

Visibly Fragile America

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Etienne C. Toussaint, [Of American Fragility: Public Rituals, Human Rights, and The End of Invisible Man](#), 52 **Colum. Hum. Rts. L. Rev.** __ (forthcoming, 2021).

Focusing on Black American lives during the Covid-19 pandemic of 2020, UDC Law Professor [Etienne C. Toussaint](#)'s latest article is a tour de force, which provocatively yet persuasively argues that U.S. history, law, and society iteratively reconstitute socioeconomic inequality through "collective rituals of white supremacy that both create and reconstitute anti-Black racism and redeem white privilege." (P. 5.) For Toussaint, the catastrophe of pandemic illuminates the fragility of U.S. democracy in two significant ways: not only has the pandemic unmasked "the adverse impact of decades of inequitable laws and public policies in low-income Black communities across the United States[.]" but it has also spotlighted "America's racially biased, violent, and supervisory policing culture[.]" (P. 3.)

These themes are well-known to scholars of Critical Race Theory (CRT) and poverty law in the United States. Toussaint's contribution feels exciting and noteworthy because of his skillful synthesis of multiple literatures within legal scholarship and across the disciplines, including *inter alia*, anthropological theory on rituals; critiques of rights-based discourse (domestic and international) for reifying abstract liberal ideologies of equality, liberty, and universalism; and an adroit evaluation of Martha Fineman's theory of human vulnerability (and Amartya Sen's theory of development as freedom) in light of the collective experience of Black Americans under white supremacy.

I particularly enjoyed Toussaint's review of Critical Legal Studies scholarship that deconstructed domestic "rights-based discourse as a tool to dismantle social and economic inequality" (P. 26) and CRT scholarship that demonstrated "the importance of rights to the freedom struggles of oppressed and marginalized populations, including the plight of Black Americans from chattel slavery to Jim Crow segregation to mass incarceration." (P. 28.) I also appreciated his argument for advocates to draw upon a reconstructed human rights discourse—tempered by the social struggles of Black Americans—to challenge the normative underpinnings of contemporary U.S. public policy and articulate an emancipatory vision of democracy.

Toussaint's most important theoretical contribution, however, is his dreadful yet cogent analysis of the ideology of white supremacy. Toussaint uses the lens of the late religious studies scholar Catherine Bell's theorization of "the ritual, in materialist terms, as a bridge between tradition and an ever-changing social world, a structural mechanism that navigates the tensions between the internal moral self and the external sociopolitical order" (P. 9). He then elaborates:

The historic and ongoing subjugation of Black people in America is forged by discrete "ceremonies" of racial ritualization that use race to construct notions of "domination and resistance within the arena of the social body." In so doing, rituals of white supremacy *create* "white sacred time" by enabling historic anti-Black ideas to be "born again," interrupting modern sociopolitical life with racist traditions that "renew, regenerate, and re-energize their participants, infusing the present with holy meaning." (P. 10.)

One has only to recall photographs and similar representations of past instances of openly anti-Black racism (e.g., lynching and other practices of racialized and sexualized violence against Black Americans before and after Emancipation) and then compare them to one's experience or memory of today's (barely concealed) anti-Black racism (e.g., the incessant killing of Black Americans by police or vigilantes) to feel sick at how apt Toussaint is to identify that public (and private) anti-Black violence recreates "white sacred time," infuses the present with an unholy meaning, and thereby redeems the ideology of white supremacy for the twenty-first century.

Informed by, and valuing, Black American lives, and their literary distillations like Ralph Ellison's 1952 novel, *Invisible Man*, Toussaint discerns and fills a lacuna in U.S. political and sociolegal theory—sacrifice—in particular "the power of institutional arrangements to erase aspects of humanity from our view entirely, such as the *involuntary* sacrifices that sustain racial hierarchy, and the everyday rituals of white supremacy." (Pp. 44-45.) With these historical and contemporary realities in mind, Toussaint concludes by urging Americans to engage in "a radical (re)imagination of American democracy, one that wrestles with the erasure of Black sacrifice from the American consciousness and overcomes the ubiquity of racial ritualization that produces invisible citizens." (Pp. 24-25.)

In closing, I come away from *Of American Fragility* musing over how to perform *different* rituals—capable of infusing the present with the sacred significance of interracial justice and other dimensions of intergroup justice and social solidarity.

This is serious scholarship and well worth reading.

Rest in Power

Amadou Diallo (Sept. 2, 1975 - Feb. 4, 1999)
Sean Bell (May 18, 1983 - Nov. 25, 2006)
Oscar Grant (Feb. 27, 1986 - Jan. 1, 2009)
Trayvon Martin (Feb. 5, 1995 - Feb. 26, 2012)
Rekia Boyd (Nov. 5, 1989 - Mar. 21, 2012)
Shantel Davis (May 26, 1989 - Jun. 14, 2012)
Eric Garner (Sept. 15, 1970 - Jul. 17, 2014)
Michael Brown Jr. (May 20, 1996 - Aug. 9, 2014)
Laquan McDonald (Sept. 25, 1997 - Oct. 20, 2014)
Akai Kareem Gurley (Nov. 12, 1986 - Nov. 20, 2014)
Tamir Rice (Jun. 25, 2002 - Nov. 23, 2014)
Natasha McKenna (Jan. 9, 1978 - Feb. 8, 2015)
Walter Lamar Scott (Feb. 9, 1965 - Apr. 4, 2015)
Freddie Gray Jr. (Aug. 16, 1989 - Apr. 19, 2015)
Clementa C. Pinckney (Jul. 30, 1975 - Jun. 17, 2015)
Cynthia Marie Graham Hurd (Jun. 21, 1960 - Jun. 17, 2015)
Susie Jackson (Jan. 28, 1928 - Jun. 17, 2015)
Ethel Lee Lance (Aug. 30, 1944 - Jun. 17, 2015)
Depayne Middleton-Doctor (Dec. 15, 1965 - Jun. 17, 2015)
Tywanza Sanders (Jul. 23, 1988 - Jun. 17, 2015)
Daniel L. Simmons (Jul. 16, 1940 - Jun. 17, 2015)
Sharonda Coleman-Singleton (Sep. 24, 1969 - Jun. 17, 2015)
Myra Thompson (Dec. 5, 1955 - Jun. 17, 2015)
Sandra Bland (Feb. 7, 1987 - Jul. 13, 2015)
Alton Sterling (Jun. 14, 1979 - Jul. 5, 2016)

Philando Castile (Jul. 16, 1983 – Jul. 6, 2016)

Keith Lamont Scott (Feb. 3, 1973 – Sept. 20, 2016)

Stephon Clarke (Aug. 10, 1995 – Mar. 18, 2018)

Botham Shem Jean (Sept. 29, 1991 – Sept. 6, 2018)

Breonna Taylor (Jun. 5, 1993 – Mar. 13, 2020)

George Floyd (Oct. 14, 1973 – May 25, 2020)

And countless other Black Americans whose lives matter.

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