

**WORTHY OF SAVING? AN EXPLORATION OF HOW RACE, GENDER EXPRESSION,
AND SEXUALITY INTERSECT AND INFORM PUBLIC OPINION AND DECISIONS
ABOUT STATE-SANCTIONED KILLINGS**

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*"Penalty communicates meaning not just about crime and punishment but also about power, authority, legitimacy, normality, morality, personhood, social relations and a host of other tangential matters."*¹

This piece explores the ways race, gender (and more specifically, gender performance), and sexuality interact in the American criminal legal system. As Kelly Lytle Hernandez, Khalil Gibran Muhammad, and Heather Ann Thompson have noted, the criminal legal system

has had a major impact on everything from how urban and suburban spaces have evolved to how electoral maps are drawn to how national borders are defined and maintained to how state and federal resources are distributed to how social movements are made and unmade to how gender roles are bolstered and undermined to how cultural norms and identities are forged and reinforced to how sexuality is profiled and policed.²

It would be logistically impossible to punish every single person who commits a criminalized act in the United States.³ However, "[s]imply put, because prisons require prisoners, criminals must be produced."⁴ Thus, decisionmakers in American criminal legal systems must make choices about who to punish. In this piece, I survey the ways these identities inform each other, public opinion, and thus decisionmakers' choices about who and how severely to punish. While public opinion is not always an appropriate proxy for prediction of outcomes, it is a helpful gauge of the United States's collective consciousness and processing of culpability. Because of the spatial limitations of this project, I focus mainly on women's cases. I use capital defendants as case studies because those tend to be some of the cases which receive the most media attention.

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¹ David Garland, *Punishment and Culture: The Symbolic Dimension of Criminal Justice*, 11 *STUD. L. POL. & SOC'Y* 191 (1991).

² Kelly Lytle Hernandez, Khalil Gibran Muhammad, & Heather Ann Thompson, *Introduction: Constructing the Carceral State*, 102 *J. AM. HIST.* 18 (June 2015). It is also important to note that social control and domination extends far beyond the prison and mass incarceration framework. See Priscilla A. Ocen, *Unshackling Intersectionality*, 10 *DU BOIS R.* 471, 471 (2013).

³ See, e.g., Harvey Silvergate, *Three Felonies A Day: How the Feds Target the Innocent* (2011).

⁴ Beth Ritchie, *Queering Antiprison Work* 82.

Criminal punishment as a tool of racial domination

“From their arrival around 1619, African people had illegally resisted legal slavery. They had thus been stamped from the beginning as criminals... [R]esisting Africans were nearly always cast as violent criminals, not people reacting to enslavers’ regular brutality, or pressing for the most basic human desire: freedom.”⁵

It is no secret that there are significant racial disparities in those we choose to imprison. American criminal legal systems punish Black and native people more than other races.⁶ White people make up 76.3% of the United States population but 57.9% of the U.S. prison population; Black people make up 13.4% of the population but 38.1% of the prison population; Asian people make up 5.9% of the U.S. population but 1.5% of the U.S. prison population; Native Americans make up 1.3% of the U.S. population but 2.5% of the prison population.⁷ 61% of those who have been exonerated through DNA evidence are Black.⁸ The United States Government has even distributed propaganda in order to increase fear of Black people and Black organizations in an attempt to justify these disparities.⁹

Criminal punishment as enforcement of gender performance and sexuality

For purposes of this article, gender refers to the specific labels people ascribe to themselves, but also the way that we have ascribed gender to acts, items, and such. In today’s world, everything is gendered:¹⁰ drinking sweet drinks, pitch of voice, whether you like art, what kinds of books you read, eating salad, the color pink, hair length, violence, athleticism, whether you sat still and obeyed your teacher as a child.

⁵ Ibram X. Kendi, *Stamped From the Beginning: the Definitive History of Racist Ideas in America* 69 (2016).

⁶ See, e.g., Michelle Alexander, *The New Jim Crow* (2010); Kelly Lyttle Hernandez, *City of Inmates: Conquest, Rebellion, and the Rise of Human Caging in Los Angeles, 1771–1965* (2017); Khalil Muhammad, *Condemnation of Blackness: Race, Crime, and the Making of Modern Urban America* (2011); George Jackson, *Soledad Brother: The Prison Letters of George Jackson* (1970); Loic Wacquant, *The New Peculiar Institution: On the Prison as Surrogate Ghetto*, 4 THEORETICAL CRIMINOLOGY 377 (2000) 13th (Kandoo Films 2016); Paul Butler, *Chokehold: Policing Black Men* (2017); Ronald Cotton, Jennifer Thompson-Cannino, and Erin Torneo, *Picking Cotton* (2009); Claudia Rankine, *Citizen: An American Lyric* (2014), Angela Y. Davis, *Are Prisons Obsolete*.

⁷ U.S. Census Bureau, *Quick Facts* (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219>; Federal Bureau of Prisons, *Inmate Race* (last updated Nov. 20, 2021), https://www.bop.gov/about/statistics/statistics_inmate_race.jsp.

⁸ Simon Howard, *Exonerees in Black and White: The Influence of Race on Perceptions of Those Who Falsely Confessed to A Crime*, 25 PSYCH., CRIME & L. 911, 911 (Oct. 2019).

⁹ See, e.g., Assata Shakur, *Assata* (1987); Jeffrey Haas, *The Assassination of Fred Hampton: How the FBI and the Chicago Police Murdered a Black Panther* (2010).

¹⁰ See, e.g., Ashley Martin *What Happens When We Give Everything a Gender*, BEHAVIORAL SCIENTIST (July 18, 2018), <https://behavioralscientist.org/what-happens-when-we-give-everything-a-gender/>.

“It takes a leap for juries to picture women as a violent ‘other’ o[r] threat to society.”¹¹ In 2012, women committed 14.7% of homicides but represented less than 2% of death sentences.¹²

In the documentary *The Power of Forgiveness: The Story of Karla Faye Tucker*, an attorney comments on the decision to prosecute, young, white, thin Karla Faye Tucker; “[s]he’s young, she’s female, she’s a person who [] capital punishment is not even sought against.”¹³ In 1991, as he was leaving office, former Ohio Governor Richard Celeste commuted eight individuals’ death sentences to life, which included the four women who were then on death row.¹⁴ Celeste also explained that he “selected cases based on the prisoners’ crimes, the fairness of sentences, mental health and IQ, and length of time served.”¹⁵ However, it seems hardly a coincidence that the governor used half of his clemency grants to save all of the women.

Masculinity may also be a determinant in criminalization, particularly in conjunction with lesbianism. In December 2012, there were significantly fewer openly gay men than women on death row.¹⁶ This is particularly relevant given the stereotypical perception of lesbians as more masculine than most women, and of gay men as more feminine than most men. As Kathryn Ann Farr has argued, “[t]he alleged links between gender, sexual orientation and violence are variously arranged. As Van Gelder [] points out: “Since women are primarily defined as lovers of men, lesbians are easily stereotyped as ‘man-haters’” []. There is also the myth that lesbians kill because they are “male wannabes” [] or at least are violent like men [], and, juxtaposed, that women who kill are masculine and (or, and thus) lesbians [].”¹⁷ Lauren Gutterman has also described Cesare Lombroso’s influence on public understanding of the link between queerness in women and criminality:

Cesare Lombroso, a founder in the field of criminology... drew a [strong] connection between female masculinity and violence. In his 1893 treatise *The Female Offender*, Lombroso argued that innately criminal women could be identified by their masculine

¹¹ *Lesbians on DEATH ROW*, DIVA, July 2013, at 34.

¹² *Id.*

¹³ *THE POWER OF FORGIVENESS: THE STORY OF KARLA FAYE TUCKER* (Family Christian Media 2005).

¹⁴ *At End of Term, Ohio’s Governor Commutes Death Sentences for 8*, N.Y. TIMES A1 (Jan. 11, 1991), <https://www.nytimes.com/1991/01/11/us/at-end-of-term-ohio-s-governor-commutes-death-sentences-for-8.html>.

¹⁵ *List of Clemencies Since 1976*, DEATH PENALTY INFO. CTR., <https://deathpenaltyinfo.org/facts-and-research/clemency/list-of-clemencies-since-1976>.

¹⁶ *Lesbians on DEATH ROW*, DIVA, July 2013, at 34.

¹⁷ Kathryn Ann Farr, *Defeminizing and Dehumanizing Female Murderers: Depictions of Lesbians on Death Row*, 11 *WOMEN & CRIM. JUST.* 49, 52 (2000) (citing L Van Gelder, *Attack of the ‘killer lesbians,’* MS., Jan/Feb 1992 at 80-82; M. MacNamara, *Kiss and Tell*, VANITY FAIR, June 1992, 90,92,96,98,100,104,106; C. HOLMLUND, *A DECADE OF THE DEADLY DOLLS: HOLLYWOOD AND THE WOMAN KILLER* (Univ. Cal. Press 1994) 127-51).

behavior, personality, and appearance. According to Lombroso, the "born" female criminal, bent on dominating others and consumed by her excessive sexual desires, "belong[ed] more to the male than to the female sex."¹⁸

Prisons and criminal legal punishment have long been used as a tool to enforce gendered norms. In the mid-late twentieth century, the United States criminally required individuals to wear at least three pieces of sex-appropriate clothing,¹⁹ enforcing a gender binary.²⁰ As Sarah Pemberton notes, prisons are stricter in their enforcement of a gender binary than other governmental institutions, such as the Department of Motor Vehicles.²¹

In the 2014 film *Out in the Night*, the "New Jersey Four"—Renata Hill, Venice Brown, Patreese Johnson, and Terrain Dandridge—tell the story of when a man accosted and threatened to rape them and three other Black lesbian friends; they then beat their aggressor out of fear for their safety.²² The group was immediately arrested and brought to Rikers Island. Eventually, all but one in the group took plea deals, the longest ultimately sentenced to eight years.

Many of the women in this group were relatively masculine presenting; Hill describes how her brothers refer to her as their "brister," or "brother/sister" after coming out.²³ She describes her anguish that women in the prison are not allowed to wear boxers and must wear "panties."²⁴ Hill relates that women in the prison are not even allowed to wear shorts as boxers, and that she was punished for doing as such.²⁵ Near the end of the film, Angela Davis asks an audience what would have happened had it been white women resisting the homophobic attacks. The New Jersey Four's story illustrates the harsh outcomes and criminalization thrust upon queer, masculine Black individuals and tactics used to enforce heterosexuality and (white) femininity upon them.

Criminal punishment at the intersection of race, gender, and sexuality

Race is gendered (and/or gender is racialized).²⁶ Black people are perceived as more masculine than white people and white people are perceived as more

¹⁸ Lauren Jae Gutterman, *Saving Jeannace June Freeman: Capital Punishment and the Lesbian as Victim in Oregon, 1961-1964*, 27 J. HIST. SEXUALITY 134, 149 (2018).

¹⁹ Louis Lucero II, *Memories of That Night at the Stonewall Inn, From Those Who Were There*, N.Y. TIMES (June 16, 2019), <https://www.nytimes.com/2019/06/16/us/revisiting-stonewall-memories-history.html>. (The three pieces could not include socks).

²⁰ Sarah Pemberton, *Enforcing Gender: The Constitution of Sex and Gender in Prison Regimes*, 39 J. WOMEN IN CULTURE & SOC. 151, 175 (2013).

²¹ *Id.*

²² *Out in the Night* (Blair Doroshwalther 2016).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ See Kerri L. Johnson, Jonathan B. Freeman, & Kristin Pauker, *Race is Gendered: How Covarying Phenotypes and Stereotypes Bias Sex Categorization*, 102 J. PERSONALITY SOC. PSYCH.

masculine than Asian people.²⁷ In a Penn State study, (majority white) participants rating the masculinity and femininity of faces rated Black males as the most masculine and most commonly mis-sexed Black females than any other demographic.²⁸ In another study, participants were more able to correctly guess the sex of Black males and Asian females than Black females and Asian males.²⁹ Schug, Alt, and Klauer have found that people “are more likely to imagine a man when thinking of a Black individual and less likely to think of a man when imagining an Asian individual, relative to the frequency of Whites.”³⁰

Since even before Sojourner Truth had to ask “Ain’t I a woman?,” Black women have been consistently masculinized as they are racialized. White women have historically been seen as “ladies” and obtained a level of femininity and status of women that Black women have been routinely denied.³¹ As Toni Morrison wrote, white women are “worthy of respect” because of their “softness, helplessness, and modesty,” whereas nonwhite women were “—unworthy of respect because they were tough, capable, independent and immodest.”³² As Kali Nicole Gross writes, the United States has “racialized, gendered notions of protection,” which contributes “to Black women’s disproportionate incarceration in the late nineteenth and early twentieth centuries and these legacies influence the relationship among black womanhood, violence, and mass incarceration.”³³

These understandings of the gendered aspects of race could lend some support to an understanding of overrepresentation of certain demographics in prisons as a function of masculinity, informed by race, or of race, informed by masculinity.³⁴

116, 116 (2012) (presenting findings that “challeng[e] the notion that social categories are perceived independent of one another and show, instead, that race is gendered”).

²⁷ Adam D. Galinsky, Erika V. Hall, & Amy J. C. Cuddy, *Gendered Races: Implications for Interracial Marriage, Leadership Selection, and Athletic Participation*, *Psychological Science* (2013); Colleen M. Carpinella, Jacqueline M. Chen, David L. Hamilton, & Kerri L. Johnson, *Gendered Facial Cues Influence Race Categorizations*, 4 *PERSONALITY & SOC. PSYCH. BULLETIN* 405, 405 (2015).

²⁸ Goff, Thomas, & Jackson, “Ain’t I a woman?”: *Towards an intersectional approach to person perception and group-based harms*, *SEX ROLES*, 59(5-6), 392–403 (2008).

²⁹ Kerri L. Johnson, Jonathan B. Freeman, Kristin Pauker, Jeffrey Simpson, *Race is Gendered: How Covarying Phenotypes and Stereotypes Bias Sex Categorization*, *J. PERSONALITY & SOC. PSYCH.*, 2012-01, Vol.102 (1), p.116-131. As a result, research has shown that Black women and Asian men appear less in popular magazines than other demographics. Joanna Schug & Philip S. Lu, *Gendered Race in Mass Media: Invisibility of Asian Men and Black Women in Popular Magazines*, 6 *PSYCH. POPULAR MEDIA CULTURE* 222, 222 (2015).

³⁰ Joanna Schug, Nicholas P. Alt, & Karl Christoph Klauer, *Gendered race prototypes: Evidence for the non-prototypicality of Asian men and Black women*, 56 *J. EXP. SOC. PSYCH.* 121, 121 (2015).

³¹ Toni Morrison, *What the Black Woman Thinks About Women’s Lib*, *THE N.Y. TIMES MAG.* (1971).

³² *Id.*

³³ Kali Nicole Gross, *African American Women, Mass Incarceration, and the Politics of Protection*, 102 *J. OF AM. HIST.* 1, 25-33 (2015).

³⁴ This relies on the assumption that males will be considered more masculine than females.

In 2018, Black males had an incarceration rate of 2.27%, white males 0.392%, Black females .088%, and white females 0.049%.³⁵

Size and beauty may also interact with race and gender presentation to impact conceptions of guilt. Martha Beck's (also known as the "lonely hearts killer") weight and desirability are often mentioned in conjunction with her name.³⁶ The last words of the large white woman Martha Beck before she was executed were:

What does it matter who is to blame? My story is a Love
Story...but only those tortured with love, can understand what I
mean. I was pictured as a fat, unfeeling woman. I am not unfeeling,
stupid, or moronic. In the History of the World, how many crimes
have been attributed to Love?³⁷

Sexualization, criminalization, and purity

"[H]ypersexualization implies immorality, which in turn threatens the social order and thereby justifies Asian women's [and other minorities'] disposability."³⁸

In the United States, Christianity—the dominant religion and frequently cited genesis of moral impetuses for criminalization—has been historically controlled by white people.³⁹ In the eighteenth and nineteenth centuries, enslavers had conflicting opinions about whether enslaved African people would be capable of saving through religious conversion.⁴⁰

White settler colonialists in the United States have long wielded the presumed immorality of sexuality against racial and sexual minorities. Western oversexualization of African people and their descendants goes back at least as far as 1736.⁴¹ White colonialists spread falsehoods about African people's enlarged genitalia and hypersexuality.⁴² Later, in the 1980s, Black heterosexual men were also frequently cast as a "deceptive" "variation of the hyper-heterosexually degraded Black male predator" and blamed for the spread of the AIDS

³⁵ Bureau of Justice Statistics, *Prisoners in 2018* 16 (Apr. 2020).

³⁶ *Full Synopsis: The Honeymoon Killers*, WATCH TCM, <https://www.tcm.com/watchtcm/titles/78307>.

³⁷ Sara Louise Knox, *Murder: A Tale of Modern American Life* 98 (1998).

³⁸ Maria Cecilia Hwang & Rachel Salazar Parreñas, *The Gendered Racialization of Asian Women as Villainous Temptresses*, 35 *GENDER & SOC.* 567, 567 (2021).

³⁹ Becky Sullivan, *The Proportion of White Christians in the U.S. Has Stopped Shrinking, New Study Finds*, NPR, (July 8, 2021, 1:12 AM), <https://www.npr.org/2021/07/08/1014047885/americas-white-christian-plurality-has-stopped-shrinking-a-new-study-finds#:~:text=What%20was%20once%20a%20supermajority,dipped%20below%2050%25%20in%202012>.

⁴⁰ Kendi, *supra* note 5, at 68-69.

⁴¹ *Id.* at 42.

⁴² *Id.* at 137-38.

epidemic.⁴³ Another variation of this trope is, of course, the false stereotype of Black men as rapists of white women.⁴⁴ Asian women have also been historically hypersexualized in the United States, cast as “prostitutes and temptations.”⁴⁵ Many have also falsely blamed homosexuality for issues of sexual abuse in the Catholic clergy.⁴⁶

Criminalizing sex has been a consistent way to impose a system of morals. Adultery is still illegal in many states and “tens of thousands of people are ‘arrested, prosecuted, incarcerated, deported, or fined; for sex-work related offenses in the US every year.”⁴⁷ The criminal legal system has long been a tool to enforce heterosexuality. Having sex with a person of the same sex was criminalized in the United States until 2003 and marrying someone of the same sex was criminalized in many states until 2015.⁴⁸

Defendants’ homosexuality (and non-heterosexuality) has also routinely been wielded against them in criminal trials in order to convict or obtain longer sentences. Introduction of lesbian books as evidence of a criminal defendant’s sexual orientation has been used as the only aggravating factor to prove a homicide was premeditated.⁴⁹ During the sentencing phase of Jay Ancil Neil’s capital murder trial, the prosecution argued, “The person you’re sitting in judgment on – [] You’re deciding life or death on a person that’s a vowed [] homosexual.”⁵⁰ Defense counsel then unsuccessfully objected and the state continued, “I don’t want to import to you that a person’s sexual preference is an aggravating factor. It is not. But these are areas you consider whenever you determine the type of person you’re setting in judgment on. . . . The individual’s homosexual.”⁵¹ In Bernina Mata’s case, the prosecution also argued that “Mata deserved to die because, as the prosecutor phrased it, she was ‘not a normal heterosexual person.’”⁵² Prosecutors have argued for capital punishment over life in prison for gay individuals because, “[i]f he was gay, we’d be sending him

⁴³ Joey L. Mogul, Adrea J. Ritchie, & Kay Whitlock, *Queer (In)justice* 35 (2011).

⁴⁴ Where We Stand: Racism and Rape, National Alliance to End Sexual Violence, <https://endsexualviolence.org/where-we-stand/racism-and-rape/> (last visited Mar. 29, 2022).

⁴⁵ Alisa Change, A Sociologist’s View on the Hyper-Sexualization of Asian Women in American Society, NAT’L PUB. RADIO (Mar. 19, 2021), <https://www.npr.org/2021/03/19/979340013/a-sociologists-view-on-the-hyper-sexualization-of-asian-women-in-american-societ> (quoting Nancy Wang Yuen); see, e.g., Hwang & Parreñas at 567.

⁴⁶ See Richard Fitzgibbons & Dale O’Leary, *Sexual Abuse of Minors by Catholic Clergy*, 78 LINACRE Q 252, 252 (2011).

⁴⁷ Deborah L. Rhode, *Op-Ed: Why is adultery still a crime?*, L.A. TIMES (May 2, 2016), <https://www.latimes.com/opinion/op-ed/la-oe-rhode-decriminalize-adultery-20160429-story.html>; Anna North, *The movement to decriminalize sex work, explained*, VOX (Aug. 2, 2019) (quoting Juno Mac & Molly Smith, *Revolutionary Prostitutes: The Fight for Sex Workers’ Rights* (2020)), <https://www.vox.com/2019/8/2/20692327/sex-work-decriminalization-prostitution-new-york-dc>.

⁴⁸ See *Lawrence v. Texas*, 539 U.S. 558 (2003); *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015).

⁴⁹ Ruthann Robinson, *Lesbianism and the death penalty: a ‘hard core’ case*, 32 WOMEN’S STUDIES QUARTERLY 181 at 185-86.

⁵⁰ *Neill v. Gibson*, 278 F.3d 1044, 1060 (10th Cir. 2020).

⁵¹ *Id.* at 1061.

⁵² *Lesbians on DEATH ROW*, DIVA, July 2013, at 35 (quoting Ruthann Robinson).

where he wants to go,” or, in other words, a place filled with individuals of the same gender.⁵³

Of course, the criminalization of sexuality has not been applied uniformly; women and white people have frequently been excepted from culpability for hypersexuality. In the nineteenth century, “[w]hite men who were influential enjoyed a more protected status, even when they were widely perceived to engage in coercive sexual practices with unwilling subordinates such as indentured servants and younger men of lesser social and economic standing.”⁵⁴ In Lillian Faderman’s criminal case, “one jurist refused to credit allegations that two teachers, Marianne Woods and Jane Pirie, engaged in sex with one another in part because he did not believe lesbians existed among white, middle class, educated Christian women and because they did not have exaggerated physical features (enlarged clitorises) assumed to be solely possessed by African women.”⁵⁵ There also exists a history of fetishizing women (especially white women) who have killed people in the United States.⁵⁶

Case studies

Jeannace June Freeman

Jeannace June Freeman was a white, poor, masculine, lesbian woman who was sentenced to death in Oregon in the 1960s.⁵⁷ She and her partner, Gertrude Jackson, also white, killed Gertrude’s two biracial children and threw their naked bodies, one of which had evidence of sexual assault, into a river.⁵⁸

As Lauren Gutterman has described in her piece *Saving Jeannace June Freeman: Capital Punishment and the lesbian as victim in Oregon, 1961-1964*, Freeman’s masculine presentation was relevant to public perception of her culpability.⁵⁹ Jeannace was significantly more masculine-presenting than Gertrude was, including in photos disseminated to the public around the time.⁶⁰ Jackson was described as a “frail, docile, numb, unintelligent individual.”⁶¹ At trial, “[t]he

⁵³ *During National Pride Month, South Dakota Schedules Execution in Case Tainted by Anti-Gay Bias*, DEATH PENALTY INFO. CTR. (June 18, 2019), <https://deathpenaltyinfo.org/news/during-national-pride-month-south-dakota-schedules-execution-in-case-tainted-by-anti-gay-bias>; *see also*, Mogul, Ritchie, & Whitlock *supra* note 44, at 92-117.

⁵⁴ Mogul, Ritchie, & Whitlock *supra* note 44, at 14-15.

⁵⁵ *Id.* at 7.

⁵⁶ *See, e.g.*, Rowdiva.com; CHICAGO (Miramax Films 2002).

⁵⁷ While I was an undergraduate student at the University of Michigan, I was a research assistant for Lauren Gutterman on a piece about Jeannace June Freeman. *See* Gutterman, *supra* note 18, at 134.

⁵⁸ *Id.* at 135.

⁵⁹ *See generally id.*

⁶⁰ *Id.* at 153.

⁶¹ Mogul, Ritchie, & Whitlock *supra* note 44, at 148.

prosecution portrayed Freeman as almost inhuman: a monster incapable of empathy, obsessed with sex and with dominating others.”⁶²

Her conviction and death sentence spurred a conversation in Oregon about the death penalty and ultimately led to a vote for statewide abolishment, with over 60% of voters in favor of abolition.⁶³ After her conviction, Gutterman argues, Jeannace underwent a feminization and the narrative of her masculinity changed.⁶⁴ The monstrosity of her masculinity became evidence she was damaged, that she had been sexually abused.⁶⁵ In order to frame Freeman as innocent, the public desexualized and humanized her.⁶⁶

Freeman became the face of the Oregon abolition movement.⁶⁷ Oregonians were likely open to this shift in narrative because, while she was a masculine lesbian, Jeannace was still a white woman. The public and decisionmakers were able to separate Freeman from her acts and, in their eyes, unfavorable identities. People were willing to understand her negative attributes as products of a troubled history, rather than active choices she herself had made.

Lisa Ann Coleman

Lisa Ann Coleman was not afforded the same grace. She was convicted and sentenced to death in 2006 for killing her partner’s nine-year-old son, Devontae Williams.⁶⁸ She was a larger, dark skinned lesbian Black woman.⁶⁹ Lisa Ann Coleman was executed in Huntsville, Texas in 2014.⁷⁰ Her attorney argued that “[w]hat’s she’s really guilty of is being a black lesbian.”⁷¹

The facts of Lisa Ann Coleman’s case are quite similar to those of Jeannace June Freeman; she and her partner, Marcella Williams, killed her partner’s children. While in both cases, there was evidence of beating, Devontae ultimately died from malnutrition and pneumonia.⁷² Similar to Jackson, Williams, Devontae’s

⁶² Mogul, Ritchie, & Whitlock *supra* note 44, at 147.

⁶³ See Gutterman, *supra* note 18, at 134.

⁶⁴ See generally *Id.*

⁶⁵ *Id.* at 143.

⁶⁶ *Id.* at 140, 153.

⁶⁷ *Id.* at 137.

⁶⁸ Terri Langford, *Woman Executed for Boy’s 2004 Starvation Death*, THE TEXAS TRIBUNE (Sep. 17, 2014), <https://www.texastribune.org/2014/09/17/lisa-ann-coleman-sixth-texas-woman-face-execution/>.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Tasneem Nashrulla & Claudia Koerner, *Lisa Coleman Becomes The Sixth Woman Executed By Texas Since 1982*, BUZZFEED NEWS (Sept. 17, 2014), <https://www.buzzfeednews.com/article/tasneemnashrulla/lisa-coleman-could-become-the-sixth-woman-executed-by-texas>.

⁷² Execution Report: Lisa Coleman, TEXAS EXECUTION INFO. CTR., <http://www.txexecutions.org/reports/517.asp>.

mother, pled guilty and was given a life sentence.⁷³ Unlike in Freeman’s case, Coleman, Williams, and Devontae were all Black.

Lisa Ann Coleman’s case has received relatively little media attention. For example, the three other women discussed here have their own Wikipedia page; Coleman does not, other than the page describing Davontae’s death.⁷⁴ This is somewhat surprising, given the torturous circumstances leading up to Davontae’s death, including evidence that Coleman had beat him with a golf club, tied him up with clothes and an extension cord, and beat Devontae and his siblings with belts, clothes hangers, and extension cords.⁷⁵ Coleman’s conviction, given with little sympathy or outcry in her defense, may be representative of what Dorothy Roberts has noted as the overly critical eye American criminal legal systems have toward Black mothers.⁷⁶

Karla Faye Tucker

Karla Faye Tucker, on the other hand, became a public figure of sympathy and piety while on death row. Tucker and two others were convicted for killing Jerry Lynn Dean and Deborah Thornton (both white) with a pickax in order to steal motorcycle parts.⁷⁷ She was a thin, white, seemingly heterosexual, relatively feminine-presenting woman in her 20s and 30s while she was on death row.⁷⁸ She was also the first woman executed in Texas in over 100 years.⁷⁹

Tucker killed Thornton and Dean when she was 23 years old.⁸⁰ Tucker had a troubled childhood, having started using drugs when she was ten years old.⁸¹ Her mother was addicted to drugs, a sex worker, and taught Tucker how to do as such.⁸² After she was convicted, Tucker was known for telling the police that “she

⁷³ Tom Dart, *Lisa Coleman executed by lethal injection after final appeal rejected*, THE GUARDIAN (Sep. 17, 2014), <https://www.theguardian.com/world/2014/sep/18/lisa-coleman-texas-lethal-injection-executed>.

⁷⁴ *Murder of Devontae Williams*, Wikipedia, https://en.wikipedia.org/wiki/Murder_of_Davontae_Williams (last visited Apr. 19, 2022). Some have also suggested that Karla Faye Tucker’s case received so much attention because she was female and because she used an axe to kill. See, e.g., Karen Beckman, *Dead Woman Glowing: Karla Faye Tucker and the Aesthetics of Death Row Photography*, 19 CAMERA OBSCURA 1, 2 (2004).

⁷⁵ Texas Execution Information Center, *supra* note 72.

⁷⁶ See Dorothy Roberts, *Unshackling black motherhood*, 95 MICH. L.R. 938, 938 (1997).

⁷⁷ Texas Department of Criminal Justice, *Inmate Information: Karla Faye Tucker*, https://www.tdcj.texas.gov/death_row/dr_executed_offenders.html (last visited Apr. 21, 2022).

⁷⁸ See THE POWER OF FORGIVENESS: THE STORY OF KARLA FAYE TUCKER (Vision Video 2005).

⁷⁹ KARLA FAYE TUCKER: FOREVERMORE (Pure Flix Ent. 2011).

⁸⁰ Texas Department of Criminal Justice, *Inmate Information: Karla Faye Tucker*, https://www.tdcj.texas.gov/death_row/dr_executed_offenders.html (last visited Apr. 21, 2022).

⁸¹ THE POWER OF FORGIVENESS: THE STORY OF KARLA FAYE TUCKER (Vision Video 2005).

⁸² *Id.*

experienced an orgasm every time the pickaxe landed, even after the victims were dead.”⁸³

However, while she was on death row, Karla Faye transformed in the public’s mind from a sex-ravaged killer into a pure Christian woman. The public became fascinated with Tucker; a multitude of artists have created projects dedicated to her story, including an Indigo Girls song and a movie starring Diane Keaton.⁸⁴

The movie *Karla Faye Tucker: Forevermore*,⁸⁵ sheds light on public opinion of Tucker’s transformation while incarcerated. It provides both a take on the creators’ views on Tucker and her ability to transform and at least one narrative that the public had access to on Tucker’s life. Based on the true story, the film follows Tucker during her time on death row and, particularly, her romance with prison pastor Dana Brown.⁸⁶

In the movie, Karla’s reckoning with her killings includes addressing with the masculinity of her actions. When she finally confronts the fact that she killed two people, she exclaims, “I was so ashamed... finally I realized I had brutally murdered two people that night. I worked so hard to be like one of the guys, to be accepted, I fought like the guys, I drank like the guys, and now I even murdered like the guys. What kind of a woman kills with a pickaxe?”⁸⁷

After this reckoning, Tucker is able to lean into her femininity and perform heterosexual womanhood. Her romance with the pastor was a particular source of feminization. Near the beginning of the film, his character declares, “there are so many things I can say about her beauty and genuineness.”⁸⁸ He writes her a love letter in which he calls her “a Texas harvest moon.”⁸⁹ After Brown proposes to Tucker, someone brings her wedding magazines and she flips through them, wrapped in tulle.⁹⁰ During their ceremony, while the chaplain is reading her vows by proxy, Tucker stands illuminated, wrapped in tulle, crying, but her makeup does not smudge, holding a tiny bouquet of white flowers: a picture of white

⁸³ *A crime that shocked America*, BBC NEWS (Jan. 30, 1998), http://news.bbc.co.uk/2/hi/special_report/1998/karla_faye_tucker/48796.stm; see Dorothy Howbrook, *Chilling true story of female killer who reached orgasm as she butchered her victims with a pickaxe*, THE U.S. SUN (June 29, 2020), <https://www.the-sun.com/news/1054982/chilling-true-story-of-female-killer-who-reached-orgasm-as-she-butchered-her-victims-with-a-pickaxe/>.

⁸⁴ See, e.g., *CROSSED OVER* (Spring Creek Productions 2008) (a feature film starring Diane Keaton); *THE TOMORROWPEOPLE*, *AMERICA’S DEATHROW SWEETHEART* (1999); *INDIGO GIRLS*, *FAYE TUCKER* (1999), *RICHARD DOBSON*, *BALLAD OF CHIPITA AND KARLA FAYE* (2006); *MARY GAUTHIER*, *KARLA FAYE* (1999); *DAVID KNOPFLER*, *KARLA FAYE* (2001).

⁸⁵ *KARLA FAYE TUCKER: FOREVERMORE* (Pure Flix Ent. 2011).

⁸⁶ *Id.*

⁸⁷ *KARLA FAYE TUCKER: FOREVERMORE* (Pure Flix Ent. 2011).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

youth, femininity, heterosexuality, and beauty.⁹¹ Later, Tucker is seen cradling a heart-shaped pillow while praying in the fetal position before she touches the photo she has copied and pasted together of her and her husband's faces on top of a bride and groom.⁹² In the film, Tucker also becomes greatly selfless and turns to a life of helping others; a suburban mother has her son come to the prison so Tucker can help him stop using illegal drugs.⁹³

Tucker's performance of femininity increases and is increased by her proximity to Christianity. Her relationship with the pastor both bolsters viewers' perception of her femininity and her commitment to Christianity. In *Forevermore*, when Tucker is being strapped into the table for her injection, she is laying down with her arms crossed out like a crucifix.⁹⁴ One of the guards strapping her in complains that he can't strap her in to be killed because he's Catholic.⁹⁵ The other guard berates him and the Catholic guard apologizes to Tucker, kissing a clutched prayer token.⁹⁶ This theme overlaps with those presented in the documentary *The Power of Forgiveness*, a call for forgiveness and death penalty abolition with Tucker as the centerpiece.⁹⁷ In the beginning of the film, Tucker's victim's brother, Ron Thornton sets out to know God and to learn about why people murder after his sister and father are killed. By the end of the film, when he is reflecting on his journey, he declares "[w]ell, basically I found out that [Karla Faye Tucker] was real. A real Christian... I did learn out of the whole thing that people can change, and God is real."⁹⁸

This femininity and ascent to Christianity caused many to reduce their perception of her culpability. During Tucker's execution, when the defendant's family and friends are separated from the victim's family, Ron Thornton chose to sit in the defendant's section as Karla's friend.⁹⁹ Fred Allen, who was in the "tie down squad" for the Huntsville execution facility and had previously witnessed over 100 executions, suffered a mental breakdown and quit his job days after Tucker's execution.¹⁰⁰ "After Karla Faye... and I was a pro. Capital punishment. After Karla Faye, and after all this, until this day, eleven years later: no sir. I don't... nobody has a right to take another life. I don't care if it's the law. And it's so easy to change the law."¹⁰¹ Larry Fitzgerald, a media witness for hundreds of Huntsville executions, also felt more moved by Tucker than he had by other individuals he saw killed by the state: "She was a born-again Christian, and I had

⁹¹ *Id.*

⁹² *Id.*

⁹³ KARLA FAYE TUCKER: FOREVERMORE (Pure Flix Ent. 2011).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ THE POWER OF FORGIVENESS: THE STORY OF KARLA FAYE TUCKER (Vision Video 2005).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Stacy Abramson, *Afterword: Interview with a Tie-Down Officer*, TEX. OBSERVER (Dec. 6, 2002), <https://www.texasobserver.org/1196-afterword-interview-with-a-tie-down-officer/>.

¹⁰¹ Laurie Ruth Johnson, *Forgotten Dreams: Revisiting Romanticism in the Cinema of Werner Herzog* 202 (2016).

no reason to doubt her sincerity.... She had a spirituality about her... As far as I was concerned, she was a good person who made a terrible mistake... I always said that if Karla Faye ever got off death row, she could move in next door to me.”¹⁰² The image in many people’s minds of Karla Faye reaching orgasm with each strike of the pickaxe, it appears, had dissipated. People believed transformation was possible, at least for Karla Faye.

Even though Tucker had a hold on public opinion, it did not change her ultimate outcome, and she was executed on February 3, 1998.¹⁰³

Wanda Jean Allen

Wanda Jean Allen, who also turned to Christianity after her death sentence, received far less public attention and sympathy. Allen was convicted for shooting her partner, Gloria Leathers in Oklahoma in the 1990s.¹⁰⁴ She was a young, relatively thin, light skinned, masculine-presenting Black woman. Growing up, her family of eight siblings was raised by a single mother, living in public housing and relying on public assistance.¹⁰⁵ She was the first Black woman to be executed since 1954. She had previously been convicted of manslaughter for killing Dedra Pettus when she was 21.¹⁰⁶

Wanda Jean Allen was both masculine and racialized. She had short, natural hair around the time of trial and during sentencing.¹⁰⁷ This is both more masculine and more racialized than longer or straighter/styled hair. She was also light skinned.¹⁰⁸ She was known to walk around her family home without a shirt on, something generally only societally accepted for males.¹⁰⁹ Allen would sign cards to her girlfriend, Leathers, from “Gene,” the masculine spelling of her name.¹¹⁰ At trial, the state introduced “extensive testimony that Allen was the ‘man’ in the relationship, that she went by the nickname ‘Gene,’ and that she dominated Gloria.”¹¹¹

¹⁰² Michelle Lyons, *Death Row: The Final Minutes: My life as an execution witness in America’s most infamous prison* 65 (2018).

¹⁰³ Corky Siemaszko, *The day the Pickax killer Karla Faye Tucker was executed in 1998*, N.Y. DAILY NEWS (Feb. 3, 2016), <https://www.nydailynews.com/news/national/pickax-slayer-put-death-smile-prayer-leth-article-1.798969>.

¹⁰⁴ Bobby Ross Jr, *Wanda Jean Allen executed Two-time killed dies by lethal injection*, THE OKLAHOMAN (Jan. 12, 2001), <https://www.oklahoman.com/article/2726438/wanda-jean-allen-executed-two-time-killer-dies-by-lethal-injection>.

¹⁰⁵ Adam Buckley Cohen, *Who was Wanda Jean?*, THE ADVOCATE, Mar. 13 2001, at 27.

¹⁰⁶ *Id.* at 29.

¹⁰⁷ THE EXECUTION OF WANDA JEAN (Moxie Firecracker Films 2002).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Cohen, *supra* note 105, at 31.

Allen was also likely intellectually disabled; she had received an IQ test result of 69 when she was younger, something that later would have prevented Texas from executing her in the wake of *Atkins v. Virginia*.¹¹²

While Allen was on death row, she, like Karla Faye Tucker, became a born-again Christian.¹¹³ Unlike Tucker, Allen's ascent into Christianity required renouncing her lesbianism.¹¹⁴ Allen's development of a Christian identity, including her renunciation of lesbianism, was not as widely praised or accepted as Tucker's. Allen's reverend, Rev. Robin Myers said on the subject:

“I always suspected that Wanda's renunciation of lesbianism had more to do with helping to revamp herself in the most palatable way for her clemency and appeal processes. She knew perfectly well that her being a lesbian was a big strike against her and that it's an embarrassment in the black community. She was going to play the best hand that she could play at the very end.”¹¹⁵

Allen's sexuality change was a prerequisite for some to side with her; when Allen asked Theotis Payne, a famous radio personality, to advocate for her, Payne responded “Wanda, there is an issue we have to clear up before I start bringing these black people in here to support you... What's the deal about you being a lesbian?”¹¹⁶ She clarified that she was not a lesbian. “I'm out of that darkness into the light.”¹¹⁷

Toward the end of Allen's appeals cycle, Allen's friend asked about it being a sin for women to be with women. As the friend recalls, Allen responded, “[w]ell, God made me. And the way that I am had to be the way that he made me.”¹¹⁸ Allen's last words were, “Father, forgive them, they know not what they do,” some of the last words attributed to Jesus as he was crucified.¹¹⁹

Unlike most members of Karla Faye Tucker's victims' families, Gloria Leathers's family did not want Allen to be executed.¹²⁰ Nonetheless, the state of Oklahoma executed Wanda Jean Allen in 2001.¹²¹

¹¹² THE EXECUTION OF WANDA JEAN (Moxie Firecracker Films 2002); see *Atkins v. Virginia*, 536 U.S. 304 (2002).

¹¹³ THE EXECUTION OF WANDA JEAN (Moxie Firecracker Films 2002). Unlike Tucker, the faith ran in her family; Allen's brother was a reverend. *Id.*

¹¹⁴ Cohen, *supra* note 105, at 27.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.* at 31.

¹¹⁹ Ross, *supra* note 104.

¹²⁰ THE EXECUTION OF WANDA JEAN (Moxie Firecracker Films 2002).

¹²¹ Ross, *supra* note 104.

Concluding Commentary

The cases surveyed suggest that, while masculinity and queerness was a criminalizing factor for both white and Black defendants, only white defendants were able to be viewed apart from those circumstances or as capable of transformation. The public was more willing to perceive them as victims of their circumstances, separate from their “undesirable” acts, pasts, and identities. Additionally, the white defendants tended to attract more public focus and media attention than women of color doing the same. Notably, however, in capital cases, overwhelming public attention, sympathy, and forgiveness does not always result in life-saving action.