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Civil Death in California: A Concept Overdue for Its Grave

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CIVIL DEATH IN CALIFORNIA: 
A CONCEPT OVERDUE FOR ITS GRAVE

INTRODUCTION

California's modern correctional theory has established rehabilitation of the offender as its primary goal, and uses therapeutic and reformative concepts to treat the prisoner's needs and problems and to assist his adjustment to the environment he will encounter on release from custody. Such correctional programs ideally include positive measures designed to re-establish the individual's dignity, enabling him to achieve a new social identity and re-enter society with confidence and a sense of personal responsibility. Conversely, failure to re-orient the offender often results in his inability to integrate into non-criminal social groups, with recidivism the inevitable result.

Unfortunately, these modern goals clash with the reality of California's civil death statute, embodied in sections 2600 and 2603 of the Penal Code. Literally a holdover from the nineteenth century, section 2600 operates first totally to remove an individual's civil rights during his prison sentence. Although re-

2. See The President's Commission on Law Enforcement and Administration of Justice, Task Force Report: Corrections 51-55 (1967) [hereinafter cited as Task Force Report] for recommendations that the inmate be provided with educational, vocational, and clinical services as the first stage of rehabilitative treatment. The report further recommends the prisoner be provided with an opportunity to reduce the isolation inherent in his institutional setting by allowing him exposure to the outside community. Programs such as work-release and study-release would be utilized, with outright discharge constituting the final stage of this rehabilitative scheme.
5. CAL. PEN. CODE §§ 2600, 2603 (West 1970). For a discussion of section 2600, see notes 6-9, 26, 67, 89, 103, 120 and accompanying text supra. Section 2603 provides that persons sentenced to state prison are not incompetent as witnesses by affidavit or deposition in a civil case or proceeding or by affidavit or deposition or personally in a criminal case or proceeding, or incapable of making a will, or incapable of making and acknowledging, a sale or conveyance of property.
6. CAL. PEN. CODE § 2600 (West 1970) states in relevant part: "A sentence of imprisonment in a state prison for any term suspends all the civil rights of
cent court decisions have prompted the Legislature to restore four narrow rights to prisoners by amendment to this section,\(^7\) this limited restoration of rights is piecemeal and ineffectual because the basic statute still operates to deny the existence to prisoners of all other civil rights.

To remove an individual's civil rights in such a comprehensive fashion, and then to expend countless dollars and man-hours in rehabilitation efforts to persuade the prisoner that he possesses dignity and is capable of re-entering society with confidence and a sense of personal responsibility are irreconcilable acts based on conflicting theories. The civil death statute is premised on the antiquated penal concepts of retribution and total disregard for the rights and needs of prisoners. The statute, which predated adoption of the indeterminate sentence, probation and parole, and other rehabilitative techniques in California,\(^8\) is incompatible with subsequent developments in correctional theory.\(^9\)

This comment examines the origins of civil death and its present operation in California. It then urges the adoption in California of the specific disabilities approach, now utilized by the

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\(^7\) CAL. PEN. CODE § 2600 (West 1970) provides the following specific rights:

1. To inherit real or personal property.
2. To correspond, confidentially, with any member of the State Bar, or holder of public office, provided that the prison authorities may open and inspect such mail to search for contraband.
3. To own all written material produced by such person during the period of imprisonment.
4. To purchase, receive, and read any and all newspapers, periodicals and books accepted for distribution by the United States Post Office. Pursuant to the provisions of this section, prison authorities shall have the authority to exclude obscene publications or writings, and mail containing information concerning where, how, or from whom such matter may be obtained; and any matter of a character tending to incite murder, arson, riot, violent racism, or any other form of violence; and any matter concerning gambling or a lottery. Nothing in this section shall be construed as limiting the right of prison authorities (i) to open and inspect any and all packages received by an inmate and (ii) to establish reasonable restrictions as to the number of newspapers, magazines, and books that the inmate may have in his cell or elsewhere in the prison at one time.

\(^8\) Civil death existed in California prior to 1868. See note 22 infra. It was enacted as section 2600 of the Penal Code in 1941. Probation, id. § 1203 et seq. (West Supp. 1974), was originally enacted in 1872; the indeterminate sentence, id. § 1168 (West 1970) in 1917; parole, id. § 3040 et seq. (West 1970), in 1941; accelerated prisoner discharge, id. § 3024.5 (West 1970) in 1947; and the work furlough program, id. § 1208 (West 1970) in 1957.

\(^9\) The incompatibility of civil death has even been recognized by the California Legislature, although the legislators have not as yet changed section 2600 to reflect their findings. A recent Legislature study concluded there is no evidence to prove more severe penalties deter crime more effectively than less severe penalties. ASSEMBLY COMMITTEE ON CRIMINAL PROCEDURE, DETERRENT EFFECTS OF CRIMINAL SANCTIONS (1968).
federal government, forty of the fifty states, and most countries with modern penal systems. The comment demonstrates how an emphasis on specific, limited civil disabilities, rather than the existing California approach of eliminating virtually all civil rights at the moment of sentencing provides a superior approach to protecting prisoners' rights which is also compatible with modern correctional theory.

I. THE HISTORICAL DEVELOPMENT OF CIVIL DEATH

The imposition of civil disability as a consequence of crime is one of man's oldest legal concepts, originating in ancient Greece, where it was known as "infamy." The tightly knit Greek city-states, whose people placed great importance on the rights and consequences of citizenship, employed infamy as a retributive penalty to punish criminals for their crimes against society. Once convicted, criminals were prohibited from appearing in court, voting, making speeches, attending assemblies or serving in the army.

The Romans, recognizing also the deterrent impact of "infamy," adopted the penalty and called it "sacer," further defining the conditions of its imposition during its spread throughout the Empire. The Germanic tribes of Europe later absorbed the concept into their own primitive penal systems, changing its name to "outlawry" in the process. Tribal contact was responsible for the eventual Anglo-Saxon adoption of "outlawry" in England, where it was viewed as a form of community retaliation against the criminal. The theory was that the criminal, in effect, had declared war on the community by violating its laws, giving the latter the right to retaliate by whatever means seemed appropriate. The rough justice of England in the ninth century meant the criminal lost not only all his civil and property rights, but frequently his life as well, for he could be killed with impunity by anyone. The imposition of civil disabilities as an additional sanction for a criminal conviction became an integral part of the heavily punitive English penal system, which emphasized retribution and deterrence as its principal method of combating crime.

"Outlawry" eventually became known as "attainder" and attached to any person who was convicted of treason or a felony, with immediate and grave civil disability consequences. The hapless individual's lands and chattels were forfeited to the Crown, and "corruption of blood" was proclaimed, resulting in a legal incapacity to grant property to heirs or to receive property devised from ancestors. To further add to his difficulties, the convicted

10. This historical overview of civil death was adapted from Damaska, Adverse Legal Consequences of Conviction and Removal: A Comparative Study, 59 J. CRIM. L.C. & P.S. 347, 350-51 (1968) [hereinafter cited as Damaska].
criminal was declared "civilly dead," the legal equivalent of being physically dead, and any legal rights he would otherwise possess were suspended.\textsuperscript{11}

Obviously not viewing a felony conviction as a matter to be taken lightly, the American colonies borrowed from the English common law and adopted the penalty of civil death, although forfeiture and corruption of blood were abandoned as unacceptable. Not long thereafter, England and continental Europe moved away from time-tested, but brutal, methods of punishment and public degradation,\textsuperscript{12} as the Age of Enlightenment dawned in the late eighteenth century. Rather than continuing the old traditions of severe punishment for transgressions, it was believed punishment should become less severe and penal efforts be directed instead to prevention of crime and reformation of the criminal.\textsuperscript{13} This laudable concept eventually resulted in the abolition of corruption of blood and forfeiture in England\textsuperscript{14} and, by 1933, the abolishment of civil death in Europe.\textsuperscript{15}

The initial enactment of civil death statutes in America appears to have been the result of an unquestioning adoption of the English penal system by our colonial forefathers, who continued existing practices without evaluating or questioning the validity of their rationale.\textsuperscript{16} Nevertheless, the Age of Enlightenment eventually brightened American penal sanctions as well. Its primary effects were the novel concept of establishing the penitentiary as

\begin{enumerate}
\item See 4 W. BLACKSTONE, COMMENTARIES 373-82; Ex parte Brown, 68 Cal. 176, 178, 8 P. 829, 830 (1885).
\item The death penalty was accomplished by hanging, beheading, burning at the stake, boiling alive and mutilation of the criminal's body. Mutilations included branding the criminal's cheek, as well as the mutilation of hands, ears, tongue, and other body parts.
\item Public degradation was often designed to expose the criminal to public ridicule and loss of status, for example, by making a seller of rotten fish wear a rotten fish around his neck. Special Project, The Collateral Consequences of a Criminal Conviction, 23 VAND. L. REV. 929, 945 nn.23, 26, 28 (1970) [hereinafter cited as Special Project].
\item Id. at 948.
\item The Forfeiture Act 1870, 33 & 34 Vict., c. 23; 8 HALSBURY'S STATUTES OF ENGLAND 179 (3d ed. 1969).
\item Civil death was abolished in France in 1854 and in Germanic countries at about the same time. By 1900, "civil death" per se existed nowhere in continental Europe. The only comparable civil death statute existed in Russia during Stalin's rule and was abolished after his death in 1958. The worldwide trend away from civil death was reflected in the report of the Seventh International Congress of Criminal Law held in Athens in 1957, which said, in relevant part: "[A]ll legal consequences of conviction motivated by the sole goal of degradation should be abolished." Loss of civil rights was also specifically mentioned by the Congress. Damaska, supra note 10, at 352-54.
\item Special Project, supra note 12 at 950.
\end{enumerate}
a replacement for public degradation and a declaration that civil death was no longer to exist in the absence of an express statute providing for it. Unfortunately, this enlightenment was only temporary, for in 1799, New York became the first state to adopt a civil death statute for convicted felons, followed thereafter by other states which either passed similar statutes or imposed specific disabilities in their constitutions. By 1868, the disability of civil death had been well-established in California when the California Supreme Court had its first opportunity to consider the consequences of civil death in Estate of Nerac, and held that a prisoner sentenced to the state prison for a term less than life was deemed to be civilly dead, with all of his civil rights suspended during the term of his imprisonment.

II. CIVIL DEATH IN CALIFORNIA

A. California's Civil Death Statute

The language of the original civil death statute continued almost unchanged in California for one hundred years. Under this statute a convict was deprived of all his civil rights. For example, he was rendered incapable of voting, of defending his interests by lawsuit, of entering into valid contracts, or even of contesting a divorce based on no other factor than his imprisonment. In 1968, the statute, now embodied in section 2600 of the Penal Code, was amended to grant four specific and narrow rights to

17. During this period of history prisons were used only to confine the criminal before his trial and to detain him until he paid his fine, rather than as a means of punishment per se. Special Project, supra note 12, at 946 n.37.
21. See, e.g., Conn. Const. art. 6, § 3 and Del. Const. art. 5, § 2 (right to vote).
22. Section 145 of the Act Concerning Crimes and Punishments provided:
A sentence of imprisonment in the State Prison for a term less than life suspends all civil rights of the person so sentenced during the term of imprisonment, and forfeits all public offices and all private trusts, authority, and power; and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.
24. Id. at 396, 95 Am. Dec. at 112.
The changes, however, left untouched the general preamble of section 2600 of the Penal Code: “A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment.” This passage is virtually the same as its counterpart in the statute considered by the California Supreme Court in the 1868 case of Estate of Nerac, although it omits the last phrase of the 1868 statute: “and the person sentenced to such imprisonment for life shall thereafter be deemed civilly dead.” Although at first blush this semantic change seems to be an improvement in that “civil death” is not now expressly mentioned in section 2600, the fact that imprisonment “for any term” will result in virtually a total loss of civil rights gives the modern version of the statute a “civil death” character. Furthermore, it should be noted that the suspension of civil rights for anyone sentenced to life imprisonment and never granted parole will result in a permanent “suspension” of civil rights, akin to actual civil death. That the equivalent of civil death still exists is borne out by the title of Chapter 3 of the Penal Code: “Civil Death of Prisoners” and in section 2603, entitled: “Effect of Civil Death on Competency as a Witness, Capacity to Make Will or Conveyance of Property.

Nomenclature and semantics aside, the initial impact of section 2600 is first to remove all civil rights of the prisoner upon sentencing, then specifically to restore only four enumerated rights during the time the sentence is served. The Adult Authority is vested with the discretionary power to restore a prisoner’s rights during the term of imprisonment with certain exceptions. The sentencing judge has similar power to restore certain civil rights to the prisoner during the interval between the time sentence is pronounced and the time the prisoner commences his imprisonment.

Apparently accepting these restoration provisions at face value, the California Supreme Court stated in dicta that California had abandoned the concept of strict “civil death,” replacing it with “statutory provisions seeking to ensure that the civil rights of those convicted of crimes be limited only in accordance with legitimate

29. See notes 6 & 7 supra.
30. The Adult Authority and sentencing judge are prevented from restoring the rights to act as trustee, hold public office, exercise the privilege of an elector, or give a general power of attorney. CAL. PEN. CODE § 2600 (West 1970).
penal objectives." This statement fails to recognize the reality that prisoners' civil rights are not "limited," but virtually non-existent in California, for the effect of section 2600 is still to remove all civil rights, except those specifically exempted, barring restoration by special act of the Adult Authority or the sentencing judge.

California's position on prisoners' civil rights is decidedly in the minority. The state is one of only ten which still retain blanket removal of civil rights or have a civil death statute. Most foreign countries which possess modern penal systems have adopted a prisoners' rights stance which is less severe than California's. The world-wide trend appears to be away from the sweeping penalty of totally eliminating civil rights upon conviction, moving instead toward discarding, or at least limiting, the punitive disqualifications resulting from criminal conviction.

It is not necessary, however, to leave California to find support for an increasingly liberal view of prisoners' rights or to observe the trend away from the disabilities of civil death. California's own courts have limited section 2600, although without thus far re-evaluating the antiquated premise underlying the statute. Indeed, although no legislative history exists to prove the fact, the four enumerated civil rights granted in the California civil death statute appear to have been enacted because of case law mandating their extension to prisoners.

32. The ten states are: Alaska, Arizona, California, Missouri, New York, North Dakota, Oklahoma, Oregon, Rhode Island, and South Dakota. See note 20 supra, for statutory citations for each jurisdiction.
33. Each of the following countries imposes limits on the state's ability to remove a convict's civil rights: Argentina, Austria, Belgium, Canada, Colombia, Denmark, Egypt, England, Ethiopia, France, Germany, Greece, Holland, Israel, Italy, Japan, Lichtenstein, Luxembourg, Monaco, Norway, Poland, Portugal, Russia, Spain, Sweden, Switzerland, and Yugoslavia. The countries of Chile and South Korea had the same policy, although governmental repression now makes the present status of prisoner civil rights uncertain. See generally Damaska, supra note 10, at 352-55.
(2) The right to correspond confidentially with attorneys and public officials: Ex parte Hull, 312 U.S. 546 (1941); In re Jordan, 7 Cal. 3d 930, 500 P.2d 873, 103 Cal. Rptr. 849 (1972).
(3) The right to own all written material produced during the period of imprisonment: In re Van Geldern, 5 Cal. 3d 832, 489 P.2d 578, 97 Cal. Rptr. 698 (1971); Davis v. Superior Court, 175 Cal. App. 2d 8, 345 P.2d 513 (1959).
(4) The qualified right to purchase, receive and read published writings: Walker v. Blackwell, 411 F.2d 23 (5th Cir. 1969), Jackson v. Godwin, 400 F.2d 529 (5th Cir. 1968), and Rivers v. Royster, 360 F.2d 592 (4th Cir. 1966).
California courts have viewed the civil death statute as penal in nature, and therefore to be construed strictly and not extended by implication or construction. Despite older decisions to the contrary, several more recent California decisions evidence a movement toward recognizing the general civil rights of prisoners. One court proclaimed in Hall v. Hall:

The trend of the law is to lessen the severity and harshness of the common-law penalties in relation to convicts, their property and rights; and . . . this is in accord with the modern notion that imprisonment of a felon is rather a means for protecting society than a punishment imposed upon an individual.

More recently, an appellate court stated that confinement to prison does not strip a prisoner of all his constitutional rights. The existence of a residuum of legal rights for prisoners was further acknowledged in Grasso v. McDonough Power Equipment, Inc., where the court proclaimed that the term "civil death" was not to be interpreted as denoting the convict's total legal extinction.

The reluctance of courts in recent cases to impose civil death has generally been expressed in three ways: (1) through a broad reading of the existing exception provisions; (2) through the restoration of particular civil rights; and (3) through the choice of an alternate legal theory when the court's final decision might

See also In re Harrell, 2 Cal. 3d 675, 470 P.2d 640, 87 Cal. Rptr. 504 (1970), cert. denied, 401 U.S. 914 (1971) reacknowledging all these rights.


38. People v. Hernandez, 229 Cal. App. 2d 143, 150, 40 Cal. Rptr. 100, 104 (1964) (holding that a prison inmate forfeits civil rights); 18 Op. CAL. ATT'Y GEN. 275, 276 (1951) (a section 2600 decision holding that a "sentence of imprisonment in a state prison for any term less than life suspends all the civil rights of the person so sentenced." (emphasis added)).


42. Roberts v. United States Dist. Court, 339 U.S. 844 (1950) (section 2600 could not deprive a convict of citizenship granted under the fourteenth amendment); Emmanuel v. Sichofsky, 198 Cal. 713, 247 P. 205 (1926), and Coffee v. Haynes, 124 Cal. 561, 57 P. 482 (1899) (involuntary conveyance of property to a creditor). See also cases cited note 35 supra.

have been easily supported by the disabilities provided by the civil
death statute.\footnote{44}{In Beck v. West Coast Life Ins. Co., 38 Cal. 2d 643, 241 P.2d 544 (1952), the supreme court disqualified the beneficiary under a life insurance policy from collecting the policy proceeds after he had murdered the insured. Although the court of appeal (Beck v. West Coast Life Ins. Co., 228 P.2d 832 (1951)) had founded its denial of benefits squarely on the civil death of the now-imprisoned beneficiary, the supreme court based its decision on principles of equity, rather than on civil death.}

It is noteworthy that the civil death statute is a creature only of the state legislatures and has no analogue in the federal system. This fact has been recognized by California courts, although they have not commented on the inequity of a system that deprives a California defendant of his civil rights if he goes to trial in a state court, but not if he is tried in a federal forum within California! \footnote{46}{Id.}\footnote{47}{See, e.g., In re Jones, 57 Cal. 2d 860, 372 P.2d 310, 22 Cal. Rptr. 478 (1962).}\footnote{48}{See, e.g., Cancino v. Sanchez, 379 F.2d 808 (9th Cir. 1967); Weller v. Dickson, 314 F.2d 598 (9th Cir.), \textit{cert. denied}, 375 U.S. 845 (1963), which upheld civil rights under the Civil Rights Act of 1870, 42 U.S.C. §§ 1981-94, prior to the passage of the Civil Rights Act of 1970, 42 U.S.C. §§ 1981-88 (1970). The courts generally have ruled that all prisoners may invoke the provisions of the Act since it applies to \textit{any} person within the jurisdiction of the United States. McCollum v. Mayfield, 130 F. Supp. 112 (N.D. Cal. 1955). The Supreme Court has held that prisoners can sue under the Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671-80 (1948), for injuries sustained while in a federal prison. United States v. Muniz, 374 U.S. 150 (1963). Note also that the Federal Rules of Civil Procedure allow a prisoner who is a \textit{domiciliary} of a non-civil death state to sue in a federal district court located in a civil death state. Urbano v. News Syndicate Co., 358 F.2d 145 (2d Cir.), \textit{cert. denied}, 385 U.S. 831 (1966). This result obtains because the capacity to sue is determined by the law of the plaintiff's domicile. \textit{Fed. R. Civ. P. 17(b).} Federal courts have also expressly held that civil death statutes apply only to sentences in the \textit{state} courts. \textit{E.g.}, Hill v. Gentry, 280 F.2d 88 (8th Cir. 1960). Consequently, a prisoner under a \textit{federal} sentence may maintain an action in a state like California, which has a civil death statute. Id.} Hayashi \textit{v. Lorenz}\footnote{45}{42 Cal. 2d 848, 852, 271 P.2d 18, 20 (1954).} held that the California statute was intended to apply only to persons convicted in the courts of this state and imprisoned in California state prisons. In the same case, the California Supreme Court declared that the civil disabilities attendant on the conviction and sentencing of a person in \textit{federal} court for a federal offense would be determined by federal law. California has recognized that state and federal rights are separate and that, curiously, a person who is civilly dead under California law may be fully possessed of his federal civil rights under the fourteenth amendment\footnote{47}{See, e.g., In re Jones, 57 Cal. 2d 860, 372 P.2d 310, 22 Cal. Rptr. 478 (1962).} or under a federal statute such as the Civil Rights Act. As a further example of the inconsistent approach taken by California in applying the civil death statute, the state courts have been willing to abrogate 'the civil death disability preventing the initiation of civil suits in areas where a superior statu-
tory or sufficiently important social policy exists. 49

The existing California civil death statute stands as part of an ancient, but crumbling wall being slowly broken apart by the steady tide of federal and state decisions which have increasingly recognized the rights of prisoners. 50 An example of a recent decision which runs counter to California's statutory position is Procunier v. Martinez, 51 which invalidated California censorship regulations for prisoner mail. The United States Supreme Court affirmed earlier federal court pronouncements that a prisoner "retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." 52 The same opinion recognized that the state has legitimate and substantial concerns as to security, personal safety, institutional discipline, and prisoner rehabilitation which are not applicable to the ordinary community at large. The Court cautioned, however, that these considerations do not eliminate the heavy burden the state bears in justifying any deprivation of fundamental constitutional rights. 53 An earlier appellate court decision also declared that, although a convict may lose certain rights on entering prison, he is not entirely bereft of all of his civil rights and does not forfeit every protection of the law. 54

49. See California Highway Comm'n v. Industrial Accident Comm'n, 200 Cal. 44, 251 P. 808 (1926) (workmen's compensation laws and the social policy to compensate workmen for injuries suffered in the course and scope of their employment).


52. Id. at 422-23. The quoted language originated in Coffin v. Reichard, 143 F.2d 443 (6th Cir. 1944) and was followed for the first time by the United States Supreme Court in Price v. Johnston, 334 U.S. 266, 285 (1948).


III. THE ALTERNATIVE OF SPECIFIC DISABILITIES

The scope and increasing number of judicially granted prisoner rights in other jurisdictions raises the question why California—generally considered a progressive jurisdiction—continues in the small minority of American states which still recognize the blanket disability of civil death. Forty of the fifty states, the federal government and most foreign governments recognize, and the overwhelming majority of the commentators advocate utilizing the alternative of specifically defined disabilities during the period of imprisonment and parole. The imposition of specific disability is markedly different from civil death in one crucial aspect: the former initially assumes prisoners retain all the rights of the average citizen, selectively restricting or removing only those rights which are incompatible with considerations of security, order, and rehabilitation of the inmates according to the particular legitimate governmental interest involved; civil death, on the other hand, operates to remove all of the prisoners' civil rights, restoring only a very limited number of specific rights which are themselves limited by prison considerations of security and discipline. It is readily apparent that the two systems are diametrically opposed in their underlying philosophies: the imposition of specific disabilities encourages rehabilitation while civil death emphasizes retribution. The results produced by the two sanctions are also markedly different. When specific disabilities are imposed, prisoners remain civilly "normal," except where the limitations of the prison environment necessitate the curtailment of certain rights and freedoms. In sharp contrast, prisoners under civil death exist as "slaves of the state," possessing only those limited freedoms mandated by courts seeking to restore some fundamental constitutional guarantees to the grim world within the prison walls.

Fortunately, the United States Supreme Court has also utilized the specific disabilities approach. In Procunier v. Marti-
the court invalidated California's prison mail censorship rules, which were based on the antiquated view that prisoners, being civilly dead, possessed no right to privacy in their outside correspondence. Rejecting this civil death approach, the Supreme Court allowed the censorship of prisoner mail "if it furthers one or more of the substantial governmental interests of security, order and rehabilitation of inmates and if it [censorship] was no greater than necessary to further the legitimate governmental interest involved."

The area of prisoners' civil rights has received considerable attention from other state jurisdictions and from commentators who espouse an evolution away from the outdated civil death concept, seeking instead the adoption of specifically defined disabilities to be imposed during the period of imprisonment. The commentators generally base their endorsement of specific disabilities on the premise that prison regulations and regimentation are intended for the maintenance of order in the prison community and not as additional punishment for the prisoners' crimes. A specific disabilities statute generally designates particular narrow disabilities which become effective on sentencing and remain operative during the term of imprisonment, and sometimes throughout the convict's life unless the right is restored by statutory procedure. A prominent example of this approach is that taken by

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58. Id. at 413-14.
61. California provides a release from "all penalties and disabilities resulting from the offense or crime of which he has been convicted . . ." upon satisfactory completion of his probation, with the contingency that the prior may be pleaded and proved in any subsequent prosecution for any other offense. Cal. Pen. Code § 1203.4 (West 1970).
A similar provision exists for adults convicted of misdemeanors and also to allow the sealing of records of juvenile offenders. See Cal. Pen. Code §§
the American Law Institute's Model Penal Code. Even the highest court of New York, the first state to adopt a civil death statute and, with California, one of ten states which have retained civil death among their criminal sanctions, has stated that any additional punishment in excess of that permitted by the judgment or constitutional guarantees "should be subject to inquiry. An individual once validly convicted... is not to be divested of all rights and unalterably abandoned and forgotten by the remainder of society." 

The primary reason courts have not stepped more frequently into the area of prisoners' rights is the traditional deference accorded prison administrators in the areas of prison conduct, discipline or the enforcement of prison rules and regulations. Judges...
often felt they lacked the necessary expertise to understand the realities and necessities of prison administration, feared judicial entanglement in the complexities of prison disputes, or believed the involvement of the courts might undermine the authority of prison officials by subjecting their acts to judicial review.  

Another cause for judicial reluctance was the opinion, held even by members of the judiciary, that prisoners were people who had by their own acts forfeited virtually all of their civil and human rights. The courts' reluctance to become involved in redressing prisoners' grievances has resulted in the vesting of prison officials with broad and unquestioned authority within the walls of their own institutions. Unfortunately, this broad authority and the lack of effective judicial review of the performance of prison administrators has sometimes led to periodic abuses of this discretion, with scandals and penitentiary riots the inevitable result.

Fortunately, many courts have reconsidered their prior attitude of deference to prison administrators and have begun to protect what few rights the prisoners possess. Some courts have gone even further, to declare that prisoners previously stripped by statute of all rights nevertheless retain certain fundamental

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67. Characteristic of this attitude is the statement: [The prisoner] has, as a consequence of his crime, not only forfeited his liberty, but all his personal rights as well except those which the law in its humanity accords to him. He is for the time being the slave of the State. Ruffin v. Commonwealth, 62 Va. (21 Gratt.) 790, 796 (1871). See also Estep v. United States, 327 U.S. 114, 122 (1946) ("A felon customarily suffers the loss of substantial rights.") where the Court cited California Penal Code section 2600; People v. Hernandez, 229 Cal. App. 2d 143, 150, 40 Cal. Rptr. 100, 104 (1964) ("The prison inmate forfeits civil rights (Penal Code, § 2600) and, as we have noted, is divested of a large measure of constitutional rights."); cf. Bergesen & Hoerger, Judicial Misconceptions and the "Hidden Agenda" in Prisoners' Rights Litigation, 14 SANTA CLARA LAW. 747, 756 (1974).


69. For courts which have recognized and protected prisoner rights, see note 35 supra and notes 71, 72, 74-82 infra.
This new judicial attitude is manifested by an increasing willingness to provide judicial review of prison operation and discipline and thereby to safeguard the fundamental rights of the prisoner from the potential abuses of the prison system.

This new school of judicial activism began in 1944, when a federal court, in *Coffin v. Reichard*, stated for the first time: "A prisoner retains all the rights of an ordinary citizen except those expressly, or by necessary implication, taken from him by law." After this decision, other courts adopted the view that the convict remains entitled to basic constitutional guarantees, and that prison administrators must be able to justify any repressive measures employed in prison operation, with the courts readily assuming jurisdiction over prisoner complaints where administrative review is inadequate or ineffective. Courts have displayed this new activism in almost every phase of prison administration in order to safeguard the rights of the individual convict. They have heard prisoner complaints involving tort claims; inadequacy of medical treatment; interference with correspondence between the prisoner, his attorney and the courts; general correspondence.
to and from prisoners;\textsuperscript{77} access to legal advice and materials;\textsuperscript{78} and prisoner filing of habeas corpus petitions;\textsuperscript{79} segregation in prison;\textsuperscript{80} discipline and punishment;\textsuperscript{81} and religious freedom\textsuperscript{82}—all areas which were previously off-limits to judicial scrutiny and review. Once having recognized the existence of prisoners' rights, courts have been willing to grant injunctive relief to protect them,\textsuperscript{83} to suggest the appointment of special monitors to observe prison conditions,\textsuperscript{84} and even to give detailed orders for the operation of the facility to correct an abuse under the Civil Rights Act.\textsuperscript{85} The strongest single criterion triggering involvement of the courts has been whether the prisoner's complaint alleges deprivation of constitutional rights which the court normally protects for citizens not in prison.\textsuperscript{86}

IV. POSSIBLE CONSTITUTIONAL ATTACKS ON CIVIL DEATH

Just as the Constitution establishes civil rights which many courts are not willing to extend to prisoners, it also suggests theories under which the statutory imposition of civil death in California may be attacked. The three which will be considered here are the arguments that the penalty of civil death constitutes cruel and unusual punishment, violates equal protection, and deprives prisoners of their civil rights without due process of law.

A. Cruel and Unusual Punishment

Some critics of civil death statutes argue since these statutes are inflexible and mandatory penal sanctions, they constitute cruel and unusual punishment, prohibited by the eighth amendment.\textsuperscript{87}
The courts have proclaimed that the basic concept of the eighth amendment embraces nothing less than the dignity of man. . . . Fines, imprisonment and even execution may be imposed depending upon the enormity of the crime, but any technique outside the bounds of these traditional penalties is constitutionally suspect. 88

The fact that California's version of civil death is not graduated in severity according to the offense, but is used to remove virtually all prisoners' rights regardless of the nature or magnitude of the felon's crime, 89 increases its vulnerability to constitutional attack. 90 When it is considered that the term "felony," for which civil death may be imposed, is defined broadly to include offenses of widely varying seriousness, the argument that civil death is cruel and unusual punishment is further strengthened. 91 It may be assumed that the severity of the offense will be reflected in the length of sentence imposed, thereby limiting the duration for which the prisoner's civil rights will be suspended. This assumption avoids the otherwise valid criticism that the arbitrary and uniform deprivation of civil rights may be totally unrelated to the nature of the crime, and therefore cruel and unusual punishment. Nevertheless, uneven and somewhat arbitrary punishment is still likely because cruel and unusual punishments inflicted." U.S. CONST. amend. VIII. The provision has been incorporated into the fourteenth amendment and applied to the states. See, e.g., Robinson v. California, 370 U.S. 660, 666 (1962). Robinson invalidated as cruel and unusual punishment a California statute which imposed a penal sanction for the "offense" of merely being addicted to the use of narcotics. 370 U.S. 660, 667 (1962). A similar case, however, upheld a Texas statute which prescribed criminal punishment for the offense of being drunk in public. The court distinguished between status and condition, saying that punishment arbitrarily imposed for the former constituted cruel and unusual punishment, whereas the latter was considered a matter over which the defendant exercised full control and therefore could constitutionally be punishable. Powell v. Texas, 392 U.S. 514, 533-34 (1968). It is submitted that a comparison with civil disabilities imposed as an automatic consequence of conviction would reveal the imposition of penalties as a result of status, rather than a condition over which the convict exercises control.


89. "A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced." CAL. PEN. CODE § 2600 (West 1970) (emphasis added).


91. CAL. PEN. CODE § 17(a) (West 1970) defines a felony simply as an offense that may be punished by death or imprisonment in the state prison.
characterization of the punishment as a felony in California is determined by the sentence imposed, rather than by the punishment allowed by statute. Thus, one individual may be sentenced and punished as a felon, with the attendant loss of virtually all his civil rights, while another who committed the identical offense may, within the discretion of the sentencing judge, be sentenced to a term of imprisonment in the county jail, thereby acquiring only the status of a misdemeanant. It was a similar situation of arbitrary sentencing procedures which led the United States Supreme Court to find the discretionary method of imposing the death penalty to constitute cruel and unusual punishment and therefore to be unconstitutional.

It is important to note that the civil disabilities imposed on a misdemeanant are only those necessitated by the needs of jail discipline and security or to enforce the conditions of probation. This same result could be obtained through the adoption of specific disabilities for felony offenders, thereby eliminating the problem raised herein of disparate disabilities resulting from sentencing discretion.

Another example of the arbitrariness inherent in the imposition of civil death occurs when one person is convicted of a relatively minor offense which nevertheless carries the designation of "felony." The "felon" will then suffer an automatic deprivation of virtually all of his civil rights, despite the fact that this sanction is unrelated to the nature of his offense or to his own personal character and potential for rehabilitation. In contrast, another individual may commit a more serious crime which is designated as a misdemeanor with little effect on his civil rights. Obviously,

92. See Special Project, supra note 12, at 954 & nn. 92-97.
93. CAL. PEN. CODE § 17(b)(1) further provides:
When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes [if] . . . a judgment imposing a punishment other than imprisonment in the state prison [is given].
95. Penal statutes often provide alternative penalties, allowing the sentencing judge to exercise his discretion to view the offense as a felony or a misdemeanor and sentence the offender in accordance with his determination. While discussing the civil disabilities which would ensue from the discretionary sentencing of an offender as a misdemeanant, the court in Macfarlane v. Dept. Alcoholic Bev. Control, 51 Cal. 2d 84, 89, 330 P.2d 769, 772 (1958) said:
[A]fter entry of the judgment imposing punishment on petitioner by imprisonment in the county jail, the crime of which he was convicted is to be deemed a misdemeanor for all purposes and he is not thereafter to be subjected to the statutory disabilities or deprivations which accompany or ensue from a felony conviction.
96. The most obvious examples of disparity in punishment are evidenced by the present felony penalties for possession of marijuana (CAL. HEALTH & SAFETY CODE § 11357 (West Supp. 1974)), or for conspiracy to commit a misdemeanor (CAL. PEN. CODE § 182 (West 1970)), compared with the possible misdemeanor sentences for carrying concealed firearms (Id. § 12031 (West Supp. 1974)), ve-
the emphasis is on the label given the particular offense, rather than on the substantive relationship between the offense and the social interest protected by the disability. Such an emphasis raises not only problems of cruel and unusual punishment, but equal protection difficulties as well.

B. Equal Protection

The most easily satisfied equal protection test is simply to find a rational relationship between the particular legislative classification and the interest the state seeks to protect. Even this minimal standard makes civil death or extensive civil disabilities suspect if it is assumed that the length of the term of imprisonment is intended to be commensurate with the severity of the convict's offense. Certainly, no "rational relationship" can be postulated to justify imposing the same degree of civil death during the prison terms of a second offender petty thief as that imposed on a convicted mass murderer. Similarly, a person convicted of his first felony for offering a bribe to a bank official should not be under the identical civil disabilities and behavioral restraints during his period of imprisonment as a person classified as an habitual criminal with four separate convictions for murder, train wrecking, burglary with explosives, and escape from a state prison by the use of force and deadly weapons. These comparisons are

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97. In Otsuka v. Hite, 64 Cal. 2d 596, 414 P.2d 412, 51 Cal. Rptr. 284 (1966), the California Supreme Court found a voting disability not to be violative of the eighth amendment. It reached this decision only by limiting the definition of "infamous crimes," the criterion for imposing the disability, to persons who had been convicted of crimes evidencing a threat to the electoral process. 64 Cal. 2d at 611, 414 P.2d at 422-23, 51 Cal. Rptr. at 294-95. The court noted the term "felony" was overinclusive and thus deprived offenders who did not endanger the public interest of the fundamental right to vote. 64 Cal. 2d at 615, 414 P.2d at 425, 51 Cal. Rptr. at 297.


99. CAL. PEN. CODE § 666 (West 1970) provides in pertinent part:

Every person who, having been convicted of petit larceny or petit theft and having served a term therefor in any penal institution or having been imprisoned therein as a condition of probation for such offense, commits any crime after such conviction is punishable therefor as follows: . . .

3. If the subsequent conviction is for petit theft, then the person convicted of such subsequent offense is punishable by imprisonment in the county jail not exceeding one year or in the state prison not exceeding five years.

100. CAL. PEN. CODE § 639 (West 1970) states in relevant part:

Every person who gives, offers, or agrees to give to any director, officer, or employee of a financial institution any . . . money, property, or thing of value . . . for procuring . . . for any person a loan or extension of credit from such financial institution is guilty of a felony. (Emphasis added.)

101. CAL. PEN. CODE § 644(b) (West 1970) reads:
amples to illustrate that no justification or reasonable foundation exists for such an astounding disparity between crime and punishment! The civil death statute, which imposes on all felons an identical loss of civil rights is an antiquated penal sanction long overdue for review and modification. California's present statute is merely an ineffectual effort to modernize an outmoded concept by the cosmetic addition of those limited rights mandated by recent court decisions, yet without examining the dry-rotted conceptual foundation underlying the statute. When the civil disabilities imposed on ex-felons were analyzed from a similar equal protection viewpoint, a massive and exhaustive law review special project remarked somewhat euphemistically: "It is plausible to conclude, therefore, that even under the traditional test, these statutes will be found utterly lacking in reasonableness."\textsuperscript{102}

\section*{C. Due Process}

Another constitutional attack on the imposition of civil death for any felony during the period of imprisonment may be made by examining, under due process standards, the relationship between the nature and circumstances of the crime and the various rights automatically forfeited on conviction. The arbitrary presumption of disqualification to perform various civil functions,\textsuperscript{103} or the automatic imposition of broad civil disability lacking a direct relationship to the nature of the crime should be suspect and, prior to being imposed, should comply with recognized standards of procedural due process for the prisoner. Support for this concept is found in the United States Supreme Court case of \textit{Heiner v. Donnan},\textsuperscript{104} where the Court held that failure to give a party an opportunity to prove the irrationality of a statutory presumption violated the due process clause, since changing circumstances may invalidate the presumption or the otherwise valid premise on which it was originally based. Further, the case of \textit{Kennedy v. Mendoza-Martinez},\textsuperscript{105} requires full due process safeguards before

\begin{itemize}
\item Every person convicted in this state of the crime of [enumerated felonies including escape from a state prison by use of force or dangerous or deadly weapons], who shall have been previously three times convicted of the crime of burglary with explosives, murder, train wrecking, shall be adjudged an habitual criminal and shall be punished by imprisonment in the state prison for life. (Emphasis added.)
\item \textsuperscript{102} See Special Project, supra note 12, at 1213.
\item \textsuperscript{103} \textsc{cal. pen. code} \textsection 2600 (West 1970) provides in relevant part:
\begin{quote}
A sentence of imprisonment in a state prison for any term suspends all the civil rights of the person so sentenced, and forfeits all public offices and all private trusts, authority, or power during such imprisonment. (Emphasis added).
\end{quote}
\item \textsuperscript{104} 285 U.S. 312, 327-29 (1932); cf. Tot v. United States, 319 U.S. 463, 467-68 (1943).
\item \textsuperscript{105} 372 U.S. 144, 167 (1963).
\end{itemize}
a sanction is imposed where the resulting disability constitutes punishment.\textsuperscript{106} Thus, if the length of sentence alone is intended accurately to reflect the appropriate punishment for the crime, then blanket disabilities automatically imposed on all prisoners without a hearing to determine the validity or appropriateness of this additional sanction may be violative of the prisoners' entitlement to due process of law before those civil rights guaranteed them by the Bill of Rights are removed.

Additionally, California's civil death statute may violate the due process clause because it is overly broad in its elimination of virtually all of the prisoners' fundamental rights, when compared with the limited state interests sought to be protected.\textsuperscript{107} As noted earlier, the state has legitimate interests in prisoner rehabilitation, institutional discipline and security and in the personal safety of those confined and employed within the state's prisons.\textsuperscript{108} Yet these interests are not directly served by removing the convict's right to sue to protect his property,\textsuperscript{109} to contract for his personal needs outside the prison walls or the needs of his family,\textsuperscript{110} or to give personal testimony in civil trials.\textsuperscript{111} By analogy, in cases involving first amendment protections, the United States Supreme Court has required states to accomplish their legitimate legislative objectives by the narrowest workable means.\textsuperscript{112} Statutes which broadly stifle or eliminate fundamental liberties are invalid when the legislative purpose can be achieved by narrower means less incursive upon first amendment freedoms.\textsuperscript{113} Because the Supreme Court has also applied this restrictive standard to cases involving the due process clause in areas other than first

\textsuperscript{106. See also Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886, 895 (1961): [C]onsideration of what procedures due process may require under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the private interest that has been affected by governmental action. \textit{Quoted in} Goldberg v. Kelley, 397 U.S. 254, 263-64 (1970).}

\textsuperscript{107. See text accompanying notes 52-53 \textit{supra}.}

\textsuperscript{108. See text accompanying note 52 \textit{supra}.}

\textsuperscript{109. \textit{Ex parte} Robinson, 112 Cal. App. 2d 626, 246 P.2d 982 (1952).}

\textsuperscript{110. Compare CAL. CIV. CODE \S 1556 (West 1954), with CAL. PEN. CODE \S 2603 (West 1970).}

\textsuperscript{111. See CAL. PEN. CODE \S 2603 (West 1970), granting the right to give testimony only in \textit{criminal} trials. \textit{Cf.} Application of McNally, 144 Cal. App. 2d 531, 301 P.2d 385 (1956).}


amendment rights, it may be argued that a similar extension would be justified to protect the fundamental civil rights of prisoners.

V. THE DIRECT RELATIONSHIP TEST

A rational and equitable procedure must be devised for imposing civil disabilities which will prevent arbitrary injustice to convicts, yet provide adequate protection for the interests of society which could be endangered by their behavior. A test predicated on the direct or rational relationship which the convict's offense and current behavior bear to the specific civil rights involved would satisfy this requirement.

This direct relationship between removal or limitation of civil rights and the offense committed obviously must be shown prior to such removal or limitation. It has been suggested that the determination of which civil rights must be removed or limited could best be made at the time of sentencing, when the judge has the offender and his record before him. Assuming adequate procedural safeguards were provided for the prisoner, it would also seem that a subsequent determination could be made by prison officials to reflect the prisoner's later behavior in prison and to allow consideration of changed prison conditions and exigencies which may permit increased exercise of his rights, or require additional limitations in response to temporary emergency conditions within the prison.

VI. THE EFFECTS ON PAROLEES

The impact of such a modification of prisoner rights on the parolee must also be considered. While technically still a prisoner, the parolee has been granted, commensurate with his reduced danger to society and his progress toward rehabilitation, increased privileges and the freedom to serve the last portion of his sentence outside prison walls. The statute covering the civil

114. The first amendment aspects of political disabilities subject these disabilities to substantial overbreadth objections. Voting and the right to associate for political reasons have been recognized as forms of political expression deserving stringent protection. E.g., Williams v. Rhodes, 393 U.S. 23 (1968) (entitlement to qualify for the election ballot); United States v. Texas, 252 F. Supp. 234, 249-50 (W.D. Tex.), aff'd, 384 U.S. 155 (1966) (voting).

See also United States v. Robel, 389 U.S. 258 (1967) (right to employment while holding Communist Party membership); Aptheker v. Secretary of State, 378 U.S. 500 (1964) (right to travel).

115. See, e.g., Special Project, supra note 12, at 1236.

116. Id. at 1236-37.


118. Id. § 3054.
rights of parolees is consistent with the concept of specific disabilities, for the Adult Authority may

\textit{permit} paroled persons civil rights, other than the right to act as a trustee, or hold public office, or exercise the privilege of an elector during the term of such parole. The scope or extent of such civil rights shall be such as, in the judgment of the authority, is for the best interest of society and such paroled person.\textsuperscript{110}

This section of the Penal Code is more liberal than the civil death statute, for the parole statute simply states that \textit{all} civil rights may be granted to the parolee with certain exceptions, whereas the Adult Authority's power to restore civil rights is preceded in the civil death statute by the statement that "sentence of imprisonment in a state prison for any term suspends \textit{all} the civil rights of the person so sentenced. . . ."\textsuperscript{120} When a prisoner under sentence of civil death is paroled, he maintains his prisoner status until restoration of his rights by the Authority or completion of his parole. Nevertheless, it is significant to note that section 3054 of the Penal Code,\textsuperscript{121} providing for parole, is equivalent to a specific disability statute as discussed herein. The only revision of section 3054 necessary totally to achieve the status of a specific disability statute would be to make the allowance of civil rights mandatory, rather than permissive.

Should sections 2600 and 2603 of the Penal Code be revised to grant all civil rights to prisoners, except those specific disabilities necessitated by legitimate concerns of security, discipline, safety and rehabilitation, and should Penal Code section 3054 be modified to make most civil rights mandatory for parolees, the parolee would then possess all the rights of the normal citizen, except those which must be limited or removed to ensure proper supervision under the terms of parole.\textsuperscript{122} This result would be especially appropriate for those individuals who are never sent to prison, but placed on probation for their crimes. Any restriction of parolee rights should obviously occur at the time probation is granted, similar to the previous recommendation, that any limitation of convict rights should occur at the time of sentencing. It

\textsuperscript{119.} \textit{Id.} (Emphasis added.)
\textsuperscript{120.} \textit{Id.} § 2600 (emphasis added).
\textsuperscript{121.} \textit{Id.} § 3054.
\textsuperscript{122.} California courts have stated that constitutional guarantees against unlawful search and seizure generally do not apply to a parole violator because of his technical status as a prisoner. People v. Hernandez, 229 Cal. App. 2d 143, 150, 40 Cal. Rptr. 100, 103-04 (1964), \textit{cert. denied}, 381 U.S. 953 (1965), and that a search by a parole officer of a parole violator is not illegal, even though it is made without a search warrant and without the parolee's consent. People v. Gastelum, 237 Cal. App. 2d 205, 208-09, 46 Cal. Rptr. 743, 745-46 (1965); \textit{cf.} People v. Lamb, 24 Cal. App. 3d 378, 101 Cal. Rptr. 25 (1972).
is also logical to assume that the specific disabilities imposed on the parolee would be no greater than those encountered by that individual during his imprisonment. Restrictions unique to the actual prison environment, such as a total lack of privacy, would be removed or loosened since no longer necessary or directly related to the parolee's new status\textsuperscript{128} and the professed goal of preparing him for his eventual return to society.\textsuperscript{124}

The direct relationship test would operate, during the period of parole, to restrict the rights of or to bar participation by the parolee in areas directly related to his offense as long as is reasonably necessary for the protection of the public. Thus, an embezzler could be barred from practice as a Certified Public Accountant; a person convicted of governmental corruption or bribery could be denied the right to hold public office; a narcotics violator could be prohibited from the practice of medicine; and an extortionist could be denied positions of public or private trust. Conversely, the person convicted of petty theft would not lose his right to vote, nor would the individual under sentence for involuntary manslaughter lose his capacity to contract or to serve as a juror, for neither offense demonstrates an unfitness to perform the specified civil function.

Once parole is properly completed, the individual would become eligible under existing California law\textsuperscript{125} to withdraw his plea of guilty or nolo contendere and enter a plea of not guilty; or, if convicted after a plea of not guilty, to have the verdict of guilty set aside. In either case, the court would dismiss the accusations or information against the individual, who would thereafter be released from all penalties and disabilities resulting from the offense of which he was convicted.\textsuperscript{126} This restoration of rights would be an appropriate termination of the limited restriction of rights suggested herein during the term of imprisonment.

\textsuperscript{124} See 67 C.J.S. Pardons, § 17 (1950) and notes thereto.
\textsuperscript{125} CAL. PEN. CODE § 1203.4 (West Supp. 1974).
\textsuperscript{126} The California Supreme Court struck down laws which prevented an ex-convict from voting in Ramirez v. Brown, 9 Cal. 3d 199, 507 P.2d 1345, 107 Cal. Rptr. 137 (1973). Ramirez, however, was subsequently reversed by the United States Supreme Court, sub nom., Richardson v. Ramirez, 418 U.S. 24 (1974).

Nevertheless, the right to vote was restored to ex-felons by the voters of California when Proposition 10 was approved by a substantial margin in the election of November 5, 1974. This restoration affects all former convicts who are no longer in prison and who have satisfactorily completed their parole, and serves as further evidence of public acceptance of the restoration of important rights to ex-felons, replacing the medieval repugnance which initially led to the unfortunate development of civil death as a consequence of conviction.
This inconsistency between California’s modern penal philosophy and its civil death sanction must be resolved. The Legislature must re-examine Penal Code sections 2600 and 2603 and revise them to allow prisoners to retain all civil rights except those which must be limited by the prison environment and the specific needs for security, order and inmate rehabilitation. Such a change would, in effect, require a balancing of the individual rights of the prisoner and the specific needs of prison security and discipline. The ultimate result would be a more flexible approach to the individual offender and the nature of his crime, thereby eliminating the gross disparities previously discussed.\(^{127}\)

Even if a substantial number of civil rights are restored to prisoners, the safety and security of the prison would not be impaired, for reasonable restrictions on mobility, as well as everyday surveillance of prisoner activity, could be imposed in direct relation to the corresponding threat presented by the prisoner. In a sense, California has already recognized, by its multi-level system of prison security, that some prisoners do not require the same amount of surveillance or restrictions on their activities as other prisoners, and that the prisoner will often be motivated to better his prison surroundings by improving his behavior, thereby reducing potential security and discipline problems. The maximum security facilities of San Quentin and Folsom, the medium security prisons in Soledad and Chino, and the minimum security correctional facilities at Jamestown and Deuel are typical examples of the varying degree of security and levels of restrictions imposed on prisoner activity by the California penal system.\(^{128}\)

An important consideration, reflected by this prison system, should be to aid prisoner rehabilitation by revising sections 2600 and 2603 of the Penal Code to reflect a philosophy compatible with the modern goals of rehabilitation. This revision would abolish usage of the term “civil death” in all section headings. It would further specify that prisoners retain all of their ordinary civil rights, except those removed under specific disabilities imposed because of the demonstrable requirements of the prison environment. Those specific rights presently recognized by section 2600\(^{129}\) would be retained, together with other rights unrelated

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\(^{127}\) See notes 93-101, and accompanying text supra. Note, however, that section 1556 of the California Civil Code would also require appropriate amendments. That section presently reads: “All persons are capable of contracting, except minors, persons of unsound mind, and persons deprived of civil rights.” (Emphasis added.) Cal. Civ. Code § 1556 (West 1954).


to the prisoner's offense or criminal conduct, such as the rights to sue, to contract, and to appear in court to testify in civil matters. Additionally, effective hearing and administrative procedures should be specified by the Legislature to permit the imposition of additional civil disabilities by prison authorities in direct relationship to prisoner misconduct, or to reflect valid prison circumstances which have changed since the original imposition of specific disabilities on the prisoner. The evolution of California's civil disabilities law would then be complete, to the benefit of both prisoners and the rehabilitation system. The suggested revision would recognize in statutory form what already exists in judicial decisions, rehabilitation philosophy, and the system of diverse correctional facilities.

Finally, the basic relevancy or purpose in automatically removing prisoners' civil rights should be questioned. This comment has traced the historical evolution of civil death as a punitive and deterrent sanction in an era when heavily punitive penalties were thought to be the only effective means of dealing with criminals. Times have changed. Rehabilitation has replaced the rack as the purpose of penal policy. Selective civil disabilities which protect society or are directly related to the prisoner's offense are probably valid; disabilities which effect a totally indiscriminate removal of a prisoner's rights within prison largely negate efforts to instill a sense of personal responsibility for conduct or to tailor a correctional program to the character, intelligence and abilities of the individual inmate. Civil disabilities which accompany the prisoner through the prison gates and follow him as a parolee are detriments to that individual's efforts to start a new life and to obtain employment. The inevitable effect of a convict's failure to re-integrate into society after release from prison is feeling alienation and, eventually, an increased probability of recidivism.130

Certainly, such difficulties are not compatible with modern rehabilitative programs such as pre-release centers, half-way houses, job-skill training, prison aid societies, and work-release programs. Such disparities between the disability sanction and rehabilitational objectives serve to emphasize the archaic nature of blanket civil disabilities and their irrelevance within a modern correctional program.

The concept of civil death as it exists in California is long overdue for the legal graveyard. Basic prisoner rights must be recognized, with limited restrictions imposed thereafter only as ab-

130. See D. GLASER, THE EFFECTIVENESS OF A PRISON AND PAROLE SYSTEM 13-35 (1964), where the author estimates that one-third of all prisoners released from the prison system within the first two to five years following release become recidivists.
solutely necessary for the protection of society and efficient prison administration. Such a change will create a more cohesive penal and probation system, the foundation of which is rehabilitation, rather than retribution, and which recognizes and protects the fundamental rights of all citizens.

Jud Scott