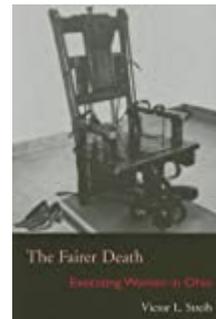




**Victor L. Streib.** *The Fairer Death: Executing Women in Ohio.* Athens: Ohio University Press, 2006. x + 198 pp. \$24.95 (paper), ISBN 978-0-8214-1694-5.



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## Gender Politics in Capital Punishment: Ohio and America

Trying to figure out why some killers are condemned and executed, while others committing similar crimes manage to evade the ultimate penalty, is akin to attempting to thread a needle with a blade of grass. That is to say, it's well nigh impossible. Comparing condemned women to their more fortunate "sisters" appears, on its face, to be a somewhat easier task. Women are, after all, executed in far fewer numbers than men. A total of 568 women have been hanged, gassed, electrocuted, and injected since 1632, representing less than 3 percent of all the executions in America. Since 1900, the percentage has dropped even further, to less than 1 percent of all executed inmates.

Narrowing the study to a single state would seem to bring the topic into microscopic focus. Nineteen states have executed women, who ranged in age from a seventeen-year-old in Virginia to Louise Peete, who claimed to be fifty-eight when California executed her in 1947. (Peete was probably sixty-three.) Even the most "death-friendly" state for women—New York—has only executed seven women in its entire history; eight if you count Ethel Rosenberg, electrocuted at Sing Sing by the

federal government for espionage in June 1953.

How hard can it be to compare such a small sampling of women? Difficult, as Victor Streib discovered after closely examining the cases of four women executed in Ohio and eleven other women who were condemned but not executed. Nine of the eleven had their death sentences overturned and two currently reside on Death Row.

In his new book, *The Fairer Death: Executing Women in Ohio*, Streib struggles mightily to come up with common denominators that link all of the cases. He concludes that race plays a significant role. Other than ethnicity, the circumstances of the crimes, time periods, and personalities of the defendants are too diverse to allow for firm conclusions. Nonetheless, Streib's work is a valuable addition to the rich body of work on the death penalty in America.

Streib is a law professor at Ohio Northern University, as well as a prolific author and an attorney who has represented female death row inmates, though regretfully he does not reveal which ones. Despite his background,

*The Fairer Death* is not a work of advocacy, he states, but an effort, “based on academic research,” to “explore an interesting topic” (p. xi). Recognizing that the lopsided percentage of men on death rows across the United States reveals inherent inequities in the legal system, Streib set out to examine the underpinnings of this discrepancy, what it demonstrates about society’s ideas on gender and how these expectations play out in criminal cases involving women and capital punishment.

He first offers a wide-angle view of overall death penalty laws in the United States, zooms in on Ohio, and then homes in on condemned women in that state, offering detailed descriptions of their crimes, trials, and sentences. An appendix lists all of the women residing on death rows throughout the United States, as of 2005.

Death penalty statutes themselves are not to blame for the vast over-representation of condemned men, Streib asserts, because they contain no overt gender bias. But deeply ingrained gender ideology does play a significant role in how the laws are applied. Since states began rewriting capital punishment laws in the aftermath of the U.S. Supreme Court’s 1972 decision abolishing the punishment, murder (with one or more aggravating factors, including rape, murder-for-hire, robbery, a history of violence) is the only death-qualifying crime. And aggravating factors must overshadow any mitigating circumstances, such as acting under duress or acting under the domination of others. Men are more likely to have violent pasts, to kill in connection with rape or robbery, or to be dominant actors in crime.

In this observation, Streib reinforces work done by other scholars, such as Ann Jones in *Women Who Kill* (1996) and Vicki Jensen in *Why Women Kill: Homicide and Gender Ideology* (2001), who argue that men and women in general possess different motivations for murder. Men are more likely to kill out of explosive rage, or during the commission of another crime, while women tend to nurse grievances or murder intimates, often because of abuse. This cultural perception of gender “differences” has enabled defense attorneys to play on jurors’ sense of women as inherently “emotional” and thus susceptible to the influence of others. According to Streib, “these mitigating factors provide opportunity for biases in favor of women defendants that are quite difficult to support” (p. 9).

Ohio is one of thirty-nine states with the death penalty. It currently ranks fifth in the number of inmates on death row, with 194 men and two women. (California has the largest death row population, more than 600,

including 16 women.) And an Ohio case looms large in national death penalty policy. Sandra Lockett was sentenced to death in 1975 for facilitating the murder of a pawn shop owner. Lockett’s sentence came despite the fact she did not actually do the killing—apparently not an unusual circumstance in Ohio capital punishment politics. Lockett appealed, arguing that the Ohio death penalty statutes “did not give the sentencing judge a full opportunity to consider mitigating circumstances in capital cases, as required by the Eighth and Fourteenth Amendments” (p. 65). In 1978, the U.S. Supreme Court agreed. In addition to Lockett’s sentence, the decision overturned death sentences for 98 other inmates across the country and required states to re-write their death penalty laws.

Lockett’s is one of fifteen individual cases Streib examined in an effort to locate commonalities among women condemned to die. The cases offer a fascinating window into aspects of the women’s lives that may have led judges and juries to condemn them. Race clearly played a pivotal role, as Streib acknowledges. African Americans represent more than 50 percent of the condemned women. Two of the four executed women were black: one was the first woman executed in Ohio, who was hanged in 1848 for beating a fellow prisoner to death; the other was a lesbian electrocuted in 1954 for drowning her partner. Would white women have been executed for the same crimes? It is impossible to know. The two executed white women both poisoned their victims. Anna Marie Hahn, electrocuted in 1938, appears to have been a serial killer.[1] Dovie Dean, executed in 1954, poisoned her husband.

Six of the eleven women condemned but not executed were also black. All were convicted between 1975 and 1988. It is impossible to know whether they would have been executed because three of them had their sentences overturned by the Lockett case and Ohio Governor Richard Celeste commuted the sentences of the others in 1991.

Streib, in laying out the details of the cases, shows that all of the white condemned women shared personality traits that placed them outside the gender “rules” that reward women—in court at least—for being emotional and that punish them for “unnatural” stoicism and nontraditional backgrounds. Several of the condemned women killed family members, a factor that elicits sympathy under the “right” circumstances—abuse, for example. But their choice of victims precluded this: mothers-in-law, grandmothers-in-law, and their own children.

“Class” appears to have played an important, if unstated, role in all of the cases. None of the condemned women came from well-off or educated families. Many, including current death row inmate Nicole Duir, convicted in 2005 of murdering her son, apparently suffered from mental illness or had mental incapacity bordering on retardation. Judges, coming from far different backgrounds, seem not to have considered the role that poverty, limited intellect, or mental illness played in the crimes.

*The Fairer Death* does not offer definitive answers. As its title suggests, perhaps ironically, when it comes to the

death penalty, there is no such thing as fairness. Not for men and not for women. From beginning to end, the process is shot through with luck (or lack of it), subjectivity, and the vagaries of time and place. Perhaps the only way to make it completely fair is to abolish the death penalty altogether.

Note

[1]. Diana Britt Franklin describes Hahn’s crimes in *The Goodbye Door: The Incredible True Story of America’s First Female Serial Killer to Die in the Chair* (Kent: Kent State University Press, 2007).

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