

The Law, Vulnerability and Disputed Victimisation in Helen Garner's *The First Stone* and Laura Kipnis' *Unwanted Advances*

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IT IS A RITE OF PASSAGE IN THE EARLY DAYS OF LAW SCHOOL TO PONDER EIGHTEENTH-century jurist William Blackstone's famous ratio, in which it is deemed 'better that ten guilty persons escape than that one innocent suffer' (Blackstone 352), and the kind of society—or more importantly, normative vision of society—it meaningfully instantiates. The ratio, after all, as a precursor to the now commonplace *presumption of innocence*, suggests that the criminal division of law (and, more broadly, the rule of law and the tenets of procedural fairness it requires) has been designed so as to protect the accused from the sheer brutality of accusation, over and above its other, secondary function, which is to protect society from its criminal element, and protect victims of crime. It, then, heralds a specific political commitment: by stressing the importance of tempering the structural violence of sovereignty and the state apparatus in the organisation of a well-formed society, it correctly deemphasises or downplays the ways in which individual cases of injustice (that is, the ten guilty persons who escape) are able to shape the contours of social life.

Protecting the accused from the potential arbitrariness of accusation in order to temper the structural violence of the law, however, becomes problematic in cases of sexual violence. This is because, plainly, sexual harassment and assault

are predominantly gendered crimes, and protections of the accused (overwhelmingly male) have often been at the expense of the complainant (female), perpetuating and reproducing a culture in which victims are ignored, disbelieved, and endure further humiliation and, in many cases, feelings of revictimisation at the altar of the law (Lievore 25-39). This is perhaps one of the reasons why the Australian Bureau of Statistics estimated in their 2005 Personal Safety Survey that only about 19 percent of female victims of sexual assault are estimated to report the incident to the police. This way, the law's inbuilt protections or safeguards *from the law* become the very means by which structural inequity is reified. Penny Pether writes, 'rape itself, and the law's failure to turn the resources of state power to effectively "discipline and punish" it, advances both the "anatomo-political" and the "biopolitical" ends of sovereign power, to "reproduce violent and unequal relations of gender"' (Pether, 238-39).

Both Helen Garner's *The First Stone: Some Questions about Sex and Power* (1994) and Laura Kipnis' *Unwanted Advances: Sexual Paranoia Comes to Campus* (2017) raise significant questions about how indecent assault, sexual harassment and sexual assault are dealt with in the contemporary day, specifically on college campuses, and the ways in which the action of accusation and designation of victimhood are rhetorically manipulable. Both books recount, in a broadly journalistic, contemplative fashion, each author's bemusement and chagrin with young women's not being able to correctly *handle* or construe sexual advances or misconduct by professorial men; both authors frame their attitudes as one side of an intergenerational feminist war; and, most curiously, both authors cannot see the male accused in their respective case studies as holding any position of structural power or advantage.

What I'm most interested in is the fact that both authors view a relatively new trend of young women seeking legal redress for sexual harassment as a betrayal of feminism, not because the law has never particularly been useful to women victims of sexual violence, but rather, more alarmingly, because the 'pathetic... scurrying to the law' (Garner 137) frames women as 'grim and dull and wowseryish and self-righteous, struggling against men in the name of boring old justice' (202). Both authors, writing twenty-three years apart (but what seems like a lifetime apart given that Kipnis is writing in the febrile environment of #metoo), seem to miss the point entirely, and for exactly the same reasons. In *The First Stone* the newest iteration of feminism is repeatedly described by Garner as priggishly asexual, vengeful and cowardly: the campus newspaper is edited by *puritan feminists* (45), who are 'faceless' and 'secretive' (71), 'thought-police' and 'saboteurs' (178), operating a 'Checkpoint Charlie' (88), and 'cold-faced, punitive' (100). Similarly, a fed-up Kipnis makes a 'plea for grown-up feminism' (185), instead of the current 'dimwitted feminism' (205) and 'carceral feminism' in which 'a profoundly conservative, law-and-order spirit' (18)

redirects feminism's main goals towards punishment and regulation. It's no surprise, then, that in both *Unwanted Advances* and *The First Stone*, contemporary feminism is deemed to have devolved into its perceived radical other: Islam. At one point, Garner exclaims, 'isn't this a bit bloody Islamic?' (148), while Kipnis writes, 'I recently read a description of the Saudi legal system: "Justice is often situational. The law is what a person in a position of power decides it is"' (87), before likening it to contemporary American college campuses. Garner and Kipnis evoke the most stereotypical and jingoistic representation of totalitarian oppression, but in their topsy-turvy dystopia, it is women who oppress men.

In *The First Stone*, which recounts an incident at Melbourne University's Ormond College in which the college master, Colin Shepherd, allegedly indecently assaulted two students, Elizabeth Rosen and Nicole Stewart, the questions that propel Garner are 'why are they so angry?' and 'why did they go to the police?' (38). The questions are repeated, in various forms of indignation by Garner and her peers, ad nauseam: one asks, 'he touched her breast and she went to the cops?' (15); Garner likens it to 'needing to run to Big Daddy and even wreck a man's life' (210). Garner wonders whether she was '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 (as if life could so enchantingly imitate Katherine Hepburn and Spencer Tracey's repartee) 'fighting back with their own weapons of youth and quick wits' (40). She then writes that young girls are 'so fragile! They have to learn to *deal* with it' (154), as though reporting a crime weren't, precisely, *dealing with it*. Later, Garner makes it clear that the kind of woman she *respects* is the silent, self-sufficient woman, who has had to 'devise' plots to 'live out... [her] intellect without frightening men,' which means, for the most part, not '*over-talking*' (179).

Garner and her contemporaries remind themselves constantly of their own altruistic, self-effacing silence in similar situations in their youth, thus intimating that Rosen and Stewart are little more than vexatious litigants: "'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"' (15). At one stage Garner's interlocutor suggests that it is 'the new ideology... that sexual harassment is a crime. If you get the opportunity to punish someone, you really ought to' (46); and later when a young 'feminist ideologue' suggests that women want 'redress for what's essentially unjust behaviour' Garner is shocked by the intrusion of the concept of justice:

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 (100-01).

The problem here is that, firstly, sexual harassment *is* illegal—both in civil and criminal jurisdictions: Division 3 of the federal *Sex Discrimination Act* (1984) deals with sexual harassment specifically, and otherwise each Australian state and territory's criminal legislation has a fairly comprehensive set of provisions relating to the panoply of offences of a sexual nature. It is not an *ideology* to claim it is so: it is just fact. Secondly, Garner's suggestion that the harassment be 'repeated' in order to be unjust is wholly inconsistent with the law, in which it is deemed, across all jurisdictions, that a single incident of sexual harassment or assault is enough to prosecute. Finally, it is difficult to read the book without wondering why Garner is so stunned that someone alleging that she has been indecently assaulted would, in fact, go to the police, when the crime, dealt with in section 39 of Victoria's *Crimes Act* (1958), is clearly serious enough to be punishable by a maximum of ten years imprisonment. It is hardly an ideological sleight of hand to call a crime a crime.

Both authors extend a posture of generosity towards the accused men, and suspicion and scorn for the young women accusers, because, inexplicably, the law is painted as a tool deftly weaponised by women against 'hapless' (Kipnis 62), 'puzzled' (Garner 51), 'innocent' and 'unworldly' (Garner 123) men. This is all the while the young women disingenuously paint *themselves* as the victims: Kipnis laments, 'victim status has become a form of cultural capital on campus' (89), and Garner is baffled when Rosen and Stewart refer to their 'vulnerable positions' on campus, sneering 'vulnerable to what?' (69). As Rosalind Smith intimates, these narratives of male vulnerability and lament are depoliticised by Garner and Kipnis in the pursuit of particular generic commitments: by adhering to the narrative conventions of true crime, rather than attempting to genuinely think through the jurisprudence of their claims, both authors show more interest in the iteration of particular myths in relation to gender and individual freedom, portraying them as normative, and rational, and cultivating a 'community of sympathy' among their readership, than any real interest in the laws (and the reliance on these laws) from which they draw much of their purported outrage. As such, both authors deftly galvanise readers' own anxieties in the creation of two particular archetypes of victim: the 'ideal victim' who is 'innocent, suffers deeply but is ready to forgive', and the bad victim who is undisciplined, vengeful, and politically opportunistic (Van Dijk 8). Rebecca Stringer calls this the 'power victim'—'a subject who "plays the victim"... undertaking activism and claiming unearned power on the basis of fraudulent victim identity' (Stringer 11). It is here that we get a sense that both women are writing in a specifically neoliberal feminist context, in which a discourse of personal responsibility, agency, self-

determination and individual will, supersedes 'an older vocabulary that spoke of structures, domination, inequality and oppression' (Gill and Scharff 9).

When Garner assumes there must be something *more* to the story, 'beyond accusations of nerdish passes at a party', asking if 'something really monstrous' simmered beneath the accusation, 'why hadn't it come out in court?' (38-9), we see her central problem: if there *were* something nefarious going on, then it would have presented itself as a narrative *event*; the true crime genre within which she writes, and the expectations it fosters among her readers, precludes the possibility that it could present as a structural precondition. Compounding this inability to portray sexual harassment as an abuse of structural power, Garner reduces each moment of sexual impropriety to individual psychology and pathology on the part of the girls. A professor making sexual advances towards a student is an abuse of power, according to Garner, 'only if the woman *lets* it' (98) be such an abuse. Similarly, Kipnis all but diagnoses the central accuser of *Unwanted Advances*, Eunice Cho, as having 'borderline personality disorder' (75). Of course, these diagnoses have absolutely nothing to do with legal standing: after all, a mentally ill person who has endured sexual violence has as much recourse to the law as every other person of sound mind. Later in *The First Stone*, Garner describes a fantasy of hers:

before people make pronouncements on what sexual behaviour society should tolerate, they ought to make the clearest possible statement of their own sexual experience, what they have learned from it, and how it might colour their attitudes. 'I have a horror of penetration'. 'I am involved with someone who satisfies me sexually'. 'I would rather have a backrub than make love'. 'I am only sexually attracted to other women'. 'I feel free only when I masturbate'. 'I have never had an orgasm and don't know what all the fuss is about'. 'I was molested as a child and still see men's sexuality as furtive and monstrous'. How would it change the way we talk about sex and power, if we had the self-awareness and the honesty to acknowledge psychological states as such, instead of passing them off as pure intellectual beliefs? (151)

Victimisation is swiftly depoliticised, and social and juridical norms pertaining to sexual harassment and assault are rebranded in the discursive world of self-awareness, self-help and a positive attitude. This is the only way to get one's head around possibly the strangest moment in *The First Stone*, in which Garner recounts a conversation with her local butcher about sexual harassment. He says to her, 'I'm a Catholic. I went to Catholic schools. A priest tried it on. I said no. Years later I was flattered! To have been liked!' (186). For Garner, this is evidence enough that being a victim is, rather than a social, juridical, or

ontological category, the mere failure of the transformative discipline of positive thinking. Of course, with this view of the world, the law could be bypassed! Writing *The First Stone* in a journalistic and true crime hybrid style, in which Garner can rhetorically foreground her personal experiences and her point of view as the privileged, rational compiler of sundry evidence, allows her to present even the most implausible narratives, like of the grown man who, in retrospect, was perfectly happy to have been singled out for abuse by a priest, in a sympathetic and completely ordinary light. This is similar to Kipnis' strategy in *Unwanted Advances*, where on the final page she describes the onerous duty of having to 'weigh the evidence in [her] own inner courtroom' (239). Once again, what was, or ought to be, the traditional purview of the law is instead internalised and psychologised as per the prerogative of the true crime narrator. The book's jurisdiction of the mind successfully thwarts the law as an institution and frustrates its perceived necessity, or efficacy for social order, organisation, and protection.

It is widely acknowledged that in Australia, New Zealand, the United Kingdom, the United States and Canada, at least, the vast majority of sexual crimes against women are already not reported or recorded. Women have, over the years, attributed this to fears of being disbelieved, blamed, and, importantly here, for the fear that the assault was apparently too trivial to report (Lievore 28). Returning to Blackstone, then, the ratio of the ten guilty persons who must go free so that the one innocent is not wrongly convicted is thrown wildly off kilter in cases of sexual violence, ceasing to provide any axiomatic relief at all: the ten guilty persons have probably escaped because they were never captured in the first place by the gamut of the law. In the case of Garner and Kipnis, we see the ways in which particularly coercive narrative strategies also work, in an extralegal, journalistic sense, to justify the exclusion of women from the legal sphere, by cleverly delegitimising the measures taken by young women who seek redress for indecent or sexual assault.

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