

jurisdictions to an approach to justice more closely resembling an adult model, is appropriate. He argues strongly for retention of children's courts as separate jurisdictions.

In summary, *Juvenile Justice — Debating the Issues* is a valuable resource for the practitioner and student alike. Its presentation in four and allows for easy focus on the issues of importance to the particular reader. The book provides a good analysis of a range of approaches

and philosophies, not always congruent, from the many disciplines involved in the identification of, policing of and response to juvenile crime.

Nevertheless, the book leaves one with a sense of dismay that the rights of juveniles to due process, and to the other citizenship rights which we adults take for granted, are so often ignored or inadequately protected. Perhaps, as Michael Hogan suggests, a re-commitment to the ideology of '... social

justice — with its commitment to equity, fairness, rights and access to services' is called for. In both the adult and the juvenile systems, and regardless of political or economic philosophies, such an ideology ought not to be in question. It still is for many young people in the Australian juvenile justice system.

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Letter

Dear Editor,

Frith Way's review of Helen Garner's *The First Stone* ((1995) 20(2) *Alt.LJ*) cannot pass without comment if only because of its misrepresentation and fallacious arguments. Please allow me to respond in your journal and provide a different perspective on both *The First Stone* and Frith Way's review of it.

In the section headed "Sit Down Girlie" on legal issues from a feminist perspective Jess Ticolate is also highly critical of *The First Stone* but she does offer to listen to contrary views. She says 'a bit of controversy never scared Girlie off'. Let's hope not!

P.J. Lynn

Power and jackboot feminism

An alternative review of The First Stone

Your reviewer Frith Way (FW) reveals lack of objectivity, if not hostility, in her first sentence when she rejects Garner's alleged born again liberalism. Born again or otherwise, the question is not her politics but whether her book achieves what she claims — to examine questions about sex and power in the context of the Ormond incident. In my view Garner does this extremely well.

FW is quite right when she states that *The First Stone* has generated an intense amount of interest — but the reasons are not just the interesting mix of sex and power. The prime reason is that the book examines a grave injustice which has pained, angered and puzzled many peo-

ple — and caused a further feminist diaspora.

Garner argues persuasively that the life of the Master of Ormond College has been ruined by the disproportionate response of the complainants' actions. FW's answer is in essence to dismissively state that while it may have been preferable to use conciliation, it was appropriate for the police to become involved. The victim — a man acquitted of the charges, has endured ignominy and his family have suffered immeasurably. FW puts this to one side in her eagerness to maintain the myth of the female victim.

Garner's main thesis is that the allegations were *never* a matter for police intervention — no matter that the bureaucracies were slow to respond. In my own view it was hardly a matter for the bureaucracies either, but who can thwart the feminist vice squad on the march?

Curiously for a self-confessed young feminist, FW finds 'galling' the patently evident truth that men sometimes put their hands on women's breasts. I presume she also finds galling the fact that women sometimes seduce men. FW calls this harassment — but she is using her own Frith-in-Wonderland definition. The Collins Concise English dictionary defines harass as — 'to trouble, torment or confuse by continual, persistent attacks...' By any stretch of an ideologically hidebound imagination, it is difficult to see any question of harassment in the Ormond College incident.

Contrary to FW's inference, Garner is *not* saying it is okay to grope a woman, or a man presumably; just the sensible notion that breast touching may be boorish. It may also in certain circumstances, of course, be delightful; but whatever it is, it does not fall into the category of criminal behaviour. FW more seriously accuses Garner of churlishness. Not so — there is nothing surly or niggardly in *The First Stone*. On the

contrary, there is a wrestling with a serious issue in which many people have been hurt. Perhaps churlish is a more apt description of FW — for here she displays the certainty of a Jehovah's Witness, with the same rigidity of thinking, lack of subtlety and a dash of unwarranted condescension to 'the old timer' Garner who in her younger days handled boorish behaviour herself instead of exacting retribution through the legal system.

The reviewer alleges that Garner takes insufficient account of the circumstances in which the incident (not harassment) took place. On the contrary, they are examined in great detail and it is partly *because* of the circumstances that Garner clearly demonstrates the gross over-reaction to an alleged boorish incident. FW says of the complainants that '*going to the police was a last resort . . . the women didn't jump, they were pushed*'. The unanswered question is who pushed them?

FW lets her ossified ideological cat out of the bag when, almost reluctantly, she says that 'attraction between teacher and student is inevitable but for a teacher to act on it is inappropriate'. Well! What a wonderful counsel of priggish perfection — lets make a law against it! Teachers, sometimes very young ones, and sometimes students (not-so-young), do attract each other and even (heaven forbid) fall in love. But, says FW, censoriously, '*when the advances are not wanted (it is) offensive*'. Of course it is! Who would argue otherwise? There may be an offence, but not a criminal one. FW does, however, dimly recognise that students are not completely powerless — she seems not to recognise that Masters are not all-powerful either!

The reviewer is concerned about complaints legislation being '*a dodgy pistol and not an AK-47 . . . they act as a deterrent but they fire blanks*'. This might well be true but her analogy with

military hardware makes my point more emphatic — that the use of an anti-tank rocket is just as absurd and inappropriate; for thus was the police intervention in a minor campus incident.

One of Garner's major arguments is flawed according to FW. Garner takes the view that women must take responsibility for their sexual freedom and accept a certain level of risk. This seems to me to be a reasonable comment on modern sexual mores and, of course, applies equally to men and women. However, FW takes umbrage with a whining, even surly complaint — '*men get their freedom no questions asked but women don't — we must trade off safety for emancipation*'.

What poor victims we women are, she is saying. What empty rhetoric — to argue that men get their freedom, no questions asked. Pray tell what kind of questions should be asked? Perhaps one question could be — should men refuse to accept freedom without the guarantee of an assault-free world? Should women refuse the freedom they now enjoy because an assault-free or even a harassment-free world cannot be assured? The answer is obvious. Both men and women have freedom and it brings its problems — both risk assault, armed robbery, homicide and other crimes.

FW wants a cast iron guarantee that if women accept their freedom it will be in a world free of danger. A used car salesman's guarantee is all we get in this world. That illusory guarantee of certainty, naively sought by FW, can only be available when the millennium arrives!

I agree entirely with FW that *The First Stone* is a fascinating book —

The Evidence of Children: The Law and the Psychology

by J.R. Spencer and Rhona Flin; 2nd edn, London, Blackstone Press, 1993; distributed by Federation Press; 465 pp; \$45.00 soft-cover.

Are children chronically unreliable witnesses? Lawyers have traditionally thought so, regarding children with a suspicion bordering on prejudice. In a chapter on the psychology of children, for example, Spencer and Flin quote the following passage from Heydon, *Evidence: Cases and Materials*, which sets

mainly because Garner is compassionate and open to argument and persuasion. One of the powerful things about the book is Garner's genuine dilemma in examining her feminist views and her frequent confrontation with those who portrayed women as helpless victims. FW says that the book is simplistic and that Garner's portrayal of (some) modern feminists as priggish, disingenuous and unforgiving, is inadequately reasoned. In my view, anyone reading FW's review will recognise FW in this portrayal — perhaps with the addition of the appellation punitive. Garner is too kind to her erring sisters and too sensitive to describe FW and those sharing her dogmas as jackboot feminists, defined as those in their ideological strait-jackets who regard moderate women as traitors or fools and men as objects of animosity and suspicion, if not hatred.

Charles Montesquieu (1689-1755) French lawyer, philosopher and man of letters stated that: . . . '*the object of punishment ought always to be the establishment of order — a just temperance of punishments and rewards . . .*' (my emphasis)

In the Ormond incident this object was not met. Minor allegations were not proven in a court of law and an innocent man was severely punished anyway. There is no cause for crowing over this affair which has given comfort to misogynists, pain to genuine feminists — and a touch of arrogance to the jackboot feminists whose urge to punish shines through their narrow suffocating fanaticism.

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out a series of negative beliefs about the reliability of children:

First, a child's powers of observation and memory are less reliable than an adult's. Secondly, children are prone to live in a make-believe world, so that they magnify incidents which happen to them or invent them completely. Thirdly, they are very egocentric, so that details seemingly unrelated to their own world are quickly forgotten by them. Fourthly, because of their immaturity they are very suggestible and can easily be influenced by adults and other children . . . A fifth danger is that children often have little notion of the duty to speak the truth, and they may fail to realise how important their evidence is in a case and how important it is for them to be accurate. Finally, children sometimes behave in a way evil beyond their years.

One of Spencer and Flin's chief missions is to persuade lawyers that chil-

dren are far more trustworthy than commentators such as these would have it. In fact many of the rules which were justified by beliefs such as those expressed above, have already been abolished in most Australian jurisdictions (nor did the above comments appear in the 3rd edition of Heydon's book). Nevertheless, some residues of this suspicion do remain to be corrected; Spencer and Flin attempt to do this by setting out an impressive array of psychological evidence designed to show that children really are reliable. Access to this psychological literature — through the text and an excellent bibliography — is, for this reviewer, the book's greatest strength. The authors undoubtedly deliver on their promise to cover both 'the law and the psychology' and this no doubt reflects the fact that they are, respectively, a lawyer and a psychologist.

The quality of the legal scholarship is also impressive, particularly when the authors deal with the history of the various legal rules which they discuss. From an Australian point of view, however, the usefulness of the legal commentary is limited by the fact that the authors deal only with the law in England and Scotland. Of course the Australian law of evidence has much in common with that which operates in England (and to a much lesser extent, Scotland), and the general criticisms which the authors make of the law of evidence are certainly relevant here; but it is, essentially, a British book.

While the scholarship is impressive in *The Evidence of Children*, the layout is less so. I found the table of contents particularly irritating: rather than showing the page numbers both for each chapter and for each section within each chapter, the table of contents merely shows the page number for each chapter and then lists the sections in one rather difficult to read paragraph. The publishers have also used endnotes rather than footnotes, which is always frustrating: do I go to the trouble of finding the endnote on the off chance that it might be interesting, or simply assume that it won't be and run the risk of missing something important? But these are only small blemishes on an otherwise excellent book. In Australia the book will be most useful to academics and students interested in the evidence of children; for practitioners the usefulness of the book is limited by the fact that the authors do not discuss Australian law.

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