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The Effect of State Statutes on the Civil Rights of Convicts

Statutes in all states place restrictions on the civil rights of those convicted of a felony. Most of these statutes withhold specific rights, but "civil death statutes" in force in a minority of jurisdictions purport to impose a general or blanket proscription on all of the convict's civil rights. The author of this Note analyzes both types of statutes and concludes that the general or blanket deprivation statutes should be repealed and replaced with legislation specifically delineating the rights affected. After examining the various statutory methods by which those rights actually taken from the convict are subsequently restored to him, the author also concludes that all states should adopt the "automatic restoration" approach now in effect in a minority of states.

INTRODUCTION

A person imprisoned upon conviction of a felony will often lose more than his freedom; he may lose many of his civil rights, such as his marital rights, his right to vote, his right to sue, his right to inherit, and his right to contract. Even more severe, if sentenced for life imprisonment, he may be declared "civilly dead," which may result in the termination of his marriage and the distribution of his property among his heirs. While only a minority of the states provide for civil death, all states impose some type of statutory restriction on a convict's civil rights. Although the nature of the sentences imposed upon those convicted of crime has evoked considerable criticism and many recommendations for reform, little attention has been accorded to those provisions that deprive convicts of their civil rights. The statutory provisions governing the

1. No precise definition of "civil rights" is generally recognized. Some distinguish between civil and political rights. See, e.g., People ex rel. Malley v. Barrett, 203 Ill. 99, 104, 67 N.E. 742, 743-44 (1903). Others define civil rights broadly to include all "rights which are an outgrowth of civilization." Grooms v. Thomas, 93 Okla. 87, 88, 219 Pac. 700, 701 (1923). Finally, civil rights have been defined as those rights bestowed by positive law. Green v. State, 251 App. Div. 108, 110, 295 N.Y. Supp. 672, 674 (1937).

eventual restoration of civil rights to the convict upon his release have been similarly neglected.

Congress has provided for the loss of certain rights upon the conviction of specified federal offenses. For example, conviction of treason results in the loss of United States citizenship; the conviction for numerous other federal offenses deprives the convict of the right to hold an office of "honor, or profit, under the United States." This Note, however, is concerned solely with deprivations of civil rights imposed by state statutes. These statutes, as well as the methods of eventual restoration of the state convict's civil rights, will be analyzed in light of their practical effectiveness and their soundness under contemporary concepts of criminal law and penology.

I. DEPRIVATION OF CIVIL RIGHTS DURING IMPRISONMENT

A. CIVIL DEATH STATUTES

When a sentence was imposed upon a convicted felon under the English common law, he was not only declared civilly dead, but through the doctrine of corruption of blood, he became unable to transfer his estate to his heirs, and through forfeiture his property passed to the crown. By 1870, however, the English had eliminated the common-law rules of forfeiture of property and corruption of blood. In the United States, these rules are prohibited by the federal constitution and are proscribed by many state constitutions and statutes. Although civil death has never been con-

5. Since this Note is limited to an analysis of the effect of state statutes, no consideration will be given to the rights afforded convicts under state and federal constitutions. For an excellent discussion of this area, see Note, 110 U. PA. L. REV. 985 (1962).
6. See Avery v. Everett, 110 N.Y. 317, 324, 18 N.E. 148, 150 (1888); 1 BLACKSTONE, COMMENTARIES *132; 4 BLACKSTONE, COMMENTARIES *336, *380–89; 1 CHITTY, CRIMINAL LAW *723. Civil death resulted in an "extinction of civil rights, more or less complete." Avery v. Everett, supra at 324, 18 N.E. at 150. However, civil death apparently did not cause the felon's property to pass to his heirs as if he were in fact dead. See Rex v. The Inhabitants of Haddenham, 15 East 463, 465, 104 Eng. Rep. 918, 919 (K. B. 1812).
7. An Act To Take Away Corruption of Blood Save in Certain Cases, 1814, 54 Geo. 3, c. 145; An Act To Abolish Forfeitures for Treason and Felony and To Otherwise Amend the Law Relating Thereto, 1870, 33 & 34 Vict., c. 23.
9. See, e.g., ALA. CONST. art. 1, § 19; ARIZ. CONST. art. 2, § 16; ME.
considered part of the American common law, several states have statutes providing for some variation of civil death. Civil death under the English common law apparently was designed to augment the infamy and ignominy that was traditionally attached to the conviction of a felony, but the enactment of civil death statutes in the United States was motivated more by the objective of public security—the policy that life convicts should not be allowed to exercise rights that could endanger public safety.

The specific disabilities imposed by the civil death statutes vary greatly from state to state. A few statutes simply provide for the convict's civil death; many others, in addition, deprive the convict of specific rights, such as the right to vote and the right to hold public office. Additional qualifications and other explanations of the civil death penalty are occasionally found within the civil death statutes themselves or in other legislation. Generally, if a civil death statute is invoked, the convict will lose commercial rights, such as the right to enter legally enforceable con-

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3. ALA. CODE tit. 61, § 3 (1958); ALASKA STAT. § 11.05.080 (1962); ARIZ. REV. STAT. ANN. § 13-1653 (1956); CAL. PEN. CODE § 2601; IDAHO CODE ANN. § 18-311 (1948); KAN. GEN. STAT. ANN. § 21-118 (1949); MINN. STAT. 610.34 (1961); MO. REV. STAT. § 222.010 (1959); MONT. REV. CODES ANN. § 94-4721 (1947); N.Y. PEN. LAW § 511; N.D. CENT. CODE ANN. § 12-06-27 (1960); OKLA. STAT. tit. 21, § 66 (1961); ORE. REV. STAT. § 137.240 (1953); R.I. GEN. LAWS ANN. § 13-6-1 (1956); UTAH CODE ANN. § 76-137 (1953); VT. STAT. ANN. tit. 13, § 7005 (1958); cf. HAWAII REV. LAWS § 83-38 (1955).

4. See Tappan, Loss and Restoration of Civil Rights of Offenders, in NATIONAL PROBATION & PAROLE ASS'N 1952 YEARBOOK, CRIME PREVENTION THROUGH TREATMENT 86, 90-91. There is no legislative history available to explain the purpose of civil death statutes. Another possible purpose for such legislation could have been to facilitate the administration of penal institutions; the deprivation of the civil rights could conceivably minimize the amount of interference a convict could make in the prison routine.

5. E.g., IDAHO CODE ANN. § 18-311 (1947); MINN. STAT. § 610.34 (1961).


7. E.g., civil death "must not be construed to render . . . [life convicts] incompetent as witnesses upon the trial of a criminal action or proceeding, or incapable of making and acknowledging a sale or conveyance of property." IDAHO CODE ANN. § 18-312 (1947).

8. E.g., N.Y. ELECTIONS LAW § 152 (unpardoned felons denied the right to vote).
tracts and the right to pursue a licensed business or profession. He may also be denied certain personal rights—his marriage may be terminated despite his or his spouse's wishes and his natural children may be placed for adoption without his knowledge or consent. His property rights may be severely restricted. In a few civil death states, sentence and imprisonment for life will automatically result in the distribution of the convict's property to his "heirs." In Alabama, the life convict must make and publish his last will within six months after his sentencing, and failure to do so will cause his property to descend to his "heirs" through intestacy. Finally, the convict's access to the courts may be severely restricted. Although the convict is allowed to finish any civil actions commenced before conviction, he will thereafter be denied the right to bring a civil suit. Despite this inability to initiate litigation, the convict nevertheless remains amenable to suit.

Moreover, only a few civil death jurisdictions toll the running of

17. While a majority of the civil death jurisdictions permit the life convict to enter contracts binding upon him, they do not permit him to enforce a contract. See, e.g., Stephani v. Lent, 30 Misc. 346, 349, 63 N.Y. Supp. 471, 473 (Sup. Ct. 1900); Grasser v. Jones, 102 Ore. 214, 218, 201 Pac. 1069, 1071 (1921). Statutes in a few states specifically provide that a convict is capable of making or acknowledging a sale or conveyance of property. See ARIZ. REV. STAT. ANN. § 13-1653 (1956); IDAHO CODE ANN. § 18-312 (1948); MONT. REV. CODES ANN. § 94-4722 (1947); N.D. CENT. CODE ANN. § 12-06-27 (1960). These statutes, however, have been interpreted to limit the life convict's right to make contracts exclusively to transactions involving real property. See, e.g., Miller v. Turner, 64 N.D. 463, 467, 253 N.W. 437, 439 (1934). A few other states simply seem to deny the convict any right to contract. See, e.g., N.H. REV. STAT. ANN. § 607:8 (1955); R.I. GEN. LAWS ANN. § 13-6-1 (1956).


21. E.g., HAWAII REV. LAWS § 83-38 (1955) (property given to or accruing to a life convict vests in his "heirs"); R.I. GEN. LAWS ANN. §§ 13-6-5-7 (1956); VT. STAT. ANN. tit. 13, § 7005 (1958).

22. See Ala. CODE tit. 61, § 3 (1960).


25. See, e.g., Quick v. Western Ry., 207 Ala. 376, 92 So. 608 (1922). But see UTAH CODE ANN. § 76-1-38 (1953).

the statute of limitations during the life convict's period of imprisonment.27

B. STATUTES SUSPENDING CIVIL RIGHTS

Most of the civil death states have enacted legislation providing for the blanket suspension of civil rights of those sentenced to prison for a term of years.28 In those states having both civil death and suspension of rights provisions, these statutes will apparently be interpreted in pari materia; if a person sentenced to life imprisonment retains a particular right, a person sentenced for a term of years will retain that right also.29

Under a general suspension provision, a convict clearly will lose his right to bring a civil suit during the term of his imprisonment30 although this is mitigated by the fact that the statute of limitations is tolled in varying degrees in all states having suspension statutes.31 What other rights are affected by the general suspension provision is unclear because further language either in the suspension statutes or in other statutes specifically deprives the convict of particular rights. Thus, a convict may lose his right to vote, not because of the blanket suspension of civil rights, but as a result of additional specific language in the suspension statute32 or in other statutory provisions.33 Similarly, a convict may clearly lose

28. ALASKA STAT. § 11.05.050 (1962); ARIZ. REV. STAT. ANN. § 13–1653 (1956); CAL. PEN. CODE § 2600; IDAHO CODE ANN. § 18–310 (1947); KAN. GEN. STAT. ANN. § 21–118 (1949); MO. REV. STAT. § 222.010 (1959); MONT. REV. CODES ANN. § 94–4720 (Cumm. Supp. 1961); N.Y. PEN. LAW § 510; N.D. CENT. CODE ANN. § 12–06–27 (1960); OKLA. STAT. tit. 21, § 65 (1961); ORE. REV. STAT. § 137.240 (1953); S.D. CODE § 13–0613 (1939); UTAH CODE ANN. § 76–1–36 (1953). All of these states except South Dakota also have civil death statutes. See note 11 supra. Frequently these statutes will specifically suspend the right to hold public office or a position of public trust. See, e.g., MONT. REV. CODES ANN. § 94–4720 (Cumm. Supp. 1961).
31. See, e.g., ARIZ. REV. STAT. ANN. § 12–502 (1956) (statute tolled in nonreal property actions for both life and nonlife convicts); CAL. CT. CODE § 328 (1956) (statute tolled in real property actions for 20 years if the term of the sentence is less than life); HAWAII REV. LAWS § 241–12 (1955) (statute tolled during term of sentence for nonlife convicts only). If a convict is imprisoned for a long period, suit brought after the termination of his sentence may prove fruitless due to the death or unavailability of parties and witnesses.
32. E.g., CAL. PEN. CODE § 2600 (1956); N.Y. PEN. LAW § 510(a).
33. E.g., IDAHO CODE § 34–402 (1949); N.Y. ELECTIONS LAW § 152.
his legal capacity to contract, not because of the suspension provision, but because other statutes so provide.34

C. THE APPLICATION OF CIVIL DEATH AND SUSPENSION LEGISLATION

Because most civil death and suspension statutes purport to deprive convicts of all civil rights, courts are faced with countless problems that arise from a literal application of these statutes.35 The lack of property rights of a "civilly dead" convict illustrates this judicial dilemma. If a convict loses his property by descent before his actual death, he will retain no funds for such possible future needs as legal expenses or support in the event of his pardon or parole. Yet if a convict retains his property, he will be unable to sue for injuries to the property or to enforce his contract rights under either civil death or suspension statutes. Such problems are equally apparent in the domestic relations area. If, upon imprisonment, a life convict's property passes by will or intestacy, the fact that his marriage is automatically terminated could preclude his spouse from her marital share. Moreover, whether his spouse is free to remarry is unclear. Finally, the problem arises whether a "civilly dead" convict may be regarded as dead for the purposes of collection of the proceeds of his life insurance policies.

Such considerations have forced the courts to engraft substantial exceptions and to create alternatives to a literal interpretation of civil death and suspension statutes.36 In Avery v. Everett, an early New York case, the Court of Appeals had to determine whether the New York civil death statute divested a life convict of his property upon imprisonment. The court held that civil death did not result in the distribution of property, for if a life convict could be sued during his imprisonment, he could not at the same time be considered dead.37

34. E.g., IDAHO CODE § 29–101 (1949) (those who have lost their civil rights have no capacity to contract); OKLA. STAT. tit. 15, § 11 (1961).
35. With living men regarded as dead, dead men returning to life, and the same man considered alive for one purpose but dead for another, the realm of legal fiction acquires a touch of the supernatural under the paradoxical doctrine of civil death. Note, 50 HARV. L. REV. 968 (1937).
36. In California, with the narrow exception of In re Bagwell, 26 Cal. App. 2d 418, 79 P.2d 395 (Dist. Ct. App. 1938), where a convict was denied a writ of habeas corpus for the purpose of bringing a civil action in his own behalf, no appellate court in this century has upheld the deprivation of a convict's rights under the California civil death statute. See Comment, 26 So. CAL. L. REV. 425, 433 (1953).
37. 110 N.Y. 317, 18 N.E. 148 (1888). See also In re Johnson, 184 Misc. 855, 56 N.Y.S.2d 568 (Sur. Ct. 1945), where the fact that decedent's son was civilly dead did not preclude him from sharing in his father's estate.
time be "civilly dead" for the purpose of the distribution of his property. Similarly, in Smith v. Becker,\textsuperscript{38} the Kansas Supreme Court noted that unless the life convict were allowed to retain his property during imprisonment, his release before natural death could lead to the anomalous situation of his "living with heirs who have inherited his property."\textsuperscript{39}

Courts have also been reluctant to apply a literal interpretation of civil death statutes in cases involving insurance.\textsuperscript{40} In Sullivan v. Prudential Ins. Co.,\textsuperscript{42} for example, the Maine court held that civil death did not entitle the life convict to receive the proceeds of his life insurance policy. The court determined that the risk covered by the insurance policy, which contained an implied condition that the insured would do nothing to hasten the maturity of the contract, was only for "a natural, actual death."

In McLaughlin v. McLaughlin,\textsuperscript{43} the Missouri Supreme Court, in effect, narrowly construed its suspension of rights statute by broadly construing the provision permitting the appointment of a trustee to handle the convict's estate during the suspension.\textsuperscript{42} In that case, a convict's wife had obtained a divorce decree that conveyed some of the convict's property to her but did not provide for a trustee. The court held that the convict had a right to the appointment of a trustee, and since none was appointed, the convict could sue his former wife to set aside that part of the divorce decree distributing his property. Similarly, a California court held that the suspension of a convict's civil rights did not prevent him from continuing a civil action that had begun prior to his conviction.\textsuperscript{44} The court noted that otherwise all of the defendant's property could be subject to attachment in the action, and the defendant would be without relief for the term of the sentence no matter how groundless the action.\textsuperscript{45}

\textsuperscript{38} 62 Kan. 541, 64 Pac. 70 (1901).
\textsuperscript{39} Id. at 544, 64 Pac. at 71. See also Gray v. Stewart, 70 Kan. 429, 432, 78 Pac. 852, 853 (1904), where the court said that civil death statutes must be strictly construed because they are "in derogation of the natural rights of persons to hold and manage their own property."


\textsuperscript{41} 131 Me. 228, 160 Atl. 777 (1932). The action was brought by the administrator of the convict's estate, appointed pursuant to Me. Rev. Stat. ch. 154, § 20 (1954), repealed by Me. Laws ch. 276 (1959).

\textsuperscript{42} 228 Mo. 605, 129 S.W. 21 (1910).
\textsuperscript{43} Mo. Rev. Stat. § 9229 (1939), repealed by Mo. Laws 1333 (1945).
\textsuperscript{44} Castera v. Superior Court, 29 Cal. App. 694, 159 Pac. 735 (Dist. Ct. App. 1916).

\textsuperscript{45} California continues to follow a narrow interpretation of its suspen-
Despite the efforts of the courts to alleviate the harshness of civil death and suspension statutes, the convict and his family must proceed in a state of uncertainty and confusion. This problem is illustrated in a New York case in which the wife of a convict sentenced to life imprisonment sought a declaratory order that she was free to remarry.\textsuperscript{46} The husband defended on the ground that the chances of parole make life imprisonment unlikely. Nevertheless, the court interpreted the civil death statute strictly in this case and awarded the declaratory order to the wife. This action by the wife was probably prompted by the fact that she felt that the unclear state of the law made any reliance on the civil death statute unwise in light of the possibility that she might be charged with bigamy or adultery. In such a situation, a statute allowing imprisonment of a spouse as a ground for divorce would seem clearly preferable to the uncertain effects of the civil death statute.\textsuperscript{47}

D. Evaluation of Civil Death and Suspension Statutes

The soundness of civil death and suspension statutes should be evaluated in light of the current emphasis on rehabilitation of the convict to enable his eventual return to constructive participation in society, in lieu of punishment or retribution, as the primary goal of modern penology.\textsuperscript{48} Even when narrowly construed, the blanket provisions of civil death and suspension statutes hardly

\textsuperscript{37} See In re McNally, 144 Cal. App. 2d 531, 301 P.2d 385 (Dist. Ct. App. 1956); cf. note 37 supra.

\textsuperscript{46} Brookman v. Brookman, 161 Misc. 741, 292 N.Y.S. 918 (Sup. Ct. 1937).

\textsuperscript{47} Under present New York law, the only ground for divorce is adultery. N.Y. CIV. PRAC. ACT §§ 1147–60. Other civil death states, however, specifically provide for divorce on the ground of imprisonment of a spouse. See, e.g., MINN. STAT. § 518.06(4) (1961); UTAH CODE ANN. § 30–3–1(6) (1953). The Supreme Court of Alabama has interpreted its civil death statute in pari materia with a statute providing that a sentence of “seven years or longer” is cause for divorce; the court held that the legislature did not intend that civil death should automatically dissolve the marital status. Graham v. Graham, 251 Ala. 124, 36 So. 2d 316 (1948); accord, Villalon v. Bowen, 70 Nev. 456, 273 P.2d 409 (1954).


The swing of the penological pendulum from punishment to reformation during the last two hundred years was the result of the slow recognition that lawbreakers, like other human beings, can profit by experience and training . . . . Society has invested colossal sums in, and has committed itself to, the belief that a considerable majority of offenders can be reformed.

subserve this rehabilitative purpose. The automatic dissolution of
the life convict’s marriage, for example, may adversely affect his
morale, thus lessening his chances for rehabilitation and parole.
Similar objections may be raised against the indiscriminate depriv-
atation of the convict’s property rights. Where, as in Alabama, a
convict’s property is distributed to his “heirs” upon his imprison-
ment for life, rehabilitation may be substantially retarded by the
convict’s awareness that in the event of his pardon or parole he
would be penniless. A similar result may ensue when a convict
loses his property through his inability to protect it from the en-
croachments of third parties.

In lieu of outright repeal of civil death and suspension of rights
legislation, a few states have attempted merely to alleviate the in-
ability of the convict to protect his property interests. To relieve
the convict’s family and creditors from the hardships created by
the disabilities imposed on the convict, these states have enacted
statutes providing for the appointment of a committee or a trustee
to maintain the prisoner’s estate, prosecute his claims, and defend
suits brought against him. The New York statute is represen-
tative of this type of legislation. Whenever any person is sentenced
either to life imprisonment or for a term of years, his relatives or
creditors may apply for the appointment of a committee for the
management of his estate. The court may direct payment of the
convict’s debts, provide for support and education of his depend-
ents, and supervise sale of the convict’s property and investment of
the proceeds. If the convict should be pardoned or his sentence
commuted, the committee will be ordered to transfer all of the re-
main ing property to him.

These statutes are unsatisfactory, however, because they ap-
pear to have been designed for the benefit of creditors and depend-
ents with little concern for the interests of the convict. The
convict has no control over the committee’s actions. The commit-
tee may never come into existence because the creditors and rela-
tives may not undertake to have one appointed or there may be no
creditors or relatives; the convict himself is not authorized to ask

49. See Note, 48 YALE L.J. 912, 916 (1939). See also Note, 13 WYO. L.J.
50. See note 23 supra and accompanying text.
51. See note 31 supra and accompanying text.
52. ME. REV. STAT. ch. 158, § 4 (1954); MO. STAT. ANN. §§ 460.010–
460.250 (1956); N.Y. CORREC. LAW §§ 320–25, 350–61; R.I. GEN. LAWS
ANN. §§ 13–6–4 to 13–6–7 (1956).
54. Such statutes were enacted when “no thought was given to whether
... a convict should have property at the expiration of his sentence and
when parole was unknown.” 1946 N.Y. LAW REVISION COMM’N REP. 180.
for the appointment of a committee. Moreover, even if a committee is appointed, it may fail to protect the convict's property; he may have a cause of action against a third person, for example, but the committee may neglect to bring suit on it.

The need to deprive a convict of a particular right may vary, depending upon whether the rehabilitative effect of the retention of that right and the concept of doing justice to the convict and his family outweigh the interests in maintaining community safety and avoiding undue public inconvenience. The omnibus provisions of civil death and suspension of rights statutes fail to recognize the necessity of balancing these factors. This type of analysis may be illustrated by considering the right to sue. The principal objections to allowing a prisoner to bring a civil suit are: (1) prisoners may try to instigate litigation to be temporarily absent from prison; (2) they may exercise poor judgment in deciding whether to sue—acts that would normally be overlooked may assume a distorted importance in the mind of a prisoner; (3) they may harass public officials with countless lawsuits.\footnote{See 1946 N.Y. LAW REVISION COMM'N REP. 190.} The first objection could be met by entrusting the conduct of the lawsuit to the convict's attorney and allowing the convict's testimony to be taken by deposition.\footnote{See, e.g., TENN. CODE ANN. § 41-604 (1955).} The other objections are not so easily overcome. Unwarranted civil actions arising out of the arrest, prosecution, and confinement of the prisoner could be so numerous and expensive as to interfere materially with the performance of an official's duties.\footnote{See 1946 N.Y. LAW REVISION COMM'N REP. 189. This problem might be partially alleviated by the use of court injunctions against a prisoner's repetitious or overly vexatious litigation in the same fashion that injunctions are occasionally issued against other harassing lawsuits. Cf. Clieett v. Hammonds, 305 F.2d 565 (1962), where the court upheld a contempt citation for violation of an injunction prohibiting further litigation over the ownership and possession of certain land.} However, the fact that the majority of states have apparently not deemed it necessary to deny the convict access to the courts for civil suits\footnote{See note 65 infra and accompanying text.} may indicate that such problems are not overly burdensome. In addition, other considerations tend to weigh in favor of the retention of the right to sue. Vindication of the convict's rights in court may enable him to secure some degree of economic protection for his dependents and clearly should not endanger public safety. Moreover, permitting the convict to sue may prevent the unjust enrichment of third party debtors who occasionally benefit from the convict's inability to reach them.\footnote{See note 65 infra and accompanying text.} Accord-
ingly, the balancing of these factors favoring the convict's right to sue against the fact that the objections on the grounds of public inconvenience do not seem insurmountable indicates that justice would be best served by allowing the convict to retain the right to bring a civil suit.

This balancing test, incorporating both the policy of rehabilitation and the need for community protection, is best utilized by proceeding right-by-right, the approach apparently adopted by those states that have statutes depriving a convict of such specific rights as the right to vote, to hold positions of public trust, and to engage in a profession or business requiring a license. Since the common-law disabilities are apparently inapplicable in the absence of civil death or suspension of rights legislation, the convict would retain those civil rights not specifically proscribed by statute. Thus, in these states a life convict's property will not be distributed among his heirs upon imprisonment and his marriage will not be automatically terminated; in addition, he will probably retain other property rights, including the right to contract and to bring suit.

That convicts in these states retain the right to sue and to contract may improve the convict's chances for rehabilitation by allowing him to protect his property and thus insure a means of livelihood in the event of his release or parole. On the other hand, the rights that more directly affect community life and involve potential harm to society have been rightly withheld from the impris-

It cannot be supported as a deterrent to crime. It may give a windfall to debtors, and it may inflict an unmerited punishment on innocent third persons, namely, on the dependents of the person sentenced and his heirs.


60. E.g., W. VA. CONST. art. IV, § 1; WIS. CONST. art. 3, § 2; NEB. REV. STAT. § 32-1048 (1960); N.M. STAT. ANN. § 3-8-3 (1953); WYO. STAT. ANN. § 6-4 (1957).

61. E.g., NEB. CONST. art. XV, § 2; N.C. CONST. art. VI, § 8; N.M. STAT. ANN., § 5-1-2 (1953); W. VA. CODE ANN. § 310 (1961); WIS. STAT. § 17.03 (1961).


63. See Willingham v. King, 23 Fla. 478, 481, 2 So. 851, 853 (1887); Note 50 HARV. L. REV. 968, 969-70 (1937).

64. See Owens v. Owens, 100 N.C. 240, 6 S.E. 794 (1888), where a woman imprisoned for life was allowed to take her dower interest in her husband's estate; Hine v. Simon, 95 Okla. 86, 218 Pac. 1072 (1923), where a life convict was allowed to inherit land. See also Davis v. Laning, 85 Tex. 39, 19 S.W. 846 (1892).

oned convict. For example, a convict will be deprived of his right to vote, possibly to avoid the danger that bribes might be offered to the wardens delivering the greatest number of votes to a particular political party.

II. RESTORATION OF RIGHTS

Equally as confusing and diverse as the statutes depriving the convict of his civil rights are the methods by which those rights are eventually restored to him. In a few states, certain rights may be restored to the convict upon parole. In the great majority of states, however, rights are restored when the convict is released by pardon; they may also be restored at the termination of his sentence, either automatically or through a certificate of good conduct.

A. PAROLE

The placing of the convict on parole generally does not restore the civil rights he lost as a result of his imprisonment. In effect, a parolee continues to serve his sentence even though he is no longer imprisoned; the sentence is not suspended, and he remains in the legal custody of the state. There are some exceptions to this general rule. New York, for example, has amended its suspension statutes to allow a convict on parole to bring suit. Statutes in a few other states permit the paroled convict to exercise all nonpolitical civil rights. Although these statutes do not define either political or nonpolitical civil rights, presumably the former term would include the right to vote and to hold public office, and the latter would probably encompass the rights to contract or to bring suit.

Parole has the double function of rehabilitating the offender and protecting society from his possible further transgressions. The extent of the restoration of civil rights to a parolee will be resolved in terms of one of these two functions. Where the sole interest is in community protection, emphasis will be on rigid surveillance of the parolee and restriction of his rights. However, if the policy of

66. See note 60 supra.
67. See In re Sutton, 50 Mont. 88, 94, 145 Pac. 6, 8 (1914); Note, 37 Va. L. Rev. 105, 115 (1951).
68. E.g., State ex rel. Lampi v. Tahash, 261 Minn. 310, 112 N.W.2d 357 (1961); People ex rel. Natoli v. Lewis, 287 N.Y. 478, 41 N.E.2d 62 (1942); Crooks v. Sanders, 123 S.C. 28, 115 S.E. 760 (1922); Scott v. Chichester, 107 Va. 933, 60 S.E. 95 (1908).
69. N.Y. PEN. LAW §§ 510-11.
70. E.g., IDAHO CODE ANN. § 18-310 (1948); ORE. REV. STAT. § 137.240 (1953).
71. NEWMAN, SOURCEBOOK ON PROBATION, PAROLE, AND PARDONS 174 (1958).
rehabilitation is stressed, the community may become endangered by the parolee’s excesses and misconduct. Clearly, some control over the parolee is necessary to protect the community and to prevent his return to crime. Thus, in most states the parolee must obtain permission to borrow money or change jobs, and he is prohibited from associating with other parolees or ex-convicts. The rehabilitative purpose of parole, however, may be enhanced without burdening or endangering society by restoring to the parolee some of the civil rights forfeited because of imprisonment. Although sound policy may justify the prohibition of an imprisoned convict’s right to vote, such a restriction is more difficult to justify in the case of the parolee since the danger of prisoners becoming embroiled in political struggles is no longer present. In addition, the exercise of the franchise by the parolee may hasten his integration into normal community affairs. The rehabilitative purpose may similarly be served by restoring the right to sue. The harassing or vexatious lawsuits that might result from prison confinement should be less likely once the prisoner is released and becomes involved in normal community pursuits. Moreover, permitting the parolee to protect his personal and property interests in the courts may encourage him to accept responsibility for the maintenance of himself and his family. The New York Law Revision Commission, in recommending the passage of the present New York suspension statute, noted that the parole system was devised long after the statute on suspension of civil rights was adopted and that the prohibition against the right to sue in the case of the parolee was “attributable to accident rather than intention.”

B. PARDON

The majority of states make some provision for the granting of pardons. The pardon power may be vested simply in the governor alone, in the governor aided by an advisory board, or solely in the advisory board. Although a pardon could completely

72. Id. at 175.
73. 4 ATT’Y GEN. SURVEY OF RELEASE PROCEDURES 212–13 (1939) [hereinafter cited as SURVEY]; Note, 65 HARV. L. REV. 309, 311–12 (1951).
74. See text accompanying note 66 supra.
75. See notes 55–57 supra and accompanying text.
76. 1946 N.Y. LAW REVISION COMM’N REP. 194.
77. E.g., ILL. REV. STAT. ch. 104–1/2, § 1 (1961); N.Y. CODE CRIM. PROC. § 692; ORE. REV. STAT. 143.010 (Supp. 1961).
79. CONN. GEN. STAT. ANN. §§ 18–24a, 18–26 (1960); MINN. STAT. § 638.01 (1961).
erase a conviction and exonerate the convict of all punishment,\textsuperscript{80} such a broad interpretation of the effect of a pardon has not been applied in practice. While certain rights are almost always restored to the pardoned convict—the right to sue,\textsuperscript{81} the right to contract,\textsuperscript{82} the right to vote,\textsuperscript{83} and the right to inherit and convey property\textsuperscript{84}—a pardon will not necessarily erase all the effects of the conviction. A license to engage in certain businesses or professions may be withheld;\textsuperscript{85} a forfeited office need not be restored;\textsuperscript{86} marriages terminated by conviction are not reinstated nor is the spouse’s right to a divorce based on the conviction destroyed.\textsuperscript{87} Moreover, the pardoned convict cannot regain property interests that have vested in third parties as a result of the conviction.\textsuperscript{88}

The primary purpose of the pardon is not to serve as a method of restoring civil rights, but rather as a means of official clemency designed to release certain prisoners subsequently determined to be innocent or otherwise unjustly imprisoned.\textsuperscript{89} In

\begin{itemize}
  \item \textsuperscript{80} The United States Supreme Court in \textit{Ex parte} Garland, 71 U.S. (4 Wall.) 333, 380 (1867), announced a liberal definition of “pardon”:
    \begin{quote}
    A pardon reaches both the punishment prescribed for the offence and the guilt of the offender; . . . it releases the punishment and blots out of existence the guilt, so that in the eye of the law the offender is as innocent as if he had never committed the offence . . . . [I]t removes the penalties and disabilities, and restores to him all his civil rights . . . .
    \end{quote}

  \item \textsuperscript{81} White v. State, 260 App. Div. 413, 23 N.Y.S.2d 526 (1940), aff’d, 285 N.Y. 728, 34 N.E.2d 896 (1941); Page v. Watson, 140 Fla. 536, 192 So. 205 (1938) (dictum).

  \item \textsuperscript{82} 3 \textsc{Survey} at 280.

  \item \textsuperscript{83} In the Matter of the Executive Communication, 14 Fla. 318 (1872); Wood v. Fitzgerald, 3 Ore. 568 (1870); 3 \textsc{Survey} at 272; Note, 37 \textsc{Va. L. Rev.} 105, 112 (1951). \textit{But see} \textsc{Conn. Gen. Stat. Ann.} § 18–26 (1960).

  \item \textsuperscript{84} 3 \textsc{Survey} at 271–72.

  \item \textsuperscript{85} Branch v. State, 120 Fla. 666, 163 So. 48 (1935); State v. Hazzard, 139 Wash. 487, 247 Pac. 957 (1926). In New York, the state Board of Regents may in its \textit{discretion} restore licenses to pardoned physicians and dentists. \textsc{N.Y. Educ. Law} §§ 6502, 6613(13). The burden of proof is on the applicant to show good character. See Jablon v. Board of Regents, 271 App. Div. 369, 66 N.Y.S.2d 340 (1946).

  \item \textsuperscript{86} \textsc{E.g.}, \textsc{Va. Code Ann.} § 2–32 (1950); Morris v. Hartsfield, 186 Ga. 171, 197 S.E. 251 (1938); State \textit{ex rel.} Webb v. Parks, 122 Tenn. 230, 122 S.W. 977 (1909); Commonwealth v. Fugate, 2 Leigh 724 (Va. 1830); 3 \textsc{Survey} at 273–74.

  \item \textsuperscript{87} Hollaway v. Hollaway, 126 Ga. 459, 55 S.E. 191 (1906); 3 \textsc{Survey} at 280; Note, 37 \textsc{Va. L. Rev.} 105, 113 (1951). Where a pardon is granted after the divorce, some statutes provide that the pardon does not vitiate the divorce. See, \textit{e.g.}, \textsc{Wis. Stat.} § 247.07(3) (1961).

  \item \textsuperscript{88} \textit{Ex parte} Garland, 71 U.S. (4 Wall.) 333, 380 (1867) (dictum); State v. Hazzard, 139 Wash. 487, 492, 247 Pac. 957, 959 (1926); 3 \textsc{Survey} at 279.

  \item \textsuperscript{89} See \textsc{Tappan, Loss and Restoration of Civil Rights of Offenders}, in \textsc{National Probation & Parole Ass’n 1952 Yearbook, Crime Prevention Through Treatment} 86, 97.
\end{itemize}
theory, then, the pardon should be used sparingly; it would not affect those convicts who were properly convicted and imprisoned. In practice, however, the pardoning power is often misused as a substitute for parole;90 moreover, a predominating influence in the granting of a pardon, especially where that authority is vested in the chief executive alone, is sometimes political.91 Thus, the practical result of restoration of rights when a pardon is granted may be to restore rights to those fortunate enough to receive a pardon while still withholding rights from those who are paroled or who have served their sentences.

C. RestoraTion Through Good Conduct Certificates

Another method of restoring civil rights is through the use of a good conduct certificate. Statutes restoring civil rights to the convict on the basis of good conduct vary substantially, but there are two general types. First, restoration may depend upon the convict's compliance with prison regulations during his imprisonment.92 In Colorado, for example, a convict who has complied with prison rules is entitled at the end of his sentence to a certificate of good conduct from the warden; upon presentation of the certificate to the governor, all of his civil rights are restored.93 Second, the statute may make the good conduct of the convict after his release from prison determinative of the restoration of civil rights.94 Thus, in California, a convict released from prison, either by completion of sentence or parole, may apply to the superior court for a certificate of rehabilitation and pardon after satisfactory conduct during the parole period or for some other fixed period.95

Neither variation of the "good conduct" method is entirely satisfactory. Where the restoration rests on the good conduct of the

90. Ibid.
92. COLO. REV. STAT. ANN. § 105-4-13 (1953); NEB. REV. STAT. § 29-2634 (1943); S.D. CODE §13.4718 (Supp. 1960); UTAH CODE ANN. § 64-9-30 (1953); WYO. STAT. ANN. § 7-311 (1957).
93. See COLO. REV. STAT. ANN. § 105-4-13 (1953).
94. E.g., CAL. PEN. CODE §§ 4852.01-.17; N.Y. EXECUTIVE LAW § 242.
95. See CAL. PEN. CODE §§ 4852.01-.17. A description of the California procedure may be found in MacGregor, Adult Probation, Parole, and Pardon in California, 38 TEXAS L. REV. 887, 908-13 (1960). Minnesota law provides for a variation of the two types of restoration through a good conduct certificate. A convict who has completed his sentence is certified by a judge or other appropriate official as being rehabilitated. This certificate is forwarded to the Governor who has discretionary power to restore the convict's civil rights. See MINN. STAT. §§ 610.41-.43 (1961). In addition, MINN. STAT. § 243.18 (1961) provides that a prisoner who has satisfactorily served his full term of imprisonment shall receive from the Governor a certificate restoring his rights and privileges.
convict prior to his release, the emphasis is on the convict's conformity to the patterns of prison life rather than on his ability to withstand the temptations and fulfill the demands of living in the community. In some cases, the best behaved inmate may be an habitual offender; hardened criminals may live within the prison rules only to secure the earliest possible release. This problem, of course, is not present where the emphasis is upon the convict's conduct after his release from prison. In the latter case, however, because the burden is on the convict to secure a certificate of rehabilitation or good conduct, many eligible convicts fail to apply and thus are denied their civil rights. Apparently they do not wish to risk embarrassment by an investigation into their past record, or they fear loss of employment upon discovery by their employers of their past prison records.

D. AUTOMATIC RESTORATION

Several states provide for automatic restoration of the convict's civil rights, generally either upon the completion of the sentence or upon the expiration of a period of time after the convict's release. The clearest example of this type of legislation may be found in the Wisconsin statute, which provides that every convict "obtains a restoration of his civil rights by serving out his term of imprisonment or otherwise satisfying his sentence." Many of the automatic restoration statutes provide for an earlier restoration of rights for a convict on parole who has received a discharge from the parole board or its equivalent.

Frequently, these statutes make no provision for informing

96. See Tappan, supra note 89, at 97–98.
98. KAN. GEN. STAT. ANN. § 62–2252 (Supp. 1961); OHIO REV. CODE ANN. § 2965.17 (Supp. 1962); WIS. STAT. § 57.078 (1961). The Proposed Minn. Criminal Code adopts the principle of automatic restoration. Under this proposal, all civil rights except the right to hold public office, which is forfeited forever upon conviction of bribery, are automatically restored when the convict completes his sentence or is discharged by the Adult Corrections Commission. PROPOSED MINN. CRIMINAL CODE § 609–165 (1962).
99. E.g., MO. REV. STAT. § 216.355 (1959); TENN. CODE ANN. § 40.371 (1955). The Missouri statute applies only to the first conviction for a felony and then only if the convict obtains a certificate of discharge from the parole board.
100. WIS. STAT. § 57.078 (1961). This statute was enacted primarily to restore franchise rights. See Note, 1951 Wis. L. REV. 358; cf. Brossard, Restoration of Civil Rights, 1946 Wis. L. REV. 281.
the released prisoner of the fact that his rights are restored.\textsuperscript{102} Thus, a released prisoner could fail to exercise his re-acquired rights simply because he was unaware that any rights were restored to him.\textsuperscript{103} Since the integration of released prisoners into community life is desirable, they should be encouraged to exercise those rights that could facilitate their assimilation into normal civic and business life, such as the right to vote and the right to contract.

The rehabilitation of the convict will probably be enhanced by allowing him to renew active community participation with the fewest possible formalities and procedural burdens.\textsuperscript{104} Since automatic restoration statutes return rights to anyone who has completed his sentence, the community bears an implied risk that the restored convict may not be fully rehabilitated and that he may thus misuse his re-acquired rights. Yet it seems reasonable that if the convict has served his full penalty, society should return him as fully as possible to his former status. Moreover, this risk seems much less dangerous than the chance that a convict on parole may commit another crime, a risk freely taken by all states. In addition, under automatic restoration, the convict is spared the embarrassment and often unnecessary investigation demanded by statutes requiring application to courts or administrative agencies.

\textbf{CONCLUSION}

In approximately one-third of the states, civil death and suspension of rights statutes deprive convicted felons of some or all of their civil rights. Such statutes are imprecise and result in uncertainty and confusion for the courts and the convict alike. Moreover, they tend to hamper the rehabilitative process. Those states still having civil death and suspension statutes should "reassess the value to be gained from attaching an indefinite, perhaps permanent, disability to the crime."\textsuperscript{105} Such a re-evaluation should result in the repeal of civil death and suspension of rights legislation; these states should consider the deprivation of each particular right as a separate and distinct problem, a process at least implicitly adopted by the majority of states. In deciding whether a convict should be deprived of a certain right, community protection and convenience should be balanced against the ideal of doing justice to the individual convict and the possible adverse effect the deprivation of that right would have upon his rehabilitation.

\textsuperscript{102} See, \textit{e.g.}, \textsc{Ohio Rev. Code Ann.} \S 2965.17 (Supp. 1962); \textsc{Wis. Stat.} \S 57.078 (1961).
\textsuperscript{103} \textit{Cf.} Wallerstein, \textit{supra} note 97, at 107.
\textsuperscript{104} See \textsc{Proposed Minn. Criminal Code} \S 609.165, comment (1962).
In addition, those states that do not provide automatic restoration of civil rights to convicts should do so. This method of restoring rights encourages the more frequent exercise of civil rights by ex-convicts; it avoids the embarrassing investigation and publicity of the good conduct certificate and provides the convict with notice that his rights are restored. This increased opportunity for a released prisoner to exercise the civil rights available to other citizens should be a definite aid in his rehabilitation.