9

Supreme Court Stories: Narrating Violence in Suva Streets and Homes

Kate Stevens

The establishment of British law was a cornerstone of the colonial civilising mission in Fiji. The Supreme Court was a key symbolic and physical presence in the landscape of colonial Suva. It was both a monument to colonial power as well as a space where intimate and personal stories were retold. When the courts adjudicated hearings over criminal cases, many of the accounts recounted violent and painful experiences. The remaining archive is thus a place where the personal and private intersects with practical, quotidian enforcement of colonial rule. The stories told before colonial magistrates thus reveal a darker side of Suva life and how women and children responded to violence that occurred in Suva's streets and homes. However, these stories were also constrained and silenced by the judicial process.

This chapter looks at the establishment and limits of the colonial legal system in the early decades of colonial Suva, focusing on the cases of rape and sexual violence brought before the Supreme Court between 1875 and 1920. Individuals appearing before the courts navigated relationships in the urban environment and negotiated how ideas of race, gender and respectability were overlaid on the changing colonial landscape. Though overall few in number, these cases reveal Suva as a cosmopolitan and culturally mixed settlement in a colony predicated

on ideas of racial and economic separation. The evidence presented also highlights aspects of women's experiences within the urban environment. Cases of sexual violence are one of the few places where women appeared before the Supreme Court and one of the few places where their words are recorded in the colonial archive. Such cases therefore suggest some of the challenges that women experienced living in Suva as well as in meeting colonial standards of respectability and credibility. The silences and limits also speak to the challenges in accessing justice through the colonial courts.

This is, in Sally Engle Merry's phrase, 'law at its bottom fringes, where it intersects the social life of ordinary people rather than where legal doctrines are created'.[1] As the chief police magistrate in Fiji and later British judge in the New Hebrides, Gilchrist Alexander stated '[t]he Magistrate finds himself the repository of the domestic secrets not only of the native, but also of the white element of the population'.[2] Focusing specifically on sexual crime thus enables insight into aspects of Suva life that are otherwise largely absent in the archive.[3]

1 Sally Engle Merry, *Colonizing Hawai'i: The cultural power of law* (Princeton: Princeton University Press, 2000), 8, doi.org/10.1515/9780691221984.

2 Gilchrist Alexander, *From the Middle Temple to the South Seas* (London: John Murray, Albemarle Street, 1927), 82. See also 84–85 for more comments on the way in which court gave insight into human nature and 'the whole domestic atmosphere which seems inevitably to permeate the discussion of native sayings and doings'.

3 For scholarship on how anxieties around rape or assault of white women framed unequal colonial social and economic relations, and conversely created conditions enabling sexual violence towards indigenous women, see Norman Etherington, 'Natal's black rape scare of the 1870s', *Journal of Southern African Studies* 15, no. 1 (1988): 36–53, doi.org/10.1080/03057078808708190; John Pape, 'Black and white: The "perils of sex" in colonial Zimbabwe', *Journal of Southern African Studies* 16, no. 4 (1990): 699–720, doi.org/10.1080/03057079008708257; Pamela Scully, 'Rape, race and colonial culture: The sexual politics of identity in the nineteenth-century Cape Colony, South Africa', *American Historical Review* 100, no. 2 (1995): 335–59, doi.org/10.2307/2169002; Jonathan Saha, 'The male state: Colonialism, corruption and rape investigations in the Irrawaddy Delta c.1900', *Indian Economic and Social History Review* 48, no. 3 (2010): 343–76, doi.org/10.1177/001946461004700303; and on the history of rape generally, Joanna Bourke, *Rape: A history from 1860 to the present* (London: Virago, 2007); Anna Clark, *Women's silence, men's violence: Sexual assault in England, 1770–1845* (London and New York: Pandora Press, 1987); and Georges Vigarello, *A history of rape: Sexual violence in France from the 16th to 20th century* (Cambridge: Polity Press, 2000).

Colonial Space, Race and Courts

In early colonial Fiji, the evolution of a plurality of courts divided criminal cases, deliberately or otherwise, along the boundaries of race as well as geography, thereby separating indigenous and European subjects (and indentured labourers in Fiji) within the judicial system. The pattern of courts across the colony broadly reflected the attempts to compartmentalise racial groups into different geographic and economic spaces. Fijians were encouraged under Gordon and subsequent governors to maintain a 'traditional' lifestyle and non-monetary economy in villages.[4] Native Regulation No. 5 (1878) restricted Fijians' movements, requiring chiefly permission to leave the village or to take up paid labour.[5] Though restrictions on entering paid labour were relaxed somewhat in 1912, the importance of village life and obedience to chiefs was maintained. Indentured labourers were also subject to restrictions. They were housed in plantation 'lines' (cramped and unsanitary blocks of housing) and labour laws curtailed their freedom to travel. Though Europeans managing plantations lived in relative isolation, traders, officials and settlers mostly congregated in the urban centres. Norman Etherington outlines how different court systems existed in different spaces broadly contiguous with these socio-economic fault lines. He found:

> a system articulated into four separate legal worlds operating side by side. What mattered most was not the race or national origins of persons charged, but the arena in which those persons operated. Town justice was different from plantation justice, and both were in their turn different from justice meted out in the Provincial Courts.[6]

I argue, however, that race did play a large part in determining legal outcomes, as the different arenas of the plantation and the village were frequently demarcated along racial, as well as economic, lines.

---

4 Nicholas Thomas, *Colonialism's culture: Anthropology, travel, and government* (Princeton: Princeton University Press, 1994), 116. Note that this encouragement could be highly interventionalist involving, for example, the relocation of villages considered to be in too remote or unsanitary locations and thus allowing for easier oversight of the village and its inhabitants.

5 See Regulation No. 5 1878 in *Regulations of the Native Regulation Board: 1877–1882* (London: Harrison and Sons, 1883), 38–39.

6 Norman Etherington, 'The gendering of indirect rule: Criminal law and colonial Fiji, 1875–1900', *The Journal of Pacific History* 31, no. 1 (1996): 45–46, doi.org/10.1080/00223349608572805.

Figure 9.1: Government Buildings from Fiji Club, n.d.
Source: RD Fitzgerald, P32.4.150 Fiji Museum.

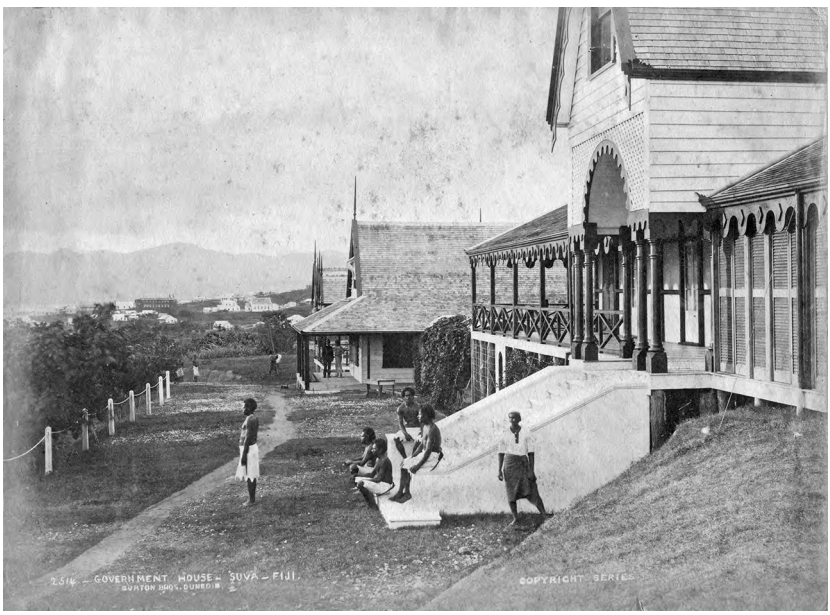

Figure 9.2: Government House, Suva, Fiji, 1884.
Source: Burton Brothers, P32.4.106 Fiji Museum.

Police courts, which operated in Suva and Levuka, dealt with crimes stemming from the problems of urban settlement (theft, drunkenness and offences to public order and morals) and operated like their equivalents in Britain or British settler colonies. The Supreme Court adjudicated on serious crime, including murder, assault, rape and sexual assault. These cases were forwarded from the lower courts to the criminal sittings held quarterly in Suva or Levuka. Trials could be conducted by jury but only if all parties involved were European, or by assessors, who advised the chief justice but did not have a decisive vote in the outcome of the case. The Criminal Procedure Ordinance of 1875 ensured that any cases involving Fijians or Polynesian immigrants were tried by assessors, as the impartiality of a European jury in judging crimes involving non-Europeans was deemed dubious at best.[7] This was justified on the basis of similar procedures in India, but nevertheless irked settlers who regarded trial-by-jury as a British birthright.[8]

Of the different courts, the most complete records survive for the Supreme Court. Depositions, arrest warrants and some verdicts are preserved and offer insight into the operation of criminal trials. These records are not always complete, as verdicts were not always recorded and the registers were missing at the time of research. I have supplemented where possible with newspaper coverage, though this is limited in other ways. Archives themselves are colonial structures, and this is reflected in the way historians encounter them too. In the court cases for rape and sexual assault, for example, when reading each file the medical evidence is encountered first in the bundle of depositions held together in the file.

The cases that I examine include charges of rape, attempted rape, carnal knowledge, attempted carnal knowledge, and indecent assault. These offer insight into how official and local ideas about sexuality, morality, race and gender intersected and diverged.[9] Rape cases centred on questions of penetration and consent. Indecent assault (sexual assault short of

7 See Peter Duff, 'The evolution of trial by judge and assessors in Fiji', *The Journal of Pacific Studies* 21 (1997): 189–213. Trial by assessor was extended to Indian, Chinese and Pacific Islanders in 1883; Bridget Brereton, *Law, justice, empire: The colonial career of John Gorrie, 1829–1892* (Barbados: University of the West Indies Press, 1997), 127. The chief native commissioner was 'to serve *ex officio* as assessor' on any criminal cases involving a Fijian.

8 See Martin Wiener, *An empire on trial: Race, murder, and justice under British Rule, 1870–1935* (Cambridge: Cambridge University Press, 2009), 83, doi.org/10.1017/CBO9780511800665.

9 While sodomy (sexual intercourse between men) and bestiality (sexual relationships with an animal) appear rarely in the Supreme Court, they involved a different gendered dynamic and are not considered here.

penetrative rape) required proof of lack of consent though the physical evidence required was less defined. Carnal knowledge, the charge for rape or indecent assault of (female) children, specified that if the victim was under 16 years or, more commonly, under 12 or 13 years, the question of consent was irrelevant.[10] Only physical proof of the assault was required, though this could be problematic to establish and therefore the subject of speculation. Cases of sexual crime thus offer valuable case studies because they involved both physical evidence and moral judgment, and gendered, racialised hierarchies of knowledge and reliability.[11]

While the Supreme Court in Suva heard cases from across the colony, the examples in this article come primarily from a small number of cases of rape and sexual assault that occurred in the town between 1880 and 1920. The majority of the Supreme Court case files for serious crimes, including murder, rape and serious assault, survive.[12] The paper trail for individual cases is, however, almost always fragmented.[13] Qualitative analysis is difficult for a number of reasons. Colonial *Blue Book* reports for Fiji during this period divided all crime into categories that are overly broad for the purpose of most historical analysis. For example, rape and sexual assault cases were included as 'offences against the person', while other crimes were categorised as 'larceny', 'property offences other than larceny', 'drunkenness' or 'other offences'.[14] Moreover, such figures tell us little about the true extent of sexual crime due to non-reporting, stigma and shame, a problem noted across historical and contemporary settings.[15]

10 Supreme Court Ordinance 1875 (No. 14) Criminal Procedure Ordinance 1875 (No. 23), and Summary Offences Ordinance 1876 (No. 17), Fiji Certified Copies of Acts 1875–1880, CO 84/1, National Archives Kew, London (hereafter NAK).

11 Moreover, as Martin Wiener explains, interracial murder – like sexual crime – trials provide 'revealing episodes in the ordinary operation of the criminal law across the Empire, cases in which this underlying conflict [between liberalism and inequality] could not simply be argued in the abstract but had to be resolved by a courtroom decision over the fate of an actual defendant'. Wiener, *An empire on trial*, 5.

12 Each case file generally contains the indictment, arrest warrants and court summons and depositions from the lower court taken from the victim, witnesses and accused (if a statement was made) that were forwarded from the lower courts. They do not contain a record of the testimony heard in the Supreme Court itself, leaving open the possibility that the statements provided were different.

13 At the time of research, the registers of criminal cases were missing from the National Archives of Fiji, making it difficult to draw robust conclusions regarding the relative volume of sexual versus other cases before the court over the 45 years analysed or especially to establish the number of cases dismissed as *nolle prosequi*.

14 Police reports for some years give a detailed breakdown of cases heard in the Police Courts in Suva and Levuka.

15 Bourke, *Rape: A History from 1860*; Susan Estrich, 'Rape', *The Yale Law Journal* 95, no. 6 (1986): 1087–184, doi.org/10.2307/796522.

Magistrates' comments nevertheless reveal that many cases were not pursued beyond the lower courts. For example, European Stipendiary Magistrate Valla requested instruction on this matter from the colonial secretary, noting that:

> Many cases occur from time to time, some of them are actually rape, but I find that so far, the cases sent to the Att Gen. have not sufficient evidence in his option to ensure a conviction for rape and in consequence the accused is dismissed with absolutely no punishment – even for assault …[16]

Officials preferred to pursue certain cases in the lower courts.[17] Of cases tried by the Supreme Court, verdicts and sentences were not always recorded in individual files (particularly after 1889), complicating efforts to assess longer-term patterns and trends in rape and sexual assault cases and the relationship between evidence, testimony and the outcome.[18]

Dangerous Streets: Protesting Colonial Law

Such cases could be a site for political protest in Suva, as elsewhere across empire. Many European residents, alongside officials and lawmakers, conceptualised Suva as a European space. The perceived threats to European women and children in the town are best illustrated by an editorial in the *Fiji Times* in April 1884, which concerned a case of sexual assault that did not make it to the Supreme Court. Mirroring the stirrings of discontent in Papua New Guinea examined by Amirah Inglis and Claudia Knapman's previous work on Fiji, this article decried the 'dastardly attempts upon defenceless white women' by 'colored barbarians' and 'semi-barbarians' in the Fijian capital.[19] While there were a relatively high number of Suva sexual violence cases brought to the Supreme Court in that year (three in total), the editorial focused on a case dealt with in the lower police court. The author asked:

16 Memo for the Assistant Colonial Secretary, SM Valia, 13/1/93 CSO 304/1893, in CSO 2320/1985, National Archives of Fiji, Suva (hereafter NAF).

17 Brereton, *Law, justice, empire*, 136–37.

18 This was problematic given that the registers that would enable cross-referencing of case files to trial outcomes were missing.

19 *Fiji Times*, Wednesday 9 April 1884; Amirah Inglis, *Not a white woman safe: Sexual anxiety and politics in Port Moresby, 1920–1934* (Canberra: Australian National University Press, 1974); Claudia Knapman, *White women in Fiji 1835–1930: The ruin of empire?* (Sydney: Allen & Unwin, 1986), Kindle.

> Can anyone read with temperate pulsation and hands unclenched the tale of the miscreant found concealed in a white woman's bedchamber, arrested, brought before a police court, and sentenced to – two months imprisonment! Can any one wonder that the result has been, not the suppression, but the rapid increase of attempts so lightly regarded, and so playfully punished.[20]

They called attention to 'the failure of the law to punish in a befitting manner a crime so heinous [it] has had the natural effect of encouraging the lustful savage to persistence in his attempts'. The piece continues well over a thousand words in this vein. The outcry reflected the claimed 'general sympathy' of the Suva population, at least some of who joined a public meeting in protest of the handling of this case (and another letter to the editor supported the use of physical punishment).[21] The editorial suggested whipping as punishment as a means to prevent further such violence.

The concern over this specific incident, and the perceived threats towards white women, reflected the anxieties over European status in the colony: 'White men were quick to respond to any hint of Fijian interest in white women.'[22] The protection of women and children in Suva – or more specifically the failure to do so – stood for broader settler perspectives that their standing in the capital and colony was undermined by government protectionism towards Fiji's indigenous subjects. This strategy was a common one across the British imperial world.

Claiming that the government was at fault and 'itself directly responsible for the evil now attaining to such alarming proportion', the editorial presented a gendered narrative of white hegemony under threat:

> Ten years ago, before her Majesty's Colonial Government assumed rule in Fiji, Europeans were objects of respect throughout the group. Their womenfolk especially were held in esteem almost in veneration, and enjoyed an absolute immunity from insult or annoyance. From the day the first Governor entered upon his tenure of office until now the constant official effort has been to degrade the European in the eyes of the native, to elevate the native at the expense of the whiteman, to sneer down in the native mind the idea, till then firmly fixed, of a 'superior race,' and to

20 *Fiji Times*, Wednesday 9 April 1884.
21 *Fiji Times,* Wednesday 23 April 1884.
22 Knapman, *White women in Fiji*, Location 2806, Kindle.

> increase official importance by making it appear to the native that all outside the circle are men of no consequence whatever. This most injudicious policy has been strictly adhered to and has been but too successful. As in the case of all lower orders, the idea of a perfect equality with those above then [sic – them?] was easily instituted, and in the attempt to assert it, self-conscious equality became an affectation of superiority. This feeling has been fostered and nurtured by the systematic petting of natives by prominent officials, generally during the first years of residence in the colony only, but in some notable instances, as a continuing habit. The force of such example has spread widely. It has been further strengthened by the attitude assumed by these same officials towards what both they and their colored associates are accustomed to regard as the white commonality, and the natural result is seen in the disposition which prompts the dregs of colored rascality to attempt the violation of white women.[23]

While I do not have records of the specific incident that lead to this outcry, the piece is revealing of local European perceptions of the city: that it should be a white space and that this was infringed upon by the presence and behaviour of non-European men. However, the voices of women and of non-European residents are absent in this construction of the city.

Suva Lives on Trial

But what of the cases that do make it to the Supreme Court itself? What do the experiences and narratives recorded in this archive reveal of intimacy, violence and colonial rule in Suva? Across the first 40 years of the Supreme Court's operation in Suva, I have identified 13 relevant cases that took place in the town during this period. Elsewhere I look at cases across the colony, and I draw on some of these here for what they reveal about attitudes to justice and race across Fiji more broadly. Where possible, I have matched the Suva cases with coverage in the *Fiji Times*.[24] Of course, as the *Fiji Times* editorial quoted above suggests, many incidents never made it to the level of the Supreme Court.

23 *Fiji Times*, Wednesday 9 April 1884.

24 Some microfilm were unavailable or missing during research in July 2019.

Among those cases heard, a high number of complainants were young, indicative of who could be considered a victim. Children, particularly European children, were more often victims in these cases than adult women. In such cases, the home was frequently a space of vulnerability: a site of intimate interaction but also of policing and anxiety. Domestic servants, household visitors and family members were frequently cited as defendants in charges of carnal knowledge.[25] Indeed, cases of interracial sexual crime almost exclusively involved European children and non-European domestic servants. The disquiet of the European parents of young victims echo Stoler's work on anxieties over domestic space in the Dutch East Indies.[26] Overall, the large number of sexual cases involving child victims is striking. This likely reflects their vulnerability, official perceptions of innocence linked to age that were independent of race, and the role that family members played in bringing complaints forward to the police and courts.[27] These cases also tended to result in longer sentences for the accused, regardless of the racial dynamics in a particular case.

Aside from these cases involving children, there were few cases of interracial rape or sexual assault brought to Supreme Court trial in Suva or elsewhere. Given Knapman's scholarship highlighting the powerful and persistent ideologies of virtuous white womanhood held by colonial officials and settlers in Fiji, it is striking that few cases of rape and sexual assault involving European women are recorded before the courts.[28] Rather, many of the cases heard in the highest court involved violence between indentured labourers on plantations, illustrative of the constructed narrative of sexual jealousy explored by Brij Lal.[29] In Suva itself, the most common of those few cases recorded were between indentured Islanders and Fijians, given the city's more cosmopolitan population compared to other parts of the colony. Despite these limits, the cases hint at the diversity of living arrangements and economic participation in the capital, despite government, chiefly and the Colonial Sugar Refinery's attempts to keep individuals in their homes, villages or plantation communities.

---

25 For example in Case 48/1906, the accused allegedly had carnal knowledge of MC, six-year-old daughter of RA while helping move a bedstead into the house. See also Case 10/1882, Case 52/1917, Criminal Sittings, Fiji Supreme Court, NAF.

26 Ann Laura Stoler, *Carnal knowledge and imperial power: Race and the intimate in colonial rule* (Berkeley, Los Angeles and London: University of California Press, 2003).

27 See for example Case 13/1908; and Case 42/1908, Criminal Sittings, Fiji Supreme Court, NAF.

28 Knapman, *White women in Fiji*, Locations 2795, 2806, 2836, Kindle.

29 Brij V Lal, 'Veil of dishonour' in *Chalo Jahaji: On a journey through indenture in Fiji,* ed. Brij V Lal (Suva/Canberra: The Fiji Museum/Australian National University Press, 2000), 215–38.

For example, an 1884 trial involved a Fijian man charged with rape of a woman from Tokelau. The victim was working in Suva, and living with her husband along with other Islanders with a Chinese man in Suva.[30] The defendant appears to have been among the residents of this diverse household. On the night of 6 April, according to the woman's deposition, the accused came and lay naked beside the victim and felt her all over while she was asleep beside her husband. She promptly woke her husband and they sent for the police. Another resident, a 'boy' from the Solomon Islands, supported the woman's statement. The defendant denied the accusations: he stated he had gone to bed at 10 pm and awoke only when the woman was hurling bad language at him. The verdict for this case is not recorded with the depositions. Nevertheless, the case highlights the cosmopolitan nature of household life – something that officials and missionaries were keen to avoid across the colony but struggled to control, above all in the city.

These cases also provide a sense of the ways in which women and children were involved in the economic life and daily rhythms of the city. One such case occurred in 1892, where a 13-year-old Fijian girl, JMK, came from Nukuvatu to Suva with a companion to sell fish on Thursday 26 May. According to the statements from the two girls, the accused enquired what fish they had for sale, and asked them to bring the products to his house. JMK checked with the man if he was married before agreeing.[31] However, when the complainant and her companion arrived at his home, the accused attempted to rape the girl: he grabbed JMK's wrists and asked her to have 'connection' with him. JMK said she was too young. The defendant then 'took hold of my breasts [and] asked What are these?' The man pulled her to the ground and pulled off the victim's sulu as she called out. She then managed to run away, leaving her sulu on the ground behind, and reported the incident to the police.[32]

Another noteworthy case involved the European proprietress of a hotel in Suva, one of the more common occupations for women who sought or needed greater economic independence in the colony.[33] In 1905, the accused man was found not guilty of the attempted rape and indecent assault of AR, proprietress of the Melbourne Hotel. She had been assisting her daughter at the bar on the night of the assault. The medical

30 Case 15/1884, Criminal Sittings, Fiji Supreme Court, NAF.
31 The defendant replied that he had two wives.
32 Case 29/1892, Criminal Sittings, Fiji Supreme Court, NAF.
33 Knapman, *White women in Fiji*, Location 1270, Kindle.

practitioner GWA Lynch reported bruises on the victim's face and marks on her jaw, but did not examine the rest of her body. Cook Ghurharan told the court he found the accused's hat and spectacles the next morning.[34] AR was a female business owner and serving alcohol: gendered norms of appropriate occupations for women may have played into the verdict. Moreover, unlike most non-European defendants of the period, the defendant had representation in court and the initial case took place over three days of depositions at the Suva Police Court. This case parallels the gendered and racial narratives that underpinned the 1915 case against Stella Spencer for slapping a Fijian man. James Heartfield convincingly argues that Spencer's conviction in the case 'was not motivated by a desire to protect Fijians, but to punish those Europeans who failed to observe the policy of separation from the natives'.[35] Neither Spencer nor AR upheld the propriety expected of white women in the colony, and this influenced how they were perceived in the courtroom.

Overall, however, as was the case across the colony, there were relatively high numbers of convictions from Suva cases: for those 10 cases where I know the outcome, seven resulted in guilty verdicts, though sometimes of a lesser charge. The proportion of convictions likely reflects the high barriers for cases to proceed to the Supreme Court in the first place, as well as constraints in how these narratives of violence could be told and who could tell them and be believed within the colonial court system. The construction of the appropriate victim highlights some of the ways in which the courtroom was constructed as a male, colonial space in Fiji, as explored below.

Words and Bodies: Constructing Credible Victims

These cases provide one of the few places where women's voices can be heard directly in the colonial archive, yet their stories are structured by the nature of the court process.[36] Their testimony was often overshadowed by

34 Case 5/1905, Criminal Sittings, Fiji Supreme Court, NAF.

35 James Heartfield, '"You are not a white woman!"', *The Journal of Pacific History* 38, no. 1 (2003): 69–83, doi.org/10.1080/00223340306076.

36 For more on the voices of the colonised in Fiji's courts, see John Kelly, '"Coolie" as labour commodity: Race, sex, and European dignity in colonial Fiji', *The Journal of Peasant Studies* 19, nos. 3–4 (1992): 262, doi.org/10.1080/03066159208438495.

both colonial politics and the court's focus on the medical evidence, on the victim's body instead of the victim's words. The limits of the archive (and indeed the trial process for those that made it to court) demonstrate the gendered operation of colonial courtrooms, particularly in the assessment of women's testimony and medical evidence in trials of sexual violence in Fiji. The prioritisation of certain types of evidence – male, European and increasingly scientific – demonstrates who was considered suitable to contribute to the production of colonial and legal knowledge and the processes by which non-European voices were devalued. This masculine medicalisation of evidence parallels processes occurring across the British Empire, in ways that continue to shape the perceptions of women's testimony and reliability in sexual violence trials today. In an increasingly cosmopolitan Suva, the courtroom remained a colonial space.

Underpinning these factors, in the minds of European magistrates, was the pervasive influence of influential jurist Matthew Hale's 1778 warning that 'rape is … an accusation easily to be made and hard to prove, and harder to be defended by the party accused, tho never so innocent'.[37] Hale drew attention to his (unsubstantiated) fears of false and pernicious rape accusations, arguing the importance of a fresh complaint and corroborating evidence. As many contemporary commentators and historians on rape acknowledge, such implicit distrust of women's testimony disadvantaged female victims in courtrooms across the British Empire and frequently focused attention on the victim's actions, morality and credibility.[38] The female body had to be proved innocent in cases of sexual crime. More broadly, sexual cases involved complicated assessments of gender-appropriate behaviour and reputation.[39]

---

37 Matthew Hale, 1778, quoted in Estrich, 'Rape', 1094–95.

38 See Estrich, 'Rape', 1087–184; Bourke, *Rape: A History from 1860*; Vigarello, *A history of rape*; Elizabeth Kolsky, '"The body evidencing the crime": Rape on trial in colonial India, 1860–1947', *Gender & History* 22, no. 1 (2010): 109–30, doi.org/10.1111/j.1468-0424.2009.01581.x; Elizabeth Kolsky, 'The rule of colonial indifference: Rape on trial in early colonial India, 1805–1857', *The Journal of Asian Studies* 69, no. 4 (2010): 1093–117, doi.org/10.1017/S0021911810002937; Scully, 'Rape, race and colonial culture', 335–59; Durba Ghosh, 'Household crimes and domestic order: Keeping the peace in colonial Calcutta, c. 1770–c.1840', *Modern Asian Studies* 38 (2004): 599–623, doi.org/10.1017/S0026749X03001124.

39 As Carolyn Strange has illustrated in the case of intimate femicide in colonial and early national Australia, 'masculine characterizations in femicide trials were judged reciprocally in relation to female victims' reputation'. The interdependent nature of gendered assumptions also underpinned trials involving intimate and sexual relationships. Carolyn Strange, 'Masculinities, intimate femicide and the death penalty in Australia, 1890–1920', *British Journal of Criminology* 43 (2003): 335, doi.org/10.1093/bjc/43.2.310; Paula Byrne, *Criminal law and colonial subject: New South Wales, 1810–1830* (Cambridge: Cambridge University Press, 1993), 116, doi.org/10.1017/CBO9780511586101.

Overlaid on the mistrust of female testimony were racialised ascriptions regarding the validity of statements made by Islanders and Indians in court. Non-European women were 'doubly suspect suspects'.[40] The 'native' witness was variously portrayed as either deceitful and untrustworthy, or naïve, confused and therefore unreliable. They were participants in what Elizabeth Kolsky has described as 'scientific inquiries, generating certain and factual knowledge under objective conditions'.[41] She further notes that the 'rationalization and modernization of law' opens further questions regarding 'the gendered consequences of colonial modernity'.[42] In general, non-European or indigenous actors were perceived as unable to contribute to, and excluded from, this increasingly 'scientific' legal project on the basis of empire-wide concepts of racial difference. These perceived differences were themselves the products of an increasingly rigid and scientific discourse of race, further contributing to a damaging cycle that reinforced colonial hierarchies within the courts.[43] Both indigenous Fijians and indentured Indians were the subject of discourse that equated whiteness with credibility and rationality, and non-whiteness with unreliability. This discourse enabled colonial law to 'enunciate equality while fabricating a racial taxonomy through which to operate unequally'.[44] The questions of reliability contributed to the many cases that never made it to the courtroom, especially at the level of the Supreme Court. The legacies of this are ongoing; arguably it is not even an afterlife of imperialism but an ongoing reality for rape and sexual assault victims in courtrooms from Fiji to Britain, despite recent initiatives to deal with these issues and change how policing and justice operates.

Despite these limits, the case files highlight the intersections and contradictions between ideals of morality, race, gender and the female body, from the perspective of both magistrates and trial participants. As John Kelly notes:

40 Kolsky, 'The body evidencing the crime', 111.
41 Kolsky, 'The body evidencing the crime', 112.
42 Kolsky, 'The rule of colonial indifference', 1106.
43 Nancy Stepan, *The idea of race in science: Great Britain 1800–1960* (London: Macmillan, 1982), doi.org/10.1007/978-1-349-05452-7.
44 Salesa makes this statement with references to policies of racial amalgamation, but it can equally be applied to law. Damon Salesa, *Racial crossings: Race, intermarriage, and the Victorian British Empire* (Oxford: Oxford University Press, 2011), 42.

> Court records are the one documentary source in Fiji's archives in which the intrusion of white overseers in the sexual and social lives of the indentured labourers is repeatedly and provocatively discussed – almost always by the Indian defendants and their witnesses.[45]

Kelly's assessment equally applies to the intimate lives of Suva residents more generally, offering a glimpse into how Indian, Fijian and European women encountered unwanted intrusions upon their bodies.

One of the aims of my broader research was to recover and make visible women's experiences of sexual violence and intimate relationships more generally, and of their work in navigating colonial legal processes. Individual experiences of intimate life are often absent in colonial records but constituted the lived experience of colonial rule. Disappointingly, I found that insight into women's experiences through trial records was limited: their narratives of rape, sexual assault and domestic relationships were heavily structured by the court process. Apart from the occasional phrase or expression, all the Supreme Court files were translated and transcribed into English by court interpreters, whose ability and accuracy were often questioned. Further, each case was filtered through various levels of the judicial process, from reporting, to depositions before the local court before being dismissed or forwarded to the Supreme Court. Officials preferred to pursue certain cases in the lower courts, with a high bar set for cases to proceed to the Supreme Court sittings in the city.[46]

As a result, many incidents described by the victims are almost formulaic, with limited words expressing their pain and shame. Rather, common elements included the isolated location of the incident (in homes alone, remote gardens, paths or streets), the use of force, and attempts (often stifled) by the victim to cry out or resist the assailant. It appears that, given the reluctance, difficulties and suspicion often associated with such complaints, these were key elements to cases successfully proceeding from initial complaint, through the lower courts to trial in Suva. Similarly, younger victims – where consent was irrelevant to the charge – appear more frequently. This trend resonates with findings of rape and sexual assault trials from colonial India, New Zealand and the Cape Colony as well as nineteenth and twentieth-century England. Moreover, as Wiener argues, in the courtroom arena the leading actors in a trial were often

45 Kelly, '"Coolie" as labour commodity', 262.
46 Brereton, *Law, justice, empire*, 136–37.

the offender and the officials.[47] Rather than giving voice to the variety of victims' emotional experiences, trials recorded those incidents that were most representative of the strict legal definition and prevailing cultural perceptions of rape. The victim's bodies had to give evidence of the violence, not just their words.

Nevertheless, through the court process victims provided a brief glimpse of the physical or emotional impact of the violence upon them. Many victims and witnesses mentioned they felt afraid to report the crime, especially if the offender was a chief or an overseer.[48] Others focused on the physicality of the attack. For example, K highlighted the violence of rape, describing to the court in 1917 how the accused 'lifted her bodily', 'fisted' her thighs and shoulders so she was 'rendered weak and he overcame me'.[49] By contrast, in an 1881 case M emphasised her fear of Savanaca, stating: 'When near I saw the expression of his eyes were not good. I was afraid and ran away.'[50] R, an indentured labourer viciously assaulted and raped by a group of men on a plantation one night in 1907, described feeling she was 'silly' and lost her senses after the attack.[51]

Other cases drew attention to the resultant suffering. The sense of shame caused by such assaults was prominent, and drew attention to the emotional as well as the physical violence of the attack. After describing her physical wounds, rape victim TB said simply: 'My mind also is in pain.'[52] In an 1881 rape case, witness S reported that Solomon Islands labourer L told her 'M has forced me and made a fool of me'.[53] Tokelauan woman K said: 'A Fijian has insulted me as if I were a pig.'[54] These accounts go beyond a description of the assault itself to hint at the devastating physical and psychological effect of sexual crime. Other accounts focus on the physical act alone, though it is unclear whether this reflected an inability or unwillingness to articulate emotional suffering in the public courtroom, or that the process of translation and transcription testimony obscured the victim's tone and emotion.

47 Wiener, *An empire on trial*, 10.
48 Case 13/1875, Case 27/1879; see also Case 6/1910, where Fijian woman S told the court she had been sent by the accused ER to bring the 15-year-old victim E to him. She said she did this because she 'was afraid as Ralulu is a big chief'. All from Criminal Sittings, Fiji Supreme Court, NAF.
49 Case 89/1917, Criminal Sittings, Fiji Supreme Court, NAF.
50 Case 7/1881, Criminal Sittings, Fiji Supreme Court, NAF.
51 Case 21/1907, Criminal Sittings, Fiji Supreme Court, NAF.
52 Case 16[?]/1879, Criminal Sittings, Fiji Supreme Court, NAF.
53 Case 13/1881, Criminal Sittings, Fiji Supreme Court, NAF.
54 Case 6/1891, Criminal Sittings, Fiji Supreme Court, NAF.

Conclusion

Legislation from both the Colonial Government and from the Bose Vakaturanga (or Great Council of Chiefs – a colonial institution itself) sought to curtail the mobility of non-European individuals in the colonial town, highlighting the attempts to designate urban space as a white one. Of course, the lived experience of residents meant that this was never achieved. Suva quickly became cosmopolitan in ways that officials, missionaries and chiefs felt was problematic, and some of the cases in the Supreme Court reflect this contested urban diversity. Women and children were widely involved in the growing economic and social life of the emerging city. In this context, they also found themselves subject to violence in homes, streets and workplaces, as well as contestations over the policing of violence in Suva.

The adversarial nature of cases before the Supreme Court resulted in the narration of differing versions of the same incident by victims, defendants and witnesses. The job of the judge or investigating magistrate, the assessors advising him, and on rare occasions the jury, was to disentangle the facts of the case, to establish the truth of the matter in order to make judgment.[55] In making judgments, racial and gendered biases were clearly at play in the courtroom. The Supreme Court itself was a settler space, serving as heart of empire in the colonial town, subscribing to colonial hierarchies of truth and reliability and reinforcing power structures.

The establishment of British law was an underpinning justification for colonial rule in Fiji, as elsewhere. Law had the power to help 'civilise' the islands, despite the fact that the British were increasingly drawn into Fiji to control the unruly behaviour of their own subjects in the decades prior to annexation. Once established, the court served as a symbolic and theatrical space, both its physical presence in the urban landscape and the performances within reinforcing the structures of colonialism. However, it is also a place in which these hierarchies could be contested and challenged, where the voices of varied men and women enter the colonial archive and had at least some ability to narrate their own stories of Suva within the context of violence.

55 Trial by jury was rare in Fiji, and reserved for capital cases involving Europeans only. It was felt that an all-white jury (as only Europeans were on the list as jurors) would not give non-Europeans a fair trial. The difference between trial by jury versus by assessors is that the court is not bound by the advice of the assessors. See Duff, 'The evolution of trial by judge and assessors in Fiji', 189–213.