Bridging Divides in Divisive Times: Revisiting the Massie-Fortescue Affair

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This Article revisits the infamous Massie-Fortescue rape and murder cases that occurred in Hawai‘i during the 1930s, in order to challenge the methods by which race scholars have previously analyzed the case by relying on gender hierarchies. Thalia Massie, a white woman, accused five “Hawaiians” of gang raping her, even though they were of various Asian Pacific ethnic identities. The rape case ended in a hung jury, and so her relatives resorted to vigilante murder of one of the defendants. The subsequent murder trial resulted in convictions, but the 10-year prison sentences for the white defendants were commuted to one-hour by the governor. The case was central in coalescing ethnic solidarity and racial coalitions on Hawai‘i. Though the misidentifying of all five defendants as racially monolithic originated with the white oligarchy, the cases solidified what it meant to be “local” in spite of ethnic divides between the various Asian and native groups.

Asian Pacific American Studies scholars have focused on the racial injustices perpetrated on the five who were accused, largely by attacking the credibility of the victim, Thalia Massie. Yet in so doing, they end up resorting to the same questionable strategies used by accused rapists to defend their actions, such as raising the sexual history of the victim and otherwise attacking her character. This Article is the first to suggest that race scholars should consider the ways in which the five accused had much more in common with Thalia Massie, as all six became pawns in a system that ultimately served the white male power structure. What happened in the cases resonates with what also happened with Emmett Till, Vincent Chin, and Chanel Miller, and demonstrates the ways in which oppression cuts equally across race and gender. In the same way that the Massie-Fortescue affair inspired coalition building between previously fractured ethnic groups on the island, now, at a moment when xenophobic essentialism and marginalization has again retaken center stage in American political discourse, is not the time for disenfranchised groups to focus on what divides us, but rather look to what unites us to each other.

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INTRODUCTION

In 2006, the American Bar Association hosted its annual convention in Honolulu, Hawai‘i. Approximately 5,000 attorneys descended upon the shores of Waikīkī, swapping their dark suits and briefcases for hibiscus print shirts and bright yellow beach bags.1 Interspersed between tanning their thighs and sipping mai tais on the Sheraton beachfront, the attendees would occasionally trapse to the Hawai‘i Convention Center to listen in on a panel or two on practitioner ethics in dispute resolution or the effects of changes in the tax code on fractional ownership of real estate, many of them lured by the promise of earning some CLE credits. Among the offerings that year was a historical trial reenactment sponsored by the General Practice, Solo and Small Firm Division.2 Those who packed into the meeting room on that balmy Thursday mid-morning were brought back to the 1930s, at a time before Hawai‘i became a state, to preside as mock jurors in a case that roiled the community and shaped race relations on the island from thence forth: the infamous Massie rape case.

The year was 1931, and the United States was in the midst of the Great Depression. Scores of white Americans left the mainland for the island paradise, some allured by the exoticism of the new island territory, others to seek new fortunes when old ones were lost on the mainland.3 It was a warm September night when Navy Lieutenant Thomas Massie and his wife Thalia Massie attended a party at the Ala Wai Inn, the very site where the Hawaiian Convention Center currently stands, and where the mock trial was occurring. Sometime late that night, Thalia left the party without her husband to take a walk. Later, when Tommie, as he was known to his friends, called home to check on her, Thalia exclaimed “something awful

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has happened” and demanded that he rush home.⁴ She stated that she had been abducted and raped by five “Hawaiians.”⁵

The police immediately arrested five local men: Ben Ahakuelo, Henry Chang, Horace Ida, Joseph Kahahawai, and David Takai.⁶ Though the evidence against them was weak, the prosecution proceeded to charge the five and put them on trial for rape. The case gained great publicity and notoriety on the mainland, reinforcing racial stereotypes depicting white women as unwitting prey to the savage lust on men of color, which demonstrated the need for increased regulation and control of the ethnic population.⁷ When the case resulted in a hung jury, the white population on the island was incensed, as well as those on the mainland, who complained that the local justice system had failed to protect white women from native men and called for martial law.⁸

It was also the era of Jim Crow on the mainland, where lynching was a common response to even slight allegations of transgressions against white women by minority men.⁹ Thus, before a new trial could commence, Tommie and Thalia’s mother, Grace Fortescue, took matters into their own hands.¹⁰ They, along with two of Tommie’s navy protégées, Edward Lord and Deacon Jones, kidnapped and murdered one of the defendants, Joseph Kahahawai.¹¹ The subsequent murder trial created another public spectacle, garnering national publicity and bringing high-profile defense attorney Clarence Darrow to the island to litigate what would become the last case of his storied career. Despite Darrow’s appeal to the jurors of an “unwritten law” that justified a husband’s actions in avenging his honor when another man defiles his wife, the jury convicted all four white defendants of manslaughter and the judge sentenced them to ten years of hard labor.¹² This result further enflamed outrage among the white population on the island and the mainland, reigniting calls for the mainland government to step in and impose martial law.¹³ Bowing to pressure coming at him from

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⁴ PINKERTON NATIONAL DETECTIVE AGENCY, INC., “ALA MOANA” CASE 8 (1932) [hereinafter PINKERTON REPORT].
⁵ Id.
⁸ Id. at 217–24.
¹⁰ See id. at 241.
¹¹ Id.
¹² Id. at 380–81.
¹³ Id. at 382–87.
multiple sources, the governor of Hawai‘i called for the four convicted to be brought into his office, where he commuted their sentences to the one-hour they would spend in his office.14

For the ethnic community on the island, the final result clearly defined the dominant racial dichotomy and hierarchy, both on the island and on the mainland: whites and non-whites. Though the five men accused of raping Thalia Massie were from various ethnic backgrounds, two being Japanese, one Chinese, and two native Hawaiian, they were monolithically cast as “Hawaiians” by not only their accuser but also the white population at large.15 Similarly, they were being treated no differently from African Americans on the mainland, who could be lynched with impunity and with little recourse for even the slightest perceived transgressions against the white majority.16 The Massie-Fortescue trials became the lynchpin in coalescing ethnic solidarity on the island, particularly among the native population and the various Asian ethnic groups. Thus, the cases were crucial in early formations of local identity through coalition building and activism among Asian Pacific American groups on the island.

The Massie-Fortescue affair became emblematic of how people of color would continue to be treated in the United States in general, resonating with what would later happen to Emmett Till,17 the Central Park Five,18 and Vincent Chin.19 As a result, the Massie-Fortescue cases have become a significant topic of scholarly inquiry among race and ethnic studies scholars, particularly in Asian Pacific American Studies. Many of the scholarly endeavors have focused on piecing together a more accurate history of what actually happened, much of which is based on the investigations of the Pinkerton National Detective Agency that ultimately exonerates the five who were accused of raping Thalia Massie.20 This was the evidence presented during the reenactment of the Massie rape trial in 2006, and at the close of the proceedings, the mock jurors in the audience “voted unanimously to give the defendants the acquittal they probably deserved all along in real life.”21

14 Id. at 389–90.
15 ROSA, supra note 6, at 1, 4.
20 STANNARD, supra note 7, at 429; see generally PINKERTON REPORT, supra note 4.
However, the strategy employed by the defense team during the mock trial—and embraced by subsequent public opinion about the Massie-Fortescue cases as evidenced in the majority of scholarship—has focused on impeaching the credibility of the victim by attacking her character. Whereas the findings of the Pinkerton report establishing an alibi where the five accused were on another part of the island when the rape allegedly occurred would be enough to exculpate them, much more of the attention over the years has been paid to Thalia Massie’s moral character and conduct in order to question whether any rape happened at all. These are the same strategies employed in many rape trials, where often the victim becomes the object of scrutiny and judgment as much as, if not more than, the accused.

Though the task of achieving posthumous racial justice is an admirable enterprise, this Article suggests that the quest for racial justice in the Massie-Fortescue cases have overly relied upon and therefore perpetuate the same mechanisms of oppression and prejudice that created the injustice in the first place, though from a gendered rather than racialized angle. Indeed, rather than focus on the racism underlying the vigilante murder of Kahahawai and the underlying structural reasons for the commuting of the sentences for the four white defendants who murdered him, scrutiny and blame has been cast primarily against the accusing woman. In the same way that portrayals of Thalia Massie during the trials as an innocent and honorable white woman justified racial violence and solidified the dominance of white patriarchy on the island, so too does her current vilification as a lying drunkard who possibly made the whole thing up to cover up her infidelities mask and perpetuate the racial and gender hierarchies that created the problem in the first place. Protection of white patriarchy is not seen as responsible for the oppression and murder of an innocent ethnic man, but the lies of a conniving jezebel is blamed entirely.

In this respect, this Article suggests that the defendants in the Massie rape case had more in common with Thalia Massie than not, and that further critical inquiry into the case should focus on the ways in which the five ethnic men and she are both victims of a system created to preserve the dominance of white men. The five men of color were demonized as bestial savages to foment a demand for more regulation and control on the island by the white male power structure, and Thalia Massie was extolled as the

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22 Pinkerton Report, supra note 4, at 261 (finding “there was not opportunity for the accused to commit the kidnapping and rape of Mrs. Massie[,] at the time alleged by her, or at other times within this period. For such to have been possible it would be necessary for many witnesses to have willfully made false statements and to have perjured themselves at the trial of the accused.”).

23 Stannard, supra note 7, at 401.
paragon of white feminine virtue so that she could be protected by the power of white men. Victim and accused alike served as pawns in a system that ultimately perpetuated the control of minorities and women by the white patriarchy on both the island and the mainland.

In the same way that the Massie-Fortescue cases spurred coalition building and local solidarity among the various Asian and Pacific ethnic groups on the island, this Article proposes that the Massie-Fortescue cases can similarly coalesce alliances between Asian Pacific Americans and other oppressed groups, such as women and other minorities. Part I analyzes and critiques the ways in which local Hawaiian perspectives and scholarly literature on the Massie-Fortescue affair have evolved in a way that primarily focuses on Thalia Massie’s role in producing the injustice. Part II provides a broader assessment of how the Massie-Fortescue cases fit into a larger systemic scheme that supports and maintains white patriarchy. Part III recounts the role of the Massie case in coalescing local identity among the different ethnic groups on the islands and evaluates the current need to remember and revisit the lessons learned from the Massie case. Part IV discusses how, in the same way that the Massie-Fortescue affair inspired coalition building between previously fractured Asian Pacific American groups on the island, that now, at a moment when xenophobic essentialism and marginalization has again retaken center stage in American political discourse, is not the time for disenfranchised groups to focus on what divides us, but rather look to what unites us to each other.

I. HISTORY, LEGEND, AND HOW HER STORY WAS TOLD

What motivated Thalia Massie to accuse the five men of raping her has long been a topic of local speculation and conjecture, though almost all local Hawaiians agree that the five men were not responsible. Some believe that Tommie Massie battered his wife that night, while others theorize that Thalia had been having an affair. The story has grown to one of local legend that is not always grounded in what really happened. Despite the differing opinions and their accuracy, most also share the common belief that the local boys were the victims and Thalia Massie was

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24 STANNARD, supra note 7, at 140 (declaring at the end of his study that “[t]he only thing known for certain is that the truth was far more prosaic than the story she cooked up. Someone took Thalia for a ride and punched her. Perhaps Tommie added to her injuries before calling the police, perhaps not. But she was not raped. And the men she accused had never seen her before and had nothing to do with her at all.”).


26 See ROSA, supra note 6, at 3.
the villain. In local lore, she has been cast into a modified caricature of the lying, vindictive shrew who fabricated a story of rape and ruined the lives of five innocent youths.27

Little critical treatment of the cases appeared for decades following the commutation of the murder sentences by the governor and after the Massie-Fortescue family left Hawai‘i and returned to the mainland. Thalia’s family was once prominent and powerful on the mainland, as they were distantly related to Teddy Roosevelt, and they threatened defamation lawsuits against anyone who dared cast a critical eye to their role in the sordid affair.28 It was not until three years after Thalia Massie died and the threat of legal action had subsided that critical analyses of the Massie-Fortescue trials began to emerge. In 1966, three journalistic treatments of the Massie-Fortescue cases appeared almost simultaneously: Something Terrible Has Happened by Peter Van Slingerland,29 Rape in Paradise by Theon Wright,30 and The Massie Case by Peter Packer and Bob Thomas;31 though all three have been criticized as incomplete for their inaccuracies, and somewhat catering to sensationalist sensibilities.32 They also evidence a myopia to the gender dynamics involved; as Paul Harris writes, “[n]or did the authors understand how the Massie murder trial was an expression of a male-dominated view of the world.”33 Another book, Hawaii Scandal by Cobey Black34 was published in 2002, which is deemed more accurate than the previous three, largely because Black had access to navy records that the others did not.35 Much of her research was done decades earlier, around the same time of the other three, but publication of her work was delayed because publishers thought the market to already be oversaturated with books about the subject.36

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29 Van Slingerland, supra note 25.

30 Theon Wright, Rape in Paradise (1966).


33 Harris, supra note 25, at 219.

34 Cobey Black, Hawaii Scandal (2002).

35 Stannard, supra note 7, at 429.

36 Rosa, supra note 6, at 96.
The most comprehensive study to date on the Massie-Fortescue cases is *Honor Killing: Race, Rape, and Clarence Darrow’s Spectacular Last Case*, published by historian David Stannard in 2005.37 In addition to combing through archival records, he extensively interviewed local residents who were finally willing to talk about both the cultural climate of the day and their impressions of the events.38 However, whereas Stannard focuses on the racial injustice perpetuated on the five who were accused of raping Thalia Massie, he also does not engage in the nuances of gender hierarchies. More recently, John Rosa published *Local Story: The Massie-Kahahawai Case and the Culture of History* in 2014,39 but he focuses on issues of race from the perspective of the defendants and the non-white community. Though this portion of this Article considers the entire critical history of the Massie-Fortescue affair, it concentrates on Stannard’s work not only because it is now the primary source relied upon by scholars for its exhaustiveness and accuracy, but also because it presents the veiled sexism of local accounts and attitudes about Thalia Massie.

Stannard narrates the story in a way that is consistent with how the community had always questioned Thalia’s moral and sexual history. Even before delving into the details of the incident, Stannard sets the temporal context of Hawai‘i as a destination where, according to locals, privileged women from “prominent families with lots of money” come to the island “to go crazy for the time being” and get “a marvelous thrill out of these beach boys.”40 It is in this backdrop that Stannard situates Thalia Massie, as an entitled descendant of a prominent and once wealthy family from the mainland who reluctantly followed her military husband to the far reaches of the earth, needing some means of distraction from the boredom of life on the remote island.41 Stannard points out how “[o]ther acquaintances and neighbors commented on Thalia’s custom of coming to the front door or walking around the yard half naked—‘looking like a prostitute.’”42 He goes on to describe how heavily she drank and how, according to the maid, “when Tommie was away on sea duty, Thalia frequently entertained men who were friends of the couple . . . . When Tommie was gone it was not unusual for one or the other to spend the night—in one instance for an entire week—or for Thalia to go to the beach with one of them and not return for several days . . . .”43 Stannard continues then to discuss the

37 STANNARD, supra note 7.
38 See ROSA, supra note 6, at 95–98 (describing Stannard’s interviewing process).
39 Id. at 4–5.
40 STANNARD, supra note 7, at 26 (quoting an unnamed local Hawaiian matron).
41 Id. at 35.
42 Id. at 36.
43 Id. at 36–37.
psychological effects of her behavior on her husband Tommie, which paints
him in an almost sympathetic light.44 Before the central events have
unfolded, Thalia is cast as the villain of the story, even though Tommie was
more directly responsible for the kidnap and murder of Joe Kahahawai.45

Stannard describes how on that fateful evening on Saturday, September
12, 1931, Tommie and Thalia attended a party at the Ala Wai Inn with other
naval officers and their wives.46 As the evening progressed, Thalia felt
increasingly neglected by her husband, so around midnight she left the
premises for a walk in the nearby streets.47 Stannard accounts how
eyewitnesses in the area at the time report seeing an intoxicated white
woman seemingly heading towards “Submarine alley,” described by locals
as a “risqué area” where “loose” sexual encounters were known to occur.48
Witnesses accounted that there was a white man following not far behind
her.49 The implication, here, is that Thalia was either with the man or that
he was following her and possibly the one responsible for the rape, and that
they were both headed towards a more salacious part of town.

During the rape trial, the defense attorneys had called the witnesses who
had seen Thalia walking past them on John Ena Road at around 12:10 a.m.
to establish an alibi for the defendants who were seen by witnesses miles
away in downtown Honolulu around 12:15 a.m., and had gotten involved in
an altercation with another motorist at around 12:35 a.m. in the same area.50
According to the defense, it would have been impossible for the defendants
to have committed a rape that far away in that amount of time.51 The
defense brought the witnesses who saw Thalia walking past them at 12:10
a.m. to refute the prosecution’s position that the rape happened between
11:10 p.m. and 12:30 a.m.52 All the witnesses testified that they had seen a
white woman, wearing a dress similar to the one Thalia Massie had on that
night, stumbling past them, with a white man following close behind her.53
Stannard reports that according to one of the witnesses, George Goeas:

The woman appeared to be drunk . . . and it was difficult to tell if she and the
man were together, because the man always seemed to be a step or two

44 Id.
45 ROSA, supra note 6, at 29–31.
46 STANNARD, supra note 7, at 45.
47 Id. at 51.
48 Id. at 53.
49 Id. at 52.
50 PINKERTON REPORT, supra note 4, at 249.
51 STANNARD, supra note 7, at 190.
52 Id. at 208–11.
53 Id. at 191–93.
behind or in front of her. Goeas guessed that they were a couple that had had an argument.\textsuperscript{54}

Regardless of whether Thalia was with the man or not, the defense had introduced the witnesses only to place her at a certain location at a certain time. However, this evidence provoked a popular theory that she was with this other man and that he may have been the one who attacked her.\textsuperscript{55}

The defense was proving the simple fact that even if Thalia Massie had been raped, it was not the defendants who were responsible. However, the public sentiment that formed as a result of the evidentiary inquiry extended into whether the rape happened at all, regardless of the identity of the perpetrator.\textsuperscript{56} The medical examination indicated that there was no physical evidence of rape.\textsuperscript{57} The examining physician found no injuries below the waist, and his notes stated “[v]aginal examination of hymen was old, lacerated at 5 and 7 o’clock position. No other abrasions or contusions noticeable.”\textsuperscript{58} When asked if he thought this to be odd, the doctor explained that Thalia was “a married woman [and] the vagina opened quite a bit.”\textsuperscript{59} The popular conclusion was that Thalia had not been raped at all, and if she did have sex that night, it was consensual.\textsuperscript{60} What is often overlooked, however, is the fact that she did have injuries on other parts of her body that indicated she had indeed been attacked.\textsuperscript{61}

Although the defense in the Massie case was focusing on establishing an alibi for the accused, the subsequent local rumor and lore that emerged after the trial engage in the culture of victim blaming in cases of rape.\textsuperscript{62} The demonization of Thalia Massie in local opinion mirrors the victim blaming that happens to rape victims during their trials. Kimberley Peterson writes about what happened to Chantel Miller during the Brock Turner rape trial, “the defense painted [Miller] as a party girl, someone who drank too much and was willing to sleep with anyone, using her memory loss from the night of her rape against her.”\textsuperscript{63} Peterson argues that the Brock Turner rape trial

\textsuperscript{54} Id. at 191–92.
\textsuperscript{55} Id. at 410.
\textsuperscript{56} VAN SLINGERLAND, supra note 25, at 81–82.
\textsuperscript{57} STANNARD, supra note 7, at 84.
\textsuperscript{58} Id.
\textsuperscript{59} Id.
\textsuperscript{60} See id. at 410.
\textsuperscript{61} ROSA, supra note 6, at 26.
\textsuperscript{63} Kimberly Peterson, Victim or Villain?: The Effects of Rape Culture and Rape Myths on Justice for Rape Victims, 53 VAL. U. L. REV. 467, 470–71 (2019).
was emblematic of “[s]ome of the most prominent myths regarding the rape victim [which] include: (1) victims often lie about being raped; (2) victims invite rape by their behaviors and actions . . . .”64 Both of these myths have prevailed in the way that the Massie rape has been treated. As commonly occurs when women report sexual assault,65 the popular theory is that Thalia fabricated the entire story of her rape, an assumption that is typically bolstered by general aspersions of her character and conduct.

Though she was cast as the pure and innocent victim during the actual trial and the defense did not engage in any character assassination at the time, the more recent efforts to exonerate the defendants posthumously have painted Thalia in the same way as Brock Turner’s attorneys portrayed Chantel Miller: as a party girl, someone who drank too much and was willing to sleep with anyone and whose memory loss from the night of the rape should be used against her.66 It seemed to be local knowledge that Thalia was a habitual drunk, and according to the witnesses who saw her, she was drunk the night of the alleged rape.67 Before even describing her injuries, the medical report starts with a description that Thalia “had an alcoholic breath” and “was under the influence of liquor.”68 Victims of rape are often blamed when they are intoxicated.69 One implication is that intoxication makes women more receptive to sex, which is a myth and untrue.70 The other implication is that they were too drunk to remember what actually happened and are thus unreliable as witnesses.71

64 Id. at 475.
65 Marilyn Yarbrough & Crystal Bennett, Cassandra and the “Sistahs”: The Peculiar Treatment of African American Women in the Myth of Women as Liars, 3 J. GENDER RACE & JUST. 625, 628 (2000) (“The term ‘Cassandra curse’ has been used most frequently in legal scholarship to describe the situation (and treatment) of female victims of sexual harassment and sexual assault who find themselves and their credibility in question when they dare speak about their attacks or attackers.”); see also Amy D. Ronner, The Cassandra Curse: The Stereotype of the Female Liar Resurfaces in Jones v. Clinton, 31 U.C. DAVIS L. REV. 123, 130 (1997).
66 Peterson, supra note 59, at 470–71.
67 STANNARD, supra note 7, at 191–92.
68 Id. at 84.
71 Id. at 139 (describing how a defense attorney argued in closing argument that it was incredulous to believe that a victim could “have been in an alcoholic stupor, and yet
Much attention has been paid to Thalia’s inconsistencies between what she said the night of the alleged rape and what she said later to deduce that she was fabricating the entire story. When Thalia was discovered battered and bruised in the face by a passing car, she said that she had been dragged into a car and attacked by a group of “five or six Hawaiian boys” who “had beaten her up and thrown her out of the car.” Rather than be driven to the hospital or the police station, she asked to be taken home. When asked “[h]ave you been hurt in any other way?” she said no and “asked us not to ask any more questions as her jaw was hurt so badly.” Only later at home would she elaborate to her husband that the men had dragged her into some bushes and violently raped her six or seven times. She also protested against her husband calling the police. The fact that Tommie was the one who called the police rather than his wife has led to the local belief that he was in fact the one who had beaten her, and that the story of the rape was fabricated to cover it up.

Another popular local theory is that Thalia was lying to cover up a pregnancy from an affair. For example, native Hawaiian activist Ku’umeaaloha Gomes’ description of the events reflects the popular misconception that “[a]t the hearings it was found out that she had been having an affair and wanted to cover it up because she got beaten up.” Concealing infidelity is commonly viewed as a motive for false allegations of rape. Thalia testified that she had become pregnant after the alleged incident and underwent an abortion. When asked during trial whether the child could have been her husband’s, Thalia testified, “my husband and I had not had intimate relations” since the time of her last menstrual cycle.

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72 STANNARD, supra note 6, at 54.
73 Id.
74 Id.
75 Id. at 55.
76 Id.
77 See HARRIS, supra note 25, at 216.
78 ROBERT MAST AND ANNE MAST, AUTOBIOGRAPHY OF PROTEST IN HAWAI’I 427 (1996); see also ROSA, supra note 6, at 87–88 (suggesting that Gomes may have been misinformed by a fictional novelization of the events).
79 Lesley McMillan, Police Officers’ Perceptions of False Allegations of Rape, 27 J. GENDER STUD. 9 (2018); see also André De Zutter et al., Motives for Filing a False Allegation of Rape, 47 ARCHIVES OF SEXUAL BEHAVIOR 457 (2018).
80 A hospital report from the procedure that Thalia had done, however, suggests that she was not actually pregnant, though the prosecutor Jack Kelley did not challenge the veracity of her statements. WRIGHT, supra note 30, at 234–35 (detailing the hospital report findings, “Cervix old bilateral tear. Contents of uterus negative. No enlargement.”); see also STANNARD, supra note 7, at 168.
prior to the rape, ‘nor have we had any since.’”81 Indeed, Tommie and Thalia had been going through marital difficulties prior to the incident.82 They had stopped having sexual relations, and there were local rumors that she was seeing other men.83 According to Tommie, Thalia was constantly trying to make him jealous by talking about other men, and on one occasion when she was riding in a car with another naval officer, he followed them, punched the other man, slapped Thalia, and dragged her away.84 In August 1931, a month before the alleged rape, Tommie threatened to divorce Thalia and relented only after she agreed in writing to go on “probation” where she had to “mend her ways or be sent home to her family.”85 After this, Thalia no longer dared go out with other men or have them over when Tommie was away.86 A pregnancy during this “probationary” period, where the couple was still not having sex with each other, would evidence her infidelity. Thus, the rumor arose that she fabricated the story of rape to cover up her adulterous indiscretions.87 There was even a rumor that Thalia might have been having an affair with one of the five suspects.88

Nested in the theory of adultery is the implication that a woman’s sexual mores affect her credibility when she makes allegations of rape. Prior to rape shield laws, a victim’s sexual history could be used by defendants to prove that she was lying. A number of scholars have noted how historically “evidence that a woman was unchaste was thought relevant to prove that she was also a liar.”89 Though the defense in the Massie rape trial did not employ such tactics, questions of Thalia’s sexual history have pervaded judgments about her in the court of public opinion. The central question that has permeated the entire Massie-Fortescue affair has always concerned Thalia’s motivation for lying, which is seen as setting off the entire chain of

81 STANNARD, supra note 7, at 168.
82 Id. at 36–37.
83 Id. at 36, 39.
84 Id. at 37–38.
85 Id. at 40.
86 Id.
87 Russell Owen, Mrs. Massie in Court Tears Up Evidence of a Domestic Rift, N. Y. TIMES, Apr. 23, 1932, at 1.
88 VAN SLINGERLAND, supra note 25, at 80.
events that led her husband to murder Joe Kahahawai. Focus is taken off of the structural racism involved and blame is centralized in the lies of one woman.

Furthermore, the focus on Thalia’s rape allegation shifts attention away from Tommie’s agency and responsibility for the murder. In fact, this had been Darrow’s defense strategy all along, which was to claim that Tommie had temporarily gone insane when he heard Kahahawai allegedly confess to the rape of his wife. Tommie claimed that he blacked out and went insane when Kahahawai confessed “Yes, we done it.” Yet this was a lie. As the prosecutor Jack Kelley attempted to explain to the jury in his closing argument, “we done it” was not the way a native Hawaiian would confess in the vernacular, but rather “he would have said ‘We do it’ or ‘We been do it.’ That is the Hawaiian vernacular. There is no past tense in the Hawaiian language and they don’t use that vernacular, which is common on the mainland.” In fact, the defense of insanity was entirely premised on lies. Deacon Jones would later confess that he pulled the trigger, and so the elaborate story of a confession and Tommie going temporarily insane was fabricated in order to cover up the true motivations for the murder, which was most likely race. Yet public attention has not homed in on Tommie’s lies, or Deacon Jones’ lies, or anyone else’s lies except Thalia’s. Thalia becomes the primary villain in the story, and the men merely ancillary pawns.

In perhaps the most dramatic and memorable point of the Fortescue murder case, Thalia was on the witness stand being cross-examined by prosecutor Jack Kelley. Kelley handed Thalia a report of a psychological evaluation that she had undergone and asked “[h]as your husband always been kind to you?” The New York Times reported in spectacular detail how at that instant, “there came a transformation from the pathetic looking figure into a woman who, with low voice but blazing face, turned on him as he produced a paper statement containing statements regarding her feeling toward her husband before the assault.” Thalia ignored the prosecutor’s question and snapped back, “Don’t you know this is a confidential communication between doctor and patient?” and proceeded to rip the document into shreds and throw the pieces to the ground to the applause of her supporters in the gallery. After the judge reinstated order in the courtroom, Kelley, with his face and neck red with anger as he stared at her,
blurted out, “Thank you, Mrs. Massie, at last you have shown yourself in your true colors.” At the close of questioning, Thalia ran from the witness stand to her husband, and as the New York Times article describes, “Throwing her arms around him, she cried loudly and hysterically: ‘What right has he got to say that I don’t love you? Everybody knows I love you!’”

Though his statement was ultimately stricken from the record and theoretically shielded from the jurors, Kelley’s remark about Thalia “showing her true colors” had the effect of denigrating her character in the public eye for all posterity. Darrow had Thalia testify as to how devoted Tommie was to her to bolster his defense that her rape had thrown him over the edge. Though Kelley likely intended to produce the psychological report only to rebut the rosy picture that she painted of her and Tommie’s relationship and to therefore cast doubt on the theory that Darrow was suggesting, his angry reaction produced a different result as it became one of the most memorable moments of the trial that was eaten up by the public. The Massie case was one of the most hotly followed stories for two years, garnering as much public attention as the Lindbergh baby. The fact remains, however, that when this episode occurred, Thalia was not on trial. Even though Tommie was the one on trial for murder, she was the one came off as conniving and culpable. This may not have been prosecutor Kelley’s initial intent when he was cross examining Thalia on the stand, but this ultimately was the effect, especially for locals on the island who came to blame Thalia for the whole affair.

If Tommie was not as in love and deeply devoted to Thalia as he says he was, then there must be some other motive for the murder. Even if he did not actually love his wife, he may have viewed her as his property and her rape, whether true or not, would have been an assault against his masculinity. Thus, he needed to avenge his position as a man. Another theory could be that as a white Southerner, he could not abide a rape of any white woman by a non-white man, let alone any type of sexual relationship.

96 Id.
97 STANNARD, supra note 7, at 358.
98 Owen, supra note 87, at 1.
99 Id. at 337.
between a white woman and non-white man. Thus, he participated in what amounted to a lynching in order to protect white racial purity. Perhaps even more likely, his motivation for the murder could have been a combination of both. Even if Tommie was no longer in love with Thalia, he was still possessive of her. He was obsessed with rumors that she was having an affair and went so far as assault another white man whom he had seen her with. However, what finally pushed him to participate in murder was the possibility that a non-white man had dared transgress this sexual boundary.

Yet Kelley’s comment about Thalia’s true colors undermines this. Rather than being seen as an instrument used to advance the dominance of white masculinity, Thalia is seen as a malicious woman whose lies begin a sequence of events that ultimately result in Joe Kahahawai’s murder. Stannard similarly makes Thalia almost entirely accountable for everything that transpires, saying in his conclusion, “but what Thalia unleashed changed Hawai‘i—permanently.” Despite his extensive exposition into the racial hierarchies, political tensions, and other structural causations for the murder of Joe Kahahawai and the releasing of his murderers, Stannard’s conclusion, which is perhaps shared by much of the local community, suggests that injustice reduces down to the actions of one woman. John Rosa rightly proposes that Thalia’s voice was taken from her and she became a surrogate for white womanhood that required the vengeance and protection of white men, but at the same time, critical treatments of the case have made it all about her story, her lie, and her individual culpability for the murder of Joe Kahahawai rather than the collective responsibility of a racist and sexist superstructure that ensured the unjust result.

II. THE ROLE OF HER STORY IN THE HISTORY OF OPPRESSION

Alleged rape of white women has often been used as an instrument of oppression against populations of color. According to Floyd Weatherspoon, “[b]lack males have historically been the victims of false allegations of rape,” and the criminal justice system disproportionately punishes black

103 Stannard, supra note 7, at 38.
104 See Harris, supra note 25, at 218–19.
105 Stannard, supra note 7, at 410.
men who are accused of rape, especially when the victim is white.\textsuperscript{107} However, in the American South where many of the principals in the cases came from, including Tommie Massie and Grace Fortescue, extrajudicial murder was a common response to allegations that a white woman had been raped by a black man. Barbara Holden-Smith describes how “Southern apologists for lynching argued that the mob acted in order to protect the virtue of white Southern womanhood from black men who were incapable of controlling their desire for white women.”\textsuperscript{108} During the Massie rape trial, Thalia Massie was presented as the paragon of white womanhood. At the same time, the five accused were demonized as lustful savages, representative of a depraved ethnic population on the islands that needed to be dominated and controlled. Joe Kahahawai was one of the two native Hawaiians who were accused, who also happened to be the darkest skinned of the five defendants, and he was specifically targeted to make a statement to the non-white community about sexual boundaries.

The Massie-Fortescue cases served colonialist interests by portraying the local population as savage criminals, which required discipline and subjugation. The mainland press and the mainstream, white-owned Hawaiian press was quick to frame the rape within the narrative of racialized moral panic where the integrity of white morality was being threatened by perverse sexual proclivities of the native population. Immediately after the alleged rape, the \textit{Honolulu Advertiser} ran the headline \textit{Gang Assaults Young Wife: Kidnapped in Automobile, Maltreated By Fiends}.\textsuperscript{109} As Helen Geracimos Chapin suggests, “from the 1850s on, the mainstream papers, backing the legal system, demanded the control of dangerous sexual proclivities of the non-white underclass.”\textsuperscript{110} In regard to previous rape cases by non-whites on the island, the \textit{Advertiser} had previously described the perpetrators as “brutes . . . reeking of bestiality,” and declared that the “honor of womanhood and the sanctity of virtue” were at stake.\textsuperscript{111} In the Massie case, the \textit{Advertiser} referred to the non-white suspects as “gangsters,” “degenerates,” and “thugs” while describing Thalia Massie as “a white woman of refinement and culture” and “a young married woman of the highest character.”\textsuperscript{112}

As Paul Harris suggests, “Thalia Massie was made into a symbol: the loyal, faithful wife of a bereaved, justifiably angry husband. She was held

\textsuperscript{107} Id. at 47.
\textsuperscript{108} Holden-Smith, supra note 9, at 1571.
\textsuperscript{109} GERACIMOS CHAPIN, supra note 100, at 152.
\textsuperscript{110} Id. at 153
\textsuperscript{111} Id. at 154.
\textsuperscript{112} Id.
up as the symbol of ‘decent white women.’”113 As a symbol of white womanhood, Thalia Massie could be recast as pure and virginal, in need of defense and protection even if she was a drunk and a cheat. Kimberlé Crenshaw points out that “while it was true that the attempt to regulate the sexuality of white women placed unchaste women outside the law’s protection, racism restored a fallen white woman’s chastity where the alleged assailant was a Black man.”114 In this respect, the stakes for the rape trial loomed much larger than individual justice for Thalia or any of the defendants. It became a defense of white womanhood in general against an unruly ethnic local population. As John Rosa argues, Thalia’s story became no longer her own, and it was told for her “in the context of a pattern of white dominance imported from the continent, a history of haole oligarchy in the islands since the late nineteenth century, and a general but unwritten rule affirming the status of whites over nonwhites throughout the United States.”115 Because Thalia stood for more than herself, her honor had to be redeemed at all costs.

Upon first learning news of the rape, Admiral Yates Stirling, the commanding officer at Pearl Harbor where Tommie Massie was stationed, declared “our first inclination is to seize the brutes and string them up in trees.”116 Stirling saw the alleged attack as an affront social hierarchy of the islands, and believed that “quick action . . . and adequate punishment” was necessary “[f]or the sake of preserving ‘the prestige of the whites’ in the islands.”117 Though patience and faith in the justice system temporarily prevailed, the eventual hung jury would, in the minds of the white population, demonstrate the failure of the legal system to defend white prestige, so it was in the hands of the populace at large to carry out justice. In December 1931, a month after the rape trial, a group of men from the naval base kidnapped and beat Horace Ida.118 One month later, Tommie Massie and Grace Fortescue kidnapped and murdered Joe Kahahawai. In his memoirs, Stirling made clear that he had intended to incite extrajudicial lynching, as he commented about his reaction to Joe Kahahawai’s murder, “I had half expected, in spite of discipline, to hear that one or more [of the

113 HARRIS, supra note 25, at 218.
115 ROSA, supra note 6, at 43.
117 STANNARD, supra note 7, at 105.
118 Id. at 224–26.
Kauluwela Boys] had been found swinging from the trees by the neck . . . .”

The murder of Joe Kahahawai mirrored what was happening on the mainland and operated towards the same purpose of racialized dominance and control. Tommie Massie was a Southerner from Kentucky, where for decades under Jim Crow, extralegal murder of non-whites for alleged sexual transgressions against white women was commonplace. Henry Barber explains that “[t]he most commonly used excuse to justify this extra-legal punishment in the South was ‘in defense of southern white women.’” In fact, Grace Fortescue, when initially asked why she felt justified in killing Kahahawai, “said that she came from the South and that in the South they had their own way of dealing with niggers.” As Barbara Holden-Smith argues, “execution of black men for allegedly raping white women is a defining characteristic of the history of race relations in the South . . . [where l]ynching served primarily as a means to control black people in a white supremacist culture.” There were many Southerners in Hawai‘i, particularly in the military, who according to historian Gavan Daws were “unable to see Hawaiians as anything but exotic Negroes, Orientals as little brown men indistinguishable one from the other, and ‘local boys,’ especially those of mixed blood, as the embodiment of all that was worst in human nature.” Thus, rooted in the vigilante kidnapping of Horace Ida and murder of Joe Kahahawai by military personnel was a Southern disdain for any type of miscegenation and a desire to maintain racial purity.

Most of the white population believed that the killing was justified as a “code of honor” slaying. As an “honor killing,” the murder of Joe Kahahawai reinforced notions that white men alone held rights to sexually access white women. His slaying sought to ensure that the same racial hierarchies that existed on the mainland would also apply in Hawai‘i. Though the defense strategy in the Fortescue murder case had hinged upon temporary insanity of Tommie Massie, in his closing statement to the jury, Clarence Darrow appealed to the unwritten code where a man whose wife

119 ROSA, supra note 6, at 51.
121 STANNARD, supra note 7, at 301.
122 Holden-Smith, supra note 9, at 1571.
124 WRIGHT, supra note 30, at 204.
was raped was bound by duty to avenge her honor. Though it would have been uncharacteristic for Darrow to appeal to racial hierarchies given his previous work on behalf of minority clients, most of the popular sentiment from the white population on the island and on the mainland nevertheless believed that the killing was defensible as a means of regulating and disciplining a population that had been stereotyped as godless, barbaric, and beneath the whites. According to John Rosa, “the belief in white superiority linked many haoles, old and newly arrived, in their support of Thalia Massie and in defense of 'white womanhood.'”

In fact, Darrow did his best to conceal the racial undertones of the murder. Paul Harris describes how “[i]n total contrast to his defense in the Sweet trials, in the Massie case Darrow did not allow any ‘question of race’ to be discussed in the trial because he felt ‘it would have been fatal to our side to let anything of that sort creep in.'” Though it was later revealed that Deacon Jones was the person who actually pulled the trigger, Darrow strategically placed the gun in Tommie’s hands. Under the defense strategy, Tommie Massie specifically was the one who murdered Joe Kahahawai because he had raped his woman, and not because he had raped a white woman. Though in the public realm the murder was understood as a lynching aimed at keeping the ethnic population in line, in the closed realm of the courtroom, the murder of Joe Kahahawai needed to be personal and individualized, a vendetta between one man and another.

After beginning his closing argument with the statement that he “never had any prejudice against any race on earth,” and that he had “no racial feeling against the four or five men who committed this crime upon Mrs. Massie,” Darrow beseeched the jury “to forget race and look upon this as a human case.” Darrow’s appeal relied on the myth, which he very well might have truly believed in, that colorblindness would lead to racial justice. This might explain why Darrow, who had previously been known for being an advocate for underrepresented minorities, found himself embroiled in an overtly racist murder case. However, as Cynthia Lee points out, “[t]he problem with colorblindness is that it ignores reality.

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126 ARTHUR WEINBERG, ATTORNEY FOR THE DAMNED 104–118 (1957).
127 HARRIS, supra note 25, at 223.
128 ROSA, supra note 6, at 33.
129 HARRIS, supra note 25, at 221.
130 STANNARD, supra note 7, at 402–03; see also VAN SLINGERLAND, supra note 25, at 318.
131 STANNARD, supra note 7, at 372.
Even if we believe that race should not matter, the fact is that it does matter.133 The fact remains that the Massie-Fortescue cases were all about race, and to deny the societal racism involved is to mask the deeper systemic problems. The “honor killing” was not to preserve the honor of an offended husband, but to preserve the dominance of white masculinity as the sole possessor of access to white women. The killing was not a personal crime of passion, but a public spectacle intended to make a statement to the ethnic population and to control them through terror.

In addition, the protection of white womanhood from the threat of native sexuality was deployed to justify military dominion of the island from the mainland. Looming throughout the whole process, across both trials, was the threat of commissioned law and martial law being imposed from the mainland. The *American* published an article with the title *Martial Law Needed to Make Hawaii a Safe Place for Decent Women*.134 The rape of a white woman by local men of color evidenced that the island was a place of lawlessness that demanded forced imposition of the rule of law. Then, the repeated failure of the local justice system to produce results that satisfied the white power structure reemphasized the need for intervention from the mainland. In this respect, the Massies were convenient players, as Tommie’s position as a naval officer made Thalia’s rape an issue of honor not just for the white population, but for the American military as well.

Commissioned rule of the islands was threatened twice: first immediately after the hung jury in the Massie rape trial, and then again after the conviction and sentencing of the four white defendants in the Fortescue murder trial.135 In the mind of whites in the navy, on the islands, and on the mainland, the Hawaiian territorial government structure had proven itself incapable of delivering justice and was therefore unworthy of autonomous rule. Thus, in addition to calling for lynching after the acquittals of the five accused rapists, Admiral Stirling also called on the mainland to intervene and order commissioned rule and martial law over the islands.136 Claiming a broken system of justice and declaring “[t]he large number of people of alien blood in the Hawaiian islands is a matter of the gravest concern . . . .”137 Stirling wrote to Assistant Attorney General Seth Richardson demanding:

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134 HARRIS, supra note 25, at 218–19.

135 STANNARD, supra note 7 at 231, 384.

136 VAN SLINGERLAND, supra note 25, at 230.

137 Id.
Actual control of the laws—their inception, promulgation, and enforcement—should be by the national government. Should the logic of the situation decide for a government of limited suffrage with a considerable measure of control by the National Government, the constitution of such controlling government, though predominantly civil, should include an officer of the United States Army and an officer of the United States Navy . . .

Stirling wanted to capitalize upon fears of insurrection from the ethnic population and the danger it posed to the chastity of white women.

Stirling was clear in his desire to stoke racist stereotypes to politically disenfranchise the majority ethnic population and place power solely in the hands of a minority of “men primarily of the Caucasian race; by men who are not imbued too deeply with the particular atmosphere of the islands.”

Pursuant to a resolution adopted by the United States Senate to determine the necessity of commissioned rule, Richardson was dispatched to the island by the Department of Justice prior to the commencing of the Fortescue murder trial to investigate and report. Though Richardson’s findings did not support the imposition of commissioned rule, Stirling found that his inflammatory letter, which had been published within Richardson’s report, drew sympathizers from “the outraged American media, most of Congress and the military, popular opinion throughout the United States, and Hawai‘i’s old guard haole elite.”

Upon release of the report, Walter Dillingham, the most powerful businessman on the islands, also wrote to Washington and opined that a “radical change in government” might be necessary, but not yet.

Immediately upon news of the convictions and sentencing in the Fortescue murder trial, those forces on the mainland mobilized. The Hearst newspapers ran a column lambasting Washington for not earlier ordering a “complete militarization of all the islands under a military commission,” and included cut-out cards for readers to mail their senators and representatives demanding action. The column claimed no less than “American womanhood and decency in Hawai‘i” were at stake. Again,
the protection of white womanhood was invoked as the justifier for colonial domination. Yet even before those cards were sent, over a hundred congressmen signed a petition expressing Congress’ “deep concern for the welfare of Hawai‘i” and demanding a pardon of the convicted defendants. Governor Lawrence Judd conceded that the threat of martial law was a significant motivator for him to commute the sentences of the four who were convicted of Joe Kahahawai’s murder, saying “[h]ad I not acted as I did, I believe Congress might have changed our form of government and placed us under a commission.”

Only ten years later, as the United States entered World War II, Hawai‘i indeed came under martial law. The justification was overtly racial, as a reaction to the threat of Japanese invaders both inside and outside the islands. For fifteen months military rule suspended all civil rights and liberties on the islands, including the right to a jury trial and habeas corpus, effectively replacing the dual system of justice with a provost court.

Martial law would not be entirely removed until October 1944, more than two years after the Battle of Midway, which experts believe to have effectively ceased the threat of future invasion of the United States by Japan. What the unprecedented four years of military rule demonstrated to the ethnic populations on the island was the easy use of racist xenophobia to strip them of their rights, and thus the urgency of political mobilization in order to campaign for full statehood.

### III. THE ROLE OF HER STORY IN THE HISTORY OF RESISTANCE

The 2006 mock trial was presided by Lieutenant Governor James R. “Duke” Aiona, Jr. as judge, who understood the significance of the Massie-Fortescue affair in building political influence for the Asian Pacific American community on the island through coalition building and solidarity. As ABA reporter James Podgers accounts:

Aiona noted in a follow-up interview after the program, “the case really divided opinions between haoles—whites—and other groups,” including the large Chinese, Japanese and Filipino communities. “It galvanized those

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146 Id. at 385.
148 Duncan v. Kahanamoku, 327 U.S. 304, 307–08 (1946) (“On December 7, 1941, immediately following the air attack by the Japanese on Pearl Harbor, the Governor of Hawaii[‘i] by proclamation undertook to suspend the privilege of the writ of habeus corpus and to place the Territory under ‘martial law.’”).
communities and unified them with local Hawaiians.” That budding political influence “led them to gain strength and power to take over their own state.”

Indeed, even though as individuals non-whites who live in Hawai‘i might still subcategorize themselves based on their individual ethnicities, such as native Hawaiian, Chinese, Japanese, Filipino, or Korean, they identify collectively as “locals” rather than Asian Pacific American. John Rosa describes how “the Massie case could now serve as an origins story for local identity—as an example of injustice against working class peoples of color in the islands.”

The Massie-Fortescue affair further deteriorated the tenuous relationship between native Hawaiians and the white elite. Joe Kahahawai was one of their own, and his slaying at the hands of white perpetrators with little recourse was a watershed moment for the native Hawaiian community. Reverend Robert Ahuna, who conducted the committal service, declared to the crowd in attendance, “[w]ithin the bounds of our birthplace, such a thing has never been heard of,” emphasizing how much the white minority oligarchy regarded them as a racial undercaste in their native home. Kahahawai’s murder became a rallying cry for native Hawaiians. His funeral brought together an unprecedented crowd from all reaches of the islands, typically reserved for the death of royalty. Lydia Lum, who compares Joe Kahahawai to Emmett Till, describes how “Kahahawai’s funeral drew thousands of Hawaiians and initiated a previously rare strategy session between leaders of Japanese, Chinese, Filipino, and Hawaiian communities.” Rosa argues that Kahahawai’s murder was the tipping point that caused “Hawaiians to see more clearly that as a racialized group, they had more in common with working-class immigrants of color.”

The Massie case thus also brought together previously fractured Asian ethnic groups on the island, who despite being a numeric majority on the island, had lacked political power and still subsisted under the rule of the minority white oligarchy. Indeed by 1920, sixty-two percent of the population of Hawai‘i were from Asian backgrounds, with native Hawaiians representing sixteen percent and whites representing less than

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151 Podgers, supra note 21, at 64.
153 ROSA, supra note 6, at 76.
154 Id. at 52.
156 ROSA, supra note 6, at 64.
157 Id. at 58.
Part of the fracturing of the various ethnic groups had to do with their migration patterns, as most Asian immigrants during the late nineteenth century were recruited to work the growing plantation industry in Hawai‘i and they were segregated into ethnically separate camps when they arrived. As Ronald Takaki notes, “[t]he organization of camps into different nationalities supported the planters’ strategy of dividing and controlling their workforce.” Though there had been some coalition building among the various groups in respect to labor rights on the plantations, the groups did not coalesce as a political constituency until after the Massie case. Such political mobilization significantly changed the landscape of the islands, and as Takaki continues, “[b]y their numerical preponderance, they had greater opportunities to weave themselves and their cultures into the very fabric of Hawaii and to seek to transform their adopted land into a society of rich diversity where they and their children would no longer be ‘strangers from a different shore.”

Leaders in the Asian community began to build alliances with native Hawaiians. Though several Asian candidates had previously run for public office, it was not until 1930 that two of them finally succeeded, Andy Masayoshi Yamashiro and Tasaku Oka, who were both elected to the Territorial House of Representatives. Yamashiro was especially vocal about the need for coalition building during the Massie-Fortescue affair. Hiromi Minobe describes how, in response to Admiral Stirling’s call for a commissioned government, Yamashiro “repeatedly us[ed] the word ‘we’ . . . to mobilize and unify the entire island population, regardless of race, ethnicity, social class, or political ideology, in an attempt to organize a fight against a mutual ‘enemy’: a grave threat to Hawai’i’s self-governance from the continental United States.” Yamashiro, who was a Democrat, was committed to building bridges with the native Hawaiian population. He had been politically groomed under the tutelage of native Hawaiian stateman David Trask, and as a territorial representative he would often collaborate with other native Hawaiian representatives in advancing native Hawaiian interests.

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159 Id. at 157.
160 Id. at 156–57.
161 SUCHEN CHAN, ASIAN AMERICANS: AN INTERPRETIVE HISTORY 84–86.
162 TAKAKI, supra note 158, at 176.
163 STANNARD, supra note 7, at 78.
164 Hiromi Monobe, From “Vanishing Race” to Friendly Ally: Japanese American Perceptions of Native Hawaiians During the Interwar Years, 23 JAPANESE J. AM. STUD. 73, 90 (2012).
165 Id. at 88–89.
Hawaiians were resentful of the fact that the first Japanese Americans had won public offices. Only two years later, in the election of 1932, the native Hawaiian vote became a crucial element in propelling more Japanese Americans to elected offices on the islands.

For the first time on the island, ethnic divides began to dissolve, and a new term, “local,” emerged as common identifier. The one thing “local” meant was not white. As Stannard relates, “beginning in the fall of 1931, people of color in Hawai‘i took to describing the accused young men—who individually were Hawaiian, Japanese, and Chinese—by the collective term ‘local’ to distinguish them from their haole accuser and her supporters.”

The Republican party had been aligned with the navy during the Massie-Fortescue affair, and the new coalition of ethnic voters turned out en masse to vote them out of office. In the election of 1932, the Massie case became a rallying cry for a Democratic shift in power. That year, an unprecedented number of over 90 percent of the electorate showed up to vote. Roger Bell accounts “[t]he swing toward the Democrats in Honolulu after this event as well as the election of a Democrat, Lincoln McCandless, as delegate to Congress in 1932 confirmed the growing dissatisfaction with the Republican party.”

More importantly, the Massie case became a catalyst for statehood. Bell accounts how “[t]he reaction of Congress to the Massie case also revealed the vulnerability of the islands to outside interference. This further strengthened the demand for full-fledged local autonomy under statehood.” Indeed, the involvement of the mainland in pressuring territorial Governor Judd to commute the sentences was troubling for the local population. Even though for Judd the commutation of the sentences was less racially motivated than politically expedient, the pressures from the mainland were heavily steeped in racist hysteria, which was then being imposed on the islands. As Rosa describes:

[What angered locals most was not necessarily the racist rhetoric of the navy or other continental groups; rather, it was that the territory’s own judicial system had succeeded, only to have its executive branch succumb to federal

\[166\] STANNARD, supra note 7, at 412.
\[167\] Id.
\[168\] ROSA, supra note 6, at 5.
\[169\] STANNARD, supra note 7, at 413.
\[170\] Id. at 411.
\[171\] Id. at 412.
\[172\] Id. at 411.
\[174\] Id. (footnote omitted).
pressure. Locals seemed more upset at the failure of the territorial government to stand up for itself.\footnote{ROSA, supra note 6, at 63.}

Rather than adhering to the rule of law, the territorial government had aligned itself with extralegal tactics of Southern whites. John Reinecke, in an op-ed to the Honolulu-Star Bulletin, views the Massie case as the first time “the people of Hawai‘i were brought up flatly and traumatically against the power of American racialism, reinforced by ignorance of Hawai‘i.”\footnote{Id. at 89.} Reinecke also interprets the aftermath of the Massie case as a warning of “how precarious political liberties were without statehood.”\footnote{Id.}

There was, however, heavy resistance on the mainland to grant full statehood to the islands. Whereas the Massie case made it clear for locals on the island the need for equal representation in mainland politics, the extensive coverage of the case on the mainland stoked xenophobic stereotypes of native and ethnic groups as savages who needed government to be imposed upon them. These fears were exacerbated by anti-Japanese sentiments during World War II, when martial law finally was imposed, though notably without the mass internment that occurred on the mainland due to the political alliances that were forged.\footnote{STANNARD, supra note 7, at 416 (“What is often overlooked, however, is that in the islands, in stark contrast to what occurred on the mainland, an exceptionally aggressive anti-internment movement arose among the non-Japanese. Not surprisingly, in light of the multiracial union and political struggles that had emerged during the past decade, this movement included Hawaiians and other nonwhites.”).}

It would not be until after World War II that the push for Hawaiian statehood would come to fruition.\footnote{BELL, supra note 173, at xii–xiii.} As Bell further relates:

[In large part these new forces, which ultimately achieved statehood, were identified with the burgeoning Democratic party. Supported largely by the descendents [sic.] of Asian immigrants, who had long been denied equality in island life, the Democrats fervently believed that equality as a state in the Union would pave the way for genuine democracy and equality of opportunity at home.\footnote{Chan, supra note 161, at 171.}]

By 1938, a quarter of the thirty-nine elected officials for Hawai‘i were Asian Pacific American, and in 1954 the Asian Pacific American constituency was largely responsible for pushing the Democrats into power in what is often called Hawai‘i’s “Democratic revolution.”\footnote{Id. at xii.} As the Democrats pushed Hawai‘i into statehood in 1959, former Speaker of the
territorial House Hiram Fong became the first Asian American elected to the United States Senate. That same year, former majority leader of the territorial House Daniel Inouye was elected to the United States House of Representatives and would be elected to serve alongside Fong in the United States Senate in 1962, where he would serve until his death in 2012.

This political collectivism, however, has not been without its problems, as not all local Hawaiians feel as though their interests are being represented. Indeed, whereas the Massie case stimulated coalitions between native Hawaiians and Asian groups, those bonds have again fractured with time. Particularly in respect to the issue of native sovereignty and land rights, there are activists who are critical of Asian settler colonialism and view Asian immigrant groups as a significant contributor to the disenfranchisement of native Hawaiians. As Dean Itsuji Saranillio points out, “Hawai‘i statehood, narrated as a liberal antiracist civil rights project, facilitated and normalized projects of both settler colonialism and empire.” Their critique of the way in which “local” identity has played out politically is that it primarily serves the interest of the Asian immigrant population and obfuscates the rights of native Hawaiians who are subsumed into the larger ethnic monolith. For them, the myth of Hawai‘i as a multiethnic paradise is cut from the same cloth as the myth of colorblindness that Clarence Darrow used to justify his involvement in the defense of Joe Kahahawai’s murder and therefore perpetuates racial injustices.

For example, after the Supreme Court struck down the blood quantum rule that limited voting rights to native Hawaiians in respect to elections of

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182 See id. at 172.
183 Id.
184 Haunani-Kay Trask, Settlers of Color and “Immigrant” Hegemony: “Locals” in Hawai‘i, 26 AMERASIA 1, 2 (2000) (“Our Native people and territories have been overrun by non-Natives, including Asians. Calling themselves ‘local,’ the children of Asian settlers greatly outnumber us. They claim Hawai‘i as their own, denying indigenous history, their long collaboration in our continued dispossession, and the benefits therefrom. Part of this denial is the substitution of the term ‘local’ for ‘immigrant,’ which is, itself, a particularly celebrated American gloss for ‘settler.’”); Candace Fujikane, Introduction: Asian Settler Colonialism in the U.S. Colony of Hawai‘i, in CANDACE FUJIKANE AND JONATHAN OKAMURA, ASIAN SETTLER COLONIALISM: FROM LOCAL GOVERNANCE TO THE HABITS OF EVERYDAY LIFE IN HAWAI‘I 5 (2008).
185 Dean Itsuji Saranillio, Colliding Histories: Hawai‘i Statehood at the Intersection of Asians “Ineligible to Citizenship” and Hawaiians “Unfit for Self-Government,” 13 J AS. AM. STUD. 283, 287 (2010). See also MARI MATSUDA, WHERE IS YOUR BODY? 187 (1996) (“Sometimes when Hawai‘i Japanese go to school on the mainland, they run into the Asian-American movement, and they are confused because they do not think of themselves as ‘Asian.’ They think of themselves as ‘local.’”).
trustees to the Office of Hawaiian Affairs, which was responsible for administering programs for native Hawaiians, in *Rice v. Cayetano*, there was a rash of cases challenging special entitlements and compensatory benefits reserved for native Hawaiians as unconstitutionally discriminatory on the basis of race. In these cases that seemed a precursor to the current Harvard Affirmative Action case, the plaintiffs included ethnically Asian locals who evoked the language of equality and civil rights to erase legally-recognized differences between native Hawaiians and non-Hawaiians, even though those differences were put in place to recognize and compensate native Hawaiians for the role the United States government played in the overthrow of the Hawaiian crown and the dispossession of its native people.

In this respect, there remains resentment from some native Hawaiians against Asian settlers whom they see as participating in the same regime of oppression as the white settlers.

There are scholars, however, who call for healing of the fractures that have developed. Mari Matsuda recognizes, “[t]here is a tension between Hawaiians and Japanese that arises from a history of colonialism in these islands that overthrew their government and brought our poverty-stricken ancestors to work the land the missionaries took.” Yet she hopes that “our common histories make us inevitable allies in the effort to save what is special about Hawai[‘]i.” Natsu Taylor Saito furthermore suggests that understanding the interconnectedness of the histories of immigrant and indigenous populations, “help us better understand the persistence of race-based injustices and disparities, the ways in which the subordination of so-called racial minorities is rooted in the displacement of Indigenous peoples, and the need to give primacy to Indigenous struggles for self-determination.”

Hearkening to the inter-ethnic coalition building from Hawaiian history, Matsuda urges her fellow Asian Pacific Americas who hold some political power to act in solidarity for the interests of all who are

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187 See e.g., Arakaki v. Lingle, 477 F.3d 1048 (9th Cir. 2007); Doe v. Kamehameha Sch./Bernice Pauahi Bishop Estate, 470 F.3d 827 (9th Cir. 2006); Arakaki v. Hawaii, 314 F.3d 1091 (9th Cir. 2002).
189 Matsuda, supra note 185, at 188.
190 Id.
“local,” and to focus on what unites rather than what distances and divides.

IV. CONNECTING HER STORY TO CONNECTED HISTORIES

The Massie case inspired the disparate ethnic communities of Hawai‘i to reflect upon their shared histories of oppression and suffering under the ruling white regime. Both on the islands and on the mainland, racist stereotypes of non-whites as savages have been repeatedly deployed to justify domination, exclusion, and control of immigrants, indigenous populations, and other people of color. While Matsuda and Saito urge the rebuilding of racial alliances, this Article encourages race scholars to go a step further and seek alliances across gender lines. There is need to recollect an interconnectedness between gender and oppression when reevaluating the legacy of coalition-building in the Massie case. In the same way that the common experience of oppression in the Massie case brought together disparate ethnic groups on the island towards a common interest of fighting oppression, a reevaluation of the Massie case can also serve as a medium of coalition building between populations of color and women who have been similarly oppressed for the benefit of white patriarchy. Thalia Massie, and white women generally, must no longer be viewed as the enemy of populations of color.

The threat of lynching when coupled with a rape culture that assumes women can effortlessly make false accusations of rape breeds a suspicion of white women in communities of color. False allegations of rape by a white woman historically had the power of life and death over a person of color, whether through a racist justice system as in the cases of the Groveland Four and the Scottsboro Boys, or through extrajudicial...
lynchings as in the cases of Joe Kahahawai and Emmett Till. Carolyn Bryant, whose claims that Emmett Till grabbed her and made lewd remarks to her have always been in dispute, later admitted that these allegations were false. Like Thalia Massie, Carolyn Bryant’s allegation against Emmett Till was viewed as the motivating factor that caused her husband and J.W. Milam to kidnap and kill the fourteen-year old. Taken together, these women form the basis for a modified version of the lying, vindictive shrew stereotype, who is not motivated by jealousy or revenge, but by racism. The white lying shrew not only holds the ability to mobilize lynching, but also has the support of a broken justice system. In this respect, rape law is often viewed by communities of color as designed to protect only white women. Indeed, Kimberlé Crenshaw identifies a problem with “[t]he singular focus on rape as a manifestation of male power over female sexuality tends to eclipse the use of rape as a weapon of racial terror.”

Though Crenshaw brings this up to argue the need for an intersectional analysis of rape and to consider the perspective of black women raped by white men, her analysis of rape as a weapon of racial terror underscores the need to consider the ways in which rape has been deployed as method of controlling both women and populations of color. It is necessary, in this respect, to consider Thalia Massie not simply as the villainous white woman in the story of ethnic oppression on the islands, but another subject of oppression. Brande Stellings sees commonality between the experiences of white women and populations of color, where “[t]he ways in which whites used racially and politically motivated violence as a weapon to enforce blacks’ subordinate status mirrors the way sexual violence against women operates as a form of social control.” Thus, rather than be viewed as being on opposite ends of a hierarchy based purely on race, white women and populations of color may actually stand on more equal footing.

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198 See Angela Onwuachi-Willig, Policing the Boundaries of Whiteness: The Tragedy of Being “Out of Place” from Emmett Till to Trayvon Martin, 102 IOWA L. REV. 1113, 1130 (2017); Margaret M. Russell, Reopening the Emmett Till Case: Lessons and Challenges for Critical Race Practice, 73 FORDHAM L. REV. 2101, 2132 n.3 (2005).
200 Gruber, supra note 27, at 591.
201 Crenshaw, supra note 114, at 158.
202 See also Angela P. Harris, Race and Essentialism in Feminist Legal Theory, 42 STAN. L. REV. 581, 598–99 (1990).
They both stand at the feet of a system designed to keep white men at the top.

This proposition, however, runs the danger of suggesting that the oppression is equal. Crenshaw critiques such a conflation of racial and gender oppression as “both feminist theory and antiracist politics have been organized, in part, around the equation of racism with what happens to the Black middle-class or to Black men, and the equation of sexism with what happens to white women.”  

While their experiences may not be shared, they are intertwined. Though Crenshaw is extremely critical of her, Susan Brownmiller, who famously popularized the notion that rape has never been about sex and has always been about control, understood the interconnectedness between sexual domination and racial domination, specifically in the practice of lynching. She writes, “from slavery onward the black man’s fortune was inextricably and historically linked to the white woman’s reputation for chastity, a terrifying imbroglio that the black man and the white woman neither created nor controlled.” The defense of white womanhood against sexual threat by men of color is not a defense of womanhood at all, but is intended to protect white masculinity above all.

As Brownmiller suggests, rape is a systemic act that preserves male dominance in society by keeping all women in a constant state of terror. Rape culture, which includes the propensity of women to be disbelieved and blamed when they make accusations of rape, contributes to that terror and encourages silence. Even when women do speak out, the uneven prosecution for rape and disproportionate punishment for rape based on

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204 Crenshaw, supra note 114, at 152.
205 Brownmiller, supra note 191, at 377; Carmen Warner, Rape and Sexual Assault: Management and Intervention 94 (1980) (“It is now generally accepted by criminologists, psychologists, and other professionals working with rapists and rape victims that rape is not primarily a sexual crime, it is a crime of violence.”); but see Craig T. Palmer, Twelve Reasons Why Rape Is Not Sexually Motivated: A Skeptical Examination, 25 J. Sex Res. 512 (1988).
206 Brownmiller, supra note 191, at 221. This is not to say that Brownmiller’s analysis is not without its flaws, particularly when she evokes the Emmett Till murder as an illustration. See Kimberlé Crenshaw, A Black Feminist Critique Of Antidiscrimination Law And Politics, in The Politics Of Law: A Progressive Critique 207 (1990) (David Kairys ed.) (“Brownmiller’s remarkable insensitivity to the horror of the Till case illustrates how centering the perspective of white women in feminist discourse can operate to minimize racial oppression and to alienate Black women.”).
207 Brownmiller, supra note 195, at 217.
208 Id. at 15; see also Catharine A. MacKinnon, Reflections on Sex Equality Under Law, 100 Yale L.J. 1281, 1302 (1991); Gruber, supra note 27, at 581.
the race of the perpetrator,\textsuperscript{211} suggests that the justice system is not intended to remove that terror and make women completely free of rape, only free of rape by men of color.\textsuperscript{212} By inference, this suggests that women remain available to rape by white men.\textsuperscript{213} Even as populations of color disproportionately bear the brunt of the responsibility for rape, both legally and extralegally, the threat of rape is never removed.

Meanwhile, men of color are constructed into boogiemen for white women to focus their fear on to deflect responsibility and blame away from the structures that allow for rape to occur. Kimberlé Crenshaw ties the practice of lynching for rape to the control of women as property; she identifies a sexual stratification thesis where “[w]omen are viewed as the valued and scarce property of the men of their own race,” and therefore, “[t]he sexual assault of a white [woman] by a black [man] threatens both the white man’s ‘property rights’ and his dominant social position. This dual threat accounts for the strength of the taboo attached to interracial sexual assault.”\textsuperscript{214} Yet the taboo goes only one way. Whereas men of color are not permitted to transgress racial boundaries, white men are, which is reinforced by unequal application of rape law and by the culture of lynching.

The murder of Joe Kahahawai functions symbolically as a lynching intended not to avenge or protect Thalia Massie, but to avenge and protect white masculinity. The subsequent legal defense in the trial for his murder adopted a strategy designed to protect that same interest. In this respect, John Rosa is correct that Thalia’s voice, and in fact the voice of women


\textsuperscript{212} See Andrew E. Taslitz, \textit{Patriarchal Stories I: Cultural Rape Narratives in the Courtroom}, 5 S. Cal. Rev. L. & Women’s Stud. 387, 454 (1996) (“The courts joined in the lynching, often applying special rules to cases charging black on white rape, allowing juries to consider the respective races of defendant and victim in deciding what a defendant intended in attempted rape cases. A black defendant/white victim combination alone entitled a jury in some courts to draw the inference beyond a reasonable doubt that the defendant intended rape.”) (footnotes omitted).


generally, is subsumed by the interests of white men.\textsuperscript{215} The National Women’s Party attempted to intervene in the case and advocate the need for Grace Fortescue to be tried by a jury of her peers, thereby highlighting the case as a women’s rights issue, but ultimately the defendants elected to go with Darrow.\textsuperscript{216} His defense strategy did not advocate women’s rights at all, but accomplished quite the contrary, by appealing to the unwritten law that was premised on a man’s right over his woman, which Lawrence Friedman and William Haverman describe as “reinforce[ing], at least symbolically, the power of men to control the lives and sexual behavior of their women.”\textsuperscript{217} The unequal application of rape laws and extralegal lynchings against populations of color, however, polices who is allowed to maintain the power of control. In other words, the rape and murder trials have never been about Thalia Massie, but rather have always been about Tommie Massie and the patriarchal superstructure that supports him.

In this respect, focus must be taken off Thalia Massie and she must be separated from the stereotype of the lying, vindictive white woman who is responsible for ruining the lives of innocent men of color. Regardless of whether she blatantly lied or mistakenly misidentified the suspects, her role in the injustice is secondary. Unlike the Groveland Four or the Scottsboro Boys, her accusations did not lead to convictions. The Hawaiian territorial justice system functioned in the Massie rape case insofar as it did not produce convictions where the burden of proof was not met under the existing statute.\textsuperscript{218} The murder of Joe Kahahawai was initiated not by her, but by Tommie Massie and Grace Fortescue based on their Southern sensibilities regarding race and sexual boundaries. Unlike the Emmett Till case, the Hawaiian territorial judicial system functioned again insofar as it produced convictions and hard sentences for the murderers, though ultimately the governor bowed to racially motivated pressures from the mainland. The amount of distrust of Thalia that emerged in the aftermath is disproportionate to her role, in comparison to the mainland press, the

\textsuperscript{215} Rosa, supra note 6, at 29–30.


\textsuperscript{218} The rape statute at the time mandated that the victim’s word alone was not enough to convict. It read, in part, “no person shall be convicted of rape, seduction or abduction, upon the mere testimony of the female uncorroborated by other evidence direct or circumstantial.” REV. LAWS HAW. § 4156 (1925). Immediately following the mistrial in the Massie case, the legislature moved to amend the rape statute to eliminate the corroboration requirement, as well as make rape a capital offense. Rosa, supra note 6, at 42.
United States Congress, Tommie, her mother, and their Southern upbringing.

At the end of the day, what is often obscured is the fact that Thalia Massie was a victim of assault. It may not have been Ben Ahakuelo, Henry Chang, Horace Ida, David Takai, or Joe Kahahawai, but someone did assault Thalia Massie, and she was indeed a victim. Yet when we talk of the injustice that occurred in the Massie-Fortescue affair today, it is primarily from the lens of racial injustice. We fail to appreciate Thalia’s victimization by the same forces that victimized Joe Kahahawai and the four others who were accused. Catherine MacKinnon contends that “[b]eneath the trivialization of the white woman’s subordination implicit in the dismissive sneer ‘straight white economically-privileged women’ . . . lies the notion that there is no such thing as the oppression of women as such.”219 She argues that, when talking about oppression, race scholars tend to disassociate with white women,220 and most of the critical analysis of Thalia Massie is consistent with MacKinnon’s conclusion. This Article seeks not to rehabilitate Thalia Massie, but to suggest that critical attention has for too long focused on the wrong culprit. Though Crenshaw is herself critical of white feminism, she also finds that the “male-centered vision of antiracism has largely escaped the critical scrutiny [by critical race feminists] that is directed against MacKinnon’s feminism.”221 By seeing Thalia Massie with a more sympathetic eye, it is easier to take the focus off her and onto the true malefactor that has largely persisted in the background but not borne the brunt of the blame: white patriarchy.

CONCLUSION

Though the Massie-Fortescue affair is nearly nine decades old at the time of this Article, it still has relevance today. Stereotypes of people of color, particularly immigrants, as lustful savages have again been deployed to justify their continued exclusion and disenfranchisement from the political process.222 President Donald Trump capitalized on racist fears of “Mexican rapists,”223 to vault himself into office, and continues to capitalize upon

220 Id. at 22.
223 Janell Ross, From Mexican Rapists to Bad Hombres, the Trump Campaign in Two Moments, WASHINGTON POST (Oct. 20, 2016), https://www.washingtonpost.com/news/the-
these stereotypes. Mike Kagan observes concerning the current political climate:

[T]here has been a concerted effort to connect immigrants with crime—Mexican rapists, Salvadoran gang members, and so on. This is a direct appeal to xenophobia. Third, railing against sanctuary cities is a way of seeming to defend rule of law, and to portray the other side as proponents of lawlessness and chaos.224

From the Muslim ban to the border wall, we are again living in a time when policy is being shaped by xenophobic fear that is often sexualized.225

Much responsibility for the 2016 election has been unfairly placed at the feet of white women, particularly with the popular but technically inaccurate statistic that fifty-two percent of white women voted for Trump.226 The blame that is placed on white women has continued to fracture the relationship between activists of color and feminist activists, who are viewed as predominantly representing the interests of white women.227 Consistent with MacKinnon’s assessment, white women have

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225 David Simson, Whiteness as Innocence, 96 Denver L. Rev. 635, 637 (2019) (“Today, we live in a time of racially inflected immigration bans and border walls. These bans and walls are said to be necessary to keep at a distance racialized groups of people that are alleged threats to the very foundation of the United States.”).
226 LaToya Baldwin Clark, On Confirmation, 26 UCLA Women’s L.J. 21, 27 n.10 (2019) (noting that the often-cited 52% statistic “is technically inaccurate; the correct statistic should read, ‘according to exit polls, 52% of white women who turned out voted for Trump’ . . . . A more accepted study out of the Pew Research Center finds that of the white women who voted, 47 percent of them voted for Trump, compared to 45 percent who voted for Clinton”) (citations omitted).
indeed become despised and seen as the enemy of racial justice. What is forgotten is that an overwhelming majority of white men voted for Trump, and they had the most to gain from his election. In the same way that the demonization of Thalia Massie distracts from the interests of white patriarchy at play, so too does blaming white women not offer constructive solutions for progressives in the Trumpian era.

As the Massie-Fortescue affair demonstrates, however, there comes a time when civil rights and liberties are at stake that necessitates the putting aside of differences and the building of bridges to combat oppression. The Massie-Fortescue affair showed the people of Hawai‘i how vulnerable they were to martial law. Thus, ethnic populations that had previously been divided and conquered by the white ruling elite found common ground to politically mobilize and fight for the autonomy of their government. So too, at a point in history where our civil rights and freedoms are similarly vulnerable, is the time for oppressed groups to set aside mistrust and blame to build bridges to prevent the erosion of rights.

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228 Pruitt, supra note 222, at 594–97 (noting the propensity to call white women who support Trump “racist.”).