Book Review - Proof of Guilt: Barbara Graham and the Politics of Executing Women in America

Jonathan Simon

Follow this and additional works at: https://scholarship.law.berkeley.edu/facpubs

Part of the Law Commons

Recommended Citation


Proof of Guilt offers us a micro-history of a white woman executed in the mid-twentieth century and a serious study of gender in an old capital punishment system. As the subtitle suggests, many features of the old capital punishment system made it unlikely for women to be sentenced to death and even more unlikely for women actually to be executed. Barbara Graham, whose capital trial in 1953 and execution in 1955 just as the old capital punishment regime was coming to a close in the United States, provides a fascinating example of what it has taken for the state to kill a woman then and now.

The first three chapters detail Graham’s capital crime and her trial, as well as her life as the eldest daughter of a single mother in the interwar years. The crime was the kind that easily attracted a capital murder charge then and still could now. Margaret Mahan, a single woman sometimes described as “elderly,” was bludgeoned and possibly killed by a cloth pulled over her head during a brutal home invasion robbery in Burbank, California. Graham was arrested along with two men with whom she was living, while a third became the prosecution’s lead witness. Graham and the two men were convicted and sentenced to death after a trial that focused overwhelmingly on Graham’s role. Graham would insist to the very end that she had nothing to do with either the robbery or the murder, but her life had followed the kind of track that criminologists of the era would have seen as leading to violent crime and even murder.

In this study of women as subjects of criminal law and punishment—Cairns’ third—it is Barbara Graham’s execution that makes her distinctive. While women normally enjoy cultural presumptions that they are not aggressive and are unlikely to initiate violence, these presumptions go along with certain narratives and scripts that, when violated, can allow a woman criminal to appear to be a super-villain. Cairns’ portrait captures Graham’s flouting of these conventions.

Chapters 4 and 5 cover Graham’s two-year battle to save her own life. Once she was convicted and condemned, many of the features that made her easy to cast as a “femme fatale” made her very appealing to the male journalists who imagined rescuing her from the gas chamber. In one chapter, Cairns
details one of the more remarkable stories of what might be called “abolitionist” journalism: Edward Montgomery, who covered Graham’s trial for the *San Francisco Examiner* and quite favorably for the prosecution, ultimately became convinced of Graham’s innocence and led a campaign in the media to exonerate her. After Graham’s execution, his articles formed the basis of a fictionalized film about her, *I Want to Live*, starring Susan Hayward.

Montgomery’s campaign, which eventually brought the case to the legislature (although primarily on procedural issues) provided an early exposure of the changing politics of abolition, which would eventually make it plausible for elected politicians to oppose capital punishment (successfully at times) in the 1960s. Graham’s trial brought up features of capital prosecution that may have been typical at the time but became enduring elements of criticism.

In chapter 6, Cairns pulls back and sets Graham’s capital sentence into the larger racial and gender contexts surrounding the death penalty during the mid-twentieth century. What made Graham’s execution so unusual was not that she was a female, but that she was a white female. As *Cavalier* magazine documents, southern states in particular were not reticent about executing African American women, even for killings that would have been mitigated by provocation or lack of premeditation. But whiteness was not immunity. As Cairns points out, the 1950s were a time of striking hostility toward deviance, making women like Graham or condemned atomic spy Ethel Rosenberg, executable notwithstanding serious concerns about their innocence.

*Proof of Guilt* gives us a look at capital punishment in the midst of its last decade as a normal part of America’s justice system, just before the moratorium of the 1960s and the constitutionalization of a much remade capital punishment trial in the 1970s. The fictionalized film version of Barbara Graham’s case, *I Want to Live*, would help propel questions about the legality of capital prosecution to state legislatures at a moment of rising political support for the abolition of the death penalty. In a slightly different history from the one that, but for a vote or two on the U.S. Supreme Court in 1972 and 1976, we have been living, the Graham case might be remembered as a decisive one in the abolition of the death penalty in the United States. (The case of Ruth Ellis, the last woman executed in Britain at around the same time as Graham, served to abolish the death penalty there in 1964.) Barbara Graham, California’s third—and possibly penultimate (one more died within a year of Graham)—female victim, provides a fascinating subject around which to begin
to understand the role of women in mid-twentieth-century crime and criminal justice history.

Jonathan Simon
University of California Berkeley, School of Law


In this illuminating and timely study, historian Leigh Ann Wheeler unearths the complex history of the concept of sexual rights in the twentieth-century United States. How Sex Became a Civil Liberty can be viewed as a sequel to Wheeler's first book, Against Obscenity: Reform and the Politics of Womanhood in America, 1873–1935, which detailed the history of women who campaigned against what they deemed to be indecent popular entertainment. Her new book, which covers the period from roughly 1920 through the 1990s, also focuses on the law, censorship, and sexuality, but her agenda is more ambitious. She seeks to explain how Americans came to believe that adults have a constitutionally protected right to have consensual sex with whomever they choose, to consume sexually explicit material, and to control the reproductive consequences of their sexual activity. Wheeler argues that these sexual rights did not inhere in the Constitution, waiting to be discovered, but are instead the product of nearly a century's worth of legal and social activism. The fact that Americans now tend to assume a right to sexual privacy simply underscores the thoroughgoing character of the revolution in law and the culture that she so ably documents.

Wheeler attributes the lion's share of this change to the indefatigable efforts of a cadre of lawyers and activists associated with the American Civil Liberties Union (ACLU), which she portrays as a "major and stunningly effective advocacy group." Founded in 1920 to defend critics of capitalism and pacifists from unjust persecution, the ACLU over the next two decades evolved into a leading defender of birth control advocates, nudists, theatrical producers, and others vulnerable to obscenity charges. These foci reflected the legal dilemmas and private preoccupations of ACLU founders and their friends, which to a remarkable degree dictated the organization's agenda.

It is therefore fitting that Wheeler begins her narrative with a fascinating, if also depressing, discussion of the tumultuous personal and sexual relationships of several Greenwich Vil-