

## LAW AND CHANGE

### ON STONE THROWING FROM THE FEMINIST SIDELINES: A CRITIQUE OF HELEN GARNER'S BOOK, *THE FIRST STONE*

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*[The First Stone is a contemporary exposition of a deeply held cultural belief in Western society that women, because of their way of dress and/or behaviour, encourage and impliedly consent to male sexual abuse and are ultimately responsible for it. Such a belief serves to obscure the coercive nature of male sexual abuse and to obscure what it is about heterosexual relations that produces behaviour in the form of sexual harassment and sexual assault. This article traces the way in which this cultural belief manifests in The First Stone and how Helen Garner uses the belief to construct a version of events about the Ormond affair that conflicts with documented evidence and with a feminist understanding of the nature of the socially validated form of heterosexuality in Western society.]*

#### INTRODUCTION

Helen Garner's provocatively titled book, *The First Stone*,<sup>1</sup> is a story about the morality of women who resort to the criminal law in response to allegations of being sexually harassed and assaulted<sup>2</sup> and the morality of legal intervention into the heterosexual relations that produce such behaviour. Two quotes at the beginning of *The First Stone*, together, set the moral tone of the story yet to come:

'The struggle for women's rights is ... not a matter of gender loyalty. It is a matter of ethical principle, and as such, it does not dictate automatic allegiance to the women's side in any given argument.' (*Zoë Heller*)

'Let the one among you who has done no wrong cast the first stone.' (*John 8:7*)

At the outset, these quotes hint that, in the argument to be presented in the following pages, there is a 'women's side' and a 'men's side' and, in the absence of ethical principle, the women's side will not be taken. Indeed, the morality of the women's side is alluded to, since it is only those, in biblical terms, who have 'done no wrong' who may then point the finger at another's wrong. Since this

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<sup>1</sup> Helen Garner, *The First Stone* (1995).

<sup>2</sup> Sexual harassment as defined under state sex discrimination legislation (see, eg, Equal Opportunity Act 1995 (Vic) s 85) is not a criminal offence and attracts monetary and/or coercive penalties only: see, eg, Equal Opportunity Act 1995 (Vic) sub-ss 136(a)(i), (ii), (iii)(b) and (c). Sexual assault refers to sexual behaviour that is criminalised under provisions of criminal law legislation (such as Crimes Act 1958 (Vic) ss 38-40) as a result of the lack of consent to the behaviour by the other party. It may sometimes be the case that behaviour which falls within the definition of sexual harassment also amounts to sexual assault.

story is about the alleged indecent assault of two young students by a senior academic, is Garner suggesting that this is the standard that should be set in relation to this crime? Certainly, the camps are sharply drawn between those who may, on moral principle, cast stones and those who may not. There are those for Garner and those against her: there are the camps of one 'meek'<sup>3</sup> man versus puritanical feminists, and 'secretive',<sup>4</sup> furious,<sup>5</sup> 'cold faced',<sup>6</sup> young, 'feminist ideologues'<sup>7</sup> versus older reasonable women.

The book is emotionally charged and Garner is variously scornful,<sup>8</sup> outraged,<sup>9</sup> infuriated,<sup>10</sup> horrified,<sup>11</sup> haunted, anxious,<sup>12</sup> and mad,<sup>13</sup> although the limitations of the book are not necessarily due to the expression of emotion. Rather, it is the extent to which self-righteousness, partiality, hidden prejudices and blame accompany that emotion and out of which Garner has developed a position on truth: the book is a compilation of Garner's 'truth' and others' experiences.<sup>14</sup> Although Garner purports to examine 'the current climate in sexual harassment thinking',<sup>15</sup> the book does little to examine the phenomenon of sexual harassment and sexual assault, why it happens and its effects on women. Indeed, Garner makes this clear at the outset:

The innocence or guilt of Colin Shepherd was to me the least interesting aspect of this story. What I really wanted to know was why the girls went to the police.<sup>16</sup>

Clearly then, her motivation for writing the book was not to examine the politics of sexual harassment, but to examine the 'phenomenon' of the 'power' of two young female university students who resort to the criminal justice system in response to the alleged incidents that have been dubbed 'the Ormond affair'. Through the construction of archetypes and conspiracy theories, the story becomes that of two puritanical feminists, one of whom has a powerful and erotic sexuality, who lay complaints with the police against a meek and harmless man who made clumsy passes at them at a social event. He loses his job, his career is

<sup>3</sup> Garner, above n 1, 32.

<sup>4</sup> Ibid 71.

<sup>5</sup> Ibid 144.

<sup>6</sup> Ibid 100.

<sup>7</sup> Ibid.

<sup>8</sup> "'Look — if every bastard who's ever laid a hand on *us* were dragged into court, the judicial system of the state would be clogged for years'": ibid 15 (emphasis in original).

<sup>9</sup> "'He touched her breast and she went to the *cops*'": ibid (emphasis in original).

<sup>10</sup> 'At that moment something inside me snapped. I wanted to find Elizabeth Rosen and Nicole Stewart and *shake them till their teeth rattled*': ibid 168 (emphasis in original).

<sup>11</sup> 'But all that day I experienced rushes of horror': ibid 16.

<sup>12</sup> 'But the story haunted me. I began to notice that I was anxious about it': ibid 39.

<sup>13</sup> 'I thought that I might be mad at these girls for not having *taken it like a woman* — for being wimps who ran to the law to whinge about a minor unpleasantness': ibid 40 (emphasis in original).

<sup>14</sup> This phrase is adapted from the title of an article by Carol Smart, 'Law's Truth/Women's Experiences' in Regina Graycar (ed), *Dissenting Opinions: Feminist Explorations in Law and Society* (1990) 1.

<sup>15</sup> Garner, above n 1, 179.

<sup>16</sup> Ibid 40.

ruined, people are appalled, the punishment far outweighs the crime. The issue of the students' experiences of sexual harassment remain in the background as Garner becomes obsessed with how they 'ruined' the man's career and with an apparent feminist conspiracy which purportedly attempts to stop her from writing the book. In this way, '[t]he story of Helen-as-feminist-victim shadows and repeats the one about the Master of Ormond, Colin Shepherd, as feminist-victim until her story becomes much bigger than his.'<sup>17</sup>

Since the book contains no analysis of the *nature* of the heterosexual culture which produces sexual behaviour in the form of sexual harassment and sexual assault, this article attempts to redress that failure within the framework of a critique of *The First Stone*.

#### BACKGROUND TO *THE FIRST STONE*

In March 1992, two female students of Ormond College, University of Melbourne, laid complaints of sexual assault with the police against the then Master of the college, Dr Alan Gregory. Gregory, who is referred to as Colin Shepherd in the book, was charged with four counts of indecent assault<sup>18</sup> (later reduced to two) in relation to both complaints. The first complaint alleged that, at a student party, Gregory assaulted the student, referred to as Nicole Stewart in the book, by squeezing one of her breasts twice whilst dancing. The second complaint alleged that Gregory had asked the student referred to as Elizabeth Rosen in the book into his office, locked the door, offered her a drink, told her repeatedly that he often had indecent thoughts about her, had at one stage got down on his knees before her, and when she stood up, grasped her hands and then her breasts. Rosen also alleged that Gregory approached her on three other occasions at the party, and on one of those occasions placed his hand on her bottom.<sup>19</sup> Gregory was found guilty in relation to the first count of indecent assault (although no conviction was recorded) and not guilty in relation to the second.<sup>20</sup> Gregory appealed against his conviction and in September 1992, the County Court upheld his appeal.<sup>21</sup>

In October 1991, prior to the decision to go to the police, the two students had made informal complaints of sexual harassment with the College's Vice-Master, the Sexual Harassment Adviser for the College. They also sought advice from Dr Jenna Mead, at the time a member of the College Council, and informal complaints were taken to Sir Daryl Dawson, the then Chairman of the Council of

<sup>17</sup> Jenna Mead, 'The First Stone: It's All in the Pitch' (1995) 5(38) *Campus Review* 8.

<sup>18</sup> Crimes Act 1958 (Vic) s 39.

<sup>19</sup> These events are documented in the transcript of the police interview which is set out by Garner, above n 1, 7-8 and accord with the documentation of events in: Jenna Mead, 'Sexual Harassment and Feminism' in George Papaellinas (ed), *RePublica* (1995) 170-1; Fiona Athersmith, 'Ormond College Master Convicted of Indecent Assault', *Age* (Melbourne), 25 August 1992; Fiona Athersmith, 'Court Told of Uni Head's Indecent Fantasies', *Age* (Melbourne), 1 September 1992.

<sup>20</sup> Fiona Athersmith, 'Ormond College Master Convicted of Indecent Assault', *Age* (Melbourne), 25 August 1992; Fiona Athersmith, 'Court Dismisses Gregory Charges', *Age* (Melbourne), 3 September 1992.

<sup>21</sup> Philip Johnson, 'College Head Cleared of Indecent Assault Charge', *Age* (Melbourne), 23 September 1992.

Ormond College, on their behalf by another student.<sup>22</sup> In February 1992, the Council set up a subcommittee for the purpose of formalising the statements from the two students.<sup>23</sup> After receipt of a report from the subcommittee, the Council issued a statement 'to the effect that, while it believed the young women had made their complaints in "good faith" — I think this was the term — Council nevertheless reiterated its confidence in the Master'.<sup>24</sup>

After the court proceedings, the two students lodged complaints with the Victorian Equal Opportunity Commission against the College Council. These complaints were accepted and conciliated. The settlement reached between the parties included an apology by the College which was announced and posted at the College and published in *The Age* and *Herald-Sun*. The apology, of which only a small part appears in *The First Stone*,<sup>25</sup> essentially reads:<sup>26</sup>

- (i) '[T]he College acknowledges that the complaints could have been handled differently by the Ormond College Council and ... with more sensitivity and with a greater degree of apparent impartiality'; and that
- (ii) '[The College] did not have in place an adequate policy and procedure which may have enabled the complaints to have been resolved within the college'.
- (iii) The College also accepted that 'the students had acted honourably and brought the matter to the attention of the appropriate persons in a discreet manner'.
- (iv) 'The College regrets any hurt and distress suffered by the students.'

#### THE FIRST STONE'S UNANSWERED QUESTIONS

Garner's primary focus in *The First Stone* is on the *nature* of Gregory's alleged sexual behaviour and its apparent harmlessness. Since the students' response to his sexual behaviour is the subject of a considerable amount of scorn and invective on the part of Garner, it is important to examine what it is about the *nature* of Gregory's alleged sexual behaviour that makes her decide that the criminal justice system is the inappropriate site for resolution and redress. Is it because:

- the alleged acts of sexual assault were really 'clumsy passes',<sup>27</sup> 'hapless social blunders',<sup>28</sup> and 'foolish things',<sup>29</sup> done at a party which every woman, at some time or other, is required to deal with as a natural part of heterosexual relations and should just be put up with as a 'minor unpleasantness'?<sup>30</sup> In

<sup>22</sup> Mead, 'Sexual Harassment', above n 19, 165.

<sup>23</sup> See further *ibid* 172.

<sup>24</sup> *Ibid* 173.

<sup>25</sup> Garner, above n 1, 68.

<sup>26</sup> Mead, 'Sexual Harassment', above n 19, 173.

<sup>27</sup> Garner, above n 1, 101.

<sup>28</sup> *Ibid*.

<sup>29</sup> *Ibid* 93.

<sup>30</sup> *Ibid* 40.

other words, are uninvited sexual advances an inherent expression of masculinity which should be accommodated by women who are charged with protecting men's egos: to be 'cool enough to ... ask for an acknowledgment and an apology',<sup>31</sup> to be forgiving and protect them from the consequences of their behaviour?

- physical harm is more serious than psychological harm and there was no physical force which caused the two women demonstrable harm?
- Garner believes that the two young women *attracted* the alleged uninvited sexual advances because of their physical attributes and/or style of dress?
- the alleged offender was well-educated with a prestigious academic position and, on those grounds, should have been protected from the consequences of his behaviour? Would Garner's concern have been as great if the alleged offender was, say, the gardener of Ormond College?

Or does Garner have an unstated belief that women's bodies are *acceptable* sites for playing out male desire (up to the point where no demonstrable physical harm occurs), because men 'who behave as Colin Shepherd was accused of doing' are 'just poor bastards' who 'aren't scary or powerful'<sup>32</sup> and are merely responding to eros (the essential ingredient in heterosexual relations) which must never be sacrificed?

Evidence for this unstated belief comes from Garner's own experiences of uninvited male sexual advances which she recounts in the book and which highlight her belief that men's sexuality is essentially harmless.<sup>33</sup> Garner's responses to the advances stand in stark contrast to the action taken by the two students in relation to Gregory's alleged behaviour. As an example of this contrast, Garner describes one of her personal experiences as merely that 'of being *harassed* — as distinct from *assaulted* or frankly *attacked*'<sup>34</sup> since 'no violence, no threat of any kind was involved no force: only a steady, almost imperceptible persistence' whereby a drunk stranger in a train carriage shifts along the seat between himself and Garner, puts his arms around her shoulders and asks to give her a kiss:

I let him kiss me on the lips, out of embarrassment, or politeness, or passivity .... What was my state, that allowed me to accept his unattractive advances without protest? I was just *putting up with him*. I felt myself to be luckier, cleverer, younger than he was. I felt sorry for him. I went on putting up with him long past the point at which I should have told him to back off. *Should have?* Whose *should* is this? What I mean is *would have liked to. Wanted to but lacked the ... the ...* Lacked the what? ... Surely he'll stop in a minute. Surely he can

<sup>31</sup> Ibid 92.

<sup>32</sup> Ibid 99.

<sup>33</sup> This is not to suggest that this author subscribes to the converse generalisation that all men are dangerous; rather it is recognised that it is still primarily women who feature in crime statistics and victim report studies as victims of sexual assault and that the majority of women who experience any form of sexual assault experience it from men they know, rather than strangers: see, eg, Regina Graycar and Jenny Morgan, *The Hidden Gender of Law* (1990) 329. There is, therefore, a difference between recognising the *reality* of women's experiences and then using it to fuel unfounded generalisations.

<sup>34</sup> Garner, above n 1, 62 (emphasis in original).

tell I'm only being polite, that I'm not liking it. How can he be so completely unaware that I'm actually hating it? *Why isn't he reading my mind?*<sup>35</sup>

During a massage with a male masseur, Garner recalls:

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 ... 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 ... [and] 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 .... Something needed to be said, but my mind was blank .... I said goodbye — I think I even smiled — and scuttled out of the room ... [I] fronted up to the reception desk, *and I paid*.<sup>36</sup>

These experiences reveal the concern that Garner had for the men who assaulted her and her need to protect *them* rather than herself. In relation to the man in the train carriage she observes: 'I felt myself to be luckier, cleverer, younger than he was. I felt sorry for him.'<sup>37</sup> After the experience with the masseur, Garner observes:

I behaved like a child. *I kept my eyes shut*. That is, I declined to take any responsibility in the situation. When I left the room I was still maintaining the pretence that nothing untoward had happened. And I never went back.<sup>38</sup>

After recounting that experience, she then makes the following connection between her own responses of passivity and those of Nicole Stewart:

And this is where my masseur's kiss loops back and touches Nicole Stewart and Colin Shepherd on the dance floor, in her version of the story which the judge 'did not disbelieve' but which could not be proved. What woman would not feel a shot of rage at the QC's question to Nicole Stewart: 'Why didn't you slap 'im?' We all know why. Because ... all we want to do when a man makes a sleazy, cloddish pass is 'to be polite and get away'. What did these students — clever, beautiful young women in their twenties ... — what did they do when one of their friends ran out of a party upset and told them that the Master had groped her? Their spontaneous collective action was to make it look *to him* as if nothing untoward had happened — to cover up the unpleasantness, to smooth things over ... They believed they were protecting Nicole from him; but in fact everything they did was directed at protecting *him* from knowing that he had offended her.<sup>39</sup>

Nonetheless, the empathy that Garner finds within herself for the students'

<sup>35</sup> Ibid 63-4 (emphasis in original).

<sup>36</sup> Ibid 173 (emphasis in original).

<sup>37</sup> Ibid 63.

<sup>38</sup> Ibid 174 (emphasis in original).

<sup>39</sup> Ibid 174-5 (emphasis in original).

plight is overtaken by the belief that Gregory's alleged behaviour was essentially *harmless* and in light of the harmlessness of his behaviour they can only be involved in acts of revenge and retribution:

Is it retrospective shame of our passivity under pressure that brings on the desire for revenge? Is *revenge* the right word, or should it be *retribution*, ... with its atavistic clang of righteousness? Again and again come these sharp flashes of empathy with the girls; but something in me, every time, slams on the brakes to prevent the final, unbearable smash. I invent and discard a dozen fantasies of less destructive responses to such an incident.<sup>40</sup>

In light of Garner's documented need to protect men from the consequences of their sexual behaviour, the action of the students in going to the police, in her eyes, could be nothing other than an act of revenge or retribution. She reinforces this view throughout the book by asking rhetorically 'but why did they go to the police?' In asking that question, Garner creates a dialogue between herself and like minded 'reasonable' people that such an act was "'so far over the top that it's appalling'".<sup>41</sup> Nonetheless, this dialogue ignores the evidence that the students went to the police "'as a last resort after the college had failed to deal with [the incidents] adequately'".<sup>42</sup> Thus, the answer to that question was available to Garner early on in her investigations but instead of a journalistic examination of the male institutional structures within the college which denied the students 'fairness, impartiality and equality',<sup>43</sup> Garner, paradoxically launches into a condemnation of the rigid position of the students' who, in their humourlessness, sacrificed the 'magic' of heterosexual eros in a calculated desire for revenge.<sup>44</sup>

Although a criminal trial is a public event which can severely embarrass the alleged offender, the same can be said to be true of the complainants, particularly in relation to sexual assault trials and where the alleged offender is found not guilty. This is the case notwithstanding the fact that the complainants were not named. In fact, as Mead observes, 'In pursuing a legal remedy [in relation to complaints of sexual harassment, a woman] often faces vicious attacks on her personal life'.<sup>45</sup> In particular, the two women, as students of a prestigious university college, 'understood the investment point that being at Ormond had professional, social and personal currency. In other words, they all had something to lose by stepping out of line'.<sup>46</sup> So why was going to the police such a serious matter in Garner's eyes? Despite the risk the students took in 'stepping out of line', their 'sin' appears to be that they did not 'save' Gregory from

<sup>40</sup> Ibid 175 (emphasis in original). Indeed, Garner's own responses to the man in the train and the masseur could be described as the type of 'less destructive responses' she had in mind, since they were exactly those responses that protected them from being confronted with their inappropriate sexual behaviour. In that sense, Garner did not destroy for them the illusion of their right to have sexual access to her.

<sup>41</sup> Ibid 45. See also ibid 38, 44, 46, 68, 84-5, 86, 102, 103-4, 123, 155, 179-80, 196.

<sup>42</sup> Ibid 18, quoting Rosen's evidence on cross-examination.

<sup>43</sup> Mead, 'The First Stone', above n 17, 9.

<sup>44</sup> Garner, above n 1, 202.

<sup>45</sup> Mead, 'Sexual Harassment', above n 19, 176.

<sup>46</sup> Ibid 177.

personal and social embarrassment:

'The media's what tipped the scale for me here,' [Gregory] said, 'to push me out. The reason people on the council voted against me is because of the publicity — that's what made my position here untenable .... It's damaged my reputation forever .... In terms of my career I'm finished .... There's a senior post going on in an Education faculty. What they want is almost written for me. I've applied. But I can tell you they won't have me, because of this. People keep pointing me out, in the street. Other people make jokes. The worst are the really bad male chauvinists, who go 'Ha ha ha — I do that all the time, but *you* got caught'.<sup>47</sup>

Thus, in Garner's eyes:

Shepherd might have been found not guilty by the court, but his name was being bandied about in the media, he had been stood down from his position at the college and his professional reputation was the property of gossips.<sup>48</sup>

In other words, the students did not continue to 'make it look *to him* as if nothing untoward had happened — to cover up the unpleasantness, to smooth things over ... [to protect] *him* from knowing that he had offended [them].'<sup>49</sup> More than that, they did not give him another chance: 'One of the sweetest men I ever knew, my first father-in-law, used to say, 'Even a dog gets two bites, before they put him down.'<sup>50</sup>

The central theme of the book, thus, becomes Garner's sympathy for the 'men's side' of the story. In light of this, the question that is examined in this article is not, why did the students go to the police, but what is the particular value system to which Garner adheres that makes her conclude that the students ought to have protected Gregory from the consequences of his alleged behaviour? Is this value system the same as that possessed by men who believe they have a right of sexual access to women's bodies? In addressing these questions, it is necessary, first, to examine the methodology used by Garner to tell her version of events.

#### THE POWER OF GARNER'S 'CLAIM TO TRUTH'<sup>51</sup>

Garner is a well-known, published author of fiction, although *The First Stone* is her first work of non-fiction. By August 1995, *The First Stone* had sold 42,000 copies since its release in March 1995.<sup>52</sup> The book has been acclaimed as 'one of the most controversial — and successful — books in Australian publishing history'<sup>53</sup> with the back cover describing Garner as 'one of Austra-

<sup>47</sup> Garner, above n 1, 56-7 (emphasis in original).

<sup>48</sup> Ibid 37.

<sup>49</sup> Ibid 175 (emphasis in original).

<sup>50</sup> Ibid.

<sup>51</sup> Smart, above n 14, 1.

<sup>52</sup> Richard Guilliat, 'Helen Garner Returns Feminist Fire', *Sydney Morning Herald* (Sydney), 9 August 1995.

<sup>53</sup> Paul Austin, introduction to the edited speech: Helen Garner, 'A story that needed to be told' *Australian* (Sydney), 9 August 1995.



lia's finest writers'. Clearly then, Garner writes from a position of considerable standing in the literary world. From the power derived from that position, Garner has been able to make 'claim[s] to truth' in a work of non-fiction which, contrary to available evidence and in the absence of sound theoretical or empirical analysis, no academic would be permitted to make.

Her journalistic 'claim to truth' resonates with 'law's claim to Truth' that 'the resolution of conflict [is] a purely legal matter and that those who are legally trained need only to hand down the self-evidently correct decision.'<sup>54</sup> Thus, law claims

that 'in any dispute ... [it] has access to the correct decision [because as] ... long as legal reasoning is correctly applied to the facts, the correct answer will be forthcoming. Now, what is interesting about this ... [is] that in public no one would dispute it .... What is [also] interesting in this is not the issue of whether [the] proponents and defenders of legal positivism are deceived, are subject to false-consciousness or are instrumentally serving their own class, race or gender interests. Rather what needs to be considered is the power that law arrogates to itself by making this claim to Truth, or ultimate correctness. What is also important is how this claim can disqualify other discourses, confirming a hierarchy of knowledges in which law is positioned close to the top. Lay knowledge and women's experiences does not count for much in this regime of Truth.'<sup>55</sup>

Smart adopts Foucault's meaning of the truth which is not 'the ensemble of [scientific] truths which are yet to be discovered and accepted' but rather 'the ensemble of rules according to which the true and false are separated and specific effects of power attached to the true.'<sup>56</sup> In other words, 'certain discourses claim to speak the truth and thus ... exercise power in a society that values this notion of truth.'<sup>57</sup> Similarly, what can be seen in *The First Stone* is a declaration of a point of view which becomes the 'truth' by a writer whose source of power is derived from her status as a published author of recognised standing and the attendant media controversy of a self-described feminist author appearing to 'abandon' her 'feminist sisters' (Garner versus 'feminism's grimmer tribes').<sup>58</sup> Her non-fiction story becomes an uncontested statement affirmed by her status as an author 'in a hierarchy of knowledges' comprised of those for her and those against her. But it is important to recognise that a point of view does not necessarily equate with all knowable facts, and to recognise the connection between having a point of view, conversion of that into fact and 'the truth to be described' and hence power: that is, '[p]ower to create the world from one's point of view'.<sup>59</sup> The deconstruction of Garner's version of the truth to reveal its inherent assumptions and biases becomes an even more compelling task once it is realised that the book contains several *fictional* characters which are used by Garner to create the appearance of a feminist conspiracy. The fact that neither

<sup>54</sup> Smart, above n 14, 2.

<sup>55</sup> Ibid.

<sup>56</sup> Ibid 3-4; footnotes omitted.

<sup>57</sup> Ibid 4.

<sup>58</sup> Garner, 'A Story that needed to be told', above n 53.

<sup>59</sup> Catharine MacKinnon, *Toward a Feminist Theory of the State* (1989) 121.

the complainants nor their supporters would speak to Garner adds to, rather than detracts from this conspiracy. Mead, who was closely involved with the students as a member of the Ormond College Council, contends that

[t]he book substitutes hearsay and innuendo for fact and evidence. Analysis of the events and their consequences is displaced in favour of the [*sic*] Helen's own fantasies about what might have happened .... Real people rub shoulders with invented characters ... , some people (like me) get six or seven names .... The story of Helen-as-feminist-victim shadows and repeats the one about the Master of Ormond, Colin Shepherd, as feminist-victim until her story becomes much bigger than his. In her much bigger story the fictionalising of me into six or seven individually named characters creates the impression of a feminist conspiracy.<sup>60</sup>

Using Smart's analysis, it can be seen that Garner has created a particular discourse which 'claims to speak the truth'<sup>61</sup> and in the absence of any other material with the same wide dissemination, her claim to truth, disseminated through the powerful medium of a published book, has the potential, if not the actuality, of becoming the truth for people reading it. Her power as a published novelist manifests in other ways: she is invited by the Sydney Institute to defend her version of the truth. Her speech is published in the nation's major daily newspapers which reinforces and bolsters her 'claim to truth'. As Smart observes, '[L]aw's claim to truth is not manifested so much in its practice but rather in the ideal or image of law'<sup>62</sup> and similarly, Garner's 'claim to truth' gains the credibility of the 'truth' because of the belief in the ideal or image of the well-known, published author. Again Smart's analysis of the law's claim to truth is apposite here:

[W]e operate as if the legal system does dispense justice, that is correct decisions, and we certainly give greater weight to a judge's pronouncement of guilt than a defendant's proclamation of innocence .... If we accept that law, like science, makes a claim to truth and that this is indivisible from the exercise of power, we can see that law exercises power not simply in its material effects (judgments) but also in its ability to disqualify other knowledges and experiences.<sup>63</sup>

What can be seen in *The First Stone* and Garner's subsequent published speech is how she transforms her point of view into the truth and uses it to 'disqualify other discourses, confirming a hierarchy of knowledges'<sup>64</sup> between her own point of view and that of her supporters, the point of view and experi-

<sup>60</sup> Mead, 'The First Stone', above n 17, 8.

<sup>61</sup> Smart, above n 14, 4.

<sup>62</sup> Ibid 5.

<sup>63</sup> Ibid.

<sup>64</sup> Ibid 2. Although subject to criticism, her 'truth' becomes widely accepted by journalists and others who accept uncritically and at face value her perception of events: see, eg, Padraic McGuinness, 'Feminism Debate Has to Go Far Beyond the Dogmatism of the Wimminists', *Sydney Morning Herald* (Sydney), 10 August 1995; Editorial, 'Garner Casts a Stone at Her Critics', *Australian* (Sydney), 9 August 1995; Morag Fraser, 'It's Time for Feminism's Egos to Call a Truce', *Sydney Morning Herald* (Sydney), 10 August 1995; Geoffrey Gibson, 'The First Stone' (1995) 93 *Victorian Bar News* 74; David Leser, 'Generational Gender Quake', *Age Good Weekend* (Melbourne), 18 March 1995.

ences of the students and their supporters and the point of view of her subsequent critics. In particular, her 'claim[s] to truth' manifest in:

- the construction of Gregory as a 'misunderstood victim'<sup>65</sup> at the hands of two priggish feminists;
- the redefinition of Gregory's alleged sexual behaviour as harmless;
- the construction of a puritanical feminist archetype and a sexually powerful feminine archetype; and
- the construction of a conspiracy of radical feminists which attempts to prevent her from writing the book.

Through a deconstruction of Garner's 'claim to truth', it is possible to discover the cultural meanings which Garner attaches to women's sexual role and to chart how the students are transformed from women with their own particular individual experiences of alleged indecent assault into 'gendered bodies' onto whom specific sex-role expectations have been placed. Their behaviour is thus judged through the bias of Garner's 'claim to truth' and the belief system inherent in the 'heterosexual paradigm'.<sup>66</sup>

## THE ART OF CONSTRUCTION AND CONSPIRACY THEORIES

### A *The Construction of Victims and Perpetrators*

*The First Stone* is striking because of the *immediate* attribution of blame to the students who are made responsible for Gregory losing his prestigious position as Master of Ormond College and the subsequent ruination to his reputation. Garner described the actions of the students in going to the police as 'ghastly punitiveness' and 'appallingly destructive, priggish and pitiless'<sup>67</sup> in a letter to Gregory after reading a newspaper article concerning the first trial but without being aware of the circumstances surrounding the alleged assaults: 'all that day I experienced repeated rushes of horror. I didn't stop to analyse these feelings. I just sat down and wrote the man a letter.'<sup>68</sup> Her subsequent opinion of the actions of the students after the two trials remains the same; to her they are involved in an 'absurd, hysterical tantrum'<sup>69</sup> despite evidence of the College's obstruction of their attempts to resolve their complaints of sexual harassment informally.

Because of the obvious bias that Garner displays against the students and the degree of concern she displays towards Gregory, it is necessary to examine the prejudices which inform and colour Garner's view of events for the reason she 'felt so much sympathy for the man in this story and so little for the women'<sup>70</sup> and for her claim that

<sup>65</sup> Mead, 'Sexual Harassment', above n 19, 170.

<sup>66</sup> Ngaire Naffine, 'Possession: Erotic Love in the Law of Rape' (1994) 57 *Modern Law Review* 10, 11.

<sup>67</sup> Garner, above n 1, 16.

<sup>68</sup> *Ibid* 15-16.

<sup>69</sup> *Ibid* 39.

<sup>70</sup> *Ibid*.

[t]he Ormond complainants and their supporters ran out of ... patience or perhaps they never had it. Perhaps they never believed, in their rage and frustration, that anything other than brute force would blast a hole through the battlements of men's privilege. So they charged past conciliation into the traditional masculine style of problem-solving: call in the cops, split off the relevant nuances of character and context, and hire a cowboy to slug it out for you in the main street at noon, with all the citizenry watching.<sup>71</sup>

Throughout the course of the book, the students are constructed as perpetrators of a 'crime' against Gregory although they were the victims of his alleged indecent assaults. This construction occurs through the use of perjorative language and fictionalised suppositions and statements that continually call into question their morality: their actions are variously described as 'priggish',<sup>72</sup> 'pitiless',<sup>73</sup> vengeful,<sup>74</sup> punitive,<sup>75</sup> and 'a precise mix of prissiness, cowardice and brutality.'<sup>76</sup> Rhetorically, Garner asks: 'what sort of people could these be [for going to the police]?';<sup>77</sup> 'what sort of feminists are these? What kind of thought-police, of saboteurs?'<sup>78</sup> Rather than merely being sexual assault complainants, they are 'consumed by rage and fear',<sup>79</sup> engaged 'in warfare'<sup>80</sup> and have a power beyond that of mere victims. They are

a priggish literal-minded vengeance squad that gets Eros in its sights, gives him both barrels, and marches away in its Blundstones, leaving the gods' messenger sprawled in the mud with his wings all bloody and torn.<sup>81</sup>

For Garner, the Ormond story is nothing but a manifestation of a 'mingy, whining, cringing terror of sex'.<sup>82</sup> With the use of such colourful language and metaphor, the power of the students becomes absolute and is apparently derived from their youth, socio-economic class and sexuality:

[M]aybe I was cranky that my friends and sisters and I had got ourselves through decades of being wolf-whistled, propositioned, pestered, insulted, touched, attacked and worse, without the big guns of sexual harassment legislation to back us up. I thought I might be mad at these girls for not having *taken it like a woman* — for being wimps who ran to the law to whinge about a minor

<sup>71</sup> Ibid 104-5. This statement is made contrary to the evidence that the two students spent six months attempting to resolve their complaints through every informal means possible within the College (including conciliation) and had no desire to take the matter outside the college system: Mead, 'The First Stone', above n 17, 8-9.

<sup>72</sup> Garner, above n 1, 16.

<sup>73</sup> Ibid 16.

<sup>74</sup> Ibid 175.

<sup>75</sup> Ibid 16.

<sup>76</sup> Ibid 222.

<sup>77</sup> Ibid 18.

<sup>78</sup> Ibid 178.

<sup>79</sup> Ibid 47.

<sup>80</sup> Ibid 16.

<sup>81</sup> Ibid 202.

<sup>82</sup> Ibid 193. Here Garner attempts to give vent to all her particular prejudices (despite any inconsistencies) since at a previous point in the book one of the students, contrary to displaying a 'mingy, whining, cringing terror of sex', is portrayed as a sex goddess: at 59. This point is discussed further, below text accompanying nn 113-34, 190-218.

unpleasantness, instead of standing up and fighting back *with their own weapons of youth and quick wits*.<sup>83</sup>

The luxuriant gardens, as I pedalled across them those mornings on my way to the court, became less and less real to me. They seemed the site of an absurd, hysterical tantrum, a privileged kids' paddy.<sup>84</sup>

Elizabeth Rosen's photo, the one she claimed Colin Shepherd talked about during their conversation in his office at the Smoko, is from a different planet. The first impression it creates is one of shining. Then one notices the amount of flesh that is being permitted to shine.<sup>85</sup>

### B *The Construction of a 'Misunderstood Victim'*<sup>86</sup>

In contrast, Gregory is constructed as the quintessential victim: meek, unassuming, a loner, somewhat socially awkward but a loving and domestic father. Garner's description of him after seeing him in court but before having met him is imbued with concern: '[H]e did not impress as powerful; if anything, he looked dogged, even meek. Perhaps he himself, when young, had been one of the "less-loved students"'.<sup>87</sup> His 'totality' is the victim and he is constructed in a way that evokes pity rather than anger or distaste at his alleged behaviour: "[T]o a woman of my age, blokes who behave like Colin Shepherd was accused of doing aren't scary or powerful. They're just poor bastards".<sup>88</sup>

In addition, Garner minimises the impact of the alleged sexual assaults on the students. Gregory's acts of alleged sexual assault are constructed as the harmless acts of a victim, so that he does not sexually assault them but makes 'clumsy passes', 'nerdish passes' and 'hapless social blunders', which, altogether, are 'foolish things' that happen at parties.<sup>89</sup> He is a 'poor blunderer' who has had too much to drink and 'skate[s] blithely into situations that [he is] too ignorant or preoccupied to recognise as minefields of gender politics'<sup>90</sup>; in other words, a 'harmless bunny [who] blunders into the headlights and they give him both barrels'.<sup>91</sup> In this way, Gregory is absolved of any responsibility for his alleged behaviour and is involved in something not of his making but theirs: his sexual behaviour is merely a *natural* response for a man after a few drinks and, inexplicably, he becomes the focus of an unnatural and 'brutal' act of revenge by two priggish and prudish feminists.

But why isn't Gregory's socio-economic class, his position as the head of a prestigious university college, and age a *similar* source of power? Why is it that the students are so completely powerful and he is not? Why is it that he is not to be held at all responsible for the subsequent loss of his position and the apparent

<sup>83</sup> Ibid 40 (first emphasis in original, second emphasis added).

<sup>84</sup> Ibid 39.

<sup>85</sup> Ibid 58.

<sup>86</sup> Mead, 'Sexual Harassment', above n 19, 170.

<sup>87</sup> Garner, above n 1, 32.

<sup>88</sup> Ibid 99.

<sup>89</sup> Ibid 101.

<sup>90</sup> Ibid 120.

<sup>91</sup> Ibid 155.

ruination to his career? Even more glaring an omission is the lack of responsibility assigned to the College Council (which, after the trials, withdrew its support from Gregory despite the fact that he had been acquitted) and the 'network of powerful men with institutional connections' involved in the case whom 'the students were up against in their attempts to get a fair hearing for their complaints from October 1991 to March 1992'.<sup>92</sup> Despite evidence to the contrary, the students' 'totality' is that of power and his of powerlessness. In fact, one could be led to believe that Gregory, a 'poor bastard' and 'poor blunderer' who had too much to drink<sup>93</sup> was merely a socially inept old man attempting to make it at a party with two younger women. Through the construction of Gregory as the 'gods' messenger' delivering eros, Garner implies that Gregory and the students were merely engaged in flirtatious moments with each other. That and the use of the terms 'poor bastard' and 'poor blunderer' helps the reader forget for a moment that Gregory occupied a senior academic position, was acting in that position at a social function at the college and that the women were not potential lovers, but students to whom he owed certain ethical and legal obligations. Through the construction of Gregory as a victim, Garner is able to ignore these legal and ethical responsibilities and to divert the reader from the *real* power he exerted over their lives and their economic dependence on him. As Mead observes, '[T]he Master's control of bursaries, references and economic factors means that he [had] power and influence over the economic and professional prospects of the students.'<sup>94</sup>

In the re-construction of victims and perpetrators, it becomes clear that Garner is engaged in

the scripting of a narrative about sex and power, women and universities, everyday life and mythology, in which a limited range of stereotypes are being employed to flatten out the politics [of sexual harassment] ... In this narrative, there's no room even for the idea, let alone the fact, of a reasonable women .... [The] women are reduced to young hoydens, their supporters to angry persecutors and the men to misunderstood victims.<sup>95</sup>

As a consequence, the impact of the alleged sexual assaults is denied. Their impact is further denied through comparisons with crimes of a more life-threatening nature:

I took a job with *Time Australia*, reporting the trial of a man accused of having murdered his girlfriend's two-year-old son. The horrors I heard in the Supreme Court each day threw the Ormond story into merciless perspective. The luxuriant gardens, as I pedalled across them those mornings on my way to the court, became less and less real to me. They seemed the site of an absurd, hysterical tantrum, a privileged kids' paddy.<sup>96</sup>

<sup>92</sup> Mead, 'The First Stone', above n 17, 8.

<sup>93</sup> Garner, above n 1, 120.

<sup>94</sup> Mead, 'The First Stone', above n 17, 9.

<sup>95</sup> Mead, 'Sexual Harassment', above n 19, 170.

<sup>96</sup> Garner, above n 1, 39.

On 28 April 1993 the papers reported that a fourteen-year-old girl on her way to school had been raped in a public toilet by a man armed with a knife .... I thought ... that our helpless rage and grief at ... eternally unpreventable violence against women and girls ... must get bottled up and then let loose on poor blunderers who get drunk at parties and make clumsy passes; who skate blithely into situations that they are too ignorant or preoccupied to recognise as minefields of gender politics.<sup>97</sup>

By comparison, the uninvited squeezing of a woman's breast is to Garner a trivial incident, such that to complain about it is to be the subject of her scorn: "'Look — if every bastard who's ever laid a hand on *us* were dragged into court, the judicial system of the State would be clogged for years". At this we laughed, in scornful shrieks.'<sup>98</sup> In light of these comparisons, Garner argues that what is lacking from the alleged assaults is a sufficient degree of morally reprehensible behaviour to warrant a criminal sanction. In response to a comment that the two students had taken "'formal legal channels to get redress for what's essentially unjust behaviour'", she states:

Unjust? *Unjust* is the word for the behaviour of men who use their position of power as a weapon in forcing women to endure their repeated sexual approaches, or who take revenge for a knockback by distorting a woman's career or making her workplace intolerable or sacking her. *Unjust* does not apply to a clumsy pass at a party by a man who's had too much to drink. The two things belong in different moral realms.<sup>99</sup>

A resort to moral outrage is a common technique for justifying the imposition of criminal sanctions in relation to certain behaviour, so that the absence of sufficient moral culpability on Gregory's part is Garner's justification for her condemnation of the students' decision to seek recourse with the criminal justice system. However, the absence of moral outrage in relation to crimes associated with women's bodies (rape, sexual assault and domestic violence) parallels their history of not being criminalised or of being underpoliced if criminalised<sup>100</sup> since such crimes may be justified as private matters within consenting heterosexual relations.

### *C Resorting to the Public/Private Dichotomy*

The re-definition of Gregory's alleged sexual behaviour into a clumsy pass at a party allows Garner to transform his behaviour into something that is a *private* matter between 'consenting' heterosexuals, thus justifying her repeated criticism and rejection of the legal regulation of such matters:

Eros, 'the spark that ignites and connects', flashes into the room on the charge of laughter, disarms with a sudden vision of the absurdity of the whole ghastly

<sup>97</sup> Ibid 120.

<sup>98</sup> Ibid 15.

<sup>99</sup> Ibid 100-1 (emphasis in original).

<sup>100</sup> Judith Allen, *Sex and Secrets: Crimes Involving Australian Women since 1880* (1990).

mess, and leaves women looking grim and dull and wowserish and self-righteous, *struggling against men in the name of boring old justice*.<sup>101</sup>

Again and again, in trying to understand the Ormond story, I came up against a disproportionate ferocity, a stubborn desire on the part of certain feminist ideologues to paint themselves and their sisters as outraged innocents .... They use the word *violence* in places where to me it simply does not belong.<sup>102</sup>

There it was again ... the slide from *harassment* to *violence* .... Seeing what happened to Colin Shepherd as the result of an indecent assault charge, I did not accept [the gradation between indecent assault and sexual assault] as a particularly fine distinction.<sup>103</sup>

I thought I might be mad at these girls for not having *taken it like a woman* — for being wimps who ran to the law to whinge about a minor unpleasantness, instead of standing up and fighting back with their own weapons of youth and quick wits.<sup>104</sup>

The rejection of legal intervention is a typical libertarian response to the idea of regulating so-called private matters and embodies the notion that 'privacy is central to individualism as an area of life not subjected to the power of society'.<sup>105</sup> As Lukes concludes:

[T]he idea of privacy refers to a sphere that is not of proper concern to others. It implies a negative relation between the individual and some wider 'public', including the state — a relation of non-interference with, or non-intrusion into, some range of his thoughts and/or action. This condition may be achieved either by his withdrawal or by the public's forbearance.<sup>106</sup>

Thus '[i]t can be argued that social differentiation between women and men in the gender order has its counterpart in the general social distinction between private and public'.<sup>107</sup> More particularly, it is the social construction of gender which gives rise to and maintains the public/private distinction so that the non-regulation of so-called private matters (such as sexual behaviour and domestic violence) merely serves to reinforce the power differential, based on gender, between the sexes. But to justify the non-regulation of sexual behaviour on the grounds that it is a private matter, is to fall for the 'falsity of the public/private dichotomy'.<sup>108</sup> Feminist analysis reveals 'the public nature of privacy'<sup>109</sup> and demonstrates how the public/private distinction is an illusory and meaningless concept for women, since

women have no privacy to lose or to guarantee. We are not inviolable. Our sexuality, meaning gender identity, is not only violable, it is ... our violation. Privacy is everything women as women have never been allowed to be or to

<sup>101</sup> Garner, above n 1, 202 (emphasis added).

<sup>102</sup> Ibid 100 (emphasis in original).

<sup>103</sup> Ibid (emphasis in original).

<sup>104</sup> Ibid 40 (emphasis in original).

<sup>105</sup> Katherine O'Donovan, *Sexual Divisions in Law* (1985) 2.

<sup>106</sup> Steven Lukes, *Individualism* (1973) 66; quoted *ibid*.

<sup>107</sup> O'Donovan, above n 105, 3-4.

<sup>108</sup> Ibid 17.

<sup>109</sup> MacKinnon, above n 59, 117.



have; at the same time the private is everything women have been equated with and defined in terms of men's ability to have.<sup>110</sup>

In other words, although the 'private' sphere located in the domestic household operates as a common locus for examining the extent of the sexual and physical violation experienced by women, 'private' spheres exist in various arenas in the 'public' sphere, such as the workplace, the street and social venues, wherein rape, sexual assault and sexual harassment occur and wherein the non-intervention by the law arrogates to the men who commit such violations, implicit support for their sexual control and manipulation of women.<sup>111</sup>

Thus, resort to the public/private distinction as a justification for the non-intervention that Garner advocates in relation to so-called private heterosexual matters merely serves to reinforce the cultural belief that men have a right of sexual access to women's bodies and that problems within heterosexual relations can be dealt by the parties themselves. What this overlooks, however, is the inequality of power that can exist within a heterosexual relationship and the fact that a heterosexual relationship is necessarily a product of, and is affected by, structures of power that are external to it. In fact, resort to the public/private distinction is a diversion, since it merely tells us when, and in what realms of life, uninvited male sexual violation will not be regulated or under-regulated; it does nothing to provide an understanding of the nature of female/male relations which conspire to produce a power differential between the sexes through acts of sexual assault and sexual harassment.

Indeed, the diversionary nature of the public/private distinction is demonstrated by Garner herself in her response to the criticism that she had betrayed the privacy of the two students by telling the story of the Ormond affair without their agreement:

In what sense is it 'their' story? It is distorting and deeply wrong to bestow on [them] ... the ownership of this story. It could be truthfully called *their* story only if they decided to keep it to themselves .... And they didn't. They took their complaints to the police. And the police took them to the courts .... a court in a democratic country like Australia is an open forum .... So, once the complaints reached the courts, the story ceased of *necessity* to belong to the young women, or to the college, or to the man against whom the allegations were made. It stopped being 'their' story, and it became 'our story'.<sup>112</sup>

Using Garner's own logic, it can be argued that the private nature of male sexual behaviour loses that quality of privacy and becomes public property and a legal concern as soon as it falls within the definition of sexual harassment or sexual assault by virtue of a woman's lack of consent to it.

<sup>110</sup> Catharine MacKinnon, 'Feminism, Marxism, Method and the State: Towards Feminist Jurisprudence' (1983) 8 *Signs* 635, 656-7.

<sup>111</sup> Resort to the public/private distinction as justification for non-intervention of and non-regulation by the law in matters concerning women's economic, sexual and social lives is documented in Graycar and Morgan, above n 33, 30-40.

<sup>112</sup> Garner, 'A Story that needed to be told', above n 53 (emphasis in original).

D *The Construction of Powerful Female Sexuality*

Although Garner dismisses the feminist view that sexual assault and harassment of women by men is to be understood in terms of power,<sup>113</sup> she, in fact, uses but reverses the discourse of power to define the relationship between Gregory and the students. For Garner, Gregory's alleged acts of indecent assault in relation to Elizabeth Rosen can be excused because of the force of her sexual power:

Elizabeth Rosen's photo, the one she claimed Colin Shepherd talked about during their conversation in his office ... is from a different planet. The first impression it creates is one of shining. Then one notices the amount of flesh that is being permitted to shine. The gaze, whether one is male or female, drops like a stone from top to bottom of this photo, then travels slowly up. She is wearing a dark, strapless evening dress, out of which the double mass of her splendid bosom — the only possible word for it — is bursting. Her face and shoulders are tanned, her eyes are glowing, her dark-lipped, enormous mouth is split wide in a frank grin, showing perfect teeth. Her face is so dazzling that her hair, worn up and back except for one free curl over her right eye, is only a shadow. It is impossible not to be moved by her daring beauty. She is a woman in the full glory of her youth, as joyful as a goddess, *elated by her own careless authority and power*.<sup>114</sup>

Although the reader is told that men make lewd remarks in response to sighting Rosen's photo, those remarks are not motivated by a desire for power and control; their function 'is to conceal from themselves their deeper response, which is something like awe'.<sup>115</sup> Thus, Rosen's sexual power is an unquestionable given. Irrespective of her psychological make-up, her background, her own self image, it is only Rosen's physical appearance that makes her powerful and all men, it seems, are rendered powerless by the force of her sexuality.

In her construction of Rosen's sexuality, Garner uses a descriptive technique which 'has resonances with the standard [soft] pornographic genre': as Smart observes the hint of 'a pornographic vignette ... constitutes a further, more invisible dimension to the manner of judgment' of a woman who has been sexually harassed, assaulted or raped.<sup>116</sup> The 'hint of a pornographic vignette' within the description of Rosen injects into the apparent heterosexual relations between Rosen and Gregory the added dimension of Gregory's understandable titillation at the sight of her. Her 'sexual desirability has been fetishized' in that 'it is made to appear a quality of the object itself, spontaneous and inherent,

<sup>113</sup> Garner, above n 1, 209-10. See, for example, Catharine MacKinnon, *Sexual Harassment of Working Women* (1979); Catharine MacKinnon, *Feminism Unmodified* (1987) 103-7; MacKinnon, above n 59, 113-25; Nicola Lacey, 'Legislation Against Sex Discrimination: Questions from a Feminist Perspective' (1987) 14 *Journal of Law and Society* 411; Smart, above n 14, 10-20. This view can no longer be considered a solely radical feminist or even feminist viewpoint since the widespread adoption of legislation throughout Australia prohibiting sexual harassment and recent law reform work on the crimes of rape and sexual assault: see, eg, Law Reform Commission of Victoria, *Rape: Reform of Law and Procedure (Report No 43)* (1991).

<sup>114</sup> Garner, above n 1, 58-9 (emphasis added).

<sup>115</sup> Ibid 59.

<sup>116</sup> Smart, above n 14, 16.

[and] independent of the social relation that creates it'.<sup>117</sup> Rosen, as a sexualised being, cannot be dissociated from her body. She is her sexual body, and morally speaking, is responsible for its effects on men. In this way, Gregory's sexual pursuit of Rosen is explicable, and those who think otherwise are priggish, prudish, moralistic and unnatural.

Garner implicitly recognises that sexuality is the essential ingredient which gives rise to inequality within heterosexual relations, but she uses the sexuality of Rosen to construct a different discourse of power: because of the radiant power of Rosen's sexuality, her body is no longer a site of invasion by Gregory but an altar at which he *justifiably* pays homage:

Has a girl like Elizabeth Rosen even the faintest idea what a powerful anima figure she is to the men she encounters in her life? She told the court that Dr Shepherd had got down on his knees before her. Which of them does the word *humiliated* apply to, here?<sup>118</sup>

Garner compares her view that Rosen is 'a powerful anima figure'<sup>119</sup> with Rosen's statement to the Victorian Equal Opportunity Commission, that, as the result of Gregory's behaviour, she 'felt like "a worthless sexual object"; and was "humiliated and powerless to control what was happening to her"'.<sup>120</sup> For Garner, this phrase 'worthless sexual object' is 'disingenuous' and represents a false depiction of Rosen's reality. Instead Garner constructs her *own* 'truth' as to Rosen's experience of the alleged indecent assault:

Why would a young woman feel 'worthless' when a man makes an unwelcome sexual approach to her? She might not *like* it. She might want very much for it to stop. But why does it make her feel 'worthless'? Would she feel 'worthless' if the man were younger, better-looking, more cool? Or is *worthless sexual object* just a rhetorical flourish, a bit of feminist sabre-rattling on behalf of a young woman who has not taken the responsibility of learning to handle the effects, on men, of her beauty and her erotic style of self-presentation?<sup>121</sup>

If Garner's truth is that Rosen's power is derived from her sexuality, whilst Rosen's *experience* is that Gregory's behaviour made her feel like a 'worthless sexual object', then Garner's 'claim to truth' disqualifies and excludes that experience.<sup>122</sup> In other words, through a claim to objectivity and a reassembling of her point of view versus Rosen's experience, Garner's point of view becomes the only point of view. This is reiterated when, after quoting the description of a 'dazzling' blonde in a Christina Stead novel she asks: '[W]hat eels have been stirred in whose souls by that brilliant and wild creature [Elizabeth Rosen]?' Yet,

<sup>117</sup> MacKinnon, above n 59, 123.

<sup>118</sup> Garner, above n 1, 89 (emphasis in original). Nonetheless, this description of Shepherd's experience of being humiliated does not accord with other parts of Rosen's evidence that Shepherd locked the door of his office and turned off the lights before allegedly propositioning and assaulting her.

<sup>119</sup> Ibid.

<sup>120</sup> Ibid 88.

<sup>121</sup> Ibid 88-9 (emphasis in original).

<sup>122</sup> In excluding Rosen's experience of the alleged indecent assault, Garner dismisses one of the clues to be gained from women's experience in understanding what it is about the nature of heterosexual relations that produces women's inequality.

says Garner:

[A]ccording to the Equal Opportunity statement, Elizabeth Rosen thinks of herself as a 'worthless sex object' when her beauty and erotic self-presentation arouse desire in men. Something here has gone terribly wrong.<sup>123</sup>

Thus, one cannot *believe* Rosen's experience of the alleged assault because Garner has imposed on Rosen a sexuality which is all encompassing. She is literally what Garner sees her to be. She has been constructed by the outside gaze of an older woman who sees an omnipotent power in Rosen's youth. The possession of 'provocative' female sexuality as an excuse for sexual assault and harassment was reiterated by Garner in her speech to the Sydney Institute: 'If a woman dresses to captivate, she'd better learn to keep her wits about her, for when the wrong fish swims into her net.'<sup>124</sup> Implicitly, her message is that men are not to be held responsible for their sexual behaviour and may even be considered to have no choice in the matter, since a man, faced with the 'captivating' appearance and dress of a woman, is merely subject to his biological urges and will not be able to resist such 'temptation'. As Cox observes, Garner 'plays into the idea that temptation is excusable, [which has] the echoes of Adam's first claim that the woman tempted him.'<sup>125</sup> In fact, Garner takes the issue of a woman's responsibility one step further:

I don't understand how 'the community' can prevent sexual assault while yet *allowing* women the freedom we demand: the right to live alone, to go about the streets as we wish, ... to travel on public transport ... how can there be such a thing as *safety*? ... There can't be freedom without responsibility. It is a woman's responsibility to protect herself from sexual assault.<sup>126</sup>

But how real was the power that Rosen derived from her sexuality? Is her sexuality merely a construction, so that, rather than being a source of power, it represents an excuse for her alleged violation by Gregory? Whatever power one might imagine Rosen having, was it not illusory at the point when Gregory allegedly locked the door of his study? How powerful did Rosen perceive *herself* at that point? Did she think that the 'double mass of her splendid bosom'<sup>127</sup> would have the power to liberate her from a locked room in which a man has allegedly declared that he wanted to make 'indecent advancements'<sup>128</sup> towards her? Is the alleged act of locking a door and dimming the lights the act of a man 'humiliated' by her presence and a mere victim to her beauty and 'erotic style of self-presentation'?<sup>129</sup> Certainly, the construction of Rosen's powerful and provocative sexuality justifies the construction of Gregory as a harmless and 'misunderstood victim'. In this way, the projection of provocative female sexu-

<sup>123</sup> Garner, above n 1, 194.

<sup>124</sup> Garner, 'A Story that needed to be told', above n 53.

<sup>125</sup> Eva Cox, 'It's time for Feminism's Egos to Call a Truce', *Sydney Morning Herald* (Sydney), 10 August 1995.

<sup>126</sup> Garner, above n 1, 163 (emphasis in original).

<sup>127</sup> *Ibid* 59.

<sup>128</sup> *Ibid* 17.

<sup>129</sup> *Ibid* 89.

ality onto a woman can become a source of her oppression because it justifies male sexual violation and results in the loss of 'the fundamental right of a [woman] not to engage in sexual activity'.<sup>130</sup> However, Garner does not recognise the conundrum she has created, for, if female sexuality is the source of women's power as well as being the reason for uninvited sexual assault of the type which allegedly occurred, one is left wondering how Garner would rationalise the rape of a girl or woman who was as beautiful and erotically dressed as Rosen? Would her appearance give us a better understanding of the reason for the attack without having cause to resort to the discourse of gender inequality and the affirmation of masculinity? Would we expect the girl or woman to have taken some responsibility for 'learning to handle the effects, on men, of her beauty and her erotic style of self-presentation'?<sup>131</sup> Or would we reject such a rationalisation if the girl were under age or because it was a rape? What if the rape were at knife-point? Would we abhor the rape because of the overt force or because of the girl's age? Where do we draw the dividing line between those sexual assaults which make 'women call each other on the phone'<sup>132</sup> and those which are trivialised and blamed on the woman or girl herself so that the man in question becomes a 'poor blunderer'<sup>133</sup> who drank too much and, on his knees, perhaps merely longed for acceptance, not sex?<sup>134</sup>

### *E Garner's Conspiracy Theories and the Puritanical Feminist Archetype*

The other technique which Garner uses in her 'claim to truth' involves the construction of a conspiracy by the students and their supporters against, first, Gregory and then Garner to deliberately prevent her from writing the book. In reference to a conversation in which a supporter of the students, Barbara W, refuses to be interviewed by Garner, she writes:

So this was how they got the Ormond blokes on the run. I was winded by the exchange .... This path to Elizabeth Rosen and Nicole Stewart was plainly not only blocked but mined and ambushed. How could I write about these people if they wouldn't speak to me? This was the moment to put the whole thing down and walk away. But if I dropped it now I would never understand it — and for some obscure reason I needed to. The ruder and more secretive these women got, the more determined to retreat into their faceless group, the more curious I became. What sort of feminists were these, what sort of intellectuals, who expected automatic allegiance from women to a cause they were not even prepared to argue?<sup>135</sup>

However, Mead points out that this supporter, Barbara W, is a *fictional* charac-

<sup>130</sup> Crimes (Rape) Act 1991 (Vic) s 1.

<sup>131</sup> Garner, above n 1, 89.

<sup>132</sup> *Ibid* 120.

<sup>133</sup> *Ibid*.

<sup>134</sup> *Ibid* 181.

<sup>135</sup> *Ibid* 71.

ter and is one of six fictional characters who actually represent Mead.<sup>136</sup> Thus, in Garner's opening sentence, 'So this is how they got the Ormond blokes on the run', the reference to 'they' is plainly misleading whilst the reference to 'the Ormond blokes on the run' implies that the men at Ormond were also subject to a similar feminist 'attack'. Other fictional characters representing Mead include Dr Ruth V, Rose H, Vivienne S, Margaret L, and the Chair of an Equal Opportunity Committee at the College and throughout the book, their behaviour towards Garner is treated as evidence of a conspiracy of defiance against her. For example, Garner states:

Early in April 1993 I received one reply to the letters I had written to the women's supporters. It was from a Ms Margaret L—, on the letterhead of the university where she taught .... She told me she regarded my letter ... as an attempt to intimidate her, and an instance of futile harassment .... I read this intemperate letter many times. I noticed that she used the word *harassed* about my having addressed her at all. So the world, to Margaret L—, was divided into harassers and harassed. If one were not completely with her, one was the enemy .... There was to be no discussion, no putting of a case. Also, she and her group owned the story. Who would tell it? Certainly not me — *or not if they could help it.*<sup>137</sup>

However, in her condemnation of Margaret L, Garner fails to reveal that the fictional character represents Dr Jenna Mead and that the letter was written after Mead, portrayed as Barbara W, indicated she did not wish to co-operate with Garner. She intimates that her letter to Margaret L was her first contact with her, and, as a result, Margaret L's reply appears unreasonable although perhaps explicable as one of a (fictional) group of women who are operating to deliberately frustrate her. Later in the book, Rose H, one of the other fictional versions of Mead, is also condemned for refusing to answer Garner's fictional letter to her.<sup>138</sup>

Throughout the book, Garner presents the reader with other 'evidence' of the conspiracy:

After my initial conversation with Michelle B—, she never answered any further communication from me: I wrote to her and phoned her in vain. Like Dr V—, she slid back into the faceless group of women in the wider university who supported the two complainants; I never saw her or heard her voice again.<sup>139</sup>

Months later, Fiona P—, the emissary who had taken the first complaints to the judge, spoke to me (by phone — she would not go so far as to meet me) across the *cordon sanitaire* that the complainants and their supporters had thrown up between themselves and me.<sup>140</sup>

<sup>136</sup> Jenna Mead, 'Pity Not She Who Casts the First Stone', *Sydney Morning Herald* (Sydney) 16 August 1995. In a letter to the Editor of the *Sydney Morning Herald*, Garner admits the fictionalising of Mead into several characters which she states was done for legal reasons: 'Libel law made many a Mead', *Sydney Morning Herald* (Sydney), 23 September 1995.

<sup>137</sup> Garner, above n 1, 82 (first emphasis in original, second emphasis added).

<sup>138</sup> *Ibid* 196.

<sup>139</sup> *Ibid* 39.

<sup>140</sup> *Ibid* 77.

[The Women's Officer of the University of Melbourne Student Union] was apprehensive ... about saying things that the complainants wouldn't be happy about, and said she would try to contact them before she spoke to me .... My heart sank. Like all requests, this one would no doubt have to be processed at the faceless supporters' Checkpoint Charlie.<sup>141</sup>

Blocked again. Oh, they were so *wretched*.<sup>142</sup>

I sent letters as well to as many of the girls' supporters in the university as I could identify .... Deep silence ensued. As a group they maintained facelessness and voicelessness — in my direction anyway.<sup>143</sup>

I tried, on and off over a period of months, to contact several other young women students from Ormond whose names were mentioned to me as companions of the two complainants ... I got nowhere. Doors were slammed by people unwilling to act as intermediaries.<sup>144</sup>

I had been working in [New York] for several months ... when I received one morning ... a reply from one of the Ormond women's supporters ... 'Dear Ms Garner,' it said. 'Regarding your request of August 12th. I am not willing to talk to you now or in the future.' Over land and sea it had come ... one last forlorn brandishing of the feminist fist, enclosed in its tight circle of self-righteousness.<sup>145</sup>

Woven within this conspiracy, is the puritanical feminist archetype, who is 'consumed with rage and fear'<sup>146</sup> and whose hallmark is political or sexual correctness so that in the fictionalising of a feminist conspiracy, Garner's book becomes a vehicle for venting her particular hatred of sexual correctness. But, as Mead explains,

[b]y dragging in this idea of sexual correctness (on the part of 'puritanical' feminists), *we get side-tracked from the abuse of power through sexist and discriminatory behaviour* which is what I understand sexual harassment to be. I can only agree with the Assistant Commissioner for Equal Opportunity, David Bryson, when he said ... that 'sexual harassment is about the abuse of *power*'. That is why the law principally exists; not as a prudish moral arbiter.<sup>147</sup>

In Garner's construction of the conspiracy against her, she depicts modern feminism as a form of sexual correctness which lays claim to a prudish and puritanical, moral truth. In fact, these enemy feminists are depicted when a point of view different to Garner's is expressed:

The warmth of her manner on the phone had congealed into the permafrost of a feminist who'd been shown my letter to Colin Shepherd.<sup>148</sup>

<sup>141</sup> Ibid 87-8.

<sup>142</sup> Ibid 153 (emphasis in original).

<sup>143</sup> Ibid 177.

<sup>144</sup> Ibid 211.

<sup>145</sup> Ibid 220-1.

<sup>146</sup> Ibid 47.

<sup>147</sup> Mead, 'Sexual Harassment', above n 19, 167 (first emphasis added; second emphasis in original).

<sup>148</sup> Garner, above n 1, 96.

Is this what feminism has mutated into — these cold-faced punitive girls? Or is there some force in nature that makes these hard hearts?<sup>149</sup>

Altogether, the fact of four women expressing a different point of view to Garner is transformed into a feminist conspiracy accusing Garner of 'an act of treachery' against feminism.<sup>150</sup> Other people who initially appear willing to talk to Garner but subsequently change their mind are also rendered subject to the power of the feminist conspiracy:

Still I received no letter from Professor J—. I hoped against hope that he would keep his nerve .... By innocently telling me the story from the complainants' point of view he had got offside with their faction: he must be under pressure to recant.<sup>151</sup>

By the time of Garner's speech to the Sydney Institute, this feminist conspiracy has reached alarming proportions and Garner demonstrates an escalating paranoia about differing points of view which appear to challenge her 'claim to truth': her critics have become 'feminism's grimmer tribes',<sup>152</sup> there is a 'girlcott' by hostile feminists against the book and 'the public debate about men and women has been commandeered by a bullying orthodoxy' and a feminism that has calcified into fundamentalism.<sup>153</sup>

But in the grip of her paranoia, Garner fails to actually hear what some of the differing points of view are about: that modern feminism, in *naming* sexually abusive behaviour now described as sexual harassment<sup>154</sup> and identifying the harms that women experience as a result of such behaviour, was instrumental in proscribing discriminatory forms of sexual behaviour of men towards women, *not* in the name of morality but in the name of protecting the fundamental right of women to physical and mental integrity. Again the words of Mead are apposite:

[F]eminism is *not* about claiming a better kind of morality — feminists don't have to be good girls ... feminism is *not* about some superior, authoritative truth that stands as a [moral] corrective to the sexism of men. It is a political theory and a set of strategies. Being a feminist enables me to think critically about the political relations between power and sexism, for instance .... the main consequence [of the absence of this recognition] has been too much prurient focus on sex and not enough on power relations and the ways in which sexual harassment can function to further disadvantage those who are already vulnerable and relatively powerless.<sup>155</sup>

Garner, however, has not engaged in a political analysis of the alleged sexual harassment of the students by Gregory and the particular relationship between his economic power over them, and the gendered nature of the alleged assaults.

<sup>149</sup> Ibid 100.

<sup>150</sup> Ibid 169.

<sup>151</sup> Ibid 185-6.

<sup>152</sup> Garner, 'A Story that Needed to be Told', above n 53.

<sup>153</sup> Ibid.

<sup>154</sup> See, in particular, Catharine MacKinnon, *Sexual Harassment of Working Women* (1979).

<sup>155</sup> Mead, 'Sexual Harassment', above n 19, 167-8 (emphasis in original).



Instead, she has engaged in a *moral* attack of women she construes as 'thought-police', 'saboteurs'<sup>156</sup> and 'a priggish, literal-minded vengeance squad'.<sup>157</sup> This strategy hides Garner's own particular biases: in the name of seeking out the truth, the book becomes a vehicle for Garner's own brand of morality. In this way Mead's predictions come true:

[B]ecause sexual harassment has *not* been the subject of critique by feminists, in particular ... the *discourse* of sexual harassment and all its procedures continue to function to protect and empower a set of practices that, we all agree, are discriminatory on the basis of gender ... Because sexual harassment is *not* being thought about as knowledge, as discourse, as politics, as a serious formation that needs to be theorised and critiqued, it's very easily appropriated to serving conservative institutional [and personal] ends.<sup>158</sup>

One of the barriers to thinking about sexual harassment as a political phenomenon is the fact that behaviour which constitutes sexual harassment does not always have the same *shocking* elements associated with it as forcible acts of sexual assault. Frequently the behaviour is similar to, or the same as, the sexual behaviour of men in consensual sexual relations with women; in fact, sexual harassment is not 'primarily [an] abuse of physical force' although it can be that.<sup>159</sup> But it is coercive sexual behaviour nonetheless: even though the behaviour may not rely on physical force for its coerciveness, it relies on a 'form of enforcement' that is sexually coercive because it embodies 'the relations, values, ... norms and behaviours of' male sexuality, in which sexual control and manipulation of women is eroticised.<sup>160</sup> It is in this way that sexuality becomes a form of power so that a woman's *experience* of being sexually controlled, threatened, abused, or coerced in circumstances where she has something to lose (such as her job, her credibility, a chance of promotion, a wage increase, an opportunity of retraining or other economic advantages) equates with her experience of gender inequality. As MacKinnon observes:

Women and men are *divided* by gender, made into the sexes as we know them, by the *social* requirements of its dominant form, heterosexuality, which institutionalizes male sexual dominance and female sexual submission .... [In this way], sexuality is the linchpin of gender inequality.<sup>161</sup>

Indeed, once one begins to focus on the *nature* of male sexual behaviour (for example, he touched her on the breast, is that it?), the sexual culture which breeds sexual assault and harassment, and the harm experienced by women are obscured and, as Garner demonstrates, one is left with categorising sexually harassing behaviour into that which is either unacceptable or acceptable (a 'mere unpleasantness'). Such a simplistic analysis merely 'serve[s] to confirm the

<sup>156</sup> Garner, above n 1, 178.

<sup>157</sup> Ibid 202.

<sup>158</sup> Mead, 'Sexual Harassment', above n 19, 168-9 (emphasis in original).

<sup>159</sup> MacKinnon, above n 59, 113.

<sup>160</sup> Ibid.

<sup>161</sup> Ibid (footnotes omitted, emphasis added).

power relations that produce the sexism already in place'<sup>162</sup> rather than exposing them. It also serves to perpetuate the myth that male sexual behaviour is somehow less damaging if it happens in a so-called social context, that it is only about natural sexual urges and serves to deny a woman's experience that it could be anything else. In fact, Garner's technique of focusing on the nature of Gregory's behaviour leads her to conclude that because there is no shocking element to the behaviour, rather than being about power, Gregory's behaviour was merely a 'social blunder'. His behaviour is stripped of any responsibility on his part and is relegated to the domain of foolishness.

Yet the question that is not addressed by Garner is, what drives a man to allegedly grope and proposition two female students under his care? What leads a man to believe that, despite no prior history of sexual relations with a woman, his uninvited sexual advances would be *permissible* and why does Garner need to redefine such sexual behaviour into the harmless acts of a man who has had too much to drink? In other words, what is the cultural belief system that underlies sexual harassment and sexual assault which Garner fails to identify? The answer to those questions lies in an examination of the 'heterosexual paradigm'.<sup>163</sup>

#### DECONSTRUCTING THE MYTHICAL POWER OF FEMALE SEXUALITY

The Western model for "erotic love"<sup>164</sup> is represented by the heterosexual paradigm which consists of a 'strong, possessive male, mainly of a laudatory kind' and a capitulating female<sup>165</sup> who is sexually *possessed* by the male. Within this paradigm, woman is constructed as an archetype of male receptivity: historically male philosophers, poets and scientists (such as, Nietzsche, Kant, Rousseau, Balzac, Byron, Tennyson and Freud) have pronounced the view that '[w]oman wants to be taken and accepted as a possession, wants to be absorbed into the concept of possession, possessed'.<sup>166</sup> The female archetype does not know 'what she wants, [is] ready for anything, even asking for more, so long as he will "take" her as his "object" when he seeks his own pleasure'<sup>167</sup> and she is 'consign[ed] to passivity: she is to be the beautiful object of contemplation.'<sup>168</sup>

The concept of the passive female archetype has been reinforced by the Freudian view of female sexuality that the transformation from girlhood to womanhood necessitated the 'transformation of ... [a girl's childhood] sexual "activity" into its opposite: "passivity" ... [and] the desire to possessed'.<sup>169</sup> As Irigaray explains, '[Freud] stresses ... that femininity is characterised, and must be char-

<sup>162</sup> Mead, 'Sexual Harassment', above n 19, 169.

<sup>163</sup> Naffine, above n 66, 11.

<sup>164</sup> Ibid 10.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid 13, quoting Friedrich Nietzsche, *The Gay Science* (1974) 319.

<sup>167</sup> Luce Irigaray, *This Sex Which is Not One* (1985) 25.

<sup>168</sup> Ibid 26.

<sup>169</sup> Ibid 36.

acterised, by an *earlier and more inflexible repression of the sexual drives* and a stronger tendency towards passivity'.<sup>170</sup> In fact, 'the typical model of sexuality remains deeply Freudian and essentialist: sexuality is an innate *sui generis* primary natural ... unconditioned drive divided along the biological gender line'.<sup>171</sup>

In Western society, the socially validated form of female sexuality has been defined by the passive and receptive female archetype which, as a deeply held cultural belief system,<sup>172</sup> transforms women from unique individuals into commodities and sites for male possession. Because the archetype perpetuates the belief that, for a woman, her 'nature' is that of servitude to a man so that to give into a man 'is to give in to her own nature',<sup>173</sup> it can be argued that the archetype of female passivity 'forms the basis of [both] 'consensual' heterosexual relations *and* rape'<sup>174</sup> in a culture which accepts the dominance of male sexual power. As much as the passive response is perpetuated as the 'natural' or feminine response, aggressive sexual behaviour is perpetuated as the 'natural' or masculine response at the sight of a woman, thus justifying the exercise of power of some men over some women through sexual behaviour. In other words, '[m]ale and female are created through the erotization of dominance and submission'<sup>175</sup> within the heterosexual paradigm. Of course, not all women and men conform to the sex roles specified by the heterosexual paradigm but the extent to which the heterosexual paradigm is adopted as the norm for consensual heterosexual relations in a society reveals the extent to which 'masculinity is prioritised, and [the fact that] the exercise of power — no matter that it takes various forms — is gendered'.<sup>176</sup>

The claim of the heterosexual paradigm, that it is '*nature* which determine[s] that a woman's desires should correspond so well with [a man's]: that she should desire only to be possessed as he desire[s] to possess'<sup>177</sup> is revolutionary since it transforms the commonplace control of women by men through sexual behaviour (such as sexual harassment, sexual assault and rape) into women's *agreement* to be possessed.<sup>178</sup> Indeed, resort to her dress, her looks, or her behaviour as justification for possession, reinforces the idea of a woman's *choice* to be possessed. In this way, the 'naturalness' of women's submissiveness to men can be used to transform the subordination of women through sexual abuse into nature and, hence, consent. This transformation conceals 'sexuality as the

<sup>170</sup> Ibid 36-7 (emphasis in original).

<sup>171</sup> MacKinnon, above n 59, 131-2; footnotes omitted.

<sup>172</sup> The extent to which it can be said that the passive female archetype is ingrained in Western culture is uncontroversial: as Naffine observes, evidence of this archetype may be found in the romance section of any bookstore, pornographic magazines, women's magazines, advertisements, television soap operas, films and the like: Naffine, above n 66, 21, 25. Of course, not all women conform to, nor identify with this archetype.

<sup>173</sup> Ibid 13.

<sup>174</sup> Smart, above n 14, 10 (emphasis in original).

<sup>175</sup> MacKinnon, above n 59, 113.

<sup>176</sup> Smart, above n 14, 10.

<sup>177</sup> Naffine, above n 66, 15 (emphasis added).

<sup>178</sup> This proposition accords with that of Carol Pateman, *The Sexual Contract* (1988) 39 in her discussion of the 'doctrine of natural freedom and equality' in classical contract theory.

primary social sphere of male power'<sup>179</sup> in a context where sexuality is defined 'as a far broader social phenomenon [than sexual acts], as nothing less than the dynamic of sex as social hierarchy'.<sup>180</sup> In other words, the inequality inherent in the sexual abuse of women is transformed into a natural state of freedom, equality and choice; each, the man, the possessor, and the woman, the possessed, choose their respective roles because it is in their nature to do so. In this state of 'natural freedom and equality',<sup>181</sup> there is then 'only one justification for [women's] subordination'<sup>182</sup> which is that she *agrees* (consents) to be possessed and will not refuse, indeed, cannot be understood to refuse, because she wants nothing more than to be completely devoted to a man: '[f]or a woman, "love" is "a faith; woman has no other faith"'.<sup>183</sup> In fact, the characteristics of the feminine archetype are those very characteristics which enhance her compliance to male possession and devotion to a man: she is 'docile, soft, passive, nurturant, vulnerable, weak, narcissistic, childlike, incompetent, masochistic, and domestic, made for child care, home care, and husband care.'<sup>184</sup> MacKinnon, in a deconstruction of the characteristics of the female archetype, considers that

[s]ocially, femaleness means femininity, which means attractiveness to men, which means sexual attractiveness, which means sexual availability on male terms .... Gender socialization is the process through which women come to identify themselves as such sexual beings, as beings that exist ... specifically for male sexual use.<sup>185</sup>

Nonetheless, the limitations of MacKinnon's analysis are recognised<sup>186</sup> so that a *universal* female reality is *not* being advocated. What is being advocated is that historically a feminine archetype has been perpetuated to (falsely) attempt a universal explanation of *who* women are. In other words, the feminine archetype has been the 'only socially recognised and validated representation of women's sexuality'.<sup>187</sup> But it is clear that not all women conform to, nor identify with this archetype; as Naffine observes, women as individuals are far more complex and varied than is prescribed by the female archetype in the heterosexual paradigm: '[t]he vastly more complex and diverse reality of being female keeps on happening despite the efforts to make the archetype convincing ... [so that] the uncaptured truths of "woman" keep peering through.'<sup>188</sup> There are different degrees to which different women have been socialised through the politics of gender and to which they have rejected that socialisation and sought their own sexual

<sup>179</sup> MacKinnon, above n 59, 109.

<sup>180</sup> Ibid xiii.

<sup>181</sup> Pateman, above n 178, 39.

<sup>182</sup> Ibid.

<sup>183</sup> Naffine, above n 66, 12 (footnotes omitted).

<sup>184</sup> MacKinnon, above n 59, 109.

<sup>185</sup> Ibid 110.

<sup>186</sup> Naffine, above n 66, 25 n 89; Drucilla Cornell, *Beyond Accommodation* (1991) 128-41, 150-1. Cornell considers that 'MacKinnon's central error is to reduce feminine "reality" to the sexualized object [women] are for [men] by identifying the feminine totally with "the real world" as it is seen and constructed through the male gaze'; at 130 (emphasis in original).

<sup>187</sup> Elizabeth Grosz, *Volatile Bodies: Toward a Corporeal Feminism* (1994) 202.

<sup>188</sup> Naffine, above n 66, 12; footnotes omitted.

definition. But where the archetype constitutes a dominant belief system in a society or a cultural, ethnic or religious group, women will be judged according to the content of the archetype. In other words, the image of the archetype will be projected *onto* them to define their sexual availability. Feminist inquiry, through examining and listening to women's experiences reveals, however, that beneath the concept of nature and hence consent can lie the bare exercise of coercion which today is identified as sexual harassment, sexual assault and rape.<sup>189</sup>

#### MANIFESTATIONS OF THE HETEROSEXUAL PARADIGM IN *THE FIRST STONE*

Garner's reconstruction of Gregory as a 'poor blunderer' in awe of Rosen's powerful and apparently irresistible sexuality, on the face of it, appears to *challenge* the Western paradigm of heterosexual love and sexuality since the sexual power ascribed to Rosen is used to deny the existence of possessive male sexual behaviour on the part of Gregory. Nonetheless, it can be argued that it is in fact the female archetype represented in the heterosexual paradigm that informs Garner's construction of Rosen's sexuality. How? Garner, in having access to nothing other than a photograph of Rosen, reduces Rosen to her anatomical appearance so that, for Rosen, her 'anatomy is [her] destiny'.<sup>190</sup> Her anatomy is then used by Garner 'as an irrefutable criterion of [the] truth'<sup>191</sup> of Rosen's sexuality: she is 'a powerful anima figure ... to the men she encounters in her life'<sup>192</sup> and an embodiment of male gratification and 'awe'. In this way, Rosen, as a 'woman' in heterosexual terms, is 'distilled'<sup>193</sup> as an archetype. Thus, in accordance with the politics of the heterosexual paradigm, Garner constructs Rosen through the 'male gaze'<sup>194</sup> by constructing for her 'an unshakeable, objective, unmodified "reality"'<sup>195</sup> which accords with male desire: what defines Rosen, as such, 'is what turns men on.'<sup>196</sup>

But, as Naffine observes,

to distil the lives of women down to a single Romantic idea of 'woman' hood, an archetype of 'woman', is to participate in a mythology which does damage. 'The nature of the individual is not resolved into but is *ignored* by these archetypes, since the function of the archetype is to *diminish* the unique 'I' in favour

<sup>189</sup> See, eg, Liz Kelly's analysis of the response of 60 women who were interviewed about their experiences of heterosexual sex and sexual violence: Liz Kelly, 'The Continuum of Sexual Violence' in Jalna Hanmer and Mary Maynard (eds), *Women, Violence and Social Control* (1987) 46.

<sup>190</sup> Angela Carter, *The Sadeian Woman: An Exercise in Cultural History* (1979) 4.

<sup>191</sup> Irigaray, above n 167, 71.

<sup>192</sup> Garner, above n 1, 89.

<sup>193</sup> Naffine, above n 66, 12.

<sup>194</sup> Cornell, above n 186, 130.

<sup>195</sup> *Ibid* 131.

<sup>196</sup> MacKinnon, above n 59, 110. This is in fact the criticism Cornell makes of MacKinnon who has been accused of creating a feminine reality constructed only by the male gaze, male desire and male omnipotent power with no possibility of any other female reality, and no possibility for displacement of the gender hierarchy constituted by the dominant male and submissive female: Cornell, above n 186, 11.

of a collective sexed being which cannot, by reason of its very nature, exist as such *because an archetype is only an image that has got too big for its boots and bears, at best, a fantasy relation to reality.*<sup>197</sup>

Thus, Rosen, as an individual, is ignored in *The First Stone* through the construction of the archetype of an irresponsible sex goddess 'elated by her own careless authority and power'<sup>198</sup> and becomes 'an abstracted being bearing little relation to the particularity and infinite variability of real flesh-and-blood women'.<sup>199</sup>

However, other evidence was available to Garner that Rosen was a woman who was the antithesis of this archetype: in her statement to the Victorian Equal Opportunity Commission Rosen stated that as a result of Gregory's alleged sexual behaviour she felt like "'a worthless sexual object", and "was humiliated and powerless to control what was happening to her"'.<sup>200</sup> In addition, Garner reports the view of a bookseller who told her that he had "'a strong sense of [Rosen's] sincerity"'<sup>201</sup> and the view of an ex-student of Ormond College that "'[Rosen] never went to uni. She played loud music very late. She never went to meals, never seemed to eat a thing"'<sup>202</sup> and appeared to be a "'college misfit"'.<sup>203</sup> Indeed, Gregory himself stated, in his statement to the police, that the photo in question did not "'look like a typical photo of [Rosen], in my memory of her"'.<sup>204</sup> Using this evidence and one's own experience of the complexity of human nature, the 'uncaptured truth'<sup>205</sup> of Rosen can be seen to live beyond the archetype indicating that Garner has denied her the complexities, besides gender, which make up each individual such as race, class, experience, social and psychological conditioning, and the possibility that Rosen herself did not live her life, nor perceive herself as a 'goddess' and a 'powerful anima figure' before whom a man knelt in awe of her. In her denial, Garner is oblivious to the politics of the heterosexual paradigm which advocates the sexual availability of women to men and the fact that the very sexuality from which Garner tells us Rosen derived her power, is the sexuality that converts her into an object of male gratification and excuses Gregory's alleged violation of her. Despite Garner's incantations about Rosen's sexual power over men, Rosen's sexuality is of limited power because it is described in terms of what it *invites* not what it *does*; in other words, Rosen, as described, does not have the sexual power of the possessor and aggressor but only the sexual power of the woman to be *taken* and possessed. Thus, Garner's adoption of the heterosexual paradigm denies the view that 'the erotic role of women in the Western imagination ... [is] a projec-

<sup>197</sup> Naffine, above n 66, 12 (emphasis added, footnotes omitted).

<sup>198</sup> Garner, above n 1, 59.

<sup>199</sup> Naffine, above n 66, 18.

<sup>200</sup> Garner, above n 1, 88.

<sup>201</sup> Ibid 133.

<sup>202</sup> Ibid.

<sup>203</sup> Ibid 134.

<sup>204</sup> Ibid 7.

<sup>205</sup> Naffine, above n 66, 12.

tion of male need and desire'<sup>206</sup> and her resort to it permits her to transform what is typical possessive male sexual behaviour into 'nerdish passes' and to claim that there is something wrong with the students in not putting up with those passes ('I thought I might be mad at these girls for not having *taken it like a woman*'<sup>207</sup>). In this way, Gregory's alleged behaviour is *normalised* whilst the students' responses are, by comparison, construed as abnormal, since they did not obey their natures by permitting themselves to be possessed nor protect Gregory from the consequences of his 'normal' behaviour. The only way that Garner can explain this is that they are priggish, vindictive, prudish, radical feminists. In other words, they have betrayed the femininity prescribed for them in the heterosexual paradigm, a betrayal which throws the 'natural' order into disarray.

It is in this way, Garner's literary devices of minimisation and the construction of female and male archetypes are in fact consonant with the heterosexual paradigm and conventional heterosexuality: that is "'a compulsory and naturalised heterosexuality'"<sup>208</sup> in which a woman 'gives herself up to [a man] and he takes her and possesses her'.<sup>209</sup> This is demonstrated further in an article published about *The First Stone* just prior to its release:

To Garner, assuming for the argument that the allegations were true, a nerdish pass by a slightly inebriated man at a party is a long way from an act of violence, or even sexual harassment. It might be clumsy, inappropriate, befuddled or even lecherous behaviour, but to call in the police, take the matter to court, ruin a man's career and his family life, is nothing short of overkill. And where, in this seeming thirst for retribution, she argues, *is a concession to the complex, often shilly-shallying nature of male-female relationships*; to just plain old heterosexual miscommunication?<sup>210</sup>

Indeed, Garner 'regarded, as did many of her feminist friends born in the 1940s, uninvited sexual advances ... as simply part of the landscape. They were coded into human nature'.<sup>211</sup> For example, in *The First Stone*, Garner considers that

[t]he erotic will always dance between people who teach and learn, and our attempts to manage its shocking charge are often flat-footed, literal, destructive, rigid with fear and the need to control. For good or ill, Eros is always two steps ahead of us.<sup>212</sup>

In a speech to the Sydney Institute she elaborates on the 'naturalness' of eros which appears to be, amongst other things, that undefinable 'something' between men and women:

Eros, most famously, comes bounding into the room when two people fall in love at first sight .... Eros is the quick spirit that moves between people — quick

<sup>206</sup> Ibid 15, referring to Luce Irigaray's interpretation of the erotic role of women (emphasis added).

<sup>207</sup> Garner, above n 1, 40 (emphasis in original).

<sup>208</sup> Naffine, above n 66, 11.

<sup>209</sup> Ibid 13.

<sup>210</sup> Leser, above n 64, 34 (emphasis added).

<sup>211</sup> Ibid 32.

<sup>212</sup> Garner, above n 1, 161.

as in the distinction between 'the quick and the dead'. Its the moving force that won't be subdued by habit or law. Its function is to keep on cracking open what is becoming rigid and closed off. Eros explodes the forbidden .... *We can't reconstruct eros on an equal basis, as one feminist critic demands.* The whole point of eros ... is that it's *not* reconstructable. *Eros doesn't give a damn about morals or equality. Eros is the dancing force that we can't legislate or make fair.*<sup>213</sup>

Nonetheless, in the context of discussing its wonders, Garner observes that there may be an underlying sting to this thing called eros:

Sexy clothes are part of the wonderful game of life. But to dress to display your body, and then to project all the sexuality of the situation on to men and blame them for it, just so you can continue to feel innocent and put-upon, is dishonest and irresponsible. Worse, it's a relinquishing of power. *If a woman dresses to captivate, she'd better learn to keep her wits about her, for when the wrong fish swims into her net.*<sup>214</sup>

It is clear that Garner recognises the possessory nature of male sexual behaviour, but, as a natural expression of eros, it is implicit in her message that the law cannot control such behaviour and that women must either learn not to stimulate it since 'it is a woman's responsibility to protect herself from sexual assault'<sup>215</sup> or accept it as part of life:

Some men have learned to recognise and respect the boundary between their fantasy and what is real. Others, *trapped in instinct*, have not, and never will — and it's a sad fact that laws won't make them. Nor will laws alone save us from their depredations, either trivial or serious. Society makes laws ... but around and above and below laws, *there is always, for good and ill, this fluid element, life.*<sup>216</sup>

Furthermore, Garner's interpretation of the innocence of Gregory's behaviour in response to the compelling force of Rosen's sexuality also denies the possibility that the alleged assaults had nothing to do with eros but represented the indiscriminate behaviour of a man disinhibited by alcohol. As a result, she is oblivious to the way in which the depersonalising experience of Rosen (that she felt like a 'worthless sexual object') accords with this possibility.

Garner's analysis of her response to her own experiences of uninvited male sexual behaviour, whereby she submits to possessive male sexual behaviour, indicates that she has, through social conditioning or choice, accepted the archetypal feminine role of passivity and receptivity. By way of contrast, the response of the students may be more representative of the gains made by feminism in the last few decades and could be said to be one of the hallmarks of modern feminism: women's ability and desire to define themselves and act outside the constraints of the heterosexual paradigm and hence to find a freedom from male sexual manipulation and control. Even though Garner questions her own passive

<sup>213</sup> Garner, 'A Story that needed to be told', above n 53 (first and third emphases added, second emphasis in original).

<sup>214</sup> *Ibid* (emphasis added).

<sup>215</sup> Garner, above n 1, 163.

<sup>216</sup> Garner, 'A Story that needed to be told', above n 53 (emphasis added).



response to possessive male sexual behaviour, she demonstrates little understanding of her response and that of other women because she fails to recognise the *possessive* quality of the male behaviour. Thus, her dilemma of being possessed, yet hating it remains, for her, unresolved. For women like Garner who accept that 'the only socially recognised and validated representation of women's sexuality'<sup>217</sup> is that which accords with the 'naturalness' of women's acquiescence to possessive male sexual behaviour, the response of the students will appear to them to be, not only abnormal, but a transgression of what they accept as normal heterosexual relations. For women who have rejected that conditioning, the response of the students to Gregory's alleged behaviour will be applauded and seen as a breakthrough for all women who object to being controlled through possessive male sexual behaviour. Because the students chose not to conform to the passive female archetype by putting up with Gregory's possessive behaviour, they have been pilloried by Garner in a way that is characteristic of what historically has happened to women who have objected to male possessive behaviour and betrayed the belief system of the heterosexual paradigm. As Naffine observes,

[a]lways there were those women who as 'witches, *femmes seules*, marriage resisters, spinsters, autonomous widows, and/or lesbians managed not to conform' .... The woman who threatened to reveal the dissonance between herself and the being she was required to be, experienced the strength (and the violence) of society's and the law's displeasure.<sup>218</sup>

### CONCLUSION

Garner's book is a contemporary expression of 'the traditional possessive form of heterosexuality which still pervades our ... culture',<sup>219</sup> validating as it does the alluring yet submissive female archetype as the social prescription for femininity. In doing so, Garner reinforces the primacy of the expression of male sexuality over the right of a woman not to engage in sexual relations. In fact, Garner demonstrates how the issue of choice can be decided for a woman who is judged according to the content of the female archetype, since, because of her dress or appearance, she may be considered to have impliedly consented to male possession of her. A subscription to this reasoning transforms the control of women through sexual assault, harassment and rape into a woman's agreement to be possessed and denies the possibility of her sexual subordination. Paradoxically, in this state of free agreement, she can only lose, since, whilst consent has been decided *for* her, she is nonetheless, responsible for protecting herself against sexual abuse and is destined to being a prisoner of her prescribed sexuality.

In order to understand the phenomena of sexual harassment and sexual assault, it is necessary to turn the focus onto male sexual behaviour itself. By shifting the focus onto the male sexuality prescribed in the heterosexual paradigm, a differ-

<sup>217</sup> Grosz, above n 187, 202.

<sup>218</sup> Naffine, above n 66, 18 (footnotes omitted).

<sup>219</sup> *Ibid* 27-8.

ent story emerges which reveals that male 'needs and desires are a specific set of needs and desires which demand and depend on woman assuming a particular sex role as receptor'<sup>220</sup> and that 'coercion and violence [are] implicit in the possessive form of "love"'.<sup>221</sup> Such a focus, together with an appreciation of a woman's actual experiences of sexual abuse, necessarily reveals the unequal power relations inherent in the heterosexual paradigm: unequal because of the *presumptions* on which male/female sexual relations are believed to be based and the prevalence of the belief that a woman desires to be possessed; unequal because men are able to use that belief to justify coercive sexual behaviour; unequal because the issue of consent may be decided *for* her (she naturally wanted it, asked for it or led him to expect it) and unequal because there may be no protection for her against the presumptions which decide her fate. In other words, the heterosexual paradigm instils inequality in Western society because it says women choose to be possessed (and impliedly agree to coercive sexual behaviour) whilst at the same time *denying* women the choice *not* to be possessed. In arguing for retention of the heterosexual paradigm through an impassioned defence of eros, Garner fails to envisage a different form of male and female relations which maintains the dignity and wholeness of *each* person, does not involve the objectification and de-personalisation (however fleeting) of either and does not leave a women feeling angry, worthless and afraid. She refuses the possibility of a woman being 'a separate, different, distinct being with her own set of desires'<sup>222</sup> and the possibility of a man being subject to anything other than his biological desires.

At the end of the day, *The First Stone* reveals that many of the facts of the Ormond affair remain either publicly unknown or unexamined despite Garner's construction of the 'truth' through the transformation of her subjective view point into an objective statement of 'the way I see it, is the way it is (despite my prejudices).' Based on what is known, however, the story can be 're-visioned' as a long and costly struggle by two female students against an institution which failed to deal with their complaints of sexual harassment adequately, and as a victory because of the College's own admission to that effect and the serious treatment the police gave to their complaints by laying charges against Gregory. But it must not be forgotten that all parties in the Ormond affair suffered: in the words of one journalist: 'After thirty years of struggle, women should not have to have recourse to the courts to be treated with respect'.<sup>223</sup>

<sup>220</sup> Ibid 28.

<sup>221</sup> Ibid 17.

<sup>222</sup> Ibid 33.

<sup>223</sup> Mary Delahunty, quoted in Mead, 'Sexual Harassment', above n 19, 173.