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Infanticide and Reproductive (In)Justice in the South Pacific: The Construction of Pacific Women in Criminal Trials

By Kate Burry, Kristen Beek, Bridget Haire, and Heather Worth

Reproductive Justice moves beyond narrow choice-based rhetoric or individual rights-based conceptualisations of reproductive health and rights (Unnithan and Pigg 2014; Luna and Luker 2013; Ross 2017; Jolly 2016). Rather, Reproductive Justice "requires analysis of reproductive issues through an intersectional lens that considers the simultaneous operations of a person's statuses such as race, class, gender, sexuality, and ability" (Luna and Luker 2013, 330). As Unnithan and Pigg (2014, 1183) articulate, "while rights-based protocols are powerful as they promote and reinforce autonomy and self-determination of individuals, they are limited precisely in that they obscure other modes of being, belonging, connections, obligations and affiliations generated by overlapping collectivities" and the impact of these on the right not to have children, to have children under chosen conditions, and to parent children one already has under safe and healthy conditions (SisterSong 2007, see also Morison & Mavuso, this volume).

In this chapter, we apply a Reproductive Justice lens to analyse judicial files from 63 infanticide and concealment of birth cases brought to criminal courts in the Pacific region. We argue that these offences largely occur as an extreme outcome of sexual and reproductive injustice, including socio-economic inequity. Given that the law of infanticide pertains only to *women* who kill their biological infants, it is also clear that infanticide in these contexts represents "a rare instance of the overt gendering of the legal subject" (Loughnan 2012, 202). Thus, the trials analysed for this chapter are a reflection of reproductive injustice toward

Pacific women through the "active construction of the defendant's character and identity" (Gurevich 2008, 518), particularly in relation to gender, motherhood, and class narratives.

A Brief History of Sexual and Reproductive Health and Gender in the Pacific

In some areas of the Pacific, colonial administrations implemented policies around fertility practices, drawing on moralistic and demographic anxieties regarding perceived population decline. Population decline was linked to birthing and infant feeding practices, fertility control methods, including abortion and infanticide, which reportedly occurred under particular circumstances in parts of the Pacific (Brewis 1995; Jolly 1991, 1998), and alleged "maternal insouciance" or indifference (George 2010, 93). In response to this perceived maternal incompetence, from the late 1800s until the 1930s colonial administrators and missionaries in Fiji and Vanuatu implemented various programmes, including surveillance of maternal behaviour such as inquests into miscarriages, stillbirths, and infant deaths (Jolly 1998).

From the mid-1800s until the early 1900s, Christian missionaries played a role in influencing gender roles, promoting female domesticity and other pro-natal practices such as earlier marriage, conjugal relations and cohabitation of men and women after marriage, and a decrease in post-partum abstinence (Bayliss-Smith 1974; Jolly 1998). Dureau (1993) notes of the Western Solomon Islands (as does Jolly (1991) of Vanuatu) the increased recognition of nuclear family structures as they pertained to women's roles, increasing women's workload as tasks related to the household, crop harvesting, cooking and childrearing became less and less the collective responsibility of extended family networks.

There is some evidence to suggest that the extended period of engagement with missionaries and colonial administrators from the mid-19th and into the 20th century shaped the Christian values attached to motherhood and the maternal domesticated identity in the

contemporary Pacific (Jolly 1998; 1991). The focus on motherhood as encompassing women's core value and legitimacy in contemporary Pacific society can be used by women to claim their importance in the social order, but this obscures the physiological, social, psychological and emotional toll of Pacific women's reproductive labour, and the ongoing pressures of child rearing (George 2010; Dureau 1993). In addition to this, debates on other issues that affect women are often centred on the mother's failure to uphold family values to protect themselves and their children (George 2010). Among these concerns are sexual abuse and incest which relate to "less palpable truths about the circumstances of motherhood in the region" (George 2010, 91). The perpetrator of such violence is largely overlooked and absolved of guilt (George 2010). In this way, Pacific women are often blamed not just for others' assaults on them, but also for the broader degeneration of the family unit and, therefore, society (George 2010; Cummings 2008). This blaming of women for broader societal shifts echoes colonial era denunciation of "other mothers"—mothers who did not fit the idealised white middle-class version of motherhood— and "bad mothering" for broader socio-economic, demographic, social and political concerns (Jolly 1998; Roberts 1995).

The centrality of motherhood to Pacific Island women's identities and their socio-cultural and political value, tied to colonial and missionary influence, can be understood as complicating overt efforts to limit reproduction (George 2010; Segeral 2018; White, Mann, and Larkan 2018). The historical transition of gender roles also translates to decisions regarding reproduction and contraceptive use, with men who assume the role of household head often (but not always) making decisions on contraception and using threats of violence when women insist on their use (Family Planning New Zealand 2019; Family Planning International New Zealand 2009; Dureau 1993). This gendered inequity in reproductive decision-making alongside other barriers (e.g., insufficient contraceptive supplies, geographical remoteness, high rates of gender-based and sexual violence, and misinformation

and stigma attached to sexual and reproductive health) results in low rates of contraceptive prevalence and high levels of unmet need in the Pacific (Brewis 1994; Family Planning New Zealand 2019; Rallu, Rogers, and Reay-Jones 2010; Dureau 1993; Family Planning International New Zealand 2009). Ultimately, these historical, gendered, socio-cultural, political, and practical factors constrain Pacific women's freedom to make sexual and reproductive choices.

Legal Terminology and Relevant Statutes

Infanticide is both a distinct homicide offence and a partial defence for murder in cases where a woman causes the death of her biological child under 12 months of age by any wilful act or omission, and where, at the time of the act or omission, "the balance of her mind was disturbed" due to her not having fully recovered from the effect of childbirth, or due to the effect of lactation (Loughnan 2012). However, the "open-textured nature" (Loughnan 2012, 203) of such psychiatric labels as "disturbed", often encompassing not just the lethal act but also the woman's character and her broader circumstances, "overlaid with the social meanings accorded to childbirth and motherhood" (Loughnan 2012, 203), is well established in infanticide trials.

Most Pacific states and territories are "effectively common law jurisdictions" (Aleck 1991, 138) derived from colonial legislation and jurisprudence and with a continued reliance on case law from these countries (Rousseau 2008; Forsyth 2004), despite "some measure of legal recognition of the custom or customary practices of the local indigenous inhabitants" (Aleck 1991, 138).[i] The law pertaining to the offence/defence of infanticide is a legacy of British colonisation in the Pacific (included in the criminal legislation of all jurisdictions relevant to the cases in this chapter, except for Vanuatu),[ii] more or less replicating the British Infanticide Act 1922 (amended in 1938). (For more on this Act, see Oberman 2002; Kramar

and Watson 2006). Most women convicted under the British Infanticide Act are sentenced to probation plus counselling, as opposed to prison sentences (Oberman 2002). Although once a capital offence, the offence of concealment of the birth of a dead infant through secret disposal of its body, also a legacy of British colonial law, holds a maximum penalty of two years' imprisonment (Loughnan 2012; Oberman 2002).

A summary of the convictions and sentences for all 63 cases is included in Appendix #. Additionally, the convictions, sentences and references of the cases cited in this chapter are detailed in Appendix #.

Our Study

In this chapter, we analyse judicial files from court cases of Pacific Island women charged with killing or concealing the birth of their dead infants from 1961 until 2019. Our aim is to explore (1) what the enforcement of these laws in criminal courts in Pacific Island jurisdictions reveals about these women's lives and the contextual factors underpinning their crimes, and (2) how women—and gender and maternity more broadly—are constructed in the arguments put forward by these courts. We have close working or familial relationships in Pacific Island nations, but do not identify as Pacific Islanders so acknowledge our position as cultural outsiders (Ritchie 2001; Hesse-Biber and Leavy 2006).

All court documents were sourced from the Pacific Islands Legal Information Institute (University of the South Pacific School of Law 2020) using the key words 'infanticide' and 'concealment of birth'. This search produced documents from 63 cases, including: 27 from Fiji, 11 from Papua New Guinea, six from Samoa, seven from the Solomon Islands, one from Tonga, and 11 from Vanuatu. We took a feminist and social constructionist approach to our analysis of these documents to 'theorize the sociocultural contexts, and structural conditions' of the women's lives (Braun and Clarke 2006, 85). We undertook an inductive thematic

analysis of the court documents, with "the data provid[ing] the bedrock for identifying meaning and interpreting [the] data" (Terry et al. 2017, 9) as opposed to imposing "a priori categories and concepts" theorised separately (Pope and Mays 1995, 44).

The judicial files that we sourced and analysed did not contain the full subjective accounts from the women themselves, but largely included summing up and sentencing by judges. As Tsing (1990, 285) describes, explanations or "stories" of the crime and the woman who is charged, presented by the defence and prosecution "must be tailored for persuasion within dominant or emergent community standards". Summing up and sentencing by judges "introduces several opportunities for [...] narrativisation" (Heffer 2010, 213), including "by fitting the defendant's individual conduct within a more general moral sanction against certain behaviour in society". (Heffer 2010, 215). Thus, our analysis of these judicial documents from the Pacific takes an intersectional lens, rooted in Reproductive Justice, that pays particular attention to the narratives of gender, motherhood, and class used in the trials in constructing convincing accounts of the women, informing the type of evidence drawn out by the counsels, and the 'more general moral sanction' of women's and mothers' behaviour (Heffer 2010, 215).

Evil Women, Disturbed Women, and Objects of Pity: The Construction of Pacific Women in Criminal Trials

Women who kill their infants often do so in circumstances of gender-based sexual and reproductive oppression, isolation, fear, and other socio-economic inequities (Oberman 2002; Spinelli 2002; Vellut, Cook, and Tursz 2012). In line with other literature on infanticide, key recurring socio-economic features of the lives of women in these cases include young age, abandonment from the father of the infant, limited financial means or independence alongside significant parenting and economic obligations, little or no social and emotional support,

isolation, abuse from a male partner or family member , and lack of assistance as solo parents (Oberman 2002; Vellut, Cook, and Tursz 2012; Spinelli 2002). Additionally, prior convictions were only reported for two women in these cases.

Below we describe three key themes from our analysis of the construction of women (and gender and maternity more broadly) in these court cases: women's "failure" to conform to medical standards in pregnancy and birth; corrupted motherhood; and attempts to reconcile femininity in the offenders. These themes are analysed in relation to recurring contextual factors in the women's lives, such as socio-economic inequities and gender-based violence. Although the names of most of the defendants were used in the judicial files that are available publicly, we have chosen not to use these to minimise public exposure.

Secret Pregnancies, Unattended Births, and Ambiguous Deaths: Failure to Conform to Medical Standards

All 63 women in these cases attempted to keep their pregnancies secret from their families and communities, did not receive any antenatal care, and all except one gave birth unattended by a skilled practitioner. These factors were treated by the courts in one of two ways. Firstly, in some trials the defendant's secrecy regarding their pregnancy and non-attendance of antenatal care was used as evidence of their "disturbed" mind which was the result of socioeconomic factors (Wilczynski 1991). Secondly, the defendant was constructed as naïve or "simple," confused, "uneducated," "unsophisticated," rural, or irrational (Briggs and Mantini-Briggs 2000; Chunn and Menzies 1990).[iii] For example, in the Fijian case State v S (2014), the defendant's concealment of her pregnancy and her giving birth alone was taken as evidence by the judge of her disturbed mind, aggravated by her "lack of seeking medical attention and counselling," therefore supporting an infanticide conviction rather than one of murder.

In other instances, women were constructed as deceiving, conniving individuals who concealed their pregnancies and failed to conform to medical standards during pregnancy and birth as part of their broader plot to eventually kill their babies, thus proving criminal intent (Tsing 1990; Gurevich 2008; Briggs and Mantini-Briggs 2000).[iv] In the Vanuatu case Public Prosecutor v B (2004), the fact that the defendant "made all endeavours to cancel [*sic*] her pregnancy" and "perpetuated a lie to everyone […] that she was not pregnant" was taken as evidence that murder was premeditated.

All but one of the women gave birth alone. In 13 cases, this led to unclear circumstances surrounding the infant's death, and in some others, "confessions" were also unclear and were composed of the words and claims of others (Tsing 1990; Briggs and Mantini-Briggs 2000).[v] Giving birth away from a clinic or hospital was constructed in some trials as an effort to undermine the safety and wellbeing of the infant, but overlooked the woman's safety and wellbeing and the reasons these facilities were inaccessible (Tsing 1990). In the Solomon Islands case, Regina v P (2019), the defendant's multiple "failures" to seek assistance were constructed as evidence of her criminal intention by the judge:

> Deliberate omission on her part to assist the smooth delivery of the child – She did not seek any help or assistance from her mother, aunties or relatives. […] she deliberately failed to inform anyone about it [the pregnancy]. […] Hence, while I agree that she was in no proper state of mind, the actions leading up to the offence speaks volume on her criminal culpability.

In the initial trial of M (2011) in Vanuatu, the judge goes further in establishing the defendant's criminality from her concealment of her pregnancy and failure to seek assistance, while dismissing her account of her stepfather's threat should she fail to kill her new-born, stating:

> You deliberately concealed deliveries and births of your children. You could easily have talked to your church pastor, village chief or elder or your mother about your situations but you did not. And the only explanation you have provided to the police on interview is that your step-father threatened to “spearem mi wetem knife” [“stab me with a knife”].

The stepfather who threatened to stab her had sexually abused her over many years, impregnating her three times. This judge’s arguments reveal a lack of insight into the power inequities that likely manifest in M’s fear of further threats to her safety, as well as the impacts of trauma from five years of sexual abuse (Crosson-Tower 2014).

Several other pregnancies occurred in the context of actual or threatened abuse, including sexual abuse. In one case from Tonga (Court of Appeal v K, 1990-1991), a young woman was sentenced to four years of imprisonment on charges of incest, concealment of birth, and infanticide. This young woman was sexually abused by her biological father over many years and during her trial was blamed for her abuse survival by the judge who reasoned that if she “had not taken part [in the incest] of her own free will, it could not have gone on so long,” and she “had a favoured position in the family as a result.”

The women’s isolation and socioeconomic circumstances (most as single mothers) meant their sexualities (often expressed out of wedlock) and resultant pregnancies were subject to social and moral scrutiny and rejection. Compounding this is the fact that the women were largely unable to access antenatal care, assisted births, or legal and safe abortions in these contexts. The result is that women were deprived of their right to decide to have, to not have, or to parent and care for their children under safe conditions (SisterSong 2007, see also Morison & Mavuso, this volume). These women’s “failure” to comply with medical standards, undermining their socially-assigned duty to protect their infants, was constructed

as evidence of their mental incapacity or murderousness, outweighing their experiences of economic hardship, trauma, stigma, and disenfranchisement (Loughnan 2012; Tsing 1990).

Corruption of the Maternal Ideal

As described earlier, the maternal ideal in the Pacific has been largely influenced by the colonial and missionary (middle-class) feminine ideal of the domesticated, modest wife and child bearer (Jolly 1998). These cases reveal many contradicting points in a seeming struggle to reconcile feminine identity. Many of the women are cast as evil, their role as givers and destroyers of life a violation of normative motherhood.

Several courts focused on the corruption of idealised motherhood, upon whom "nature usually bestows motherly compassion, affection and caring comfort" (Fiji, State v Mw, 2010), and who, above all else, have a "duty to protect" (Fiji, State v L, 2017) foetuses and infants in all circumstances, as such is "normal human nature'" (Samoa, Police v L, 2005). The failure to protect life was often framed as evil, "unnatural" or "contrary to human nature", with these women showing an obvious "distaste for life" or significant mental disturbance.[vi] In the Vanuatu case of Public Prosecutor v M (2011) described above, the defendant's account of her survival of prolonged sexual abuse and killing two of her infants under threat of serious assault was minimised by the judge, and she was morally condemned as neglecting her "duty of care" and committing "a breach of trust as a mother." In this way, the judge exhibits an uncritical prioritising of maternal ideals without reflection on the context of abuse, violence, and intimidation (George 2010).

In some cases, the woman's unborn child and current dependents were referenced as lessening or influencing the terms of their sentence, so that she might not fail any further in her maternal duties.[vii] In the Fijian case State v Mw (2010), for example, the judge ordered "the prison authorities to submit the prisoner to constant medical counselling and keep her

under observation both during and after pregnancy." The notion that women are deeply embedded in their social, economic, and gendered environments, and are intimately aware of their parental responsibilities, seems to be absent from these narratives, or considered then put aside in favour of broader judgements relating to anti-maternal rhetoric (Briggs and Mantini-Briggs 2000). The example above speaks to the ongoing reproductive injustice faced by this defendant. She appears to have been subjected to constant surveillance during and after her pregnancy, presumably with little or no protection of her rights to decide how to manage her pregnancy and birth, and to parent the child in a safe and healthy environment (SisterSong 2007, see also Morison & Mavuso, this volume).

In addition to the positioning of these women as failed and corrupt maternal figures and alongside their non-compliance with medical standards in pregnancy and birth (discussed above), some women's prevailing socio-economic circumstances were framed as contributing to their disturbance of mind (Wilczynski 1991). For instance:

> I accept the social pressures brought to bear upon you especially the fact that you were not well-liked by your relatives due to the fact that you had become pregnant and that the child was an illegitimate child. Those matters clearly must have affected your mind sufficiently to reduce the culpability from that of murder. At the same time, I cannot see how your actions resulting in the death of an innocent child can be anything less than a deliberate and callous act (Solomon Islands, Regina v I, 1992).

The logic in this example, and the wording in the final sentence, is replicated in another Solomon Islands case, Regina v J (2017). Here we begin to uncover a core struggle over ideology, where the realities of women's socio-economic and gendered inequities—including experiences of abuse, ostracism, and abandonment—are overcome by the essentialist narrative that any woman who is implicated in the death of an infant, or, in some cases, who tries to bury a dead infant without others knowing, must be innately degenerate.

Even where the notion of mental “disturbance” was advanced in the trial, essentialised markers of gender may be used as measurements for ‘normal.’ In the Fijian case State v R (2007), for example, the expert witness, a psychiatrist, “described the symptoms of post-partum depression as including a failure to care for the child, lack of communication and unkempt grooming.” The maternal ideal in the Pacific is constructed through colonial and missionary ideals of women as agreeable, domesticated child bearers and wives (Jolly 1998), yet here, this maternal ideal is presented as innate, intuitive, and a measurement for normal. Women who do not fit this construction are therefore abnormal and mentally ill (Chunn and Menzies 1990). In these constructions there also appears to be a failure to recognise that pregnancy, childbirth and childrearing occur “within a specific network of social relations” and institutions (Browner 2000, 774). Instead, only the mother’s behaviour, social presentation and acceptability is under scrutiny (Nations and Rebhun 1988).

The cases of women who conceived in the context of sexual abuse (including incest) and domestic violence (including from (usually male) family members) starkly reveal this essentialising of the maternal ideal in the trials.[viii] One case from Fiji, D v State (2010-2014), where the defendant drowned her 20-day old infant and her one year and nine-month-old daughter and attempted to drown herself, is particularly revealing. In this case, the defendant’s experiences of her husband’s intimidation, verbal, physical and sexual abuse, humiliating and derogatory treatment of her, criticisms of her and her family, “exhortations for her to end her life” (which she attempted twice), as well as social isolation and financial vulnerability, were all detailed in her account. Despite these reports and her fear for her own and her children’s safety, the judge reduced her “reactions” and depressive symptoms to a de-contextualised, vindictive decision:

> …the failure of her husband to return home with baby diapers is a far fetched excuse to take two lives of innocent small girls and to rely on "diminished responsibility". On

> the other hand, such a claim is a serious insult to the mothers who go through the mill with their children having high expectations of creating a better tomorrow for them.

This last sentence suggests that the defendant's response to her experiences of daily abuse and her associated suicide attempts is an insult to the social institution of motherhood. This is a clear instance of victim blaming, and fails to address the unsafe circumstances in which this woman is trying to parent (George 2010). The role of the father (and, by extension, other abusers), whose persistent terrorising of the family led to the woman's fear and suicidality, is rendered invisible. The implication here is "that a woman's obligation to her children always takes precedence over her own interest in independence and physical safety" (Roberts 1995, 107). Mothers are entirely responsible for the wellbeing of their children, including protecting them from others' maltreatment, and for the broader social goal of preserving sacred motherhood, regardless of the context of abuse.

The court's lack of analysis of gendered constraints and power inequities is also seen in the Papua New Guinea case Regina v Y & A (1961). In this case, A compelled his daughter, Y, to kill her infant because of the shame the infant (conceived illegitimately) brought him. The power inequity between Y and her father was noted, with Y described as having become a "domestic woman servant in his power" after her mother's death. Despite this, the judge maintained:

> She knew and understood what she was doing and why, and exercised her own choice as to the actual time and means of carrying out her father's orders. […] [I]t is clear from [Y]'s own evidence that her actions were not caused by anything relating to the processes of birth or lactation. She made up her mind to obey her father before the child was born, and her actions were clearly premeditated.

While infanticide law requires a link (at least temporally (Loughnan 2012)) between the offence, the defendant's reproductive functions, and mental disturbance, this case reveals a

more nuanced picture of power inequities and how they constrain women's choices. Put simply, either women's reproductive bodies render them mentally incapable and, to use the wording in Fijian case State v Mw, unable to "perceive any rational thought", or they act on free choice (Browner 2000). This leaves no room for analysing ways that socio-economic, gender and other power inequities constrain women's agency (Walker and Gill 2019; Roberts 1995).

A 'Good Mother' Who Acted 'Out of Character': Attempts to Reconcile Feminine Identity

When the act or omission that caused the death of these women's babies (even if unclear or accidental) could not be incorporated within any normative gender framework, courts often had to look to other indicators of the women's character to make moral inferences (Chunn and Menzies 1990; Wilczynski 1991). Evidence of women's successful performance as mothers with other dependents played a significant role in garnering sympathy and was an important mitigating factor in sentencing. In other cases, alternate indicators of appropriate feminine behaviour were referenced, such as a change to the defendant's relationship status from single to partnered (Wilczynski 1991; Amon et al. 2020). Furthermore, some judges in their sentencing determined that the woman had been punished enough by divergence from her naturalised maternal identity.

Evidence of women's maternal behaviour was often important in creating a more morally acceptable image. Having other dependants and, for some, being currently pregnant, were regularly brought in as mitigating factors during trials (Roberts 1995).[ix] In a Fijian case, State v E (2011), the fact that the defendant had four other children was sufficient evidence of her fulfilling her maternal (and gendered) duties: "There is no evidence before this Court that you are not a fit and proper person to be a mother. You have four young children depended on you." In another Fijian case, State v K (2018), details of maternal capability were provided,

such as that she “wrapped the baby properly” (she knows how to perform childcare tasks), and “she held her child and she loved him” (displaying essentialised maternal instincts). In these cases, the offence was constructed as “out of character” in relation to evidence of other maternal behaviour.[x]

The defendant’s actual or anticipated realisation of her involvement (however tenuous) in her baby’s death (or the concealment of it) and her corruption as a woman or maternal figure was sometimes constructed as sufficient punishment by the court (Loughnan 2012). For example, in a case in Fiji (State v N, 1990) of attempted suicide and infanticide, the judge argued, “There cannot possibly be a greater punishment to a mother than finding herself in such a predicament through her own act.” In a Papua New Guinea case, State v E (2007), the judge suggested that, as a result of the infanticide, the defendant “may well be emotionally scarred, ridden with guilt and shame by what she has done, for the rest of her life.” The notion that the women had ‘suffered enough’ and would have to live with the memory, shame and guilt was raised in several cases.[xi] This argument by the courts links to the notion of motherhood as essentialised, not contested (Roberts 1993), and frames women’s family responsibilities as providing sufficient social control over their lives and behaviour by reinforcing gender roles (Roberts 1995). Yet, to quote Gurevich (2008, 532), “No one, however, remarked how well or poorly the women were situated to fulfil those obligations, nor were the obligations themselves put to question but rather treated as universal and incontrovertible standards of care and behavior.”

Establishing the argument that these women behaved “out of character” when they killed or concealed their dead infant depoliticises and decontextualises women’s responses to the injustice they face and does nothing to address these factors (Kramar and Watson 2006; Roberts 1995). It rather presents the “incident” as an anomaly in an otherwise socially acceptable life of good domestic and maternal behaviours which are natural and normal, and,

in some cases, ought to continue unhindered. This is despite these pregnancies occurring in systems of oppression, isolation, sexual and physical abuse, and socio-economic and gender inequity (Wilczynski 1991).

Conclusion

Women in the Pacific face “intersecting oppressions” (Ross 2017, 288) regarding their sexual and reproductive health and lives, including experiencing high rates of violence, economic inequality, social stigma, and patriarchal control. These oppressions link directly to the offences analysed in this chapter (Razali, Fisher, and Kirkman 2019). This injustice is grounded in a history of surveillance, condemnation, “instruction”, and criminalisation of Pacific women’s behaviour (particularly as mothers) (Briggs and Mantini-Briggs 2000), reducing socially sanctioned maternal behaviour to colonial middle-class ideals of modest, Christian, domesticated carers, and linking to their exclusion from emerging capitalism and national politics (Jolly 1991; 1998; Dureau 1993; Roberts 1995; George 2010).

These trials of women convicted over the death or concealment of the birth of their dead infants reveal the multiple injustices operating in these women’s lives: many were socially isolated, economically vulnerable, had survived abuse, and were treated with suspicion and contempt. They were also denied access to the resources and power to render their situation any different. Yet, the “court's power to impose identities and regulate the conduct of individuals in keeping them is augmented when a person is not seeking legal protection but has been charged with a crime” (Briggs and Mantini-Briggs 2000, 306). As such, maternity was constructed by the courts in complex ways to transcend history, consciousness, and the daily struggles of these women (Tsing 1990; Roberts 1993). Anti-maternal behaviour was either a symptom of irrationality or “disturbance” (thus falling under the offence/defence of infanticide), or of unfettered wicked intention. Women’s agency appeared to be allowed only

in the context of idealised motherhood (or anti-motherhood from medical and social standpoints) as the only socially and politically relevant realm in which a woman can act, while simultaneously obscuring paternal, communal, and state responsibilities (Gurevich 2008; Tsing 1990). Their broader agency was restricted through the courts' denial of women's sexuality, and minimising of coercive control and violence. This was compounded by the lack of access to education and employment during pregnancy, and the overall freedom to make choices regarding reproductive care, contraception and safe and legal abortion. These factors were largely discounted by the courts despite their power to shape women's sexual and reproductive lives and decisions (Browner 2000; Ross 2017; Tsing 1990). Institutional forces such as sexism, colonialism, and poverty underlie the crimes of the women discussed in this chapter (Ross 2017, 291; see also Morison & Mavuso, this volume), and these forces were largely sustained by the courts through relaying gender stereotypes, maternal ideologies, and through silence in the face of reproductive injustice.

Our analysis of these trials argues for an understanding of motherhood, and of maternal health (including mental health), from the lens of Reproductive Justice, taking proper account of the nuanced nature of women's lives, their capacity for reproductive autonomy, and the contexts in which they are trying to parent. This requires an analysis of motherhood as not simply "natural" and innate, but as political and shaped by historical, gendered, socio-cultural, political, and practical factors that enable or constrain women's freedom to make sexual and reproductive choices.

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[i] Judges of Pacific Island descent appear to make up the majority of the justices that presided over the trials analysed in this chapter. Customary contexts, beliefs and reconciliation practices were taken into account in a few of these cases (Rousseau 2008). However, it is beyond the scope of this chapter to analyse this in detail (for further discussion of indigenous jurisprudence, 'custom,' and '*kastom*' in legal practice in the Pacific, see Rousseau 2008; Aleck 1991; Forsyth 2004; Powles 1997).

[ii] The Fiji Crimes Act 2009 has the most extensive law regarding infanticide, including as a cause of mental disturbance, and considers not only physiological factors related to birth and lactation, but also ‘any other matter, condition, state of mind or experience associated with her pregnancy, delivery or post-natal state that is proved to the satisfaction of the state.’ (Republic of Fiji Islands Government 2009). Fiji is also the only context in which judges of infanticide trials, in their summing up and sentencing, made explicit mention of ‘social’ and ‘cultural failures’, as well as the defendants’ ‘emotional failures’, as underpinning the defendants’ acts/omissions (State v K, 2018, State v R, 2007, and State v L, 2017).

[iii] e.g., in the Fiji cases State v S (2014), State v R (2007), State v A (2015), State v E (2011), State v Ak (1990) and State v K (2018); the Papua New Guinea cases State v K (2000) and State v M (2008); and the Vanuatu cases Public Prosecutor v A (2014) and Public Prosecutor v R (1995).

[iv] e.g., in the Vanuatu case Public Prosecutor v L (2015) and the Fijian case State v M (2018).

[v] e.g., Fijian case State v T (2002).

[vi] e.g., State v V (Fiji, 2010), State v J (Papua New Guinea, 1992), and Police v L (Samoa, 2005).

[vii] e.g., in the Vanuatu case Public Prosecutor v T (2014).

[viii] e.g., Tonga, Court of Appeal v K (1990-1991); Vanuatu, Police Prosecutor v A (2014), Police Prosecutor v M (2011), and Police Prosecution v N (2010); Samoa, Police v P (2008).

[ix] e.g., in the Fijian cases State v C (2014) and State v Mw (2010).

[x] e.g., Papua New Guinea, State v M (2008); Samoa, Police Prosecution v T (2014); Vanuatu, Public Prosecutor v N (2010); Fiji, State v L (2017).

[xi] e.g., Solomon Islands, Regina v H (2004) and Regina v P (2019); Vanuatu, Public Prosecutor v N (2010) and Public Prosecutor v R (1995)), including cases of concealment of birth (e.g., Samoa, Police Prosecution v N (2013).

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