. Eighteen states have specific statutory provisions for the management of the inmate's estate by the appointment of a guardian, trustee, or committee. Many of these laws, however, provide only a limited degree of protection since they apply only to spec-

<sup>6</sup> N.D. Cent. Code § 14-03-07 (Supp. 1969); Va. Code Ann. § 20-46 (Supp. 1970); Wash. Rev. Code Ann. § 26.04.030 (1961).

ified classes of convicts and to relatively few situations.

### *Loss of Insurance, Pensions, Workman's Compensation Benefits*

A criminal conviction, imprisonment, or involvement in criminal activity can have a substantial impact upon the ability of an offender to obtain, enforce, or benefit from a life insurance policy. Most major life insurance companies refuse to insure a convict because the company is uncertain about his future prospects for rehabilitation. After the inmate's release from prison, however, few companies will automatically deny him life insurance merely because of his conviction. Most companies make the decision whether to issue life insurance to ex-convicts after considering such factors as the gravity, proximity, and amount of violence involved in the offense, the likelihood of return to crime, the demonstrated degree of rehabilitation, and the number of convictions.

A more restrictive policy prevails when the ex-convict attempts to procure automobile insurance. Automobile insurance underwriters often deny policies to applicants with criminal records because of the contention that the existence of an insured's criminal record prejudicially affects the insurer's chance of defending a claim against its insured. It is noteworthy, however, that insurers have not been able to supply the states with the underwriting statistics necessary to support this assumption. The convicted offender who is denied regular automobile insurance may have to resort to other means of obtaining coverage. For example, "high risk" insurance and the assigned risk plan available in most states provide the necessary coverage at significantly higher rates.

Criminal conviction may affect an offender's pension just as it affects his insurance. Many offenders who fulfill the statutory requirements of age and years of service for public pension benefits may nevertheless be precluded from participating in a pension fund. The Federal Government and at least 18 states directly disqualify some government employees convicted of various offenses from participating in annuity, pension, or retirement programs. The Federal Government has extended this principle to recipients of Social Security. In the absence of a

direct disqualification provision, a criminal conviction may still deprive the offender of pension benefits on the basis of general formulas requiring honorable and faithful service as a precondition to the receipt of pension benefits. As in the employment situation described above, the unconfined discretion vested by these general standards often leads to harsh results. In a recent case, for example, a police officer forfeited his disability pension benefits when he was convicted of a misdemeanor that he had committed *during his employment*.<sup>7</sup> As a result of this minor conviction, for which he was fined only \$100, the pension board permanently discontinued his disability payments of over \$346 per month.

A worker's receipt of workman's compensation benefits may also be adversely affected by his criminal conviction. At the present time only two states use the recipient's criminal conviction as grounds for terminating his workman's compensation benefits for preconviction injuries. However, the offender is not as fortunate when he sustains an injury while working in prison, even though he was required to perform the task which caused his injury. Although federal prisoners are usually compensated for their inprison injuries, a majority of the states do not provide for such compensation. By so immunizing themselves from liability, these states encourage unsafe working conditions and poor treatment of prisoners by supervisory guards. Since many prison industries perform valuable work for the states, the denial of benefits to convict-employees may be likened to a form of indentured servitude.

### *Restoration of Civil Rights and Privileges*

Although most states provide procedures for terminating some or all civil disabilities some time after the offender's conviction, it is submitted that the existence of meaningful relief from the collateral consequences of a criminal conviction is more illusory than real. Yet, the necessity of a ceremony terminating the stigma and disabilities conferred by a criminal conviction is recognized as an important rehabilitative mechanism markedly absent from the present process. One method presently available in many states for the restoration of rights is a pardon by the governor. This act of executive grace, however, is a vacuous and unrealistic alternative for all but the few ex-offenders having the necessary political connections. Even if an ex-convict is able to secure a pardon, many courts rule that the

<sup>7</sup> *Fromm v. Board of Directors of Police and Firemen's Retirement System*, 81 N.J. Super. 138, 195 A.2d 32 (App. Div. 1963).

acceptance of a pardon constitutes an implied confession of guilt that does not obliterate the conviction. Thus, the presumably fortunate ex-convict receiving an executive pardon may still be disqualified from occupational and professional licenses that, by statute, can be issued only to persons without criminal records.

Realizing the weaknesses of the pardon procedure, at least 13 states have adopted automatic restoration procedures. Enacted to facilitate the restoration of an offender's civil rights and to make the administration of restoration more efficient and economical, these procedures restore the offender's civil rights automatically upon fulfillment of certain conditions, such as completion of the prison sentence, probation, or parole. Unfortunately, since automatic restoration is usually construed by courts as tantamount to a pardon, the procedure generally does not restore the ex-convict's eligibility to receive an occupational or professional license, despite the evidence of rehabilitation.

The most enlightened and penologically progressive method of restoration now in existence is contained in expunction or annulment procedures adopted by about a quarter of the states. Both kinds of statutes are designed to restore forfeited rights and uplift the offender's status by exonerating him from the fact of his conviction and concealing the conviction from the public view. Although subject to restrictive interpretation in the licensing and occupational areas, these procedures are presently the most effective in allowing ex-convicts to escape their past record.

Restorative relief in states without automatic restoration, expunction, or annulment procedures is governed by miscellaneous provisions in which an administrative board, the judiciary, or the legislature is vested with the power to restore civil rights. In an attempt to unify these myriad procedures, several model restoration acts have been proposed, each reflecting the belief that the extant procedures are too cumbersome, costly, or unrealistic.

### *Constitutionality of Civil Disabilities*

The recent extension of constitutional guarantees to students, welfare recipients, and prisoners lends encouragement to the possibility that the judiciary will more fully recognize the constitutional infirmities that infect most civil disa-

bility statutes. Susceptible to broadside constitutional challenges, civil disability laws have recently been invalidated in two important cases. Both cases are noteworthy for their utilization of the equal protection clause of the 14th amendment to strike down civil disability laws. In one case a federal court overturned the New Jersey voting disability statute, which established arbitrary classifications of disabling crimes.<sup>8</sup> After reviewing the erratic and haphazard history of the statute, the court observed that "it is hard to understand why Bill Sikes should be ineligible for the franchise and Fagan eligible." The court was referring to the New Jersey statute's senseless classification which disfranchised persons convicted of blasphemy, polygamy, or larceny over \$6, but did not disfranchise those convicted of fraud, tax fraud, bribery, embezzlement, attempted murder, kidnapping, bomb-carrying, or, like Fagan in the court's reference to Oliver Twist, receiving stolen property. It is relevant to note that many of the Nation's civil disability statutes are as inartfully drawn and equally subject to constitutional attack.

The second important disability case is *Muhammad Ali v. Division of State Athletic Commission*,<sup>9</sup> in which a federal court enjoined the New York State Athletic Commission from denying a former heavyweight champion renewal of a license to box because of his conviction, still under appeal, for refusal to be inducted into the armed forces. The court relied on the plaintiff's extensive investigation which revealed that the Commission had customarily granted licenses to other offenders, many of whom had been convicted of rape, arson, burglary, and other crimes involving moral turpitude. Armed with this decision as a precedent, future lawsuits in behalf of ex-convicts based on investigations of licensing or occupation commissions' files may expose the arbitrary and capricious policies employed by these commissions in refusing ex-convicts legitimate work opportunities.

Fruitful constitutional challenge may also be predicated on the due process and cruel and unusual punishment provisions in the constitution. By raising the standards of fairness, rationality, and proportionality of punishment embodied in these guarantees, law suits may markedly limit both mandatory and discretionary disabilities. It has been argued persuasively, for example, that barring entrance to the legal profession for a drug or selective service conviction is an unconstitu-

<sup>8</sup> *Stephans v. Yeomans*, Civ. No. 1005-70 (D. N.J. Oct. 30, 1970).

<sup>9</sup> 316 F. Supp. 1246 (S.D.N.Y. 1970).



tional denial of due process because the offense was neither rationally nor directly connected to the functions of the occupation. Extending this principle of rational and direct connection to ex-convict applicants for all public jobs and licenses could prevent many of the injustices perpetrated against ex-convicts in the job market.

### *Civil Disabilities and Modern Corrections*

Although, as previously noted, the law does not technically exact the price of citizenship for the commission of a crime, relating this seemingly happy fact to offenders is a difficult and almost embarrassing task when the long list of forfeited rights and privileges are recounted in the same breath. An inmate's typical response is: "What good is it for me to be a good citizen when society will not treat me like one?" This valid yet perplexing question epitomizes the negative impact the forfeiture of rights and privileges has on the rehabilitation of the offender. By implicitly sanctioning community attitudes of mistrust toward all offenders, whether law-abiding or not, civil disabilities are at war with the basic concepts of rehabilitation theory.

Although the imposition of civil disabilities is felt less by the inmate than the releasee, the convict's knowledge of the loss of certain rights may deprive him of the incentive to start his life anew. A recent survey found that convicts were overwhelmingly aware of the effect their conviction would have on future job opportunities.

The debilitating influence of civil disabilities on the offender is vastly magnified upon his release. Civil disabilities discourage the ex-convict from participating in normal community life by restricting him from activities routinely performed by other members of the community. By thus denying the offender access to the norms of community living, civil disabilities retard his full socialization into the law-abiding community and produce attitudes of rejection and estrangement from the very institutions that foster development of lawful conduct. It has been demonstrated, for example, that disfranchisement of minority groups often increases their feelings of alienation and frustration. Similarly, depriving ex-convicts of the symbolic power of the vote may decrease their desire to participate in a society

that gives them no voice in changing oppressive and archaic policies that affect their lives.

Civil disabilities also operate as a causative factor in the social degradation of the ex-convict by promoting what one writer has termed the "management of status" in the community.<sup>10</sup> According to this theory, community attitudes prevent convicted offenders from attaining the same station in life as those persons without a criminal record, everything else being equal. Civil disabilities visibly mark the offender as automatically unworthy and unfit for the performance of certain functions. This badge helps to shape society's concept of the lawbreaker and demonstrates to the offender that he is not free to pursue an ordinary life. Until this machinery of status management is dismantled, the imposition of civil disabilities will remain an arbitrary societal control over the status of convicted persons.

### *Recommendations and Conclusions*

Substantial reform of the disability schemes in all states and the Federal Government is imperative before full rehabilitation of criminal offenders can be achieved. In addition to the need for uniformity among jurisdictions, remedial action of a threefold nature is required. First, the entire scheme of civil disabilities must be re-examined and restrictions that are not necessary to protect the public must be eliminated. Secondly, existing provisions that call for the blanket application of disabilities must be replaced by procedures whereby a convicted person will lose only those rights and privileges that are related to the criminal offense to the extent that the offender's exercise of a function would pose a direct, substantial threat to society. Thirdly, imaginative measures are needed to ensure that the disabilities imposed are removed as soon as the convict's rehabilitative progress indicates this action is warranted.

It is recognized that neither the adoption of these recommendations nor the total elimination of civil disabilities will free society from crime and recidivism. But it may help. The crime rate will remain unacceptably high until ex-convicts re-establish themselves as productive members of a nonretributive community. To the extent that civil disabilities impede this progress, they must be reassessed and revamped to conform to modern theories and methods.

<sup>10</sup> See Schrag, *The Correctional System: Problems and Perspectives*, 381 *Annals* 11 (1969).