The Chessmann Case

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Denne artikel er skrevet specielt for NTfK. Redaktionen har fundet det ønskeligt at bringe den på originalsproget.

Caryl Chessman was executed by the State of California on May 2, 1960, for the crime of kidnapping for purpose of robbery with bodily harm to the victim. This execution took place despite world-wide protest, including opposition by a substantial segment of American public opinion. Opposition was aroused principally by the 12 year delay in carrying out the sentence, during which years Chessman carried on an extraordinary legal campaign to set aside his conviction and succeeded in publishing popular books on his stay in the death cell. He enlisted the sympathy not only of persons who found unusual cruelty in keeping a man under death sentence for years, but also of many who were opposed to all capital punishment, and of some who may have believed mistakenly that he was innocent of any crime.

The case is in some respects less shocking than popular accounts represent it, and in some resepcts more shocking. It is less shocking insofar as a careful review would satisfy reasonable minds that Chessman was guilty of many violent crimes, including robberies and sexual attacks, and that he was moreover a peculiarly dangerous personality of the type sometimes called »psychopathic«. It is a personality that manifests itself in intellectual brilliance, egotism, defiance of the rules of social order, and lack of warmth or compassion that restrains ordinary men from attacking their fellows. There is reason to believe that for such a man the years of battle against the authorities in the shadow of death, but also in the limelight of world publicity, provided gratification for his exhibitionism rather than the torture which most people would experience.

In any event, if one assumes that the death sentence was otherwise just, the failure to carry it out in Chessman's case would have sanctioned a most curious kind of discrimination in the application of capital punishment. A murderer or traitor, represented by counsel sufficiently ingenious or unscrupulous in charging the prosecution with error and exploiting the process of review, would escape death merely because he had successfully obstructed justice for a long time, while a poorer or more stupid defendant would be promptly executed. The lesson of the case is, then, a lesson of the undesirability of the death sentence generally, for the reason among others that it is difficult to administer fairly, rather than a demonstration of special reason to refrain from executing Chessman.

The long delay in execution is also less shocking when it is reflected that this resulted from the multiplicity of remedies afforded by American law to correct errors. Although Chessman availed himself of these remedies to the limit and beyond, he was never able to persuade a single judge of the Supreme Court of California that his conviction was unjustified. The Supreme Court of the United States intervened only to make sure that the trial record, whose accuracy had been impugned as a result of the death of the original court reporter before he could transcribe his notes, was fairly reconstructed from the deceased reporter's notes in a proceeding in which Chessman effectively participated.

Nevertheless, the Chessman Case is more shocking than has generally been understood, from the point of view of the scope given by judicial interpretation to the California capital kidnapping legislation, and from the point of view of procedural irregularities which should not have been tolerated in a case where life was at stake.

The California kidnapping legislation provides in general for a maximum imprisonment of 25 years. But the jury may in its discretion impose the death penalty if the victim was "carried away" for purpose of "robbery or ransom", and suffered "bodily harm". The crimes of which Chessman was convicted in April, 1948, included two charges under this section as well as 15 other charges of armed robbery, theft and other offenses. (His earlier criminal career extending back to childhood had been such that he had spent 8 of the 10 years prior to 1948 in prison). In the crucial kidnapping case, the evidence established that Chessman robbed a young couple seated in a parked automobile, menacing them with a pistol. After they had given him their wallets, he ordered the girl to leave the car and accompany him to his car, 22 feet away, where he compelled her to gratify him sexually in a way not amounting to rape. He then returned her wallet after removing some money from it, and released her.

The 22 foot removal was held by the California Supreme Court to be a "carrying away" within the kidnapping statute. This extraordinary result was consistent with other cases decided by the court, one of which, for example, sustained a kidnapping conviction against two men who held up a store, where one of them forced the storekeeper into the back room while the other emptied the cash register. Under this line of cases, almost any robbery, involving very slight movement of the victim, becomes a potential capital kidnapping if the prosecutor chooses to indict for that offense.

The finding in the Chessman case that there was purpose to rob even after he had secured the wallets seems as fictional as the carrying away. Obviously his purpose in removing the girl to his car was sexual. The jury was permitted to conclude,

however, that Chessman had not necessarily abandoned his robbery intention when he moved the girl to his car, although his primary purpose may have been sexual.

As to "bodily harm", the third prerequisite to capital punishment for kidnapping in California, this too appears quite doubtful. An extremely repugnant experience was forced on the victims in the two incidents involving sexual aggression, and one of these women was subsequently hospitalized for mental illness. But it is hard to regard unpleasant contact as bodily harm, particularly in the light of the California holding in another case that binding and blindfolding the kidnapped is not bodily harm. Furthermore, responsible psychiatric opinion would not support the view that an adult experience of sexual aggression can produce a serious mental illness.

But perhaps worse than the indicated distortions of substantive law were some unfair features of the trial itself. Not content with prosecuting Chessman for a series of specified crimes which, with others had already received the inflammatory attention of the newspapers, the prosecutor grossly violated his duty by telling the jury, "I could give you at least a half dozen particular crimes that I know he has committed that he is not charged with here . . ." The Supreme Court of California did not hesitate to castigate this behavior, which in other cases had been held to warrant reversal of conviction. But it declined to reverse Chessman's conviction on this ground, because Chessman had neglected to register an objection at the time of the incident. Thus, violation of the most elementary rule of fairness by the public prosecutor, tolerated by the learned judge appointed by California to assure just trials, was disregarded on the ground that the lay defendant had failed effectively to assert his legal rights.

It should be noted that Chessman insisted on being his own lawyer, but finally consented to have a legal "advisor" with him at trial. This arrangement led to still another prejudicial aspect of this case. California law provides that in capital cases two counsel may argue to the jury on behalf of the defendant. However, when Chessmann asked that his legal advisor as well as himself be permitted to argue the case, permission was refused on the astonishingly legalistic ground that only a defendant *who was represented by counsel* was accorded this right under the statute. Since Chessman had chosen to represent himself, the statute was inapplicable!

It may be asked why the Supreme Court of the United States did not intervene beyond assuring the integrity of the record on appeal to the Supreme Court of California. The answer lies in the nature and limits of the U. S. Supreme Court's responsibilities under the federal constitution and legislation. The Court it not a general court of appeal superimposed on the appellate courts

of the states to correct their errors in the application of state laws. Substantially the only ground on which it can interfere in state criminal administration is that there has been a denial of "due process of law" guaranteed by the Fourteenth Amendment to the Constitution. This means something worse than mere error: a fundamental unfairness inconsistent with minimum standards of civilized dealing.

Neither was there power in the executive branches of government to prevent Chessman's execution. The President of the United States was utterly without jurisdiction. The Governor of California, who would normally in our state government have power to pardon or to substitute life imprisonment for the death sentence, could not do so in Chessman's case because of a peculiar provision of the state constitution. This provided that the Governor could not take such action with respect to an offender who had twice before been convicted of felony, unless a majority of the Supreme Court of California approved. The Court however remained opposed to clemency until the end, voting 4—3 on this issue. The Governor attempted to save Chessman's life, at the cost of serious jeopardy to his political career, by calling the legislature into special session to abolish or suspend capital punishment. The bill was defeated in committee by a vote of 8—7.

Does the Chessman case exemplify a departure from the rule of law? By no means, unless every bad decision can be so characterized. It exemplifies, rather, the potentiality under every system of law of making interpretations unfavorable to a defendant whose crimes have shocked the community. It is the accumulation of such interpretations, each plausibly supported on bases afforded by the system, in a capital case, that shocks us. The more general significance of the Chessman case in relation to American law is as follows: (1) It dramatizes the absurdities of kidnapping legislation so framed that a robbery or sexual offence may be punished with unusual severity merely because of the trivial displacement of the victim in the course of the offence. (2) It is one of a number of incidents and developments which must lead eventually to the elimination of capital punishment in most of the United States. As to the first point, it is of interest that on May 18, 1960, the American Law Institute in Washington approved a provision of its proposed Model Penal Code under which the maximum punishment for kidnapping would be life imprisonment, and then only in case the victim is not returned alive. With regard to the elimination of capital punishment, one may recall that this has already been done in half a dozen states and that in a number of others there are in practice no executions. The annual number of executions in the United States has gone down by 75% in the last 25 years.

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