



processes will eliminate recidivism. However, I do propose that restoring civic rights is a necessary step toward criminal desistance.

There are currently sixteen million Americans marked with a felony conviction,<sup>3</sup> and we all have lost certain civic freedoms.<sup>4</sup> Voting, running for office, and serving on a jury are duties the State<sup>5</sup> no longer trusts us to perform. Without legitimate justification, the State indiscriminately excludes ex-felons, stigmatizing us in the process. Yet, it requires us to rebuild our lives while confiscating the civic tools needed to complete the task.

For many of us, the frustration of being an “outsider” marks our early days of freedom. Employers, landlords, schools, and even love interests tell us we are different because we have a criminal past. Though difficult, these obstacles are temporary. More significant are the laws that keep us marginal citizens—those promulgated by the State and spawned, in theory, to protect “them” from “us.”

As an ex-felon, mindful that my experiences may vary significantly from others with whom I share an unfortunate past, I view civic restrictions through a lens carved with mistakes. I argue that removing civic freedoms can lead to re-offending by first contributing to the stigma of being an ex-felon and then by reducing an ex-felon’s moral desire to remain lawful. Part I of this Article discusses the practice of restricting civic freedoms, challenging the State’s professed need to incapacitate ex-felons and concluding that civic restrictions are seemingly arbitrary. Part II establishes that civic restrictions help to create and reinforce the permanence of a felony conviction’s stigma. Part III reveals the collective cost of civic restrictions, noting that class stigmatization and the imposition of arbitrary sanctions each represent a separate catalyst for lawlessness. Finally, Part IV identifies the benefits of eliminating civic restrictions for both ex-felons and non-felons, concluding that promoting

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3. Uggen, et al., *supra* note 2, at 288 (explaining that the “felon class,” which is represented by those felons serving time, those on probation or parole, and those who have completed their sentences, comprises “7.5 percent of the adult population” in the United States); *see also* JOAN PETERSILIA, WHEN PRISONERS COME HOME: PAROLE AND PRISONER REENTRY 136 (2003) (“59 million Americans (29 percent of all adults) have a criminal record on file with state authorities, and 5 million (6.5 percent of all adults) have served a prison term, the effect of these restrictions has a profound effect on American democracy.”).

4. Though there are other sanctions that could be deemed to impact one’s civic life, I have chosen to examine only those that directly prohibit ex-felon admission into democratic processes.

5. “The State” is used throughout this Article as a general term referring to states that impose civic restrictions.

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inclusive policies will not jeopardize civic processes and may help to curb recidivism by promoting reintegration.

I. CIVIC RESTRICTIONS: JUSTIFYING EXCLUSION

Though a substantial period of incarceration almost always



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to “protect against voter fraud,”<sup>24</sup> to “prevent harmful changes to the law,”

to jury probity stems from their degraded status or from their actual characteristics,”<sup>32</sup> he contends that the more credible justification for felon exclusion rests on intrinsic character assessments of ex-felons.<sup>33</sup> One such character trait of concern to those advocating for felon exclusion from jury service is “that felons remain adversarial to[wards] the government and will sympathize unduly with any criminal defendant.”<sup>34</sup>

### B. Making Character Assessments

When restricting civic freedoms to incapacitate ex-felons, the State must make three assumptions about character. First, it must assume that criminal acts reveal bad character. Next, it must assume that character is a fixed concept.<sup>35</sup> And finally, justifying civic restrictions as protective, the State must assume that good character is essential to making proper civic decisions.<sup>36</sup>

These popular ideas find historical support in the work of Aristotle, who contended (1) that “criminals who break laws cannot govern themselves”<sup>37</sup> and (2) “that every person chooses to develop good and bad character through autonomous actions. Once a person chose their character . . . he or she was not free to simply undo the choice.”<sup>38</sup> Thus, the State has not strayed far from Aristotle’s contentions.

When imposing civic restrictions to protect society, the State first assumes that a criminal act reveals bad character.<sup>39</sup> As Ekow N. Yankah points out, “[a] long list of contemporary scholars subscribe to this same conceptual tie between action and character.”<sup>40</sup> “Bad

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32. *Id.*

33. *Id.* at 104–05.

34. *Id.* at 105.

35. See Yankah, *supra* note 21, at 1027–28.

36. *The Disenfranchisement of Ex-Felons*, *supra* note 23, at 1307. (“‘Fitness’ and ‘capability’ are central . . . ; political competence, according to republican theory, has a moral dimension. Ex-offenders are excluded because they are deemed unable to cast their ballots in accordance with the common good.” (internal citations omitted)).

37. JEFF MANZA & CHRISTOPHER UGGEN, LOCKED OUT: FELON DISENFRANCHISEMENT AND AMERICAN DEMOCRACY 25 (2006) (quoting Zravko Planinc, *Should Imprisoned Criminals Have a Constitutional Right to Vote?*, 2 CAN. J.L. & SOC’Y 153, 160 (1987)).

38. Yankah, *supra* note 21, at 1028 (citing ARISTOTLE, *The Nicomachean Ethics*, in THE BASIC WORKS OF ARISTOTLE 972–73 (Richard McKeon ed., 1941)).

39. See *id.* at 1034–35.

40. *Id.* at 1034.



“political reasons have overriding force because of the weight of consequences attached to following or disregarding them.”<sup>51</sup>

Whether one believes that individual morality should dictate choices or that a collective morality concerned with the greatest good for the greatest number should principally guide decisions,<sup>52</sup> the result is a host of viewpoints about the role one’s individual morals play in civic processes. Given these varied viewpoints, withholding an ex-offender’s right to vote, run for office, or sit on a jury because of an apparent character flaw presumes—perhaps incorrectly—that individual morality is an absolute civic necessity.

### C. *Challenging Incapacitation Rationales*

While policy makers are right to concern themselves with the purity of democratic and criminal justice processes, presuming that ex-felons contribute to functional impurity is an oversimplification laden with misconceptions about our character.<sup>53</sup> No empirical evidence supports the notion that ex-felons threaten politics or the jury system, and laws that per se ban ex-felons from voting, holding office, and sitting on juries are both over- and under-inclusive.

Additionally, incapacitating ex-felons based on assessments of character is inconsistent with the State’s own communitarian justification for imposing civic restrictions and contradicts fundamental federal evidentiary standards.

First, there is no empirical support for the conclusion that ex-felons somehow threaten the purity of democracy<sup>54</sup> or the function of the jury.<sup>55</sup> As researchers Jeff Manza and Christopher Uggen discovered recently, “there is little evidence that serial political offenders constitute a significant actual or potential threat,” and “the claim that . . . [ex-felons] would ‘band together’ to loosen criminal

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51. *Id.*

52. *Id.*

53. Threats to the purity of democracy can be both instrumental/practical and symbolic. The challenges put forth in this section confront only the potential instrumental/practical harms of allowing ex-felons to partake in civic processes. I do not consider symbolic threats, like appearances of impropriety, as they are less consequential than instrumental/practical harms when the civic exclusion of sixteen million Americans is at issue.

54. MANZA & UGGEN, *supra* note 37, at 13 (“[E]mpirical evidence that criminal offenders would be more likely to commit voter fraud is essentially non-existent.”).

55. *See* Kalt, *supra* note 14.





reveals character similar to that of the ex-felon.<sup>64</sup> Similarly, the inherent bias theory of exclusion rests on the assumption that *all* ex-felons possess animosity toward the State.<sup>65</sup> The State does not per se bar police officers, crime victims, or corrections officials from sitting on juries, although each of these groups poses a high potential for bias. Instead, the State deems individual members of these groups distinct. Therefore, presuming the similarly situated ex-felon population to be homogenous is an inconsistent “gross overgeneralization.”<sup>66</sup>

Third, both prohibitions on jury service and disenfranchisement laws make assumptions about character that other areas of law prohibit.<sup>67</sup>

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discussed below, curtailing the moral development of ex-felons may have consequences that touch the non-felon population as well.

*D. Are Civic Restrictions Retributive?*

Though incapacitation is the most commonly cited reason for preventing ex-felons from performing their civic duties,<sup>73</sup> some might justify civic restrictions as retributive rather than protective. Theorists argue that restrictions premised only on a felony conviction are potentially criminal sanctions, rather than civil sanctions, and that



Today, Japan continues to respect the free will of the criminal actor “[b]y ‘following shaming ceremonies with ceremonies of repentance and reacceptance . . . the moral order derives a very special kind of credibility when even he who has breached it openly comes out and affirms the evil of the breach.’”<sup>88</sup> Consequently, “the stakes are high when one defies the moral order, but total social banishment is a rare consequence: the offender may humble himself and thereby be reintegrated into the social fabric.”<sup>89</sup>

Civic restrictions premised on a felony conviction cannot be retributive because they are over-inclusive, rendering just desserts incalculable. Banishing ex-felons from civic processes also does little to protect the autonomy of the ex-felon. Once punished, the ex-felon who the State banishes from civic processes has no opportunity to rejoin the moral order and reap the benefit of punishment. Thus, Civic restrictions have little to do with retribution and must be motivated by something else.

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#### E. *An Alternative Theory*

Some contend that the State prohibits ex-felons from re-entering the civic realm to placate a more devious desire. The author of one Harvard Law Review Note proposes that “[b]ehind arguments for limiting participation to the virtuous stands the community’s urge to be reassured of its own moral purity and to find a target by which to define its own identity.”<sup>90</sup> Civic restrictions are therefore nothing more than the State engaging in a “sophisticated version of banishment . . . ‘society’s most primitive form of self-defense.’”<sup>91</sup>

As W.T. Root describes:

None is so repentant a sinner as to share the blame with the criminal. If we can localize the blame in the individual we can exact vengeance with precision and satisfaction. The more we can

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113 (1896).

88. *Id.* at 1910 (citing J. BRAITHWAITE, CRIME, SHAME, AND REINTEGRATION 74 (1989)).

89. *Id.*

90. *The Disenfranchisement of Ex-Felons*, *supra* note 23, at 1312 (The idea that character is a fixed concept is essential to this justification for civic restrictions. If an ex-felon is capable of atonement and morality, then the societal cohesion facilitated by individualizing blame disappears when the ex-felon’s sentence is complete).

91. ROBERT JOHNSON, HARD TIME: UNDERSTANDING AND REFORMING THE PRISON 3–4, (Wadsworth 2002) (citing M.E. SHERMAN & G. HAWKINS, IMPRISONMENT IN AMERICA: C

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make it appear that all the causes for delinquency have their origin within the individual victim the more we may feel self-elation, the less danger there is of negative self-feeling.<sup>92</sup>

By targeting perceived character flaws as the principal justification for excluding ex-felons, society exhibits a “tendency to localize the blame for crime in the individual”<sup>93</sup> so as to also “obscure the complexity of the roots of crime and their entanglement with contingent social structures.”<sup>94</sup> In this way, the idea that ex-felons are morally corrupt “follow[s] from, rather than explain[s], a preexisting sense that ex-felons cannot be members of the community.”<sup>95</sup> Civic restriction are therefore “based not upon what we believe, but . . . what [they] allow us to believe.”<sup>96</sup>

While cynical, this view seems relevant given the lack of existing evidence supporting the notion that ex-felons threaten civic processes. So why keep ex-felons from participating? Though noteworthy, this question gives rise to a more pressing concern about the societal damage inflicted by civic restrictions. As Professor Chin inquired, what is the likelihood that civic restrictions lead to re-offending? What impact do these rules have on conformity and lawfulness?

## II. REINFORCING STIGMA

The first consequence of this “symbolic” exercise of exclusion is the stigma of a felony conviction.<sup>97</sup> Though many forces inside and outside the “criminal justice continuum”<sup>98</sup> contribute to the stigma of a felony conviction, civic restrictions reinforce stigmatization by (1) linking attributes to negative characteristics, (2) separating the ex-felon from the rest of societinside 0583 Tw”

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Two common criticisms of the study of stigma should be noted, however. First, critics have observed that those who “do not belong to the stigmatized group”<sup>110</sup> often “study stigma from the vantage point of theories that are uninformed by the lived experience of the people they study.”<sup>111</sup> A second criticism advocates for stigma research that focuses on “the sources and consequences of pervasive, socially shaped exclusion from social and economic life.”<sup>112</sup> As an ex-felon mindful of these criticisms, I examine stigma from the point of view of the stigmatized, emphasizing the macro-level consequences of keeping millions of Americans from performing their civic duties.

Therefore, working within the conceptual framework established by Link and Phelan, I establish the existence and “convergence” of the four “interrelated components” necessary for producing stigma, identifying the State as the power structure that “allows the components of stigma to unfold.”<sup>113</sup> While the State assuredly does not create stigma, it does contribute significantly to the process of stigmatization by imposing civic restrictions.

#### A. *Arrest and Conviction—The Labeling Process*

According to the conceptualization of stigma put forth by Link and Phelan, the necessary first component for producing stigma is labeling or distinguishing a group or an individual.<sup>114</sup> The “criminal justice continuum,” beginning with arrest and ending with post-incarceration sanctions,<sup>115</sup> creates the label “felon.” With such a broad classification, there is “enormous variability” within the category, requiring the State to engage in “oversimplification” when creating the class.<sup>116</sup>

Arrested, charged, and convicted in a two week jury trial, I fell victim to the labeling process. The sheriff handcuffed me, read me my constitutional rights, and then displayed me to the gallery during jury selection. When the trial ended, the judge in grand fashion slammed his gavel, proclaiming me guilty in front of a packed

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110. *Id.* at 365.

111. *Id.*

112. *Id.* at 366.

113. *Id.* at 367.

114. *Id.*

115. PETTUS, *supra* note 18, at 148.

116. Link & Phelan, *supra* note 103, at 367.





conviction,<sup>122</sup> but, perhaps more importantly, both note that an arrest and conviction is a method by which the State labels the offender.

*B. Justifying Civic Restrictions—Linking the Label to the Stereotype*

“The second component of stigma occurs when labeled differences are linked to stereotypes.”<sup>123</sup> Discussing the distinction between master and auxiliary status traits, Everett C. Hughes explains that “most statuses have one key trait (a master trait) which serves to distinguish those who belong from those who do not.”<sup>124</sup> He goes on to say that those with certain master traits are “informally expected to have a number of auxiliary traits.”<sup>125</sup>

The State makes a felony conviction a salient master trait by publicly labeling a felon at trial. In doing so, the State signals that certain negative auxiliary traits accompany a felony conviction. As Howard S. Becker explains,

To be labeled a criminal one need only commit a single criminal offense, and this is all the term formally refers to. Yet the word carries a number of connotations specifying auxiliary traits characteristic of anyone bearing the label. A man who has been convicted of a housebreaking and thereby labeled criminal is presumed to be a person likely to break into other houses. . . . Further he is considered likely to commit other kinds of crimes as well, because he has shown himself to be a person without “respect for the law.” Thus apprehension for one deviant act exposes a person to the likelihood that he will be regarded as deviant or undesirable in other respects.<sup>126</sup>

Observable in Becker’s hypothetical, corrupt morality that leads to a propensity for crime is the overriding auxiliary trait associated with a felony conviction.<sup>127</sup> As shown above, the majority of states

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122. BRAITHWAITE, *supra* note 44, at 55 (distinguishing between “shaming that is reintegrative and shaming that is disintegrative (stigmatization),” and going on to explain that “[r]eintegrative shaming means that expressions of community disapproval . . . are followed by gestures of reacceptance into the community of lawabiding citizens. These gestures of

that exclude ex-felons from civic processes justify exclusion based on the fear that this auxiliary trait will corrupt elections and taint juries.<sup>128</sup> By making character assessments about those who have a criminal past, the State links negative attributes to the label it affixes to felons. In this way, civic restrictions—or at least the justifications postulated for imposing civic restrictions—reinforce the second component of the stigma attached to being an ex-felon.

*C. Labeling Felons and Imposing Civic Restrictions Post-Release—Separating “Us” from “Them”*

“The third feature of the stigma process occurs when social labels connote a separation of “us” from “them.”<sup>129</sup> Separating felons and ex-felons from the rest of society is a two-step process. First, as noted above, the State affixes the label of “felon” to an individual convicted of an offense in a grand proceeding. Next, the State imposes restrictions on the offender following his or her release from prison. These restrictions prevent the ex-felon from taking part in a host of processes open to those without criminal records. Thus, from the outset of the criminal justice continuum, the State constructs a wall—literally and figuratively—between law-abiding citizens (who it sees as “us”) and criminals (who it perceives to be “them”).

Distinctive labeling is the first step in separating “us” from “them.”<sup>130</sup> As Link and Phelan point out, “[e]vidence of efforts to separate “us” from “them” are sometimes directly available in the very nature of the labels conferred.”<sup>131</sup> For instance, ex-felons are not referred to as “those who have been convicted of a felony;” instead, ex-felons are “thought to *be* the thing they are labeled.”<sup>132</sup> In this way, ex-felons are not members of society who have made a mistake; instead, we are members of our own class, which exists outside of society and possesses negative attributes. Similarly, consider the adulterer, the paranoid schizophrenic, the cripple, and the traitor; by

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or unnatural passions, treacherous and rigid beliefs, and dishonesty, these being inferred from a known record of, for example, mental disorder, imprisonment, addiction, alcoholism, homosexuality, unemployment, suicidal attempts, and radical political behavior.”)

128. *See supra* Section I.A.

129. Link & Phelan, *supra* note 103, at 370.

130. *See id.*

131. *Id.*

132. *See id.*

virtue of their labels, all four are what others purport them to be—they are not part of “us.”<sup>133</sup>

The second step in separating “us” from “them” is the legal imposition of laws that limit or eliminate an ex-felon’s access to a social structure. In recent years, these laws have attracted much attention in both the legal and academic communities.<sup>134</sup>

and Phelan contend that “an almost immediate consequence of successful negative labeling and stereotyping is a general downward placement of a person in a status hierarchy.”<sup>140</sup> Additionally, those stigmatized face individual and structural discrimination as a result of their label.<sup>141</sup> While individual discrimination occurs when “person-A discriminates against person-B,” structural discrimination occurs when “stigma has affected the structure around the person, leading the person to be exposed to a host of untoward circumstances.”<sup>142</sup> Consequently, structural discrimination can exist independently of and often unaccompanied by instances of “individual prejudice or discrimination.”<sup>143</sup>

Examining the stigma of a physical disability, Link and Phelan point out that some researchers have proposed that physical “barriers to participation”<sup>144</sup> create a “disabling environment.”<sup>145</sup> These barriers “reside in architecture,”<sup>146</sup> making certain tasks impossible for those who suffer from physical limitations. Thus, constructing barriers and creating a disabling environment results in one form of structural discrimination.

Analogously, civic restrictions create another form of structural discrimination. Laws that exclude felons from voting, from running for office, and from serving on juries build legal barriers that block those with a felony conviction from civic processes. Constructed without bricks and mortar, legal barriers to civic participation create a civically disabling environment with which ex-felons must contend.

The untoward circumstance arising from structural discrimination of ex-felons is the requirement that we live outside the bounds of democratic processes, occupying a lower rung on the status hierarchy. In shaping the structure of civic processes with laws that exclude ex-felons, the State again contributes to the stigma of having a criminal record.

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140. *Id.* at 371.

141. *Id.* at 372–73.

142. *Id.* at 372 (“The concept of institutional racism sensitizes us to the fact that all manner of disadvantage can result outside of a model in which one person does something bad to another.”).

143. *Id.*

144. *Id.*

145. *Id.*

146. *Id.*

### III. THE AGGREGATE COST OF STIGMATIZING WITH CIVIC RESTRICTIONS

Presumably to protect their non-felon constituency,<sup>147</sup> many lawmakers strive to promote criminal desistance.<sup>148</sup> For this reason, reentry policies center on reducing recidivism rather than on promoting reintegration.<sup>149</sup> However, the distinction between preventing recidivism and promoting reintegration is a case of semantics—without the latter, the former is unattainable.

As shown above, prohibiting ex-felons from taking part in the full complement of civic duties reinforces stigma. Thus, the negative consequences of stigmatization generally must, in part, be attributed to civic restrictions. Additionally, because civic restrictions do not foster protection, as the State hypothesizes, they are arbitrary limitations, negatively impacting the intrinsic morality of ex-felons by undermining confidence in authority.

#### A. *The Cost of Stigmatizing Ex-Felons*

By reinforcing the stigma of a felony conviction through imposition of civic restrictions, the State increases the likelihood that ex-felons will fail to successfully reintegrate.<sup>150</sup> These costs are evident in the work of sociologists concerned with the “stereotype threat model” and the interplay between amplified levels of anxiety and persistent ostracism.

The “stereotype threat model” suggests that when “individuals perform a difficult task in an area in which the ingroup is considered weak, they feel at risk of confirming the stereotype and this psychological pressure will lead them to underperform. In the long

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147. MANZA & UGGEN, *supra* note 37, at 7 (“No politician or elected judge of whom we are aware has ever lost their seat because they were *too tough* on criminals.”).

148. *Id.* at 107 (“With crime rates at historic lows in many parts of the country, the potential for a new mobilization of public fears remains substantial if rates were to again trend upward.”).

149. DAVID FARABEE, *RETHINKING*



years is extremely stressful, and social anxieties abound. These stressors lead many back to prison in short order.<sup>160</sup> Civic restrictions contribute to the anxiety of the newly-released by reinforcing the fact that as ex-felons, we are not a recognized part of democratic society.

Research has shown that “being ostracized poses a threat to four fundamental human needs: belonging, control, self-esteem, and meaningful existence.”<sup>161</sup> Additionally, “being ostracized . . . is a powerful experience, resulting in a number of negative reactions.”<sup>162</sup> In some situations the ostracized “are more likely to interpret ambiguous situations in a threatening way.”<sup>163</sup> Additionally, the “persistence of the aversive effects of ostracism” lasts longer in those with higher levels of anxiety.<sup>164</sup>

Long before this contemporary sociological research, Howard S. Becker explained “[o]ne of the most crucial steps in the process of building a stable pattern of deviant behavior is likely to be the experience of being caught and publicly labeled.”<sup>165</sup> Once the State catches and labels a criminal, that person attains a “new status,” and is “revealed as a different kind of person from the kind he was supposed to be.”<sup>166</sup> In this way, “being caught and branded as a deviant has important consequences for one’s further social participation and self-image.”<sup>167</sup> For an ex-felon, stigmatization by the State leads to a “drastic change in the individual’s public identity”<sup>168</sup> and is an important influence on the decision to remain law-abiding.<sup>169</sup>

Felons experience a high level of anxiety upon release, and the State makes being an ex-felon a salient societal trait. Thus, in light of past and present sociological research, the potential costs of

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160. Binnall, *supra* note 158, at 79 n.80 (citing PATRICK LANGAN & DAVID LEVIN, BUREAU OF JUSTICE STATISTICS, U.S. DEPT. OF JUSTICE: RECIDIVISM OF PRISONERS RELEASED IN 1994 (2002)) (“[I]n 1994, 67.5.06 295.0201 Tm( )Tj8.52 0 0 8.52 212.46 295.0201 Tm-0.0012 Tc0.0822 Tw[(t63.24 3 2



stigmatizing ex-felons are quite high. Civic restrictions help establish these potential costs by contributing to the stigma of being an ex-felon.

*B. Impacting Morality with Arbitrary Sanctions*

Generally, human beings strive to obey the law.<sup>170</sup> Social scientists believe that people choose to comply with the law, “(1) because they fear the disapproval of their social group if they violate the law, and (2) because they generally see themselves as moral beings who want to do the right thing as they perceive it.”<sup>171</sup> Though theorists differ as to the importance of each factor in promoting criminal desistance,<sup>172</sup> it is generally accepted that “fear of social disapproval and moral commitment to the law both inhibit the commission of illegal activity.”<sup>173</sup>

Additionally, as Paul H. Robinson and Paul M. Darley point out, the law shapes the social norms of society, and thus shapes what behaviors individuals perceive as moral in their quest to do the right thing:

[T]he law is not irrelevant to the operation of these powerful forces. Criminal law in particular can influence the norms that are held by the social group and that are internalized by the individual. Criminal law’s influence comes from being a societal mechanism by which the force of social norms is realized and by which the

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170. Paul H. Robinson & Paul M. Darley, *The Utility of Desert*, 91 NW.-0.36 0refe1)ovalplrimen8e1(o the law both inh318a)5. ref1 g386.34 3

force of internal moral principles is strengthened. That is, the law has no independent force, the way social group norms and internalized norms do. It has power to the extent that it can amplify and sustain these two power sources; it has power to the extent that it influences what the social group thinks and what its members internalize.<sup>174</sup>

Specifically, the law fosters compliance to its own demands in two ways. First, laws themselves “nurture”<sup>175</sup>

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use of cost-benefit assessments may stem from “an increasing awareness of how government action reaches beyond its direct objects and goals.”<sup>189</sup>

Performing a social cost-benefit analysis of civic restrictions, “the efficiency objective can be restated as minimizing the total cost (in the broadest sense) of crime and punishment to society as a whole.”<sup>190</sup> Specifically, the analysis focuses on the cost imposed on the non-felon population.

As shown, given the lack of evidence supporting the likelihood that ex-felons would corrupt the integrity of civic processes, societal protection from ex-felons is unneeded. Therefore, the State miscalculates the benefits of imposing civic restrictions when it justifies exclusion by citing a need for protection while the costs of excluding ex-felons go unrecognized.

## 2. *How Arbitrary Sanctions Contribute to Lawlessness*

When perceived as arbitrary, civic restrictions represent unfair play for the ex-offender. For ex-felons, procedural fairness extends beyond our release from prison, and arbitrary sanctions that the State imposes post-release elicit severe feelings of betrayal.<sup>191</sup> This betrayal “reinforces the debasement so common in the institutional setting and hardens the resentment offenders commonly feel toward society in general.”<sup>192</sup>

In the context of reentry, unfair play leads to reluctance among ex-felons to defer to the moral authority of law.<sup>193</sup> As Herbert Morris

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law) as tools for crafting and choosing among policy options and improving the effectiveness of government action.”).

189. *Id.* at 334.

190. Jeffrey S. Parker & Michael K. Block, *The Sentencing Commission, P.M. (Post-Mistretta): Sunshine or Sunset?*, 27 AM. CRIM. L. REV. 289, 291 (1989).

191. TRAVIS, *supra* note 119, at 259 (citing CHRISTOPHER UGGEN & JEFF MANZA, LOST VOICES: THE CIVIC AND POLITICAL VIEWS OF DISENFRANCHISED FELONS in IMPRISONING AMERICA: THE SOCIAL EFFECTS OF MASS INCARCERATION 183 (Mary Pattillo, David Weiman, & Bruce Western eds., 2004)) One offender related his thoughts as: But I, hopefully,

notes, arbitrary sanctions have a devastating affect on the morality of those subjected to them; “[a]ny punishment that has as its objective to destroy another’s character as a moral person would, I believe, violate an individual’s inalienable right to the status of moral being even if it were compatible with the retributionist principle of like for like.”<sup>194</sup>

Shown by Tyler to be a “crucial factor” in whether one obeys the law, procedural fairness is not served by arbitrary civic restrictions.<sup>195</sup> Instead, procedural fairness is lost when civic restrictions that serve no purpose prevent ex-offenders from rejoining society. Ex-felons are unlikely to view an unlawful decision as immoral when they view the law as less than legitimate. By contributing needlessly to the formation of stigma, civic restrictions are arbitrary, serve no purpose, and likely impact the decisions of many ex-felons.

#### IV. THE BENEFITS OF ELIMINATING CIVIC RESTRICTIONS

Though civic restrictions are not the sole cause of recidivism, neither are a host of other factors that make readjustment difficult.<sup>196</sup> Reentry is therefore a holistic endeavor. Efforts to promote readjustment and prevent repeated incidence of criminal behavior must center on broad campaigns to both reduce the stigma of a felony conviction and to restore faith in the government, promoting an intrinsic moral desire to remain lawful.

As Link and Phelan propose, changing stigma is a two-fold process. First, any solution “must be multifaceted to address the many mechanisms that can lead to disadvantaged outcomes, and it needs to be multileveled to address issues of both individual and structural discrimination.”<sup>197</sup> Second, and more importantly, efforts to reduce stigma must “address the fundamental cause of stigma” and “must change the deeply held beliefs of the power groups who stigmatize or limit the power of such groups to make their cognitions the dominant ones.”<sup>198</sup>

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by the information transmitted by a specific institution, in which one accepts the validity of the definition of right and wrong behavior conveyed by that institution, internalizes that definition, and expects other people to have internalized it as well.

*Id.*

194. Morris, *supra* note 84, at 46.

195. Tyler et al., *supra* note 181, at 645.

196. See PETERSILIA, *supra* note 3, at 135–37 (noting a multitude of factors that hinder readjustment).

197. Link & Phelan, *supra* note 103, at 381.

198. *Id.*

Just as the law “nurtures” societal norms, it can also have a “diluting” effect on “existing norms.”<sup>199</sup> Eliminating civic restrictions would constitute a significant State message saying, “ex-felons are citizens just like everyone else.”<sup>200</sup> Referring back to the factors for change enumerated by Link and Phelan, such a message would mark—at least superficially—a change in the “deeply held belief of the power group”<sup>201</sup> that is currently contributing to the stigmatization of ex-felons. Further, allowing ex-felons to perform their civic duties would end structural civic discrimination and partially elevate our place in the hierarchy of citizenship. While eliminating civic restrictions will assuredly have little affect on the individual discrimination all ex-felons face, again, reentry is a holistic process dictating that no one measure will successfully remedy all readjustment issues.

Additionally, because civic restrictions serve no legitimate purpose and contribute to the formation of stigma, they are arbitrary, and their elimination could have a positive impact on an ex-felon’s desire to remain lawful.<sup>202</sup> As Tom Tyler suggests, “the most important incremental contribution” to one’s decision about whether to obey the law “is made by personal morality.”<sup>203</sup> Thus, allowing ex-felons to vote, run for office, and sit on juries creates a sense of procedural fairness that could contribute to an internal moral desire to act lawfully.

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crime that gave rise to our felon status. Proponents of civic restrictions worry that allowing ex-felons to exercise civic freedoms will cause harm to the large segment of our population without a criminal record. They believe that exclusion serves a legitimate purpose.

However, civic restrictions do not protect society, and they do not embody justice. Instead, civic restrictions exclude ex-felons arbitrarily and are justified by misconception and faulty theory. So what would the State lose by eliminating civic restrictions?

The removal of civic restrictions can only serve to benefit society as a whole. Ex-felons benefit by having to navigate one less obstacle to readjustment and non-felons benefit by living among those who respect the law. By eliminating civic restrictions, the State can welcome ex-felons back into the democratic process by *officially* denouncing stigmatization; thus enhancing the tenets of democracy as “[i]t is liberty alone that fits men for liberty.”<sup>204</sup>

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204. EDGARDO ROTMAN, *THE FAILURE OF REFORM: UNITED*

