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THE FIRST STONE IN RETROSPECT: AN OUTSIDER'S OBSERVATIONS ON THE BOOK AND ITS CRITICS

Susan Grover*

Australian Helen Garner's *The First Stone*¹ has sparked allegations of factual and legal inaccuracy and betrayal of feminist ideals.² The book focuses on a highly publicized harassment case at Melbourne's Ormond College, and on the decision of two young women to take legal action against the college headmaster, the alleged harasser. Garner contends that the two women overreacted.³ Garner's critics, in turn, maintain that Garner misapprehends the nature of sexual harassment and that she is more concerned with perpetuating patriarchy than with advancing women's interests.⁴ In its own right and by inciting new debate on sexual harassment, *The First Stone* has made a significant contribution to the understanding in this area. The book expands the levels and context in which debate on the subject will occur and identifies human issues that need exploration. The book also provides important insights into how outsiders experience their own invisibility and how abuse victims serve both themselves and patriarchy by joining a conspiracy of silence.

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1. HELEN GARNER, *THE FIRST STONE* (1993).

2. Garner, herself, has described the book as "a brick thrown through a window." Jane Freeman, *No Stone Unturned As Feminist Critics Bring Garner to Book*, SYDNEY MORNING HERALD, Apr. 24, 1995, at 3. "For questioning 'puritan feminism,'" Garner has been "condemned as a turncoat and accused of endorsing rape." *Id.* See also Sonia Harford, *UK: Left's Rage Maintained*, THE AGE (Melbourne), May 15, 1996, at 20; Kevin McDonald, *Leeching the Meanings of Human Experience*, ARENA MAGAZINE, June-July 1995, at 44 (discussing critics of book).

3. She believes the women engaged in a "ghastly punitiveness," GARNER, *supra* note 1 at 16, symptomatic of "a stubborn desire on the part of certain feminist ideologues to paint themselves and their sisters as outraged innocents." *Id.* at 100. Kevin McDonald suggests that Garner has raised the problem of "allow[ing] legal regulation rightly required to prevent sexual harassment to become the paradigm of all human relationships," which would yield "a transparent world which no longer admits to the possibility of relationships of shared vulnerability." McDonald, *supra* note 2, at 44. Something in this rings of the disingenuity one detects in the repeated comments of men who object to the regulation of sexual harassment in the workplace because they do not know what is or is not harassment. What is it about the word "unwelcome" that they do not understand?

4. See, e.g., Virginia Trioli, *The Second Stone*, THE AGE (Melbourne), Mar. 29, 1995, at 13. One American writer has suggested that the critics' ire resulted from Garner's "willingness to examine the situation from all sides." Kerry Fried, *Garnering Attention: One of Australia's Finest Novelists Goes to the Movies*, THE VILLAGE VOICE (Film), May 7, 1996.

I. THE STORY

The Ormond story begins, as Garner tells it and as recounted by the news media, with allegations by one current and one former female student that the Ormond headmaster⁵ made sexual advances at a college party in the fall of 1991. One woman alleged that the headmaster placed his hands on her breasts during a dance and the other woman alleged that he made sexual advances behind the closed door of the headmaster's office.⁶ Within several weeks of the party, the headmaster learned that allegations had been made, but dropped.⁷ Almost five months passed, however, before the headmaster learned exactly who was accusing him of what.⁸ Since then, the headmaster has consistently denied the truth of the women's allegations.

According to available accounts, both accusers sought first to resolve their cases through college channels, but felt thwarted by the internal apparatus. Because the college was unwilling to take sufficiently strong and swift action against the headmaster, the women took their cases to the police, charging the headmaster with indecent assault.⁹ Garner comes on the scene when she reads in the *Melbourne Age* that the headmaster is being tried for one of the offenses. So shocked is Garner when she reads of the women's decision to report the headmaster to the police for what she sees as "mere clumsy gropings at a party," that she writes the headmaster a (now infamous) letter telling him how sorry she is that the women are putting him through this ordeal and wishing him and his family well.¹⁰ Through-

5. Garner gives the headmaster the pseudonym of "Colin Shepherd." GARNER, *supra* note 1, at 1. News accounts refer to him as "Alan Gregory." See, e.g., Jenna Mead, *Mead v. Garner*, THE AGE (Melbourne), Sept. 21, 1995, at 15 (extract of speech to Sydney Institute).

6. "Sexual imposition," including "attempts to touch," constitute the most severe of five levels of sexual harassment measured by Fitzgerald's Sexual Experiences Survey. Diane K. Shrier, *Introduction and Brief Overview*, in SEXUAL HARASSMENT IN THE WORKPLACE AND ACADEMIA - PSYCHIATRIC ISSUES 1, 12 (Diane K. Shrier, ed., 1996) [hereinafter SEXUAL HARASSMENT]. Situational factors that exacerbate the degree of trauma experienced by harassment victims include "the power differential between the harasser and victim." Sharyn Lenhart, M.D., *Physical and Mental Health Aspects of Sexual Harassment*, in SEXUAL HARASSMENT, *supra*, at 21, 27.

7. For a more detailed chronology of the case, see Robert Manne, *The Ormond College Affair*, QUADRANT, May 1995, at 2-3.

8. GARNER, *supra* note 1, at 53.

9. In interviewing one of the women's peers, Garner asks why the police got involved in the case and learns that "[t]he procedures here didn't lead to justice. All the different avenues were tried - but there were structures which protected [the headmaster]." *Id.* at 96. See Karen Kissane, *Keeping Sex in its Fit and Proper Place*, THE AGE (Melbourne), Mar. 25, 1995, at 15 (discussing the college's reluctance to pursue vigorously a response to the women's allegations).

10. GARNER, *supra* note 1, at 16. Garner attributes the ready hostility with which feminists she interviews met her to their having read this letter. At the beginning of her description of one interview, Garner notes that "the warmth of [the interviewer's] manner on the phone had congealed into the permafrost of a feminist who'd been shown my letter to Colin Shepherd." *Id.* at 96.

out her recounting of the events, Garner returns to this sense of awe and horror that the women have taken such extreme action.¹¹

Like any legal case involving disputed factual issues, the Ormond case takes on very different casts depending on whose version of reality one believes.¹² If we assume the plaintiffs are telling the truth, then it seems unfair for them even to have to submit their cases to the courts in order to receive redress. If we assume instead that the defendant is telling the truth, it seems equally dreadful that this innocent man should be forced to submit to the legal processes in question. Such factual disagreements and accompanying sympathies are at their zenith in the sexual harassment context, where the parties so often harbor very sincere, yet very divergent, versions of reality. It is no wonder that debates in this area become so heated.¹³

Garner goes further than simply saying that she agrees with the headmaster's version of reality and that therefore it was wrong for the women to seek legal redress. Rather, Garner's position is that the headmaster should not have undergone the ordeals to which the women's complaints subjected him,¹⁴ even if the women told the truth and even if he committed the acts of which he was accused. Garner just does not believe that what the headmaster is alleged to have done is all that bad.¹⁵

11. In the words of Marilyn Lake, Garner's shock at the women's charges suggests "surprisingly little knowledge of feminism, past and present. There is, in fact, nothing new in women's determination to use the State to curb men's freedom to sexually assault, exploit and abuse women." Marilyn Lake, *Three Perspectives on Helen Garner's The First Stone*, ABR, Sept. 1995, at 25, 26. As discussed below, Garner would not dispute the availability of remedies for sexual assault, but considers the culpability and injury she envisions to have occurred in these cases to be insufficient to constitute remediable assault.

12. I am not saying that either Garner or the headmaster was "right." I am saying only that those who disagree with Garner are better off if they understand Garner's perspective. To make progress in the eradication of discrimination against women—especially discrimination in the form of sexual harassment—each of us must embrace with gratitude the opportunity to come to understand and respond to points of view different from our own.

13. Discourse surrounding harassment issues suffers from the same black-and-white polarization as the factual dispute themselves. Robert Manne, for example, condescends to Dr. Mead's position by describing it as far more extreme and absolute than it is. He writes that Mead characterizes the headmaster's acts as "not the expression of folly or drink but of patriarchy - of an aggressively masculinist sexual politics." Manne, *supra* note 7, at 3. Surely Dr. Mead would agree with Manne and Garner, if indeed the headmaster's behavior was an "expression of folly [and] drink." *Id.* Mead is simply more concerned with the "masculinist sexual politics" that also underlie the behavior.

14. It may be a worthwhile exercise to consider whether our perspective much alters when we modify the facts. Do we think that the victim's complaint becomes more readily justifiable when, instead of a young woman, the victim is a young man, and the headmaster is, instead of a married, heterosexual father of two, a single, homosexual man, who has grabbed the testicles of his victim?

15. In one sense, this disagreement is simply about where the law should draw the line. How much injury is enough to warrant legal intervention? Garner pretty

There is unquestionably merit in the position of critics who argue that the nature of the power relationship (or the students' perception of a power relationship) between the students and the headmaster renders the allegations extremely serious, warranting - if true - criminal prosecution and dismissal from his position.¹⁶ But, even if Garner is wrong on this ultimate question of whether the students overreacted, *The First Stone* offers important, and often overlooked, contributions to the discursive battles being waged against sexual harassment.¹⁷ The danger is that readers will let *The First Stone's* shortcomings blind them to these contributions.

The book's offerings fall roughly into two categories: inciteful and insightful. In its inciteful function, the book brings the discourse on sexual harassment squarely to the public eye, ear and vocal chords, where surely some of it belongs.¹⁸ The insightful offerings go deeper, and are especially underappreciated in the criticism. They include the rich emotional energy and honesty with which Garner questions her own responses to instances of harassment in her own life and the problems of using black and white law to respond to the gray areas of human sexual interaction.¹⁹

clearly believes that the young women in the Ormond case did not suffer enough to warrant legal intervention.

16. Garner distinguishes the relationship between school personnel and high school students from the relationship between school personnel and university students, suggesting that in loco parentis does not operate in the latter. Regardless of the age of the student, the student-educator relationship is so fraught with power imbalances that sexual advances directed by educators toward students are invariably suspect. Moreover, Garner suggests that the harasser's knowledge that he is "exerting power" is predicate to holding him responsible for the harassment. GARNER, *supra* note 1, at 46. Surely, the onus is on those wielding power to know they are doing so. Cf. *Ellis v. Brady*, 924 F.2d 872 (9th Cir. 1991) (harasser's failure to realize actions constitute harassment irrelevant to law's definition of conduct as harassment).

17. As an outsider to Australia, I am sure that I miss some of the peculiarly Australian angles of the book. One, as Marilyn Lake points out, is that Garner has realigned the Ormond story to move the victim label from the two women accosted to the male accoster, rendering the tale just another "Australian story of the 'poor bastard.'" Lake, *supra* note 11, at 26.

18. One of the results of the popular format of the book is said to be that debate has moved into the mainstream, with the result that men have entered the fray. See John Hanrahan *Three Perspectives on Helen Garner's The First Stone*, ABR, Sept. 1995, at 26 (discussing comments of Dr. Jenna Mead published in *The AGE* (Melbourne) of Aug. 16, 1995). But see Lake, *supra* note 11, at 27 (arguing that "charges and counter-charges unleashed by the publication of *The First Stone* have polarized debate in unhelpful ways"). See also Fiona Giles, *Lois Lane on the Couch*, MEAJIN, 1995.

19. McDonald notes that "[w]hile reaction to Garner's book has largely been about the first agenda, the intense public interest is primarily concerned with the second." McDonald, *supra* note 2, at 45. See also Giles, *supra* note 18, at 386 (describing "wellspring of honesty" underlying Garner's discussion of feminist generation gap).

II. THE FIRST STONE AND THE ENSUING AVALANCHE

In its inciteful aspect, *The First Stone* has inspired unprecedented public discourse on the subject of sexual harassment in Australia. Much of the response has been characterized by feminist ire. Attacks on the book's shortcomings may be necessary and valid. They threaten, however, to blind feminists and others who think about the problems of harassment to opportunities the book presents to advance harassment discourse in ways that will make a difference.

Some of the response incited by *The First Stone* disparages Garner for expressing her views, rather than taking the opportunity to "educate" those who share Garner's views.²⁰ Feminists, both within the story Garner narrates and responding in newspaper reviews of her book, express anger that Garner would deign to write the book when she so misunderstands what actually went on, both factually and legally. The comments made by Dr. Jenna Mead, one of Garner's most vocal critics, demonstrate this. Mead touts the fact that today's feminism embraces "difference" and "change," yet is unwilling to characterize Garner's perspective as simply different from her own, seeing it instead as "wrong."²¹ At the same time, the negative emotional current spawned by *The First Stone* is itself part of the book's contribution toward "re-radicalizing" women,²² and should not be permitted to distract from the important opportunity the book presents.

An analogous situation existed recently on the Internet Femjur discussion group. Conversation focused on some university students in New York who had posted to the internet a "List of Reasons Why Women Shouldn't Be Able to Talk." The posting contained a list of misogynist reasons (ad nauseam).²³ Responses of feminists on the internet were swift and angry. At the beginning, the discourse focused on punishment of the boys. As discussion progressed over several days, however, emotions calmed and discussants focused on objectives other than punishment. Finally, someone advanced the view that feminists are better off knowing about the perverse misguided mentality of such misogynists, rather than simply silencing such people. Only by knowing how these boys are thinking would feminists know of the

20. See Les Carolyn, *Time to Tip the Literary Scales Back in Favour of the Word*, SYDNEY MORNING HERALD, July 4, 1996, at 13 (arguing that critics have hounded Garner for *The First Stone* because her message was "taboo").

21. Mead, *supra* note 5, at 15. Mead further criticizes Garner for "ignor[ing] the central fact that [Garner] doesn't know what sexual harassment is." *Id.* Garner does not come to grips with legal definitions of sexual harassment; that simply is not what her story is about. In fact, her story is about what the situation looks like to someone who does *not* have the specialized knowledge Mead describes.

22. The book has already served to "re-radicalize" women, in the words of Janet Beighle French. Janet Beighle French, *Fearing for Australian Women's Rights*, THE PLAIN DEALER (Cleveland), Feb. 13, 1996. It has also inspired "furious public debate." Freeman, *supra* note 2, at 3.

23. Such as that women who cannot talk cannot cry "rape."

need to educate them. If we do not know how people think, we cannot persuade them to change their way of thinking.

The answer to Garner is expression of opposing views in a medium accessible to Garner's readers. The accessibility of Garner's medium is pivotal in this controversy. Garner's book threatens feminists only because large numbers of people who are unlikely ever to read academic feminist scholarship have read and will continue to read *The First Stone*.²⁴ The broad accessibility of Garner's chosen medium is what renders her ideas dangerous.

By placing its message in an easily-readable and accessible form, *The First Stone* "throws down the gauntlet" to feminists to get their own message into the hands of the public, rather than reserving it for intellectuals.²⁵ If Garner has misled women into believing they would be wrong to challenge harassment as the Ormond victims did, then it is for those who disagree with Garner to disseminate their countervailing message in a way as effective as the one Garner has used to broadcast her own.²⁶ Garner presents an opportunity and impetus to

24. See Carolyn, *supra* note 20, at 13 (noting popularity of Garner's book based on sales figures).

25. In Garner's words, "[p]eople in the university aren't like people in the outside world." GARNER, *supra* note 1, at 150. Clearly the literary tastes and reading lists of the two groups are not identical. As Naomi Wolf has written, "[i]t is little wonder that so many women aren't sure what feminism means. They rarely get to hear it articulated, let alone tested." NAOMI WOLF, *FIRE WITH FIRE* 96 (1993) (noting withdrawal of feminist ideas into the academy).

Something very telling in the response of Dr. Jenna Mead to Garner's book is her concern with Garner's apparent lack of familiarity with current feminist scholarship. Garner, Mead notes, appears not to have read the works of Susan Faludi and Naomi Wolf. See Mead, *supra* note 5. The failure to refer to the work of academic feminists strikes me as hollow criticism. It is as if Mead would deny permission to speak on the subject of women's experience to all who are not versed in the theoretical discourse of feminism. Although Wolf argues that rebels must be familiar with the systems against which they are rebelling, WOLF, *supra*, at 119; she also admits that the writing of academic feminists is largely incomprehensible to lay people. *Id.* at 125. Garner does something very different from derivative work from extant theories. She supplies an entirely distinct perspective, an "everywoman" or "woman on the street" view of the Ormond situation. This is not to say that Garner represents *the* point of view of all women, but that she represents *a* point of view to which feminists can respond.

26. Mead expresses concern that Garner's work will discourage other women from coming forward. Kissane, *supra* note 9, at 15. It may. Women may not come forward with harassment claims if they do not know that what they are experiencing is (contrary to Garner's position) "harassment," as that term is defined by the law, or if they feel that such a charge would receive the kind of questioning scrutiny that Garner has inflicted on the Ormond claims. But Garner's book simply gives voice to sentiments and misconceptions that many women already harbor (unbeknownst to Mead?). *The First Stone* places into discussion precisely those points on which everywoman is likely to join forces with patriarchal forces to the detriment of feminist ideals and the women's own well-being. On the other hand, Garner's use of a popular medium to discuss the case, even from her critical perspective, broadcasts that fact that challenges to sexual harassment are within the realm of possibility.

educate, to persuade others to change how they think.²⁷ *The First Stone*, then, challenges feminists to use vehicles like *popular* literature to make sure women beyond academia know their rights and to offer support for women who choose to seek enforcement of those rights in court.²⁸ The academic feminists should fight fire with fire, and *The First Stone* is a call to arms.²⁹

Moreover, when Garner challenges the actions, decisions and strategies of the harassment victims, she is posing precisely the questions the general public is already asking about harassment, questions that *need* to be answered so that the general public will understand what is wrong with harassment.³⁰ A good example is when Garner asks, "why would a young woman feel 'worthless' when a man makes an unwelcome sexual approach to her?"³¹ This is a very reasonable question. Observers ask, "shouldn't the woman feel complimented when a man finds her attractive?" If Garner or someone like her does not ask this question in a truly public forum, then millions of people will silently ask *themselves* the question and supply themselves with answers which feminists will not like.³²

In its *inciteful* aspect, then, *The First Stone* already has served to increase public discourse about harassment. The challenge remain-

27. In the view of one writer, reviewers and critiquers of *The First Stone* "have generally failed to engage with the questions Garner raises, preferring instead the intellectually safer ground of castigating the archaism of Ormond College." McDonald, *supra* note 2, at 44.

28. Cf. Kenneth Lasson, *Scholarship Amok: Excesses in the Pursuit of Truth and Tenure*, HARV. L. REV. 926, 943 (1990) (discussing inaccessibility of legal academic scholarship).

29. In a similar vein, feminists need to respond to American author Michael Crichton's *Disclosure* and the movie based on it with a popular literature/cinema work that actually gives an accurate depiction of the horror that workplace harassment entails. By depicting the harassment as female-on-male and by concluding with a victorious male and an outcast female perpetrator, *Disclosure* only exacerbates the "confusion" about harassment which some members of society claim. "Heterosexual men . . . are harassed much less frequently than women . . . and they often perceive the harassment as flattering and mutual, rather than humiliating and devaluing. . . . Nonetheless, they [may respond negatively] when their harasser is in a superior work position." Lenhart, *supra* note 6, at 33-34. Cf. David Mamet, *Oleanna* (play about false allegations against innocent man).

30. Studies show that "the majority of people apparently believe that sexual harassment is something that can and should be handled individually - that is by the person who is harassed." Barbara A. Gutek, Ph.D. & Mary P. Koss, Ph.D., *How Women Deal with Sexual Harassment and How Organizations Respond to Reporting*, in *SEXUAL HARASSMENT*, *supra* note 6, at 39, 42. John Hanrahan argues that Garner makes a mistake in "offering her perspective as that of the 'ordinary citizen.'" Hanrahan, *supra* note 18, at 25.

31. GARNER, *supra* note 1, at 88.

32. There is plenty of documentation that harassment victims do, in fact, feel worthless. A 1992 study, for example, showed that sexual violation, especially harassment, causes self-doubt. Lenhart, *supra* note 6, at 24-25. "Harassing behaviors reinforce internalization of existing stereotypes and prejudices that devalue women, and result in low self-esteem . . ." *Id.* at 25; see *id.* at 28-31.

ing in the book's wake is for feminists to take their message to a medium as accessible as the one Garner has employed. By focusing on accessibility and by responding to the issues and attitudes that Garner's book reveals, feminists can win new ground. The book's insightful aspect, on the other hand, centers on the rich depiction of the depths and dimensions of women's experience of harassment. Garner has committed, without reducing, that experience to words.³³

III. INTERSECTING REALITIES

Although it is ostensibly a narration of events surrounding the Ormond case, *The First Stone* is actually both less and more than that. It is less than such a narrative because, as Garner's critics have so forcefully asserted, Garner was neither party nor privy to the events first hand and could not even obtain interviews with some of the primary players. Those who criticize *The First Stone* focus on the book's failure to conform to the particular literary genres to which the critics believe that the book belongs.³⁴ Dr. Jenna Mead, for example, criticizes the book for turning a "newspaper chronology into a confusing, murky, and slippery tale," for "substituting hearsay and innuendo for fact and evidence," and Garner's fantasies for the real "events and their consequences."³⁵ Mead complains that Garner does not know "the dramatis personae of the Ormond case."³⁶ Garner herself recognizes that the book does not qualify as an investigative report. In her "Author's Note," she explains that "obstacles to [her] research . . . forced [her], ultimately, to write a broader, less 'objective,' more personal book."³⁷ And here is where the book amounts to much more than a description of the events at Ormond College. *The First Stone* depicts very palpably how it *feels* (to some women) to be sexually accosted by men: the horror, ambivalence, passivity and illogic of our responses to such affronts.³⁸ In this depiction, drawn from her own

33. What she has not done, and what feminist responses can do, is draw the connection between emotive experience and legal wrong.

34. See, e.g., Hanrahan, *supra* note 18, at 25 (describing and decrying *The First Stone* at "journaliction"). But see Sally Loane, *Feminist Laws Made for Use*, SYDNEY MORNING HERALD, May 6, 1995, at 34 ("for a novelist, [Garner] is one hell of a journalist."); Giles, *supra* note 18, at 386 (describing book as "analytic mediation"), 387 (characterizing book as a "social issue novel" of the sort "popular in 1890's England").

35. Mead, *supra* note 5.

36. *Id.* Isn't that Garner's point? Well, one of them. Despite her efforts to find out what was going on, Garner failed to persuade the "dramatis personae" to communicate with her. As a result of that refusal, much of Garner's book is about the exclusion itself and, relatedly, about the exclusivity of the college and its people (and also the exclusivity of the newest generation of feminists, and perhaps every new generation . . .).

37. GARNER, *supra* note 1, at (Author's Note); see also McDonald, *supra* note 2, at 44.

38. John Hanrahan writes that Garner's book fails to keep her promise of "trembling self-examination" and "questions," offering instead "stern firmness" and a lot of "authorial decisions." Hanrahan, *supra* note 18, at 25. The portion of Garner's book

experience of harassment, Garner validates other women who have received the same abuse. Moreover, Garner very ably (if perhaps unintentionally) juxtaposes the *experience* of harassment against two other realities: that of women's inability to verbalize the experience and the legal system's inability to accommodate its all-or-nothing pigeon holes to the multi-dimensionality of experience.

Garner's book very effectively contrasts the nature of experience with the nature of law. She juxtaposes the multi-layered, multicolored, often illogical and ambiguous nature of the experience against the black and white, all-or-nothing, pragmatism of law. She expresses discomfort, for example, with apparent inconsistencies between her own feminism and her sympathy with the Ormond headmaster: fearing "her feminism and ethics were speeding toward a head-on clash."³⁹ The ambivalence of experience which here worries Garner presents a stark contrast to the definitiveness and certainty of legal results to which such ambiguous experience must be reduced:

The room was very small. People were shoving to get in. I couldn't see anything but the backs of strangers' heads. The magistrate took only a few minutes to announce his findings, in a muffled voice. He said that although he thought something had occurred to distress the young woman who had brought the complaint, doubt remained in his mind as to what had happened in the study. The student, he said, was a spirited, forthright person, with many friends who cared about her; and Dr. Shepherd had led an unblemished life privately and professionally, and was highly regarded. The case came down to oath against oath; and Dr. Shepherd received the benefit of the doubt. The magistrate dismissed the charge. The police were ordered to pay Dr. Shepherd's costs of \$15,800.⁴⁰

Elsewhere, Garner describes her view that treating all harassment as assault under the law "rules out gradations of offence."⁴¹ She suggests that one young woman "had a grid labeled criminal, [which] she was determined to lay . . . down on the broadest field of male behavior she could get it to encompass."⁴²

Central to Garner's position is her regret that the rise in women's consciousness has made inroads into the pleasure men and women can derive from the erotic undertones of daily interactions. The threat that charges of harassment will be brought vastly reduces our

that focuses on the Ormond saga, standing alone, may seem over-certain about that inappropriateness of the women's actions. However, because Garner interjects stories about her own experience of harassment and because she confesses her continuing confusion about why she responded to them as she did, the overall impression that the book gives me is of the inconsistencies in Garner's own understanding. Depiction of those inconsistencies seems a valuable contribution to our thinking about sexual harassment.

39. GARNER, *supra* note 1, at 39.

40. *Id.* at 19.

41. *Id.* at 100.

42. *Id.* at 101.

willingness to approach each other in the work and academic worlds. "Feminism," says Garner, "is meant to free us, not to take the joy out of everything."⁴³ "[T]he little god Eros, flickering and flashing through the plod of our ordinary working lives,"⁴⁴ may, indeed, be sadly tamed by the potential for harassment claims. The crux of the problem here is that mutual erotic interaction is socially valuable and that such beneficial interaction is reduced because the line between mutual interaction and unwelcome advances can be hazy. Mistakes are made, and socially desirable behaviors are punished with socially undesirable ones. The inevitable result is some decrease in the socially desirable behavior where people fear being wrongly accused of having crossed the line into the undesirable area.

Many facets of experience cannot, with integrity, be reduced to precise legal categories. Garner and others seem to see such "irreducibility" as a ground for exempting areas of sexual behavior from legal constraint.⁴⁵ Yet, the difficulty of line-drawing in the sexual harassment context should not render such experience exempt from the constraints and categorical exactness of law. Sexual behavior is no different than any other area of human conduct which the law undertakes to control. The adjudicated result of any law suit arising from disagreements about what occurred is usually entirely for the plaintiff or entirely for the defendant, even though the events underlying the claim may truly have been experienced differently by the two parties, and perhaps would fall somewhere in between their two stories if a neutral third party could have observed.⁴⁶ All types of human experience are too complicated to be accurately reflected in narrow legal results. We engage in the fiction that experience can be so reflected in order to make the law work.

The easiest analogy is that of child sexual abuse. Society encourages and depends upon intimacy between parents or other caretakers and the small children for whom they care. Without the physical and emotional bonds that characterize such intimacy, society's young will flounder. On the other side of the line is child sexual abuse. Most victims of such abuse can probably identify with ease the moment the line was crossed. Perhaps that line is less clear in the mind of the abuser and surely it is frequently quite hazy in the view of the outside

43. *Id.* at 113.

44. GARNER, *supra* note 1, at 113.

45. Graham Little, *Three Perspectives on Helen Garner's The First Stone*, ABR Sept. 1995, at 28. See also Giles, *supra* note 18, at 385 (describing power issues in sexual harassment context as "slippery, unlegislable realm").

46. This is not to say that such ambivalence is lacking from other forms of discrimination. It is just that the harassment context lends itself more readily to such ambivalence because of the special complexity of the emotional and cognitive issues involved. Because of the disparity between amorphous human sexual experience and the definitiveness of law, Garner feels discomfort with the application of law to the sexual harassment context. See GARNER, *supra* note 1, at 147-49; McDonald, *supra* note 2, at 47.

observer: society, the judge and the jury. Because the line is hazy, there is a danger that innocents will be falsely accused, charged and convicted. Because of this danger, perfectly innocent adults will circumscribe their interactions with children to avoid false accusations. The socially useful behaviors involved in intergenerational intimacy thus are diminished by legal prohibitions against child abuse. Assuming that the harm caused by sexual harassment is one worth protecting against, then, the fact that some *good* will be sacrificed in the pursuit of that protection is no argument against legal sanctions.

Although Garner is criticized for "completely miss[ing] the 'network of powerful men with institutional connections. . . that the students were up against,'"⁴⁷ she actually tells that part of the story with some poignancy. Garner may not have been privy to all of the interconnections among the men the young women confronted, but Garner does appear to give full play to the women's experience of that patriarchal group. In fact, a straightforward narrative of the sequence of events could not possibly capture as Garner does the character of Ormond College as a man's world, regardless of how many women may physically locate themselves within the college.

Garner notices, for example, in the photographs on the walls at Ormond, that the only women depicted are servants:

The only women to be seen in this gallery of privilege (apart from a couple of intellectuals with Ormond connections, whose portraits had obviously been added as a recent afterthought under feminist pressure or by some committee with a guilty conscience) stood with clasped hands beside tables at which young men prepared to attack their food in the enormous, shadowy dining hall. These women wore white caps and large white aprons: they were maids.

Stepping in from the beautiful gardens, with their flowing lines and spring foliage, I felt the halls in their grandeur to be overwhelmingly masculine: spartan, comfortless, forbidding. I had to pinch myself to remember that Ormond College, though originally established for men and their needs, had been admitting women as resident students for almost twenty years. To the passing observer, the presence of women seemed to have left no mark.⁴⁸

When Garner goes to court, she encounters two old Ormond men who push her out of "their" way to take seats behind the headmaster, presumably protecting the rear flank. As Garner crawls around on the floor trying to get her hand bag out from under the seats the two men have commandeered, the men stand silently, waiting, "without the slightest acknowledgment that a fifty-year-old woman was down on her hands and knees among their legs."⁴⁹ Garner goes on:

47. Mead, *supra* note 5, at 15.

48. GARNER, *supra* note 1, at 22.

49. *Id.* at 35.

Flustered, I sat down again on the end seat. The men installed themselves at their ease. One of them took out a newspaper, spread his arms and began to read it, taking up so much space that I was forced to lean sideways out into the aisle. They were completely unaware of my discomfort. These were 'Ormond men,' then. They expected to be deferred to. I was in their way and they behaved as if I were not there.⁵⁰

The invisibility that Garner experiences and the males commandeering more space than their physiques require are familiar to all women.⁵¹ What is important about this aspect of Garner's book is that its description of experience is *not* restricted to the intellectual level but ranges into the sensate, emotional levels where people live. Because it operates at this level, the book can reach more women.

Garner tells of a woman friend who, during a visit to Ormond, her husband's alma mater, is in the hall looking at displays of photographs of college support staff:

A couple of old boys - fifty, fifty-five - also stopped and looked at the pictures. They started making jokes about them and sending up 'this egalitarian business - it's absurd - getting quite out of hand.' So I said, 'I think it's good. It's a recognition that Ormond wouldn't be able to run without these people.' They didn't even acknowledge that I'd spoken to them. They just turned and walked away.⁵²

The powerlessness and invisibility that Garner here so palpably depicts is the same as that experienced by the two young women who file complaints against the Ormond headmaster:

A young woman graduate of Melbourne University now working for an international publishing company told me she thought the 'extremity' of the Ormond complainants' response must have been an expression of their powerlessness - a rage at not being listened to. 'Even to make people listen to them they had to work themselves up and say, "But it was really, really upsetting!"'⁵³

Garner exhibits sensitivity to the "battlements of male privilege,"⁵⁴ to the exclusion and sense of exile that patriarchal systems inflict on women. Yet she does not grasp the connection between women's inability to make patriarchal authority figures *hear* us, an inability that Garner recognizes in court and in the Ormond portrait gallery, and the experience of the two harassment claimants. The failure of Ormond College to provide adequate administrative procedures to handle the harassment complaints is a prime example of the

50. *Id.*

51. With respect to the latter, any woman who has ridden public transport next to a male is almost certainly familiar with having to relinquish a piece of her seat so that the male could spread his legs into her space.

52. GARNER, *supra* note 1, at 81.

53. *Id.* at 84.

54. *Id.* at 104.

patriarchy's failure to listen. In the words of a student advisor to the harassment victims:

It was so traumatic. It was sad that there was no structure - no one to go to, to tell us what to do. The student Equal Opportunity board at Ormond was a good idea but it was only at its starting-point. The EO group for all the colleges round the Crescent was basically males.⁵⁵

Garner appears to be someone on the road to consciousness: exhibiting a firm understanding of the invisibility that patriarchy inflicts on its victims, but unwilling to acknowledge all of the manifestations of that injury.⁵⁶

Garner's unwillingness to connect her own experience of the invisibility with that of the complainants is a manifestation of the sort of denial that the conspiracy of silence demands of abuse victims. The conspiracy seems also to be at the root of the incongruity between Garner's response to instances of sexual abuse in her own life and her response to the Ormond case. Garner appears unconscious of the connection between her own inability to speak out in response to sexual abuse in her own life and her disapproval of the contrasting ability of the Ormond harassment victims to find their voices in response to their experience of abuse. In this incongruity and unconsciousness, *The First Stone* supplies graphic depictions of the tension between the pressure on abuse victims to be faithful to the conspiracy of silence and their wish to soar free from the conspiracy's bounds.

Garner describes in poignant detail scenes from her own life in which she was silent in the face of male abuse. In recalling "the experience of being harassed," Garner describes, for example, a "country bloke" who converses with her (when she is trying to read) in an empty compartment in the train from Melbourne to Geelong.⁵⁷ Garner responds to his social overtures out of "good manners - or rather because [she] lacked the rudeness that is required in order to go on reading something that interests you while someone boring is trying

55. *Id.* at 78.

56. Even in response to a description of the system's inadequacies, Garner asks (again): why did they go to the police? GARNER, *supra* note 1, at 78. See also *id.* at 96, 137 (describing the victims as "scurrying to law"). She has just been given the reason, yet somehow cannot accept the fact that frustrations with the inadequacies of the system caused the women to pursue criminal avenues.

57. *Id.* at 62. Garner distinguishes "harassment" from "assault" or "attack," although seemingly the physical touching that the young women described rendered the acts "assault," as a legal matter. *Id.* at 97. But this is part of the conspiracy of silence. Many of us who have experienced rape, sexual assault, childhood sexual abuse, and so on, wait for years (or forever) before we attach the proper language labels to what happened to us. Suddenly, years afterwards, it hits us: "that was rape!" Our failure to realize that what happened falls within the category of events denominated "rape" was part of the denial that helped us to survive the ordeal and the memory of it. Cf. Shrier, *supra* note 6, at 12; Gutek, *supra* note 30, at 39, 43, 45, 47, 53 (noting victims' failure to label experiences as sexual harassment).

to talk to you."⁵⁸ Throughout the conversation, the man shifts closer to Garner along the seat of the train until he puts his arm around her and asks her to "give him a kiss."⁵⁹ Garner, an accomplice in the conspiracy of silence, permits the kiss and apparently denies what is happening until a person passing by the compartment looks in and Garner realizes how the situation must appear to a stranger's eyes.⁶⁰

In a similar vein, Garner describes an incident with her masseur:

One day I booked myself in. 'Haven't seen you for a while,' he said as I undressed and climbed on to the table. I explained that I'd been broke and busy, and he began to work. The only interruption was his request, half an hour later, for me to turn on to my back. He worked from my feet upwards. When he had finished with my right arm and was laying it down, he kissed the back of my hand.

I was thunderstruck. I couldn't believe it had happened. I thought I must have dreamt it. I lay there as if everything were normal, but I was tense and alert, though I still hadn't opened my eyes. He continued to massage me: left arm, abdomen, chest, shoulders, in the ordinary asexual way. Then he moved to the top of the table, stood behind me, and took my head in both hands, as he always did, to massage my neck; but I felt his face come down over mine, and he kissed me gently on the mouth.

I didn't move. I lay there, flat on my back and stark naked except for the towel he had spread over me as he worked. I kept my eyes tightly shut. I was unable to compute what he had done. I was more than anything else *embarrassed*. He finished the massage without further incident. At the end of it I opened my eyes and got off the table. I could hardly meet his eye. My face felt stiff with awkwardness. Something needed to be said, but my mind was blank. While I was pulling on my track suit he said, with a calm smile, 'Don't let it be so long, next time, between visits.' I recall thinking in amazement, surely you don't imagine you'll ever see me again? But still I said nothing and made no sign.

I said goodbye - I think I even smiled - and scuttled out of the room. I got my bag out of the locker, fronted up to the reception desk, and I paid.⁶¹

Garner's belief that the Ormond victims should "take it like women," the way Garner "took it" (i.e., silently) is archetypally the older abuse victim ordering the younger abuse victim to maintain the con-

58. GARNER, *supra* note 1, at 62.

59. *Id.* at 63.

60. *Id.* This incident reflects in an important way the manner in which having others witness our situations empowers us to recognize abuse for what it is, recognition which may be the first step to escaping it. This is why finding the words to tell our stories and finding friends and counselors who listen to us and hear what we say are so essential to healing.

61. *Id.* at 173.

spiracy of silence.⁶² Similarly, the mother who tells her child to keep silent about abuse does so because she herself underwent the same abuse as a child and was ordered to remain silent.⁶³ Garner recalls her own silence with troubled confusion. The confusion that Garner exhibits demonstrates that the conspiracy of silence has not just to do with protecting the offending sexual aggressor and keeping patriarchy intact. Forcing silence on the next generation also has to do with allowing the older generation of abuse victims to hold to the belief that the misery they experienced as a result of what they thought was forced silence and denial was an externally imposed, unavoidable misery. Telling an abuse victim that she had a choice and did not have to maintain years of silence is telling her she suffered in vain. It is as if she spent forty years in a small prison cell and then suddenly discovered the key to the cell, the means of freedom, hanging within reach on the wall of the cell. If the Ormond harassment victims were correct in speaking out, then Garner will be forced into the position of seeing that all of her own painful silence in the face of sexual abuse was unnecessary. By juxtaposing her own silence in the face of abuse with her challenge to the Ormond complainants' ability to speak, Garner suggests something about how still-hurting victims respond to those newly victimized people who are blessed with the consciousness and resources to speak out and take action against their abusers. Seeing others protect themselves in ways we haven't protected ourselves hurts.

This is the book's deeper offering. It raises from the shadows some of the enigmatic facets of harassment. Examining the apparent incongruity between human feeling and legal regulation, the book delves into the psychology of silence. The narrative gives voice to some of the difficult conflicts surrounding harassment, though perhaps leaving a resolution for another day.

The First Stone, then, has opened the gateway to increased dialogue on the harassment issue and has plumbed the depths of the powerlessness with which some victims respond to harassment. It has begun the process of integrating the many layers of our conceptualization of harassment: the legal, the physical, the emotional, the literary. It is a beginning.

62. Denial is a common response to harassment. Lenhart, *supra* note 6, at 30. Because sexual harassment, like childhood sexual "abuse is humiliating, . . . there is motivation to keep it secret." Gutek, *supra* note 30, at 40.

63. Studies have shown that "there is an interrelated spectrum of gender-based abuse and exploitation of women, including sexual harassment and . . . childhood sexual abuse," among which there are parallels, including similarity of "psychological and stress-related physiological responses . . . in victims of all forms of abuse." Lenhart, *supra* note 6, at 23-24; see also Gutek, *supra* note 30, at 40.