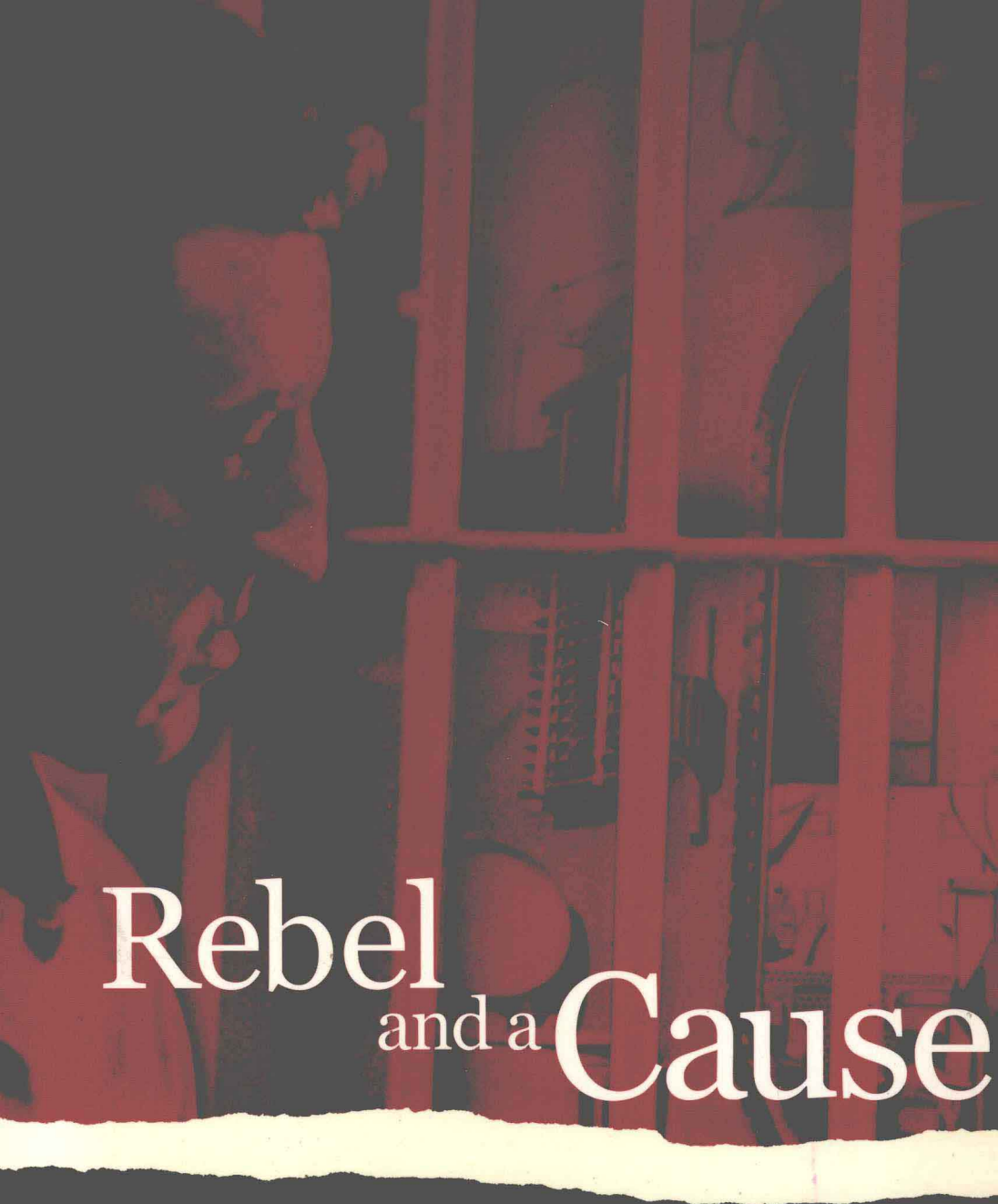

Rebel and a Cause

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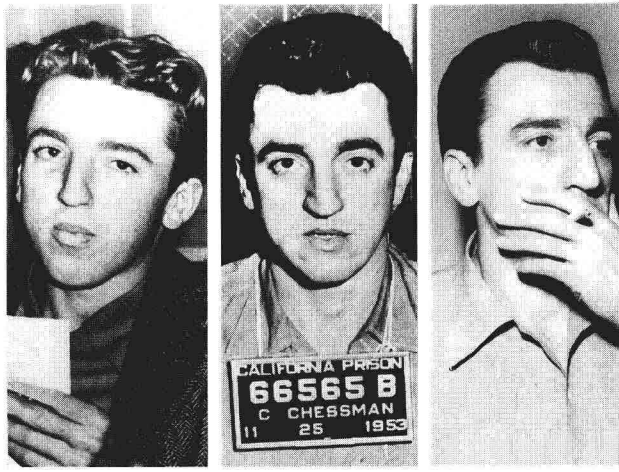

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Studies at Berkeley might be an odd fit with my résumé, but my work stint there was extremely rewarding. Before leaving the Bay Area, I also had the wonderful opportunity to teach in the college program at San Quentin. Started by Professor Naomi Janowitz, the program is now run by my good friend Sean McPhetridge. To these two folks, as well as to the incomparable Vern Griffith, I am deeply in dept. Space prevents me from acknowledging all of my students in the San Quentin Project, so I'll only single out those with whom I worked most, namely Doug Mickey, Pete Edelbacher, Steven Ainsworth, Prentice Snow, and Armenia Cudjo, capable scholars all.

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who took time—at cocktail parties, in locker rooms, and everywhere in between—to share their own remembrances of the Chessman case.

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Ask anyone who has visited the Corona or Upland Public Libraries over the past few years and they are likely to tell you how they were assisted by the kindest, most helpful reference librarians they'd ever met. I am proud as well as grateful that such people are my dad, Bob, and stepmom, Yoga. As a scholar I could do worse than to have such tireless research assistants, and as a son I could hardly ask for more loving parents. To my in-laws and fellow *peregrinos,* Bill and Dorothy DeVoti, I can only express my amazement at how giving, supportive, and unusually tolerant of an underemployed son-in-law they have been. And it is to them, and Angie, as well as to a few angels above, that I owe thanks for the greatest present of all, namely Emily. Companion in both word and deed, and for life, she has truly been a gift sent directly from Providence.

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Introduction

Today it is easy to forget that it was the Caryl Chessman case in California in the late 1950s, more than any other criminal case in the past generation, that stirred the national debate over capital punishment. . . . If one were to approach the current national death penalty controversy by studying the political and legal struggle in one state, one could hardly do better than to focus on California.

Hugo Adam Bedau, The Courts, the Constitution, and Capital Punishment *(1977)*

Beginning in the mid-1950s, capital punishment faced renewed opposition in American society. Within a decade, states from Oregon to New York eliminated the death penalty, the overall rate of executions slowed considerably, and public opinion against capital punishment reached an all-time high. Like their Jacksonian and Progressive predecessors, the postwar generation of activists saw the death penalty as contradicting what they viewed as the core principle of punishment: reforming the prisoner. This notion, known since the Progressive Era as the rehabilitative ideal, fundamentally shaped the anti–death penalty sentiment witnessed among growing numbers of American citizens during the late 1950s. This study seeks to explain why the political and legal successes scored by this most recent abolitionist campaign ultimately faced a powerful countertrend in public opinion, which by the late 1960s had turned dramatically in support of capital punishment.[1]

To assess postwar death penalty abolitionism, the following chapters focus primarily on the popular controversy surrounding the 1960 execution of Caryl Chessman. The Chessman case was interpreted by liberal intellectuals, prison reformers, and activists as uniquely representative of the period's larger movement against capital punishment.[2] Sentenced to death by a Los Angeles jury for sexually assaulting two women on local lovers' lanes in 1948, Chessman received numerous

stays of execution as higher courts determined whether he received a fair right to appeal his original conviction. Rather than strictly legal considerations, however, it was Chessman's status as a prolific death row author that generated his widespread notoriety. For the vocal, often quite influential supporters who rallied to his defense, Chessman's written efforts seemed to clearly illustrate his therapeutic reform. Bay Area college student activists endorsed this view, and in their protests began to define the perspective that analysts would soon characterize as distinctly New Left. Chessman's May 1960 execution, in turn, sparked significant popular outcry, both outside the gates of San Quentin and at U.S. embassies around the world. Writing a decade later, the historian William O'Neill identified "the fight to save Caryl Chessman [as] the most important attack on capital punishment in American history."[3]

The following chapters mark an initial attempt both to place the Chessman debate in its historical context and to assess the larger movement against the death penalty during the late 1950s. As Maurice Isserman recently observed, the catalytic impact of Chessman's case on early New Left organizing has not received critical scrutiny;[4] nor, for that matter, has any attention been given to the manner in which the death penalty became instrumental in the California New Right's rise to power, a point first evidenced during the Chessman debate. Previous studies such as William Kunstler's *Beyond a Reasonable Doubt?* (1961) and Frank J. Parker's *Caryl Chessman: The Red Light Bandit* (1975), in fact, focused almost exclusively on the question of Chessman's guilt or innocence. Examining the trial, court records, and legal machinations of the case, these authors reached opposite conclusions about Chessman's guilt. As a result, the question of whether Chessman indeed committed the crimes for which he was executed will not be central here.[5] Rather, the historical issues of why so many postwar citizens embraced Chessman's cause—or, by contrast, viewed his execution as justified—form the core of this study. In many respects a debate over the larger therapeutic principles of postwar penology, these opposing views fundamentally shaped California politics of the early 1960s. From late 1959 forward, the early incarnations of both the New Left and New Right in the state would make extensive use of the Chessman controversy in their respective criticisms of the liberal administration of Governor Edmund G. (Pat) Brown (1958–1966).

An Overview

Carol (he began to use the spelling "Caryl" in his teens) Whittier Chessman was born in St. Joseph, Michigan, on May 27, 1921, the only child of Hallie and Serl Chessman, a Baptist couple. Later that year they moved to Glendale, California, near Pasadena. There Whittier "Serl" Chessman, a direct descendant of the poet John Greenleaf Whittier, worked at a variety of jobs, most notably his own Venetian blind business; by the late 1930s that venture failed, and the elder Chessman twice tried to commit suicide, both times unsuccessfully. Hallie Chessman, meanwhile, was left paralyzed after a 1929 automobile accident, a condition that caused her increased difficulty in raising her son, who was stricken with encephalitis at an early age. As Caryl later recounted, during adolescence he began to steal groceries and other goods in order to help his family make ends meet during the lean Depression years.[6]

In July 1937, Chessman was sent to Preston Industrial School for stealing a car, marking the first of his many visits to the state's disciplinary institutions; ultimately, Chessman would be confined for all but three of the next twenty-three years. Released the following April, Chessman was back at Preston in May, again convicted of automobile theft. In October 1939, Chessman got caught taking another car, and now was placed in Los Angeles County road camp. There he met other members of what became the "Boy Bandit Gang," all of whom were nabbed by L.A. authorities in April 1941 after a wild flurry of robberies and shootouts with police. For his efforts as self-proclaimed ringleader of the gang, Chessman was sentenced to San Quentin and then transferred to Chino, from which he escaped in October 1943. Arrested for robbery the next month in Glendale, Chessman returned north under a sentence of five years to life. After spending the majority of this stretch at Folsom State Prison, Chessman came home to Glendale in December 1947.[7]

Between January 3 and January 23, 1948, a rash of robberies occurred throughout the greater L.A. region, from Pasadena to Redondo Beach, including burglaries of two clothing stores, three muggings, and one car theft. During the same period, a pair of nonlethal sexual assaults were committed against Regina Johnson and Mary Alice Meza on two separate lovers' lanes, one in Flintridge Hills and the other on Mulholland Drive. Because the assailant approached the victims' cars flashing a red spotlight, imitating a police car, he became known as the "red light bandit." The red light bandit coerced both women to perform oral sex at gunpoint; he also unsuccessfully attempted to force intercourse on Meza.

On January 23, in the wake of a five-mile chase down Vermont Avenue, Caryl Chessman and an accomplice, David Knowles, were brought to the Hollywood police station, where they were held on suspicion of the various robberies as well as the sex crimes. In 1948, the accused were not yet legally entitled to have an attorney present, and after a seventy-two-hour interrogation, Chessman admitted to all charges, saying that he alone committed the sexual assaults. He would later claim that his confession had been beaten out of him by police. Both victims proceeded to positively identify Chessman as the red light bandit. Accordingly, in late January 1948, Chessman was formally charged with eighteen counts, including robbery, sexual assault, and kidnapping. Because the red light crimes involved moving the female victims from their cars, under Section 209 of the California penal code, better known as the "Little Lindbergh Law," they constituted "kidnapping with bodily harm," a capital offense. When Chessman stood trial in Los Angeles Superior Court in May 1948, he thus faced a prosecution determined to send him to the gas chamber for crimes that did not include murder.[8]

With the bravado he would display repeatedly over the next twelve years, Chessman represented himself in court. Indeed, he refused the services of the local public defender, assuring the initial judge that he was "a good enough lawyer." In so doing, he took on virtually alone the formidable tandem of Deputy District Attorney J. Miller Leavy and Judge Charles W. Fricke, both of whom had a strong track record of winning capital convictions. Both, moreover, would remain prominent and viscerally hostile spokesmen against clemency for Chessman.

The jury of eleven women and one man sentenced Chessman to death. But on June 23, 1948, two days before Chessman was scheduled to appear before Fricke for official sentencing, the original court reporter, Ernest Perry, died suddenly. Immediately, Chessman moved for a new trial based on what he predicted would be an inaccurate transcription of the original proceedings. Fricke denied Chessman's motion, but this issue would become the sticking point disputed in the higher courts over the next twelve years. Chessman's contention of inaccuracy would be strengthened by Fricke's appointment in July 1948 of the new court reporter: Stanley Fraser, an alleged alcoholic and Leavy's uncle by marriage. In October of that same year, the Executive Committee of the Los Angeles Superior Court Reporters' Association described Perry's original court shorthand as "completely undecipherable." Fricke, though, approved Fraser's first transcription in 1949, setting off a continuous battle between Chessman, now on death row at San Quentin, and the

state, federal, and eventually U.S. Supreme courts. After the California Supreme Court accepted Fraser's transcript and affirmed Chessman's sentence, it appeared as though the execution would be carried out in March 1952. In late February of that year, however, state Supreme Court Justice Jesse W. Carter announced the first of what would eventually number eight stays of execution granted to Chessman, nearly all of which stemmed from the questionable accuracy of the trial transcript.[9]

While the contest between Chessman and the higher courts took place largely outside the public eye, the publication of Chessman's autobiographical work *Cell 2455 Death Row* in early May 1954 moved the case to center stage. Hailed by critics, Chessman's book instantly called attention to the author's impending execution, now set for May 14, 1954. On May 13, Marin County Superior Judge Thomas Keating signed another stay so that Chessman's writ of habeas corpus asking for a new trial (because of the transcript question) could be considered. Keating's action sparked a firestorm of controversy, prompting California Attorney General Pat Brown—not yet an outspoken opponent of capital punishment—to ask the state's highest judicial body to overturn it. The California Supreme Court indeed nixed the habeas corpus appeal a month later, but the conflict only intensified that summer. Scheduled to be part of a triple execution set for July 30, 1954, Chessman again received a last-minute reprieve, this time after one of his legal team tracked down Justice Carter, who was camping in the Sierras. Carter again stayed the execution, calling the transcript wholly unreliable and sending Chessman's writ of habeas corpus to the U.S. Supreme Court. Brown, in turn, moved unsuccessfully to block the two other executions set for that July 30, angrily stating, "There is no reason why a man who can write a book should have an advantage these two apparently friendless people do not have." Brown's hostile actions at this stage anticipated what ultimately would be his most clear-cut position regarding the Chessman case. Over the objections of Keating, Carter, and later Supreme Court Justice William O. Douglas, the higher courts repeatedly though narrowly rejected Chessman's appeals, and against his larger abolitionist scruples the future governor pledged to enact the death penalty while it remained California law.[10]

The transcript issue continued to be debated back and forth in the higher courts for the next five years. But when Brown assumed the governor's office in early 1959, his stance on the Chessman case seemed anything but certain. As attorney general, he had become the leading spokesman for the movement to abolish the death penalty in California.

Inexorably, the fate of that effort became entwined with the ongoing Chessman controversy. By late 1959, two more judicial stays had been granted, the legitimacy of the transcript had been affirmed after two separate hearings and no fewer than two thousand corrections, and Chessman had managed to have two more books smuggled out of San Quentin for publication. Because of the legal wrangling, Chessman had established a national record for longevity on death row, causing the American Civil Liberties Union and others to argue that his tenure now amounted to "cruel and unusual punishment." In preparation for a clemency hearing to be held between Brown and Chessman's attorneys in mid-October 1959, the governor's clemency secretary, Cecil Poole, expressed what would become the administration's overall view of the legal issues raised by the case. "Legally," Poole wrote, "the issue has not been Chessman's guilt or innocence." Instead, the controversy sprang from the higher courts' increasing concern with "procedural due process" during the postwar era. Though inseparable in theory, these views were held in abeyance by Poole, Brown, and other prominent officials involved in the case. Absolutely certain of the prisoner's guilt, Brown during the clemency meeting focused directly on the issue of rehabilitation, in the process showing his clear belief in the ideal even as he strongly disputed whether Chessman himself exemplified it.[11]

In late 1959 Chessman would again be spared from execution, this time because of a stay granted by U.S. Supreme Court Justice Douglas, who called for a review of lower court rulings. Shortly thereafter, though, the full Supreme Court declined to hear the case, and Chessman's new execution date was set for February 19, 1960. By mid-February of that year the controversy occupied front-page headlines, and voices in opposition to Chessman's death sentence emerged from across the state, the nation, and, increasingly, the world. Warned by the State Department about the possibility of disruptive protests over the Chessman affair during President Eisenhower's concurrent trip to South America, Governor Brown announced his most controversial decision. On February 18, the day before the scheduled execution, Brown gave Chessman a sixty-day reprieve while simultaneously declaring that he would bring a bill recommending abolition of the death penalty before the state legislature. That bill never left committee, but the impact on Brown's political career was nevertheless devastating; even though he would allow Chessman's execution to proceed—in the midst of even more public outcry—in May 1960, the California right, led by the Los Angeles press and soon by Richard Nixon, charged that Brown had "wavered" in his handling

of the case. Meanwhile, for death penalty abolitionists, within whose ranks could be counted some of the most vocal activists of the early New Left, Brown's ultimate betrayal in allowing Chessman to go to the gas chamber likewise would not soon be forgotten.[12]

The Issues

Throughout the Chessman case two competing narratives vied for public acceptance. Beginning with his 1948 trial, Los Angeles prosecutors and local media portrayed Chessman as a violent, menacing "sex fiend." In the particularly heated climate of postwar Los Angeles, the extreme sentence Chessman received fit with a larger official backlash against a perceived increase in sexual transgression, violent and otherwise, which observers linked to the wartime growth of the city. Although few other executions would result, state politicians frequently proposed similar usage of the Little Lindbergh Law in order to combat the postwar sex crime "wave" apparently engulfing the city and state. The popular psychiatric linkage between so-called "sexual psychopaths" and homosexual behavior (first developed by Army psychiatrists during World War II) would also play a part in the Chessman debate. Chessman's detractors further stressed the impact of this psychopathic behavior on the plight of his two female victims, one of whom—Mary Alice Meza—remained institutionalized (for schizophrenia) after 1949. As the Southern California press stoked public support for his 1960 execution, the sexual conflicts of the early postwar period continued to inform the popular narrative against Chessman.[13]

A different set of professional "experts" would shape popular opinion in defense of Chessman. In the wake of the 1954 release of *Cell 2455 Death Row,* leading criminologists and literary critics endorsed Chessman's claims that he had been reformed. During this period, politicians, prison officials, criminologists, psychiatrists, and a wide range of other professional observers all espoused belief in the postwar prison as a site of rehabilitation. As California's national importance grew in the aftermath of World War II, the state's criminal justice system advertised itself as the leader in implementing the "new penology." Influential criminologists like Harry Elmer Barnes and Negley K. Teeters, along with liberal intellectuals like Max Lerner and Elizabeth Hardwick, viewed Chessman's writings as particularly illustrative of the new penology's connections between reading, writing, and individual reform. By contrast, San Quentin psychiatrists and wardens, as well as Governors Warren, Knight,

and Brown, saw Chessman as a fundamentally defiant, unchanged criminal psychopath. However contradictory, these opposing views of Chessman's specific individual character generated extensive public debate about the larger therapeutic premise of the postwar criminal justice system itself.[14]

As it provided a unique forum for public discussion of the modern reform ideal, the Chessman controversy also marked a clear departure in twentieth-century protest against capital punishment. The most notable anti–death penalty campaigns witnessed since the Progressive Era (around the cases of Tom Mooney, Sacco and Vanzetti, the Scottsboro Boys, and the Rosenbergs) had been led by leftist organizations, especially labor unions and the Communist Party. Just prior to *Cell 2455*'s 1954 publication, California Governor Goodwin Knight (1953–1958) had responded to a popular campaign by granting clemency to Wesley Robert Wells, an African American prisoner, whose defense was led by the Communist-affiliated Civil Rights Congress, in tandem with left labor unions and the black press. Wells's supporters critiqued his death sentence (for throwing an ashtray at a prison guard) as an example of "prison Jim Crow." The Chessman defense, by contrast, rising to prominence at the end of the Red Scare, had few direct ties to an existing left. Rather, Chessman launched his public appeal in the name of ascendant notions of behavioral expertise. Like the several thousand self-defined "ordinary" citizens who wrote to Governors Knight and Brown about the case, Chessman himself argued against the death penalty in the name of individual contribution and therapeutic rehabilitation. Common to abolitionist discourse by the late 1950s, these ideals nevertheless stood in sharp contrast to the critique of racial and class discrimination articulated by the Wells defense. Equally important was a parallel tactical transition: with middle-class professionals now steering the debate, a focus on state policymaking replaced grassroots political organizing as the preferred abolitionist strategy against the death penalty. Driven by liberal criminologists, attorneys, lobbying organizations, and sympathetic public officials, from the mid-1950s onward California abolitionism was characterized first by legislative then by legal campaigns.

The evident tension between liberal death penalty abolitionism and the New Right's eventual political response ultimately casts doubt on one of the prevailing postwar assumptions held by anti–death penalty criminologists, lawyers, and activist organizations alike—namely, that the death penalty can and should be abolished regardless of public opinion on the issue. As most carefully defined by the criminologists/legal

scholars Franklin Zimring and Gordon Hawkins, this approach urges the United States to follow the example of other Western industrial nations, where previously overwhelming support for the death penalty declined precipitously in the wake of official abolition during the 1950s. For Zimring and Hawkins, the impetus for a comparable United States effort will come mainly from the Supreme Court, but also from the work of "brave governors" who follow the advice of "opinion-leading elites." "Minority opposition to the death penalty can be a political problem if it emanates from people who count," they write. California's experience during the Brown-Reagan years, however, illustrates the perils of ignoring broader public opinion.[15]

Voicing many of the same criticisms as the period's leading specialists, Governor Brown publicly pushed for abolition and became the figurehead of the liberal approach. It was this position that rendered his stance in the Chessman case so controversial. Despite solid majority support for capital punishment, the spark generated by the 1960 Chessman protests had caused a number of key participants to call for a grassroots campaign aimed at a popular referendum on the issue. Such a course was never taken, causing left participants to criticize the "distrust of the people" evident among liberal politicians and lobbying organizations like the Friends Committee on Legislation. Indeed, seduced by their unique access to the postwar state, liberal abolitionists effectively allowed the New Right to capture the popular death penalty debate unimpeded by popular political resistance.[16]

Initially relentless in his legislative efforts against capital punishment, by 1963 Brown had switched to an executive strategy, staying virtually every execution in order to help create a logjam in the higher courts. Richard Nixon made the death penalty fundamental to his (unsuccessful) 1962 gubernatorial campaign against Brown. After the 1965 Watts conflict, "law and order" formed a central component of Ronald Reagan's "white backlash" campaign for governor. Early in his administration (1966–1974), Reagan defined his pro–death penalty stance in opposition to black militance; over his first six years in office, moreover, Reagan continually clashed with the NAACP's Legal Defense Fund, which targeted California's racially biased use of the death penalty. By the late 1960s, the federal courts began to respond positively to the NAACP-led legal campaign. In response, the New Right steadily mobilized public support for restoration, and later expansion, of the death penalty. When the U.S. Supreme Court abolished the death penalty in 1972, two-thirds of California voters endorsed Proposition 17, a

Reagan-sponsored ballot initiative calling for restoration of the state's death penalty. Simultaneously antitherapeutic and antitechnocratic, Reagan's pro–death penalty politics were instrumental in helping the California New Right build an enduring popular consensus against the Great Society liberalism of the Pat Brown years.

In examining the growth, then the splintering, of middle class opposition to the death penalty, this study is comprised of five chapters. As chapter one demonstrates, earlier abolitionist movements coexisted with comparable efforts at prison reform. After a survey of the Jacksonian and Progressive Era movements, this chapter connects the Chessman controversy to the spread of the "new," therapeutic principles of postwar penology. Chapter two introduces the popular narrative that developed against Chessman, which argued that he was a dangerous product of the sex crime "wave" besetting postwar Los Angeles. Relying on popular psychiatric theories, newspaper columnists and hostile public officials stridently declared Chessman to be an unreformable sexual psychopath, a menacing condition these critics sensationalized by making frequent reference to the plight of his female victims. As examined in chapter three, Chessman responded to this portrayal by trying literally to write his way off death row. Because Chessman's books seemed to manifest vividly postwar notions of writing and rehabilitation, criminologists and liberal intellectuals helped initiate the popular campaign on his behalf.

Chapter four contrasts the Wells defense with Chessman's, paying particular attention to the shift from left to liberal death penalty protest during the mid-1950s. As illustrated by the letters they wrote to Governors Knight and especially Brown, thousands of self-identified "ordinary citizens" felt inspired enough by the Chessman case to argue strenuously against the death penalty in the name of therapeutic penology; in so doing, they showed the ways in which "new class" abolitionist ideals resonated with a growing sector of the postwar "new middle class." Lastly, chapter five traces the impact of the Chessman controversy on the politics of criminal justice in California during the 1960s. While Chessman's case sparked mobilization from the New Left and especially the New Right, by the end of the 1960s both the NAACP and the Black Panther Party moved questions of racial bias, rather than the rehabilitative ideal, to the center of criminal justice debate. Well into the following, explosive decade, both the New Left and the New Right in California thus kept the Chessman controversy alive in order to challenge the liberal ideals the case had most dramatically raised.