Litigating Salvation: Race, Religion and Innocence in the Karla Faye Tucker and Gary Graham Cases

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RACE, RELIGION AND INNOCENCE IN
THE KARLA FAYE TUCKER AND GARY
GRAHAM CASES

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I. INTRODUCTION

"If you believe in it for one, you believe in it for everybody. If you don't believe in it, don't believe in it for anybody."

-Karla Faye Tucker¹

"My responsibility is to make sure our laws are enforced fairly and evenly without preference or special treatment."

-Then-Governor George W. Bush on his refusal to grant a reprieve to Karla Faye Tucker²

The cases of Karla Faye Tucker and Gary Graham represent two examples of the renewed public debate about the death penalty in the State of Texas, and how religion and race affect that debate. This article explores how the Tucker and Graham cases represent opposing possibilities


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for understanding contemporary narratives of the death penalty. Though the juxtaposition of these two cases is not completely symmetrical, if viewed as a kaleidoscope—a complex set of factors filtered through the shifting identities of the person who is at the center of the immediate case—the hidden operations of race and religion can be examined. Tucker and Graham, both prosecuted in Houston’s Harris County and executed in relatively close proximity, demonstrate the function that race, religion and gender play in current death penalty politics. Thus, the death penalty cases of Karla Faye Tucker and Gary Graham inform an understanding of the intersection of race and gender in current death penalty narratives and the connection of those narratives to past tropes employed to justify the use of the death penalty, in spite of its discriminatory impact on blacks. In attempting to untangle the continuing impact of race and gender, the increased reliance on religious narrative can be understood in relation to the pro-death penalty arguments of the past.

These simple syllogisms, constructed above in the words of Karla Faye Tucker and George W. Bush, logically demonstrate how individual opinions on the death penalty can work in different cases. However, the peculiarity of the supporters who came forward to ask for mercy in Tucker’s case contradicts the idea that, at least for some, the identity of the defendant has no bearing on whether one supports or opposes the death penalty. Commentator Julie H. Patton objected to the emphasis on Karla Faye Tucker’s gender instead of what she perceived to be the more important issue: the inherent evil of capital punishment. Patton predicted, “The protester who supported her [Tucker’s] clemency because of her religious conversion will most likely not be there when the next inmate is walked to the death chamber.” The cases of Tucker and Graham broke rank and captured the attention of both individual citizens as well as political and religious elites. However, the citizens, political and religious elites were not the same in the two cases, race being the clearest distinction.

This article compares the Tucker and Graham cases and attempts to position them as opposing ends of a spectrum of possibilities of how religion may extend historical race and gender narratives into the present. By setting these cases at odds and adopting narratives that overlap gender and racial narratives, this article attempts to illuminate ways in which these cases help us understand how death row inmates may be able to rehabilitate
themselves and, in a sense, cleanse their personas as if they were innocent. The reliance that contemporary narratives place on religion actually obscures or reiterates the more obvious racial and gendered character of past narratives to justify the death penalty. Religion is the new language of the death penalty, but it is not divorced from the old.

II. ARE THERE POLITICAL AND LEGAL MEANINGS TO MORAL TRANSFORMATION? HOW DO RACE AND RELIGION IMPACT INDIVIDUAL DEATH ROW INMATES' ATTEMPTS AT SALVATION?

This article began with one question: does moral transformation, specifically religious transformation, have legal and political meaning? In Harris County, Texas, “meaning” is not limited strictly to the symbolic, as it may be in other states that have the death penalty but rarely execute offenders. The relatively high number of executions in Texas in recent years makes the death penalty part of the lived reality of the state’s citizens. Graham, whose execution followed Tucker’s by almost two years, was the 222nd person executed in Texas since the brief moratorium after the 1972 case Furman v. Georgia. Continuing racial disparities make the issue even more significant in Texas’s African-American community, especially in Harris County where eighty-nine defendants have been executed since the resumption of the death penalty in 1982. Although this article specifically focuses on the death penalty, its data contains explicit and implicit critiques of the broader relationship between African Americans and the criminal justice system.

This article begins with a description of the two cases around which its analysis pivots. Graham and Tucker represent a fragile and problematic dichotomy in this analysis because of their differences in identity and proclaimed guilt or innocence. The first two sections describe the legal and political landscape in which these two cases took place as a preface to an analysis of why, despite certain asymmetries, the comparison is useful in understanding race, religion and the death penalty in Texas.

5. 408 U.S. 238, 361 (1972).
6. A total of 322 men and women have been executed in Texas since 1982, when the death penalty was reinstated after the moratorium initiated by Furman. This number is even more significant when one realizes that there are 254 counties in the state of Texas, and the county with the next highest number of executions, Dallas County, has only executed 28 people. Of the 454 inmates currently on death row in Texas, 273 are from Harris County. Texas Department of Criminal Justice, County of Conviction for Executed Offenders, http://www.tdcj.state.tx.us/stat/countyexecuted.htm (last visited May 5, 2006).
A. GARY GRAHAM

"I would like to say that I did not kill Bobby Lambert. That I'm an innocent black man that is being murdered. This is a lynching that is happening in America tonight. . . . We must do everything we can to outlaw legal lynching in America."7

Graham, an African-American man, was convicted of killing Bobby Lambert, a white man, on the night of May 13, 1981, in the parking lot of a Safeway.8 Bernadine Skillern testified at trial that she saw Graham murder Lambert in the grocery store parking lot while she waited in her car for her daughter, who was shopping inside.9 Of seven possible witnesses, Skillern was the only one who identified Graham as the killer, making her testimony critical to the prosecution's case.10 Despite suggestions and even threats by others to retract her testimony, Skillern remained steadfast in her contention that Graham was the man she saw shoot and kill Bobby Lambert.11

At the time the Lambert killing took place, Graham was on what newspaper reports described as a six-day crime spree.12 Despite pleading guilty to ten other armed robberies in the same week, Graham consistently proclaimed his innocence in the Lambert killing.13 The robberies to which he did confess included two non-fatal shootings, one in which a victim lost his leg, and the rape and multiple sexual assaults of a fifty-nine year old woman.14 This rape led to Graham's capture seven days after Lambert was

8. Anna Quindlen, Public & Private: Dead Man Walking, N.Y. TIMES, May 26, 1993, at A21; Guillermo Garcia, Texas Inmate Struggles to the End; Courts Deny Last-Minute Civil Lawsuit, USA TODAY, June 23, 2000, at 3A.
9. Bernadine Skillern was 30 to 40 feet away from Graham and testified that she saw him shoot Bobby Lambert, while several other witnesses described the gunman as shorter than Graham. Andrea Greene, Catholic Group Backs New Trial for Death Row Inmate, HOU. CHRON., May 31, 1993, at A34.
10. See id.
12. See Amy Dorsett & Kate Hunger, Capital Questions: As Execution Date Nears, Proof of Houston Man's Guilt in Slaying Hinges on a Single Witness, SAN ANTONIO EXPRESS-NEWS, June 11, 2000, at 1A.
14. Id. Even though his son was not killed in the robbery perpetrated by Graham, Franklin C. Jones wrote a letter to the editor of the Houston Chronicle saying, "If anyone deserves the ultimate penalty for his actions, Graham qualifies." Jones's son lost his leg and almost bled to death as a result of injuries sustained in the robbery. Jones represented a small cadre of victims in the robberies who
The rape occurred when Graham approached a female taxi driver and asked to be driven to an apartment complex. After she took Graham to his destination, Graham pulled a gun and raped her. Afraid she would be murdered and never found, the taxi driver convinced Graham to take her to her apartment. The police arrested Graham, who was found passed out on her bed. Graham pled guilty to the robberies and was sentenced to twenty years in prison. Police then noticed that Graham fit the description of the perpetrator in the Lambert case and began questioning the Safeway witnesses. Despite pleading guilty to the previous offenses, Graham always maintained he was innocent of the Lambert shooting.

Much of the controversy in the Graham case focused on the mishandling of the original trial, rather than on Graham’s character. Graham’s lawyers failed to call the six other witnesses from the grocery store who were unable to identify Graham in a photo array; the lawyers also failed to call alibi witnesses. In fact, Graham’s lawyers did not call any witnesses during the entire guilt-innocence phase of the trial. During the punishment phase of the trial, the prosecution called every person victimized by Graham during his robbery spree, including the taxi driver, to testify. The defense called only two witnesses, Graham’s grandmother and stepfather, who both testified that Graham was respectful. Graham’s grandmother, who had cared for him from ages three to ten, said, “He loved the Lord, you know.” These reflections are a hard sell, to say the least, in light of the parade of brutality marshaled by the prosecutor.

Gary Graham, though nearly forty years old when executed, was convicted of capital murder at the age of seventeen. Similar to Karla...
Faye Tucker, Graham had a troubled youth, which ended with the perpetration of at least twenty-one other violent crimes and finally his conviction for the murder of Bobby Lambert. Graham not only fit the description of the perpetrator of the crime of which he was convicted, but he also fit the description of what the average American thinks of as a capital murderer: young, black, male and violent, with previous criminal offenses. In many ways, his case is the prototypical death row story, as was Tucker’s—except for the level of attention it garnered.

While on death row, Graham had a transformative spiritual experience, however, the exact nature of Graham’s experience is unclear from media accounts. Unlike the rich description of Tucker’s transformation, there is very little documentation of Graham’s conversion. For example, a survey of national newspaper and magazine articles found that, while many articles mentioned Graham’s name change, only one article mentioned when or why. He became Shaka Sankofa, though legal documents, while acknowledging his new name, continued to refer to him as Graham “for consistency.” The lack of description of Graham as a whole person is surprising considering the level of attention paid to the case. The reader is left with an incomplete picture of the person Graham became while on death row.

The only discussion of Graham as a transformed person came from black media sources. For example, the Houston Defender, one of two

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death sentence violate[d] the eighth amendment because he was seventeen at the time of the offense”); see also Roper v. Simmons, 543 U.S. 551 (2005) (holding that defendants under the age of eighteen could not be put to death).

29. By the time he arrived on death row, Graham had fathered two children. His son, Gary Hawkins, who was two when his father went to death row, and with whom Graham had little contact, was also convicted of capital murder in the year prior to his father’s execution. See Bruce Nichols, Death Row Inmate’s Son Faces Judgment; He Could Join Father Gary Graham in Prison If Convicted in Capital Case, DALLAS MORN. NEWS, Apr. 13, 2000, at News 1A.

30. In their research on race and media, Entman and Rojecki argue that the over-representation of black perpetrators, under-representation of black victims, and over-representation of white victims in local news intensifies negative stereotyping of blacks and “promotes anxiety and hostility in the audience.” See ROBERT ENTMAN & ANDREW ROJECKI, THE BLACK IMAGE IN THE WHITE MIND: MEDIA AND RACE IN AMERICA 81-82 (Univ. of Chi. Press 2000). This anxiety is fed by the news media, which “presents a face of Black disruption, of criminal victimizing and victimization, that compares unfavorably with Whites.” See id. at 209.

31. Using an extensive search of hundreds of articles from national and local newspapers, magazines and some transcripts of news programs on Lexis, only a single article was found that discussed this change or any characterizations of Graham, as a person, during the time leading to his death. See Ashanti Chimurenga, I Remember Shaka, ESSENCE, Sept. 2001, at 114.

32. See, e.g., Graham v. Johnson, 168 F.3d 762 (5th Cir. 1999).

33. There are still two black newspapers, the Houston Defender and the Forward Times, archived at the Houston Public Library. Lexis-Nexis includes the Houston Chronicle, which has been Houston’s
black newspapers in Houston, was the only source to report the time (1995) and reason (a tribute to his African roots) for Graham’s new moniker. Additionally, these sources consistently referred to Graham’s new name in articles thereafter. The narratives presented by black media sources offered more than the reasoning behind Graham’s adoption of a new name. In an article in *Essence*, a magazine targeted to African-American women, Ashanti Chimurenga, a lawyer for Amnesty International who later befriended Graham, quoted Graham describing himself as “a seventeen-year-old young kid who didn’t have much of a social conscience.” In the same piece, Chimurenga also characterized the Graham on death row as having “overcome a cycle of pain stemming from childhood abuse and neglect that led to adolescent drug addiction and violence,” thus linking Graham with a community’s shared experience of being fit into a pathological description of criminal behavior.

This link to a shared community experience may have motivated black artists like the Geto Boys, a local rap group in Houston with national notoriety, to hold benefit concerts for the Gary Graham Justice Coalition. The Geto Boys stated their reasons for such communal events:

We are trying to unite the youth through this effort and raise their consciousness of the situation . . . . The youths will listen to rappers, and we hope to make them aware of what’s going on in the judicial system.

The positioning of Graham in the foreground of African-American narratives may have been due to a sense of kinship with Graham’s precarious relationship to the state. That relationship ended for Graham with his execution on June 22, 2000. Unlike the funerals of most executed inmates, Gary Graham’s funeral was attended by scores of
The enormous turnout was explained by one member of the largely black crowd:

There’s a lot of us didn’t know him personally, but it was like we have seen over the years how innocent people, especially blacks, have been convicted of crimes they weren’t guilty of. The enormous turnout was explained by one member of the largely black crowd:

Graham became a kind of Every-black-man, representing to the black community the abuses enacted on them through the criminal justice system. Opaque news accounts offered little that would allow readers to see beyond Graham’s crime and rendered him as invisible as the cadres of young black men ensnared in the criminal justice system. Graham himself asserted that he had a message for young, incarcerated blacks: like himself, they had the potential to be transformed “into a force that could uplift mind, spirit, and soul.”

The focus on Graham’s alleged innocence was heightened nationally when he became political fodder in George W. Bush’s presidential candidacy. Similar to Willie Horton, Graham’s image as an individual was subverted to a need to punctuate the presidential candidate’s tough-on-crime attitude. Unlike Willie Horton, where those on the left could only point to the implicit racial appeal of the campaign strategy, the call to save Graham became a tool of the left in their effort to embarrass George W. Bush on his death penalty record as governor of Texas. As one writer for Texas Monthly wrote, “Q. When does a Texas story become a national story? A. When the New York Times says it does.” Consequently, the increasing viability of George W. Bush’s presidential bid swept Graham up into the consuming campaign media circus. Local black activists lobbying for relief in the Graham case were aware of the importance of the death penalty in the presidential campaign. Robert Muhammad, the Southwest regional representative of the Nation of Islam, was quoted at a rally in support of Graham saying, “Don’t forget the road to the White House goes

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40. See Bruce Nichols, Protest Marks Graham Service: High-Profile Guests Assail Death Penalty, DALLAS MORN. NEWS, June 29, 2000, at 23A.
41. Id.
42. See Chimurenga, supra note 31, at 113.
44. See Nichols, supra note 40.
through Huntsville.\textsuperscript{47} Nevertheless, the attention to Graham cannot be read as simple electioneering.

Calls for clemency came from a diverse cross-section of national leaders and celebrities, such as Danny Glover and Kenny Rogers, who held no direct ties to politics.\textsuperscript{48} Other significant advocates included clergy, ranging from Pope John Paul II to local black clergymen to Reverend Joseph Fiorenza, the Bishop of the Houston-Galveston Diocese.\textsuperscript{49} Many of these participants had been advocates for Graham through several execution dates. For example, Reverend Jew Don Boney, a minister and activist who would later become a member of the Houston City Council, led the local campaign to save Graham and asked “the spiritual leadership of the community” to contribute prayers and influence to Graham’s cause.\textsuperscript{50} Boney argued that “there [was] a power in the soul force, and that’s the kind of power [they] were trying to exert.”\textsuperscript{51} Responding to the suggestion that Houston’s summer temperatures in the mid-nineties made the rally’s timing less than ideal, Reverend James Dixon remarked, “We will sweat for justice.”\textsuperscript{52} None of these figures, however, could match the media whirlwind created by the arrival of Reverends Jesse Jackson and Al Sharpton in Texas near Graham’s final execution date.\textsuperscript{53} Jackson and Sharpton brought their public notoriety and political clout to the national media campaign and both spoke at Graham’s funeral.\textsuperscript{54} However, the dual role of black ministers as both political and religious leaders in the black community has been reconfigured by the national media to make them primarily political figures.\textsuperscript{55}

\textsuperscript{47} Id. Huntsville is the location of the execution chamber.
\textsuperscript{48} Though only reported in the Houston Defender, Glover went to Texas nine times between 1993 and 2000 to advocate on Graham’s behalf. See Michica Guillory, Glover Back to Defend Graham: I Thought His Life Had Been Spared, HOU. DEFENDER, Feb. 21-27, 1999, at 1.
\textsuperscript{50} See Susan Warren, Graham Supporters Renew Attention as Two Key Court Rulings Are Pending, HOU. CHRON., Mar. 12, 1994, at A29.
\textsuperscript{51} Id.
\textsuperscript{52} Susan Warren, Graham Supporters Rally at City Hall, HOU. CHRON., Jul. 11, 1993, at A24.
\textsuperscript{53} See id.
\textsuperscript{55} The perception of black clerics as primarily political when they enter mainstream politics also may be encouraged by attempts of the clerics themselves to make their message palatable to a wider audience. One only has to reflect on the Al Sharpton sans sweat suit of the 2004 presidential election and then look further to the Al Sharpton of his earlier grassroots period. The most extensive research on the issue of the image of black ministers in public life focuses on Jesse Jackson’s presidential campaigns. In his analysis of Jackson’s speaking style during the 1984 presidential
Unlike Jerry Falwell and Pat Robertson, who can bring an aura of religion/morality when they enter the political fray, Jackson and Sharpton’s identities as religious figures are obscured by the prevailing perception of them as primarily political. This in turn obscures the meaning of religion in the death penalty issue. The presence of Sharpton and Jackson, who were also present at Graham’s execution, did not foment any greater attention to religion or to what it was about Graham that warranted their attention. Graham’s invisibility is even more striking when compared to the religious spotlight on Karla Tucker, triggered by the presence of the Reverends Jerry Falwell and Pat Robertson, who served as advocates for her clemency. The absence of Graham’s humanity and the silence of the mainstream narratives on his transformation is relevant when examining how African Americans understand the death penalty. In the national media, Graham simply became the background to a foreground story of a murderer who was unrepentant for his crime.

B. KARLA FAYE TUCKER

“Yes sir, I would like to say to all of you—the Thornton family and Jerry Dean’s family that I am so sorry. I hope God will give you peace

Campaign, Charles Henry argues that Jackson “moved from an African-American preacher-cum-American politician to an American politician utilizing the expressive characteristics of black sermon performance to achieve his goals.” CHARLES HENRY, CULTURE AND AFRICAN AMERICAN POLITICS 77 (Ind. Univ. Press 1990). Jesse Jackson’s role as both a religious and a political leader has been criticized by scholars of black politics, particularly Adolph Reed. In his critique of Jackson’s 1984 presidential campaign, Reed rejected the predominant view that religion encourages political participation in the black community and instead argued that “Afro-Christianity” encourages “political quietism” among blacks. See ADOLPH REED, JR., THE JESSE JACKSON PHENOMENON: THE CRISIS OF PURPOSE IN AFRO-AMERICAN POLITICS (Yale Univ. Press 1986). In his seminal work on religion and African-American political activism, Something Within, Fred Harris further summarized Reed’s argument, describing the reliance on ministers for political leadership “as authoritarian and the tradition of the black church as antidemocratic.” See FREDERICK C. HARRIS, SOMETHING WITHIN: RELIGION IN AFRICAN-AMERICAN POLITICAL ACTIVISM 6 (Oxford Univ. Press 1999). The debate over the impact of clerical leadership on African-American political behavior can be traced back to DuBois, Lincoln and Frazier, who all agreed that religion was impacting black political participation but who make separate claims about the actual impact. See generally W.E.B. DUBOIS, THE SOULS OF BLACK FOLKS (Bedford Books 1903); E. FRANKLIN FRAZIER, THE SOULS OF BLACK FOLKS (Bedford Books 1963); C. ERIC LINCOLN, THE BLACK CHURCH SINCE FRAZIER (Shocken Books 1964). More recent studies show that the scholars who asserted that black religion led to political quietism were partially correct. Recent work by Allison Calhoun Brown has found that church attendance does not determine the level of religious participation among blacks, but that attendance in a political church can be determinative. See Allison Calhoun-Brown, African American Churches and Political Mobilization: The Physiological Impact of Organizational Resources, 58 J. POL. 935, 935-53 (1996).

56. See Nichols, supra note 40.
with this . . . . I love you all very much. I am going face to face with Jesus now."\textsuperscript{57}

The life of Karla Faye Tucker played out in a tragic fashion—similar to Graham’s life, to the lives of many who have shared their fate in the Texas death chamber, and to the lives of those who continue to reside on death row—including a dysfunctional childhood, substance abuse and previous criminal involvement. When compared to Graham’s story, Tucker’s story is both similar and totally unique. The most obvious distinctions between the two are that Tucker was a woman and white. Although there is a longer history of executing women in this country than many might guess, the execution of women is still rare, even in Texas which has averaged nearly thirty executions per year for the last five years.\textsuperscript{58} When author Beverly Lowry first met Tucker, after Tucker had been on death row for nearly five years, her first impression was that “she [Tucker] seemed more like maybe, thirteen, a transitional girl.”\textsuperscript{59} This is not a prototypical or expected description of someone who murdered two people with a pickaxe and bragged to friends that she experienced sexual pleasure while doing so.\textsuperscript{60} By the end of Tucker’s life, no one could reconcile the beautiful young woman whose conversation was laced with religious praise with the individual guilty of brutal murders that she never denied committing.\textsuperscript{61} Tucker’s admission of guilt in her crimes was as adamant as Graham’s denial of guilt.

On June 12, 1983, Karla Faye Tucker and her accomplice, Daniel Ryan Garrett, entered the home of Jerry Lynn Dean, where he and a woman lay sleeping.\textsuperscript{62} Tucker bludgeoned both to death with a pickaxe, which she

\textsuperscript{57} Excerpt from Karla Faye Tucker’s last words. Texas Department of Criminal Justice, Executed Offenders: Karla Faye Tucker, http://www.tdcj.state.tx.us/stat/tuckerkarlalast.htm (last visited Jan. 29, 2006).

\textsuperscript{58} Karla Tucker was only the second woman and the first white woman to be executed in the State of Texas. The woman executed prior to Tucker was an innkeeper named Chipita Rodriguez, who was hanged for the murder of one of her patrons. In 1985, the legislature passed a bill clearing her name. See Ellen Goodman, Karla Tucker Gave Death Row a Human Face, HOU. CHRON., Feb.15, 1998, at Outlook 6. For a complete list of women executed between 1900 and 2004 (totaling only forty-nine compared to 915 men between 1976 and 2004 alone), see Death Penalty Information Center, Women Executed in the U.S. since 1900, http://deathpenaltyinfo.org/article.php?scid=24&did=229 (last visited Sept. 20, 2004).


\textsuperscript{60} See Marianne Means, No Gender Lines Exist in Use of Death Penalty, SAN ANTONIO EXPRESS-NEWS, Jan. 20, 1998, at B7.

\textsuperscript{61} See LOWRY, supra note 59, at 242 ("Karla never removes herself from blame or responsibility.").

\textsuperscript{62} Gregory Curtis, Forgiveness and the Law, TEX. MONTHLY, Sept. 1988, at 135.
left lodged in the woman’s chest. 63 Tucker and Garret probably would not have been caught, but they boasted about the crime to friends. 64 This was the culmination of Tucker’s extremely troubled life. Karla Faye Tucker had a history of drug use that dated back to pre-adolescence. 65 By the age of fourteen, she had been on the road with rock bands and encouraged by her mother into prostitution. 66 At only twenty-three years old, she was on death row. 67 Charley Davidson, the chief prosecutor in the case against Tucker’s accomplice, remembered “seeing [Tucker] . . . and having the gut reaction that she was the embodiment of evil.” 68 After Tucker’s spiritual transformation, Davidson later stated, “the Karla Tucker who remains on death row is a completely different person who, in my opinion, is not capable of those atrocities.” 69 It was as if the free-world Karla Faye were a completely distinct person from the affable woman on death row. In some important ways, though, she was. On death row, Karla Faye was born again and married a prison minister, Dana Brown. 70 Still, her astonishing rehabilitation was no salvation from the Texas death chamber. Governor George W. Bush denied her request for a thirty day reprieve, citing his own spiritual reasons. 71 At the press conference announcing his denial, Bush explained:

Like many touched by this case, I have sought guidance through prayer . . . I have concluded judgments about the heart and soul of an individual on death row are best left to a higher authority . . . . May God bless Karla Faye Tucker, and may God bless her victims and their families. 72

Religion clearly influenced both the governor’s decision-making and Tucker’s supporters in different and complex ways. Tucker was asking for

63. Id. “Tucker continued to hack at her victims long after they were dead and left the pickax sticking out of the woman’s chest. Hardened police officers were haunted for years afterward by the carnage.” Id.

64. Id.

65. See LOWRY, supra note 59, at 121-22; see also Christy Hoppe, Woman’s Execution Looms, Stirring National Discussion Gender, Rehabilitation Add to Debate in Texas Case, DALLAS MORN. NEWS, Jan. 13, 1998, at 1A (“A heroin abuser at age 10, Ms. Tucker became a teenage prostitute.”).

66. LOWRY, supra note 59, at 124-25.

67. Id.


69. See id.

70. Karla Faye Tucker was married to Dana Brown, whom she met through a prison ministry. Christy Hoppe, State Urged to Spare Karla Faye Tucker, Minister Married to Killer, Rock Singer’s Ex-Wife Lead Call for Clemency, DALLAS MORN. NEWS, Jan. 18, 1998, at 24A.

71. See Ratcliffe, supra note 2.

72. Id.
clemency, based on her own religious transformation, from a governor who would later promote his own “born-again” experience that “made him fit to assume state, national, and international leadership.”

Tucker and then-Governor Bush used religion to articulate divergent political perspectives. In the end, however, the legal and political will aligned with the Governor’s perspective when Karla Faye Tucker was executed on February 3, 1998. She was thirty-nine years old.

To the public, Tucker’s story was one of transformation. Though her life was not spared, Tucker’s personal transformation through religious faith morally repaired her and cleansed her public image. The new Karla Tucker, the one that prosecutor Donaldson and the rest of the viewing public observed, was not easily characterized as the “other,” unlike many narratives of death row inmates. One reporter described her:

Her peculiar little person was all contradiction. She was sunny and nice, and she gave you the creeps. She was an innocent who was a guilty criminal. She was evil, and she was embraced by religious leaders who declared she was good.

By far one of the most debated and watched death penalty cases in recent history, Tucker’s execution and transformation reveals important racial and gender connotations captured in accounts of the case.

Though religion was central to Tucker’s personal metamorphosis and resulting public reception, Tucker’s race and gender were even more important to that public image. Though she may not have been the first death row inmate to experience a religious conversion, Tucker was the first white woman to be executed in Texas’s history. The rich descriptions of Tucker in media accounts stand in sharp contrast to the spare accounts provided of Graham. Through the media, a sense of Tucker as a person emerges, and one gets a sense of her impact on the reporters themselves.

For example, the above account provides the reader with a strong sense of

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75. Id.
76. See Walt & Milling, supra note 68; see also Hoppe, supra note 70.
78. Curtis, supra note 62.
79. See supra text accompanying note 58.
80. See Curtis, supra note 62.
Tucker's humanity, especially in the difficulty reconciling Tucker's humanity with her crime. The reader has a sense of Tucker's appearance—attractive, young and feminine—but there is no mention of her race or its impact in her case. The reader likely knows the particulars of her brutal crime—she killed two people with a pick-axe—but knows nothing of the criminal proceedings in which she was convicted. Many articles on Tucker inevitably mention her physical appearance, the pick-axe and that she was born-again. These supporting facts, however, are subordinated to the central story: Tucker's transformation. The particulars of her crime and her identity are lost in the story of the pretty, young woman who murdered two people with a pick-axe and found Jesus on the Texas death row.

C. ARE THESE THE MODELS? THE BENEFIT OF LOOKING AT CONCRETE CASES

The Graham and Tucker cases represent models of how death row inmates may, at least in the public sphere, rehabilitate themselves with religion. Concrete cases are beneficial, despite or perhaps because of the differences that exist between the compared individuals. In this section, the Graham and Tucker cases are examined in an attempt to position them as opposing ends of a spectrum of possibilities of how religion may extend historical race and gender narratives into the present. Even though many accounts make little of Tucker's gender and even less of her race, the absence of such commentary should be considered in relation to accounts of Graham. Like many inmates on death row, Graham was male and a racial minority. The operation of masculinity, especially black masculinity, is very different than the gender norms that may have aided the public's acceptance of Tucker's transformation. Comparison of the Graham and Tucker cases is important because both have fuelled the contemporary debate over the death penalty in Texas and nationally.

In analyzing the "the power of concrete cases," authors Samuel Gross and Phoebe Ellsworth begin with Justice Thurgood Marshall's formulation of the requirements for a Constitutional death penalty regime,

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81. See, e.g., Goodman, supra note 58; Lowry, supra note 59; Curtis, supra note 62; Hoppe, supra note 65.
as articulated in *Furman v. Georgia*. In *Furman*, Marshall decided that a death penalty would be unconstitutional if "people who were fully informed as to the purposes of the [death penalty] and its liabilities would find the penalty shocking, unjust, and unacceptable." Marshall argued that since the average American knows little to nothing about the actual operation of the death penalty, "indifference and ignorance" result. Gross and Ellsworth argue that this is incorrect since "surveys repeatedly show that many Americans believe that the death penalty does not deter murder, that it is administered unfairly and it is used in a manner that discriminates against minorities and poor people—but they support it nonetheless." However, Gross and Ellsworth agree that Marshall was partially correct when stating that "in the context of concrete cases, learning about the operation of capital punishment in practice does sometimes shock people's conscience and offend their sense of justice."

The idea that viewing concrete cases in a particular context can influence existing attitudes about the death penalty—even though Gross and Ellsworth examined the recent attention given to innocent defendants released from death row by DNA evidence—promotes an analysis of the Graham and Tucker cases to study the effects of the death penalty on African Americans in Texas. The Graham and Tucker cases share similarities that make this comparison particularly useful. First, as stated earlier, both Graham and Tucker were executed in relatively close proximity and were convicted in the same jurisdiction. In both cases, the debate over their executions took place in similar political climates, including the same governor and the same district attorney. In addition, the victims in both cases were white men. Finally, the historical narratives this project draws from—the history of gender and race in the Jim Crow South—view race and gender as inextricably intertwined.

85. *Id* at 361.
86. *See id.* at 361 n.145.
87. *See Gross & Ellsworth, supra* note 83.
88. *Id* at 39.
89. *Id*. Gross and Ellsworth note the overlooked fact that DNA has played a role in only about 10% of the cases where innocent defendants have been exonerated. Whether true, false, or slightly misinformed, the accounts of the Tucker and Graham cases are similar to the discussion of DNA evidence in the way that race, religion and gender play out in that discussion. *Id*.
90. *See supra* notes 8-81 and accompanying text.
91. *See id*.
92. *See id*.
93. The origin of the term "Jim Crow" is unknown, but the moniker is given to a whole host of formal legal codes and informal social codes that ruled the behavior of blacks and whites in the South.
From emancipation well into the twentieth century, the prevailing justification for the lynching and execution of black men was the protection of “virtuous white women.” While this justification may not exist today, an explication of current norms associated with these identities is warranted when analyzing cases of inmates who hold such identities in this region. Due to a history of mistreatment, blacks, as well as social scientists, continue to understand the criminal justice system as it treats them relative to the treatment of whites; therefore, the comparison of Graham and Tucker, the two most visible cases in recent years, closely aligns with that tradition.

Ideally, cases used for comparison would involve similarly heinous crimes committed by defendants of the same gender whose trials proceeded with roughly equal levels of fairness, isolating race and religion. The criminal justice system, however, is not a laboratory where one can manipulate factors of interest in a controlled environment. In fact, the asymmetry of the Tucker and Graham cases highlights the racial and gender contradictions embedded in the different ways religion is woven into these narratives. The attention given to Tucker’s case ignited a public debate about the death penalty in a state where regular executions were and remain the order of the day; this debate reached a fevered pitch when the execution of Gary Graham coincided with George W. Bush’s presidential campaign. The consistently high level of execution and willingness to act against emerging trends toward leniency in this area of law continues to make Texas the epicenter of the death penalty debate well past the execution of Graham.

With Tucker’s execution impending and two years before Graham’s execution, Texas reporter Carlos Guerra described the impact on Texas residents of such frequent use of capital punishment:

Since Texas resumed executions in 1982, 145 people have died, and we hardly notice anymore . . . . The following day, the reports will probably

Jim Crow laws date from roughly the 1890s until their legal and political vestiges were dismantled in the 1960s. See generally C. VANN WOODWARD, THE STRANGE CAREER OF JIM CROW (1974). This paper asks whether the legal vestiges of Jim Crow remain in the death penalty.

94. A notable recent example of this is the execution of Napoleon Beasley. Napoleon was convicted of capital murder at age seventeen. There was considerable national legal debate about, and international condemnation of, the execution of children. Texas moved forward with the execution of Napoleon Beasley despite movement by the Supreme Court to review this issue in the following session. See Stephanie Simon, Court Puts Age, Crime on Scales, L.A. TIMES, June 9, 2002, at A20. In 2005, the Supreme Court held the execution of minors under age 18 unconstitutional. Roper v. Simmons, 543 U.S. 551 (2005).
tell more about what they ordered for a last meal than about their lives, because Texas executions have become so common.\textsuperscript{95}

The controversy surrounding Graham and Tucker disrupted this described pattern. Arguably, both cases are not only anomalous to each other but, in light of this reporter's assessment, they are anomalous to the vast majority of Texas death penalty cases. However, concrete cases do not necessarily need to be representative to affect the public's perception of the death penalty. For instance, death row inmates exonerated due to DNA evidence represent only about 10\% of the total persons freed, though the public probably imagines that figure is higher.\textsuperscript{96} Though DNA-innocence cases are not necessarily representative of all innocence cases, this new technology has captured the public's attention, particularly the way in which it undermines the legitimacy of the death penalty.\textsuperscript{97} Similarly, while arguably Graham and Tucker are not representative of the vast majority of Texas death penalty cases, their impact as concrete cases is not diminished. In fact, the Graham and Tucker cases become quite revealing of the way religion operates in the context of contemporary racial inequality.

Moving forward, Gross and Ellsworth raise a caveat in this reasoning: Would many Americans care if they learned that a death row inmate who was in fact guilty of a vicious multiple murder had a defense attorney who never talked to him, or a prosecutor who lied, or was arrested because of his race?\textsuperscript{98}

The Graham and Tucker cases demonstrate that, while Americans may not care in any systematic way if the processes under which the guilty receive the death penalty are flawed, they may care in particular instances. In the Houston area, where Graham and Tucker's deaths would have been nothing out of the ordinary, the heavy media coverage surrounding both cases indicates that people cared. Thus, despite arguments for the utility of this comparison, it is worth understanding the major arguments against the comparison and how those arguments, if reframed, may actually contribute to the analysis.

\textsuperscript{95} See Carlos Guerra, \textit{We Hardly Blink at Executions Anymore}, \textsc{Austin Am. Statesman}, Feb. 6, 1998, at A13.
\textsuperscript{96} See Gross & Ellsworth, supra note 83.
\textsuperscript{97} See id.
\textsuperscript{98} Id.
III. THE DIFFICULTY IN COMPARING THESE CASES

A. DIFFERENCES IN GENDER AND/OR RACE

Karla Faye Tucker was a white woman. Gary Graham was a black man. This is an obvious truth about the identity of these people, but it is not obvious how this difference impacted the public debate over their executions. For example, the majority of accounts of the Tucker case tend to focus on her gender and her miraculous transformation.\(^9\) Thus, an argument against comparing the Tucker and Graham cases is that the social norms that influence public support or disapproval of execution are different for men and women. While this may be a valid argument, these norms do not exist in isolation. They are part of a larger narrative that ascribes different values to the lives of men and women and blacks and whites. But in the context of the Southern historical narrative, race and gender cannot be separated, especially when one speaks of white women, black men and the death penalty.

Legions of historians have documented the need to understand the history of race and gender in the post-emancipation South as systems of oppression that operated in tandem. For example, in Gender and Jim Crow: Women and the Politics of White Supremacy in South Carolina, 1896-1920, author Glenda Gilmore chronicles her own realization that "gender and race were no less intertwined in men’s politics than they were in women’s" in the South.\(^{100}\) Gilmore argues that “naturaliz[ing] white women’s purity” was as much a part of the Southern white supremacist project as “naturaliz[ing] black men’s impurity.”\(^{101}\) The need to maintain the racial order meant upholding the purity of white women at all costs. The incontrovertible accusation of rape by white women meant sure and swift death for most accused blacks, using legal and extra-legal means.\(^{102}\) Although no one can be executed for rape under current Constitutional understanding,\(^{103}\) there continues to be a high correlation between the race of the victim, the race of the defendant and the likelihood of conviction in capital cases. For example, in Texas black offenders who murder white

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99. See supra notes 80-81 and accompanying text.
101. See id. at 72.
102. See, e.g., id. at 91-118; see also Patricia Hill Collins, Black Sexual Politics: African Americans, Gender and the New Racism 61-65 (2004).
103. See Coker v. Georgia, 422 U.S. 584, 592 (1977) (holding that the death penalty for the crime of rape of an adult violated the Eighth Amendment prohibition against cruel and unusual punishment).
victims are eighty-seven times more likely to receive the death penalty than other categories of defendants convicted of capital murder. While this article does not intend to draw a connection between the discrimination that led to the Jim Crow criminal justice system and current racial disparities, facts such as the one above show the perpetuation of valuation according to race and gender in our current criminal justice system.

In fact, scholars focusing on contemporary black masculinity allude to the positioning of African-American men (especially young men) inside and outside of the black community as problematic. Usually, they are characterized as dangerous. While statistics could be used to justify the pervasiveness of the perception of African-American men as "criminal," this article is more concerned with meaning than with various, perhaps skewed constructions of reality. The death penalty is a small but extremely meaningful part of a larger criminal justice system that legal theorist Patricia Hill Collins argues developed in the antebellum period "to curtail the citizenship rights of African-American men." According to Collins's recent work, Black Sexual Politics, "the controlling image of Black men as criminals or as deviants" has normalized the incarceration and execution of black men. This may explain why Graham's execution seemed to be business as usual, while Tucker's execution seemed extraordinary. Thus, within the hierarchy of race and gender in the U.S., specifically in the South, Tucker did not fit within the description or category of people normally executed.

The analysis that accompanied Tucker's case tended to ignore race, instead focusing on gender, especially Tucker's treatment versus men. Because of the historical entanglement of race and gender, analysis of the Tucker and Graham cases must look at the impact of their combined gender and race on the disposition of their cases. While some studies may examine gender without attention to race or examine race without attention

104. See, e.g., William J. Bowers & Glenn L. Pierce, Arbitrariness and Discrimination under Post-Furman Capital Statutes, 26 CRIME & DELINQ. 563 (1980).
105. See generally COLLINS, supra note 102.
106. Id. at 158.
107. See id. at 219.
108. Id. at 158.
to gender, the tremendous focus on Tucker’s appearance, for instance, demonstrates why such academic isolation is problematic; instead of focusing on the role her whiteness played in the effort to save Tucker’s life, analysis instead focused on nonracial aspects of her appearance. El Paso minister Cal Thomas asked whether Tucker would have received the support of conservative religious leaders like Pat Robertson “if she had converted to some other faith, or, for that matter, if she had been of some other race or a man?”

Thomas asserted that Tucker received so much attention because she was “pretty, young, white and female—four characteristics that tug at the heartstrings of a culture that values them.” Thus, the value of white femininity is magnified in a culture that privileges those with this particular identity. Moreover, Thomas rightly asks: “How many homely, black, male, or older convicts enjoy the defense of such high-profile religious leaders as the Rev. Pat Robertson?”

This question becomes obvious in the context of modern American culture. In Texas, this question is a prerequisite for understanding the role of religion and race in the legitimization of the death penalty as punishment. As quoted above, Thomas is justified in asking why American society places a premium on beauty, whiteness and femininity. The Tucker case demonstrates the strong valuation of these qualities—they even privilege a woman who committed brutal, heinous acts. Tucker was privileged by being made visible, and thus distanced from the “othering” that is part of the psychology of state execution. While execution certainly cannot be considered a privilege, the outcry for mercy in Tucker’s case, compared to the racially charged standoff in the Graham case, suggests a difference in the valuation of these two people. Tucker’s lawyer challenged the possibility of mercy through the clemency process:

We all know that Texas doesn’t have any mercy. . . . Mercy is the fragrance that clings to the boot that just crushed Karla Faye Tucker.

111. See id.
112. See id.
113. It seems important to mention that, despite any social or gender advantage Tucker may have had, she was still executed. Making such comparisons of advantage or status in the area of capital punishment is extremely difficult because it is unclear where or how one marks the meaning of advantage.
114. See Keitner, supra note 109, at 40.
The lack of legal or political relief increases the importance of the narrative that surrounds an individual case, as well as emphasizes the similarities in position of two defendants navigating the legal process. In the end, one must question the political and legal structure that led a prosecutor to change his mind in the Tucker case, but to argue in the Graham case that “to have Graham as the poster child to end the death penalty is like having Frankenstein for a poster child for the March of Dimes.”

B. WHAT DO YOU PLEA? POST-CONVICTION CLAIMS OF GUILT AND INNOCENCE

The other important argument against comparing the Graham and Tucker cases derives from the defendants’ different postures toward their crimes at the time of execution. Graham proclaimed his innocence in the murder of Bobby Lambert with his dying breath. In his last statement, which was reported to have lasted six minutes (lengthy in comparison to most statements), Graham used the word innocent and alluded to his innocence or lynching fourteen times. Intermingled with thanks to his family, supporters and the black community, the repeated theme of his statement—his innocence—emerges:

I’m innocent. They’ve got the facts to prove it. They know I’m innocent. But they cannot acknowledge my innocence, because to do so would be to publicly admit their guilt. This is something these racist people will never do.

In proclaiming his innocence, Graham inherently critiques the system that placed him on the gurney and the individuals that represented that system. His proclamation of innocence becomes more than a statement of his factual lack of guilt; it becomes an act of defiance.

Tucker, on the other hand, admitted her guilt early on and never denied committing the murders for which she was convicted. At rallies to spare her life, Tucker called for a change in the death penalty system and “compassion for the people hurting because of the violence done to them.” At the time of her execution, Tucker appeared resigned to her

117. See Texas Department of Criminal Justice, supra note 7.
118. Id.
119. Id.
120. See Hoppe, supra note 65.
fate and, unlike Graham, she seemed to have a positive relationship with her jailers, as expressed in her last statement:

Warden Baggett, thank all of you so much. You have been so good to me. I love all of you very much.121

A witness to Tucker’s execution testified that he “never saw Karla Faye Tucker take the smile off her face.”122 Tucker had a consistent narrative: she was guilty, and then she was born again. The differences in Graham and Tucker’s claims of innocence and guilt only obscure the fact that they were engaged in the same legal process, even if their claims positioned them differently politically.

At first glance, the claims of innocence and guilt seem to complicate the comparison, both because of the importance innocence has played in the recent debate over the death penalty and because of the ethical commitment not to execute innocent people. The remainder of this article deconstructs the idea of a singular definition of innocence in death penalty narratives. For the moment, let us hold to the vernacular definition of innocence as “you did not do it.” Arguably, many people who support the death penalty would be troubled by the possibility of executing an innocent person, that is, a person who did not commit the crime. By claiming innocence, Graham placed himself in a different category than Tucker, who is exactly the kind of person many likely would agree should receive the death penalty: a person guilty of a heinous crime. Despite their claims of guilt or innocence, Graham and Tucker assumed the same legal posture relative to their post-conviction claims: both were found guilty, sentenced to death, and subsequently pursued every legal option available to spare their lives—including state and federal appeals, clemency petitions and media campaigns to rally public support for their cases.

Because Graham and Tucker were engaged in similar legal processes, the political nature of their narratives foreshadows the roles religion, race and gender play in the death penalty and in perceptions African Americans have of the death penalty. The legal system weighs heavily on those found guilty of murder, and, as exemplified by the Tucker and Graham cases, part of this weight includes a measure of moral and potentially religious value. While the religious and moral implications of “guilt” are open questions, the legal meaning of “guilty” has been outlined by courts. In Herrera v.

121. See Texas Department of Criminal Justice, supra note 57.
122. These statements were made by Vincente Arenas, a Houston television reporter. See Sue Anne Pressley, Texas Executes Killer Karla Faye: “Baby, I Love You,” She Tells Husband, TORONTO STAR, Feb., 4 1998, at A1.
Collins, the Supreme Court addressed the weight of legal guilt, even if evidence of actual innocence surfaces post-conviction. Leonel Herrera was convicted of capital murder and sentenced to death in the State of Texas in 1982. Ten years after Herrera’s conviction, when the case was headed to federal habeas proceedings, Herrera claimed he was “actually innocent.” While much of the Court’s decision explores the particularities of federal habeas proceedings, the Court also discusses how claims of actual innocence should be viewed in post-conviction proceedings. In the majority opinion, Chief Justice Rehnquist asserts that, once a person is found guilty, “the presumption of innocence disappears.” Conviction in a full and fair trial, despite later-presented evidence, moves the debate from proof of innocence to proof of Constitutional grounds for remedy from unfair process. Thus, the Court places all defendants found guilty of capital murder into one group: the guilty. As a result, Graham’s claims of innocence and Tucker’s claims of guilt did not alter their legal “guilt” from the point of conviction.

Finally, aside from the legal meaning of guilt, the invocation of the word “innocence” in the Tucker and Graham cases explicates the multiple meanings that are dependent on and intertwined with the identity of the person at the center of the discussion. The simplistic notion of innocence as whether the defendant did in fact commit the crime ignores the role of race, religion and gender in death penalty cases. Indeed, the Supreme Court began this discussion by bifurcating legal innocence from actual innocence in Herrera. Though Herrera suggests at least two types of innocence (actual and legal), does this sufficiently explain the political usages of “innocence” in death penalty cases, especially when race, religion and gender are central to the analysis?

124. Id. at 393.
125. Herrera claimed the eye-witness testimony used to convict him at trial was improperly admitted. He also submitted an affidavit from his nephew who claimed to be in the car at the time that his father, Raul Herrera, killed the two deputies. Also, a long-time friend of the Herrera brothers submitted an affidavit saying that Raul Herrera, not Leonel, confessed to the murder. Id. at 393-97.
126. Habeas is “a writ employed to bring a person before a court, most frequently to ensure that the party’s imprisonment is not illegal.” See BLACK’S LAW DICTIONARY 715 (Bryan A. Garner ed., 1996). Death penalty cases can go through both state and federal habeas proceedings. Id.
127. See Herrera, 506 U.S. at 399-400.
128. Id. at 399.
129. Id. at 400.
130. Id. at 399-400.
C. INNOCENCE COMPLICATED

*Herrera* is clear that actual innocence does not guarantee relief.\(^{131}\) Despite controversy over *Herrera*'s legal reasoning, it stands as good law.\(^{132}\) For the purposes of this article, *Herrera*'s legacy lies in its complication of the meaning of innocence, because it suggests that multiple meanings may impact the use of innocence in various death penalty narratives. Graham and Tucker, while both legally guilty, used different narratives in attempting to rescue themselves from execution. The final sections of this article discuss alternative meanings of innocence suggested by the Graham and Tucker cases.

i. Social Innocence

In thinking about the meaning of social innocence, one could argue that Tucker's transformation made her socially innocent. After her conviction, Tucker attempted to return to the protection of the bounded community, which is that portion of the community protected from state-wielded or state-sanctioned violence, as described by James Marquart and his fellow authors.\(^{133}\) The saliency of religion in this region made Tucker's social innocence and clemency possible in the minds of many supporters. Tucker's previous behavior could be ignored, making religion a kind of passkey that re-framed Tucker as a life worth saving. In contrast, the Graham case exemplifies how this passkey may not work for African Americans on death row. To become socially innocent, or no longer considered a social danger, a person must be cleansed of past behavior and aligned with images elevating them to a position worthy of political salvation. The pervasive image of the dangerous black criminal may have blocked the possibility of Graham's social innocence and re-entry into society; the possibility of social innocence for Tucker may have been furthered by society's reluctance to execute women and, further, to protect white women.

\(^{131}\) *Id.* at 400.


\(^{133}\) The bounded community refers to that aspect of the community that is protected from the violent actions of the state. See *JAMES MARQUART ET AL., THE ROPE, THE CHAIR, AND THE NEEDLE: CAPITAL PUNISHMENT IN TEXAS* 17 (1994).
Prior to the Civil Rights Movement, the African-American community used the idea of social innocence as a political strategy. In *Constructing African Americans as Minorities*, historian Earl Lewis discusses the general evolution of the African-American community from public danger to injured citizens. Lewis argues that, as far back as 1900, African-American institutions have "competed to establish blacks as injured citizens rather than dangerous victimizers." Lewis makes special note of the NAACP, whose legal arm has orchestrated important legal attacks on the death penalty, in addition to legal attacks on other legal structures that historically have subordinated African Americans. According to Lewis’s reading of African-American political history from slavery to the entrenchment of Jim Crow laws, blacks were viewed as a "threat" or a "social danger." Before African Americans could seek redress from the denial of citizenship rights guaranteed to them by the Civil War Constitutional Amendments, they had to become "socially innocent." Religious, social and political organizations played important roles in this transformation. Unlike minorities in other contemporary political systems who were fighting for separation from majority communities, African Americans were fighting for inclusion and integration. Before integration was possible, they had to be viewed as citizens and members of the protected community whose injuries required remedy.

Lewis argues that extra-legal and legal state violation conflation was made possible by the public’s belief that blacks were dangerous—both physically and politically. The introduction of millions of newly-freed slaves into the political process endangered the racial hierarchy of the South, which had been constructed in slavery and re-affirmed in Jim Crow. The systemic violence inherent in the treatment of blacks in the South was accompanied by a legal and political structure designed to

135. Id.
136. Id. at 25.
137. See id. at 25-26.
138. See id. at 21.
139. See id. at 25-27.
142. See id. at 17.
143. See id. at 21-25.
144. See id. at 21.
disenfranchise and alienate blacks from the political process. Additionally, the exclusion of African Americans from national civic and social life “cemented a racialized public sphere.” According to Lewis’s analysis, within that racialized public sphere, popular culture’s representation of African Americans played a key role in marginalizing African Americans. The presentation of black men as violent, criminal and potential rapists allowed “scores to see blacks as the supreme embodiment of danger.” The antidote for this danger was violence—first extra-legal lynching and then legal, state-sanctioned execution.

Tucker followed a similar process of moral re-fashioning. She transitioned from immoral beginnings, to physical danger, and finally to an injured citizen who could demand political and legal remedies from the unfair imposition of state policies—in this case the death penalty. Though the groundswell of support for the sparing of Tucker’s life was largely attributed to her religious conversion, Tucker’s religious transformation was made palatable by her gender and racial identities, neither of which fit the description of someone who should be executed. Just as African Americans were prevented from gaining redress because of social and legal norms, extant gender and racial norms actually supported the repositioning of Tucker as socially innocent.

Though the prejudices concerning whiteness and femininity still may exist in the historical thread of the South, tracing the role of race in contemporary politics is more complicated. Political scientist Cathy Cohen argues that the uneven integration of the African-American community into the larger American social and political community suggests that past strategies for community uplift have been supplanted by fragmentation in

145. See id. at 22.
146. See Fred Harris, Something Within: Religion in African American Political Activism 9 (1999).
148. Id. at 24.
149. See id.
150. See generally Chandler Davidson, Biracial Politics: Conflict and Coalition in the Metropolitan South (1972). Though this analysis includes Houston as part of the South, there are some who might challenge the categorization of Texas as such. While it might be harder to use a general Southern historical analysis in an analysis of the death penalty statewide, Houston and other parts of North, East and Southeast Texas fit relatively smoothly into “the South.” Political scientist Chandler Davidson, who has studied Houston politics for decades, argues that Houston and those counties that border traditionally southern states like Arkansas and Louisiana should be considered part of the “rim south”—those areas of states not traditionally considered Southern that share a historical, economic and political culture similar to the deep South. See id.
Cohen argues that this fragmentation has led to a reliance on alternative political alliances for marginalized groups within the African-American community (i.e., cross-racial coalitions which have formed especially among opponents of the death penalty). Cohen’s work has additional implications for social innocence as part of the politics of respectability employed by death row inmates. Through fragmentation, the process of becoming socially innocent may become an individual strategy for African Americans who are marginalized within the black community. Members of these subgroups, which Cohen categorizes as secondary marginalized groups, may be able to, if not re-enter the dominant community, successfully trigger political resources of the indigenous community by becoming “socially innocent.”

In this analysis, the Graham case demonstrates the possibility of social innocence for black death row inmates. Like Tucker, Graham claimed to be a changed person. Those around Graham concurred, including his aunt, Jennifer Clebourn:

Gary is a changed person. He has matured since he was 17 [the age Graham was arrested]. He has had 12 years to think about what he’s done wrong. He knows those robberies he did was wrong [sic].

Unlike the racial and gender norms that supported the authenticity of Tucker’s transformation, the racial and gender norms surrounding black masculinity work against society perceiving Graham as anything more than a murderer, even though Graham’s transformation and claims of innocence triggered a significant response in the African-American community. While Graham may not have attained “social innocence,” his narrative of innocence and abuse by a racist state leads to a different conceptualization of innocence.

ii. Innocence by Lynching

Unlike efforts to render inmates socially innocent, some narratives of the death penalty automatically rehabilitate the inmate, without requisite


152. See Cohen, supra note 151.

153. See Andrea Greene & Valerie Godines, Killer’s Supporters Seek to Prevent His Execution, Hou. Chron., June 1, 1993, at A16.
involvement of the inmate. In academic narratives of lynching, the person lynched is articulated as innocent.\footnote{154} This type of innocence simultaneously articulates innocence and critiques the criminal justice system. This article contends that the attention given to Graham was based on his ability to juxtapose execution with lynching.

Following Reconstruction, anti-lynching activism became one of the highest priorities on the black political agenda and the focus of much black political activism.\footnote{155} Black activists declared that the justifications for mob violence against blacks were mere façades for the political oppression of blacks.\footnote{156} The rhetoric of anti-lynching campaigns, even when spearheaded by secular black organizations, sometimes took on a spiritual tone.\footnote{157} While investigating a lynching where a black man was burned alive before a white mob, James Weldon Johnson observed:

I tried to balance the sufferings of the miserable victim against the moral degradation of Memphis, and the truth flashed over me that in large measure the race question involves the saving of black America’s body and white America’s soul.\footnote{158}

While not arguing that “illegal lynchings were the sole factor” for the 1923 reform of the Texas death penalty statute, Marquart et al. argue that the lines drawn between legal and illegal hangings “were often very thin” because both were “administered as much to maintain the caste-like system of domination as to even the scales of justice.”\footnote{159} Thus, lynching necessarily was coupled with legal executions because of their twin uses as forms of socially controlling formerly enslaved people and their descendants.\footnote{160}

Thus, when Gary Graham invoked the imagery of lynching,\footnote{161} he simultaneously proclaimed his innocence and reified the tentative relationship between blacks and the state. Like lynching victims of the past, Graham claimed that he was being “murdered” by an unfair criminal justice system for a crime of which he was innocent; he also suggested to

\begin{thebibliography}{9}
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\item 154. See Collins, supra note 102, at 218-24.
\item 155. See, e.g., Giddings, supra note 140.
\item 156. See Gaines, supra note 151, at 86 (discussing the response of black leadership to lynching).
\item 157. See Hazel Carby, Race Men 46 (1998).
\item 158. Id. James Weldon Johnson, Field Secretary for the NAACP, made this observation while investigating the lynching of Ell Persons in 1917. Hazel Carby views this observation as an improvisation on “the multiple meanings of DuBois’ declaration that ‘the problem of the Twentieth Century is the problem of the color line’.” Id.
\item 159. See Marquart et al., supra note 133, at 12.
\item 160. See id. at 2.
\item 161. See Texas Department of Criminal Justice, supra note 7.
\end{thebibliography}
other blacks the possibility of a fate similar to his own.\textsuperscript{162} Graham says as much in his last statement: “This is a lynching that is happening in America tonight.”\textsuperscript{163} Graham’s supporters also used religious tones. Robert Muhammad, when asked whether a month long fast Graham supporters were beginning was a hunger strike, replied:

This is not a hunger strike. A hunger strike is a political statement, and I am not making a political statement. We are making a spiritual statement . . . . We are here to stop the execution of an innocent man.\textsuperscript{164}

Jesse Jackson described Graham’s death as a “political sacrifice”\textsuperscript{165} and compared George W. Bush to Pontius Pilate.\textsuperscript{166} By aligning his story with the lynching narrative, Graham activated the African-American community in a way that other cases have not.\textsuperscript{167}

iii. Confession as Innocence

In death row inmates’ attempts to re-fashion themselves as worthy of salvation through religious transformation, the role of confession can affect the public’s perception of innocence. Thus, while Tucker’s repetitive confessions of guilt may have contributed to her public re-fashioning,
Graham’s professions of innocence may have heightened the desire of some to see him executed.

Tucker’s guilt became part of her “testimony,” which she shared in encounters with the media. For example, Tucker used the media to plead her case to then-Governor George W. Bush and to the public. In an open letter to Governor Bush, Tucker proclaimed:

Even though I did murder Jerry Dean and Deborah Thornton that night and not think anything of it back then, it is now the one thing I regret most in my life and in the frame of mind I am now in it is something that absolutely rips my guts out. I felt the pain of that night, and I feel the pain that goes on every day with others because of what I did that night. I know the evil that was in me then, and I know that what took place that night was so horrible that only a monster could do it . . . . It is not who I am today, and because of who I am today it makes it all the harder for me to have to think back on that night and after that night, and a lot of things I did while I was not saved.

The letter reiterates Tucker’s acceptance of her guilt. By appealing directly to Christian sentiments of the cleansing nature of confession, the public nature of Tucker’s campaign (though typically not perceived as a campaign) constituted a significant challenge to the state’s authority to execute judgment.

In Troubling Confessions: Speaking Guilt in Law and Literature, author Peter Brooks argues that “the confessional rehearsal or repetition of guilt is its own kind of performance, producing at the same time the excuse or justification of guilt.” Further, “it is the speech-act itself, which simultaneously exonerates and inculpates.” According to Brooks, “the notion that possible redemption depends on a confession is deeply
ingrained in our culture.”174 However, Brooks argues later that “the confessional impulse, considered to be redemptive can in fact produce a sterile, passive, self-satisfied complicity in the negation of the possibility of redemption.”175 Though Brooks only mentions political instances of confession, the Tucker case presents a prime example of the ambivalent way confessions of guilt are understood both legally and politically. The combined performance of evangelical Christianity, femininity and continual confession of guilt wiped Tucker’s slate clean. Despite repeated admissions of guilt, the Tucker who committed those crimes was not the Tucker on death row. While this ingrained notion of confession worked to Tucker’s benefit, Tucker ultimately failed when Governor Bush used her own words to justify execution:

Like many touched by this case, I have sought guidance through prayer . . . . I have concluded judgments about the heart and soul of an individual on death row are best left to a higher authority.176

With these words, any possibility for redemption would be lost.

In contrast, Graham’s ceaseless claims of innocence demonstrate how the emphasis on confession can actually highlight guilt. Many articles on Graham repeat his professions of innocence.177 Graham’s claim became the mantle for his supporters and anti-death penalty activists.178 Graham was quoted shortly before his death, saying, “I die fighting for what I believed in. Truth will come out.”179 That truth for Graham was his innocence, but his failure to show contrition only fuelled political support for his execution, and, according to Brooks’s analysis, legal and cultural support. Shortly before Graham’s execution, George W. Bush responded to Graham’s claim of innocence:

As far as I’m concerned, there has not been one innocent person executed since I’ve become governor. I know there is a lot of emotion swirling around the case and I understand that. The death penalty is not an easy subject for folks. I’m going to uphold the laws of the land and if it costs me politically, it costs me politically. No one case is an easy case. Obviously, those that get a lot of public attention increase the degree of difficulty. I’m going to treat this case no differently than any

174. Id. at 112.
175. Id. at 166.
176. See Ratcliffe, supra note 2.
177. See, e.g., Quindlen, supra note 8; Garcia, supra note 8; Greene, supra note 9; Dorsett & Hunger, supra note 12.
178. See, e.g., Greene, supra note 9; Perry, supra note 37; Rule, supra note 37; Nichols, supra note 40; Warren, supra note 50; Warren, supra note 52.
179. Capital Punishment, supra note 54.
other case that has come across my desk. I'm going to uphold the laws of the land. I believe the system is fair and just.\textsuperscript{180}

Bush reaffirmed Graham's guilt and his plans to uphold the legally prescribed punishment. Even though Graham proclaimed his transformation, his unwillingness to confess afforded no hesitation from the final legal authority, the Governor. Thus, the American cultural preference for confession highlights the obscuration of race and religion through the notion of innocence by confession.

IV. CONCLUSION

By analyzing concrete cases, this article explores the way that contemporary narratives relying on religion merge with past narratives of gender and race. While the simplicity of innocence or guilt is challenged by Herrera, when the bifurcation created by Herrera is extended, other constructions of innocence—social innocence, innocence by lynching and confession as innocence—can be constructed as woven into the cases of Karla Faye Tucker and Gary Graham. The paradigmatic cases of Graham and Tucker help by either crystallizing or shattering perceptions through extremely public snapshots of the death penalty. By analyzing the operation of race, religion and innocence in such cases, this dynamic relationship may manifest itself in other areas of law and society.

\textsuperscript{180} See Michica Guillory, \textit{The Graham Case: What Does It All Mean?}, HOU. DEFENDER, June 25-July 1, 2000, at 1.