

# Give Me Liberty, or Give Me Breath: A Call for Economic Justice

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## Introduction

Awareness or coming to a new consciousness are steps toward maturity, and the stories can serve as guideposts.

For us Nuevo Mexicanos growing in the Spanish-speaking villages, the cuentos of the folk tradition related the adventures of heroes who overcame the monsters, and through these stories it was possible to understand the role of the ghosts in the stories.

The historical role of the storyteller has been to characterize these monsters. We all have monsters to conquer, ghosts to confront . . .

The more stories I learned, the closer to the truth I got, the more liberated I became, and the more I realized the common problems which beset us all.

Rudolfo Anaya<sup>1</sup>

**Verónica C. Gonzales-Zamora** is a millennial law professor at the University of New Mexico School of Law. I am eternally grateful to my husband, our parents, godparents, grandparents, great-grandparents, brothers and sisters, aunts and uncles, cousins, friends, mentors, and teachers, all of whom have raised me, encouraged me, and made sacrifices large and small over many years so that I might pursue my life's passions. I am especially thankful for my two children and my six nieces and nephews for giving me the courage to take risks and the motivation to create a world worthy of my nieces and nephews. I am indebted to my research assistants Alejandro Macias-Urias and Morgan Porter for their grace and enthusiasm this summer. Many thanks to Professor Alexander A. Boni-Saenz who helped me polish this piece and provided his remarks at the 2020 AALS Poverty Law Section virtual workshop. Additional thanks to Professor Marc-Tizoc González, Regent Professor emeritus Christine Zuni-Cruz, Professor Emeritus Margaret Montoya, Professor Barbara L. Creel, Professor Marcus Gadson, and Professor Joseph Gallardo for their helpful comments and feedback on the analysis. Finally, I would be remiss if I did not express my gratitude to all of the talented people responsible for the Broadway musical-turned-film *Hamilton* for occupying my lovely children for no fewer than ten replays while I wrote this essay. Gracias a todos.

1. Rudolfo Anaya, *La Llorona, El Kookooee, and Sexuality*, 17(1) BILINGUAL REVIEW/LA REVISTA BILINGÜE 50, 51, 54 (1992).

In the introduction to this full collection, I describe the landscape of the problems we face in the United States. Chicana/x/o literature icon Rudolfo Anaya reminds us that the landscape changes and the ghosts and monsters change as society evolves. But we will continue to see ghosts and feel the presence of monsters in our meeting rooms, in our classrooms, and on the streets until we confront them.

In Part I of this essay I interpret this unique moment in history<sup>2</sup> through a retelling of the folk story *La Llorona* in order to identify the monsters and ghosts of the past and the present. Domino Renee Perez describes her own critical reflection of *La Llorona* as reinforcing “a valuable lesson about power and authority” because her family’s “storytelling circle was more than simply an arbitrary setting; it was a safe place for them to create, however problematically, a world of words, where they faced the dangers and challenges of life, embodied by a woman, and survived.”<sup>3</sup> The lore represents “a powerful, dynamic, culturally specific way to address the larger issues (the effects of racism, poverty, classism, and gender role expectations) at work in their lives.”<sup>4</sup>

At this unique moment in history, the effects of racism, poverty, classism, and sexism are more visible than ever. Reframing *La Llorona* so that *Prudentia* becomes the weeping woman of our time teaches us that being too protective of power can be harmful. *Prudentia*, the allegorical goddess of foresight and ethical decision-making, embodies prudence.<sup>5</sup> When overzealous, the virtue that *Prudentia* represents (prudence) becomes a vice (cowardice), which has resulted in killing of many BIPOC people by police, vigilantes, and COVID-19.

In Part II, I explain *Prudentia*’s tools—a mirror and snake—which represent her view of historical difficulties as she attempts to make decisions that are not only intellectually wise but morally right.<sup>6</sup> I reflect on the ghosts of

2. The description of this unique moment in history is further described in my introduction to this collection of essays: Verónica Gonzales-Zamora, *An Introduction to the Collection*, 69 J. LEGAL EDUC. 607 (2020).
3. DOMINO RENEE PEREZ, *THERE WAS A WOMAN: LA LLORONA FROM FOLKLORE TO POPULAR CULTURE* xiv (2008). The publisher describes how the story “shaped Mexican cultural identity, from folktales to acts of political resistance.” UNIV. TEX. PRESS, <https://utpress.utexas.edu/books/perthe> (2021).
4. PEREZ, *supra* note 3, at xiv.
5. “*Prudentia* can also describe ‘skill’ or ‘proficiency’ in a particular field of endeavor, such as law or warfare, reflecting the notion that previous experience assists us in foreseeing future eventualities.” Brendan Cook, “*Prudentia*” in More’s “Utopia”: *The Ethics of Foresight*, 36 RENAISSANCE & REFORMATION/ RENAISSANCE ET RÉFORME 32 (Winter 2013). In the medieval period, St. Thomas Aquinas described *prudentia* as “the ‘right reason of things to be done.’” Heidi Li Feldman, *Prudence, Benevolence, and Negligence: Virtue Ethics and Tort Law*, 74 CHI.-KENT. L. REV. 1431, 1441 (2000), <https://scholarship.law.georgetown.edu/facpub/78>.
6. Warren A. Seavey, *Principles of Torts*, 56 HARV. L. REV. 72, 88 (noting that the standard qualities relevant to judging a balancing of ends, both personal and societal, are “such knowledge, intelligence, and consideration for the interests of others as is possessed by the normal person in the community.”); Feldman, *supra* note 5, at 1443 (“[Warren] Seavey’s emphasis on

America—the past that haunts us under Rudolfo Anaya’s analysis—through the lens of *Hamilton*, the Broadway musical adapted for on-demand viewing<sup>7</sup> by Lin-Manuel Miranda.<sup>8</sup> I draw parallels between the lack of prudence at the founding of the United States and the ghosts of oppression that continue to haunt us today in the specific context of economic exploitation. By understanding the ghosts that linger today, we can incorporate prudence—that is, ethical and moral decision-making<sup>9</sup>—to remake the nation into one that does not perpetuate economic oppression and injustice against BIPOC communities.

Finally, in Part III, using prudence as the overarching guide, it is clear that economic justice is the *sine qua non* of any strategy seeking to achieve broad-scale racial justice. Not only must government leaders practice prudence, but so too should law professors, by eliminating or lessening the burden of student loans on millennials and xennials,<sup>10</sup> “a common problem[] which besets us all.”<sup>11</sup> The lessons of *La Llorona* (in which Prudentia is the monster), the reflections of the past (the ghosts of oppression that linger today), and the momentum of the present (which has before inspired revolutions) can help liberate the people of the United States of America from oppression.

### I. “I Will Kill All Your Friends and Family to Remind You of My Love!”<sup>12</sup>

I begin with the story of *La Llorona* because of its significance to Mexican storytelling traditions on both sides of the U.S.-Mexico border,<sup>13</sup> including my great home state of New Mexico. In some stories, *La Llorona* is known as the ghost of bodies of water, such as riverbanks, or, in New Mexico, the

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knowledge and intelligence intimates that the virtue Aristotle called *phronesis*, [St. Thomas] Aquinas called *prudentia*, [Adam] Smith called prudence, and Foot calls practical wisdom—the virtue of deliberating wisely about what ends contribute to human flourishing and how to achieve them—is a trait valorized in American negligence law.”).

7. HAMILTON: AN AMERICAN MUSICAL (Thomas Kail dir., 2020).
8. Lin-Manuel Miranda is a Puerto Rican xennial who co-produced a fifteen-minute satire called *Millennials: The Musical*. Lin-Manuel Miranda & Dwayne “The Rock” Johnson Present “*Millennials: The Musical*,” YOUTUBE (Nov. 29, 2016), <https://www.youtube.com/watch?v=gwfKqPYSGK0&feature=youtu.be>.
9. Rafael Morales-Sánchez & Carmen Cabello-Medina, *The Role of Four Universal Moral Competencies in Ethical Decision-Making*, 116 J. BUSINESS ETHICS 717, 723-731 (Sept. 2013), [https://www.researchgate.net/publication/271415830\\_The\\_Role\\_of\\_Four\\_Universal\\_Moral\\_Competencies\\_in\\_Ethical\\_Decision-Making](https://www.researchgate.net/publication/271415830_The_Role_of_Four_Universal_Moral_Competencies_in_Ethical_Decision-Making) (discussing the interplay of ethics and moral competencies from the perspective of several philosophers and historians).
10. Verónica Gonzales-Zamora, *An Introduction to the Collection*, 69 J. LEGAL EDUC. 607 n.2, n.3 (2020) (defining millennial and xennial cohorts).
11. Anaya, *supra* note 1, at 54.
12. HAMILTON, *supra* note 7.
13. PEREZ, *supra* note 3, at ix.

acequias.<sup>14</sup> “Some know La Llorona as a murderous mother who killed her children in an act of revenge or grief, and they believe she is condemned to wander the earth in search of the children she sacrificed, or, as others see it, relinquished willingly.”<sup>15</sup> From Domino Renee Perez’s perspective, “she was a scary woman who had done something bad, wandered crying in the night, and posed a threat to the men in my family.”<sup>16</sup> Rudolfo Anaya, a Chicano author and professor emeritus at the University of New Mexico, similarly describes her in his award-winning novel *Bless Me Última* (1972) as a demon who “seeks the blood of boys and men to drink” and who wanders the banks of the rivers, crying.<sup>17</sup> According to Perez’s mother, La Llorona died of loneliness after drowning her children under the belief that her husband would love her more with them out of the way, and then she wandered the banks of the river searching for her children’s souls so that she might enter heaven.<sup>18</sup> La Llorona, through these variations, is thus “alternately, and sometimes simultaneously, a person, legend, ghost, goddess, metaphor, story, . . . spirit, symbol, and living entity.”<sup>19</sup>

In all iterations, her story is a scary one, used to encourage good behavior in children. La Llorona is a traditional figure, a “cultural allegory, instructing people how to live and act within established social mores.”<sup>20</sup> As a result, as “La Llorona’s stories have evolved, storytellers and artists continue to adapt her story to new contexts.”<sup>21</sup> In New Mexico, for example, the story of La Llorona is used to teach children to stay away from the deadly currents of acequias and arroyos, which children growing up in the Rio Grande Valley use as unofficial swimming pools.

La Llorona “resonate[s] with many . . . deeper meanings. But to understand those meanings we have to pass on the stories [and] we have to recreate

14. The significance of water and the development of the acequias by the Pueblo people of the Rio Grande Valley, which are now used by many agricultural communities, may also explain why La Llorona is particularly important to the people of New Mexico. Robert Neuwirth, *Centuries-Old Irrigation System Shows How to Manage Scarce Water*, NAT’L GEOGRAPHIC (May 17, 2019), <https://www.nationalgeographic.com/environment/2019/05/acequias/> (“New Mexico’s community-operated acequias, some over 300 years old, demonstrate how farmers can fairly share this unpredictable resource.”). The story of La Llorona played an especially important role in my family because my father is one of 200 workers employed by a government organization that since 1925 has worked “to ensure the Middle Rio Grande basin remains a viable agricultural community within the State of New Mexico.” *Middle Rio Grande Conservancy District*, <https://www.mrgcd.com/about-us.aspx> (last visited Oct. 13, 2020).

15. PEREZ, *supra* note 3, at ix-x.

16. *Id.* at x.

17. RUDOLFO ANAYA, *BLESS ME ÚLTIMA* 26 (Warner Books 1994) (1972).

18. PEREZ, *supra* note 3, at xi-xii.

19. *Id.* at 2.

20. *Id.* at x.

21. *Id.* at 3.

the characters in our time....”<sup>22</sup> Millennials and xennials are defining their relationships to this story in the context of this unique historic time when the people of the United States are facing multiple existential crises at once.<sup>23</sup>

In this essay I continue that tradition through the lens of another allegorical figure, Prudentia, and the cardinal (pivotal) virtue she represents. As with La Llorona and the social mores she represents, a story of Prudentia, who also wanders the banks of bodies of water in the United States, can help we in legal education reframe the challenges of racial injustice in our institutions and in the broader society. Indeed, Prudentia is often pictured with Justitia, the Roman goddess of justice.<sup>24</sup>

### A. Prudentia as La Llorona

*Prudentia is La Llorona, or the weeping woman, of our time. She wanders the unpaved banks of the acequias, arroyos, and rivers of the United States, grieving for her drowned children—the ones she drowned. The children of our American Dreams—Eric, George, Ahmed, Elijah, Breonna, Vanessa, and others—can no longer breathe.*

*How could a mother do such a thing? How did it come to this?*

*Other children do not leave home, fearing Prudentia would suffocate them slowly in an impatient nightmare or, perhaps, more quickly in a stop-and-(f)risk.<sup>25</sup> Prudentia vows equality but drowning all of her children will not make it better.*

*Be careful, we say to our Black and Brown children, Prudentia is often seen with Justice, whose blindfold is deceiving and sword, mighty. Be vigilant but compliant. Listen for Prudentia’s*

22. Anaya, *supra* note 1, at 55. See also PEREZ, *supra* note 3, at ix (“La Llorona’s absence from and reappearance in my life corresponds to my own journey away from and eventually back to my cultural community.”). Chicano scholar Domino Renee Perez explains, “[t]he dynamism of the legend allows for the simultaneous existence of conventional narratives and cultural productions that reflect the changing concerns of Mexican Americans and Chican@s. Both forms ensure the continuation of the lore for a new generation of cultural readers who will define their own relationship to it.” *Id.* at 13.
23. Margaret E. Montoya, *Foreword: The Gran Trecho That is LatCrit in LATCRIT: FROM CRITICAL LEGAL THEORY TO ACADEMIC ACTIVISM* xii, xiv (Francisco Valdes & Steven Bender eds., 2021), (describing the five existential crises facing the United States at once: “(1) unrelenting police violence, as typified by the brazen police murders of George Floyd, Breonna Taylor, Tony McDade, Ahmaud Arbery, and many more, reinvigorating a massive BLM movement voicing a spectrum of injustice issues; (2) an out-of-control COVID-19 pandemic; (3) an economy in Great Depression-level distress with unsustainable inequalities; (4) an incompetent, faltering federal government under a president (Donald Trump) whose reelection campaign is defined by white ethnonationalist messages; and (5) climate change—perhaps irremediable—menacing human life as we know it but for now pushed to the background.”).
24. JESS DRAKE, *INTRODUCTION TO LOGIC* 186 (2018).
25. *Utah v. Strieff*, 136 S. Ct. 2056, 2071 (2016) (J. Sotomayor, dissenting) (“We must not pretend that the countless people who are routinely targeted by police are ‘isolated.’ They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere...They are the ones who recognize that unlawful police stops corrode all our civil liberties and threaten all our lives. Until their voices matter too, our justice system will continue to be anything but.”).

*whispers and try to get away before she sets her sights and targets on you. If you hear her siren-like voice, it is too late. She will surround you, and it does not matter what you say or where you are going, she will take you. She will hold your hands behind your back or her knee on the back of your neck so that you cannot run away. Whatever you do, do not resist. It will be hard to temper your instinct to survive, but she will only drown you faster.*

*In those precious seconds, you must save your last breaths to cry out to your own mother to save you. In those last moments, you will feel scared, mi amor, but be nice, tell her you love her. It is worth a try. She has a heart—even if it stopped beating long ago. People you never met will watch you cry and plead, maybe even try to help, but the racism that runs through her pale, ghostly veins is too strong.*

*On this lonely road, dirt or paved, in this abandoned lot or crowded courtroom, or in this somber congressional abode, we will join the other mothers, tearful because we could not protect you. She got you. Do not let Prudentia get you.*

### *B. Prudence as the Measure of Moral Virtues*

According to philosophers and scholars, Prudentia represents the virtue prudence, which “is the ability to judge between virtuous and vicious actions, not only in a general sense, but with regard to appropriate actions at a given time and place.”<sup>26</sup> It allows people to “[d]istinguish[] when acts are courageous, as opposed to reckless or cowardly.”<sup>27</sup> But one who is not careful about being careful can act in a way that does more harm than good. For example, in another version of La Llorona, she drowns her children in an attempt to save them from the shame of her husband’s extramarital affair and abandonment.<sup>28</sup> In Perez’s mother’s version, La Llorona allowed her love to be overtaken by jealousy, believing that if she could remove the obstacles (the children) she could get more affection from her husband, which then causes the opposite reaction.<sup>29</sup> Similarly, people risk doing more harm than good if they are unreasonably cautious, because prudence, if “unreasonably extended into over-cautiousness, can become the vice of cowardice.”<sup>30</sup>

To provide a conventional example, a police officer who is protecting the public should be cautious, but being overly cautious may cause him to shoot an unarmed Black or Native American man who in reality posed no threat. In this instance, the officer who is charged with being a protector of public safety has now become a threat to it. Similarly, “[w]ithout prudence, bravery becomes foolhardiness; mercy sinks into weakness, and temperance into fanaticism.”<sup>31</sup>

26. DRAKE, *supra* note 24, at 186 (discussing and defining prudence according to philosophers Gadamer, Cicero, and others). See also Morales-Sánchez & Cabello-Medina, *supra* note 9, at 721-732 (discussing perspectives on prudential from St. Thomas of Aquinas, Plato, Aristotle, and modern scholars).

27. DRAKE, *supra* note 24, at 186.

28. PEREZ, *supra* note 3, at 2.

29. *Id.* at xiii.

30. DRAKE, *supra* note 24, at 186.

31. *Id.* at 187.

The moral of this retold version of La Llorona is that leaders must be disciplined and intentional about their actions so that they are beneficial. “Prudence is considered the measure of moral virtues since it provides a model of ethically good actions.”<sup>32</sup> Similarly, law enforcement, politicians, judges, and all who make decisions must also be models of not only ethical actions, but moral ones. For our part, law professors must be to legal education what U.S. Representative John Lewis was to Congress: a conscience.<sup>33</sup>

## II. “The World Turned Upside Down”<sup>34</sup>

### A. “Are You Aware That We’re [Re-]Making History?”<sup>35</sup>

As a third-generation light-skinned Latina in a majority-minority state, my experience with explicit or express interpersonal racism was relatively minimal until I went to college. But as a first-generation college student, I quickly became aware of systemic inequities in such matters as student loans, healthcare, including reproductive care, and education generally. It was not until I entered the legal profession, however, that I began to learn about, witness, and become the subject of interpersonal racism and related biases and prejudices based on race, gender, age, or some combination of the three. The legal academy outside of my own institution has been no different. I have often wondered why, and what has contributed to the status quo of this unequal profession.<sup>36</sup>

The story in *Hamilton* serves as a guidepost in my quest for truth. Like all audiences of film, television, and other media, in watching the film *Hamilton*, I utilized “interpretative strategies that are based upon □ past viewing experiences as well as upon □ personal histories, whether social, racial, sexual, or economic.”<sup>37</sup> In particular, I approached *Hamilton* as a third-generation Latina millennial, bringing my own “cultural baggage,” which includes politics, expectations, and personal sociohistorical circumstances.<sup>38</sup> Specifically, my perspective is “informed by the legend of La Llorona,”<sup>39</sup> affected by the conditions of the national economy and the global pandemic,

32. *Id.*

33. Congressional colleagues referred to John Lewis as the “conscience of the Congress.” Katharine Q. Seelye, *John Lewis, Towering Figure of Civil Rights Era, Dies at 80*, N.Y. TIMES (Aug. 4, 2020), <https://www.nytimes.com/2020/07/17/us/john-lewis-dead.html>. Specifically, Senator Elizabeth Warren referred to him as the “moral compass of our nation.” Elizabeth Warren (@EWarren) TWITTER (July 17, 2020), <https://twitter.com/SenWarren/status/1284337609830019074?s=20>.

34. HAMILTON, *supra* note 7.

35. *Id.*

36. See, e.g. Meera E. Deo, *The Ugly Truth about Legal Academia*, 80 BROOK. L. REV. 943 (2015).

37. PEREZ, *supra* note 3, at 4.

38. *Id.*

39. *Id.*

and especially attuned to the professional and moral responsibilities of lawyers and elected leaders to the people and communities they serve.

The culturally privileged audience of the story *La Llorona* is not the same as the culturally privileged audience of the film *Hamilton*. But there are many Latinx xennials and millennials who are, like me, fluent in both worldviews and excited about the prospect of finding a way to connect their meanings. Others like me are on the literal and figurative borders, straddling two worlds: the stories of the past and the realities of the present, the stories in legend and the others in history textbooks, navigating white and nonwhite spaces, being both majority and minority depending on the context, being influenced by both new and old Mexico, wanting to perfect the King's English and Spanglish,<sup>40</sup> and being keenly aware of the widening gap in age and class in social interactions, both virtual and not. In fact, Miranda, the creator of *Hamilton* discusses the influences of his own mestizaje upbringing,<sup>41</sup> which evolved into a focus on storytelling with hip-hop and musical theater elements.

I thus recognize that this analysis may perplex some who do not have the same mestizaje worldview that I have developed since I was a child. However uncomfortable or disjointed it may seem, this analysis reflects the continually changing cultural, economic, political, and social landscape that I find myself navigating on a daily basis.<sup>42</sup> In the same way that Chicanas/x/os have frequently retold *La Llorona* to discover new truths, I interrogate the "classism, or colonialism at the center" of *Hamilton* as a vehicle for "resisting specific subjugating forces" that cause disenfranchisement and oppression based on gender and race/ethnicity.<sup>43</sup>

40. Elvia R. Arriola, *Forward: March!* 19 CHICANO-LATINO L. REV. 1, 38 n.137 (1998) (defining "Spanglish" as "the use of English interjected with Spanish").

41. Antoinette M. Sedillo Lopez, *Latinas in Legal Education- Through the Doors of Opportunity: Assimilation, Marginalization, Cooptation or Transformation?* 13 AM. U. J. GENDER, SOC. POL'Y & L. 109 (2005) ("Latino peoples' experiences as a people include a fusion of culture and identity. "Mestizaje" literally means "race mixture." Latino peoples are products of mestizaje. The racial mixture of indigenous people and Spaniards is our heritage. Our culture includes the reality that as a people, we have lost our language twice. First, we lost the native tongues to Spanish and now, the Spanish to English. Our cultures have been fused. I have called our culture a culture of fusion: Spanish/Indian/American. We often speak "Spanglish" and put chile on our hamburgers. Transformation, adaptation, and fusion are our heritage.") (footnotes omitted); Angela Harris, *Women of Color in Legal Education: Representing La Mestiza*, 6 BERKELEY WOMEN'S L.J. 107, 112 (1991) ("La mestiza dances at the funeral of the individual in a red dress. What is la mestiza's distinctive contribution to her students, colleagues, and institutions? Restlessness, ambiguity, disruption. Creative chaos. And also, maybe most important: Her refusal to be either innocent or invisible.").

42. PEREZ, *supra* note 3, at 5.

43. *Id.* at 6. Perez asserts, "La Llorona serves as a kind of cultural ambassador who can bring diverse communities into conversation about the cultural, economic, political, and social issues that inform the lore." *Id.* at 9. Specifically, Perez views *La Llorona* as a method for creating intercultural dialogue because she does not recognize any border, and similar folktales of figures like her appear in several storytelling traditions. "Respectful readings of *La Llorona* or ones that privilege Chican@ worldview can challenge existing forms of power



Like the story of La Llorona that I retold as an allegory for today's endemic racism and police violence, *Hamilton* tells a story with critical overtones by highlighting in subtle ways the "sources of oppression embedded in traditional narratives [and] point[s] to contemporary oppressive forces, though they are not specifically counter-narratives that dismantle or overtly challenge them."<sup>44</sup> *Hamilton* offers "new" truths about the story of the founding white men that challenge conventional understandings of the story; but, like La Llorona, the narrative of the founding white men is so powerful that the newly learned truths do not typically affect the culturally privileged audience's widespread positive perception of the original story.<sup>45</sup>

Cultural producers, as Perez refers to them, have revised the story of La Llorona in the same way Miranda revises the story of Alexander Hamilton by "changing its primary features, reconfiguring or renaming sources of La Llorona's oppression, recasting the roles of the major players in the tale, or reworking the somber tone to illicit [sic] sympathy and even laughter from audiences."<sup>46</sup> For example, the original Broadway cast of *Hamilton* was racially and ethnically diverse. Miranda, the writer, reworks the story of Alexander Hamilton to celebrate the founding white men. He reconfigures the sources of oppression, focusing not on the oppressive nature of the main characters themselves but on the British monarchy, people loyal to their political parties, and a rivalry between intellectual equals. The most important change is the language in which the story is delivered: not in some version of the King's English but through hip-hop music, rhetoric, and slang. *The New York Times* quoted Miranda who described that he chose hip hop as "the perfect musical style for describing the American Revolution, because it is 'the language of youth and energy and of rebellion.'"<sup>47</sup> Miranda, literally, remade history.

The Broadway-musical-turned-film is inspired by (his)story—the birth of the United States of America (America) beginning with the Revolutionary War.<sup>48</sup>

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in the colonial context of America and serve as a starting point for respectful intercultural conversation." *Id.*

44. *Id.* at 6.

45. *Id.* at 6.

46. *Id.* at 5.

47. Michael Paulson, *Lin-Manuel Miranda, Creator and Star of 'Hamilton,' Grew Up on Hip-Hop and Show Tunes*, N.Y. TIMES (Aug. 12, 2015), <https://www.nytimes.com/2015/08/16/theater/lin-manuel-miranda-creator-and-star-of-hamilton-grew-up-on-hip-hop-and-show-tunes.html> (describing Lin-Manuel Miranda's love for both musical theater and Broadway as well as hip-hop and pop music since he was child). The artistic director of the Public Theatre, which ran the off-Broadway showings, remarked: "His ability to work in both of those forms is inseparable from the fact that he loves both forms—he's not being a tourist when he visits one or the other, but he's deeply embedded in both of them." *Id.*

48. Historian Annette Gordon-Reed critiqued the film as one that simplifies and sanitizes history and disagreed with the film's portrayal of Alexander Hamilton as heroic. Liz Mineo, *Correcting 'Hamilton,'* HARV. GAZETTE (Oct. 7, 2016), <https://news.harvard.edu/gazette/story/2016/10/correcting-hamilton/>; Hannah Robbins, *Hamilton—The Diverse*

The dust settled in America's streets, and in the aftermath of a bloody war between England and her former colonies, the culturally privileged audience finds hope. But as the people of Colonial America celebrate with fireworks and debauchery, the white men in power take the trust of the American people and place it under their boots, leaving just enough room for the necks of the powerless.<sup>49</sup> What was once a founding principle—equality, and its counterpart equity—is now and has always been the elephant in the room. Equality was negotiated away like any other business interest, and in that pivotal moment, the oppressed became the oppressors. Who knew that a story from 1776, rewritten in 2015 and told by people of color,<sup>50</sup> could become an illuminating story of the present?<sup>51</sup>

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*Musical with Representation Problems*, THE CONVERSATION (June 29, 2020, 11:26 AM), <https://theconversation.com/hamilton-the-diverse-musical-with-representation-problems-141473> (“Yet, while Hamilton has been widely praised for its colour-conscious casting, the show isn’t the model of anti-racist theatre it may seem. Within it lie issues relating to the erasure of Black and Indigenous people, marginalisation of female characters and revisionist histories of its characters’ involvement in slavery.”).

49. The imagery of standing on one’s neck or with one’s boot on one’s neck has been used by many scholars to describe class and gender oppression. See, e.g., Sarah Grimke, ELIZABETH A. SACKLER CTR. FOR FEMINIST ART, BROOKLYN MUSEUM (last visited Oct. 13, 2020), [https://www.brooklynmuseum.org/easfa/dinner\\_party/heritage\\_floor/sarah\\_grimke](https://www.brooklynmuseum.org/easfa/dinner_party/heritage_floor/sarah_grimke) (quoting *The Public Years of Sarah and Angelina Grimké* 208 (ed. Larry Ceplair 1991): “But I ask no favors for my sex. I surrender not our claim to equality. All I ask of our brethren is, that they will take their feet from off our necks, and permit us to stand upright. . .”); Louise W. Knight, *The 19th-Century Powerhouse Who Inspired RBG*, CNN (Sept. 1, 2018), <https://www.cnn.com/2018/09/01/opinions/ruth-bader-ginsburg-rbg-and-grimke-sisters-louise-knight/index.html>. However, in the context of Black oppression in the United States, the phrase has been used by scholars and activists both figuratively and literally to describe oppression and police brutality. See also Jonathan Bernstein et al., *New Protest Anthems: Songs of the Uprising for George Floyd*, ROLLING STONE (June 4, 2020), <https://www.rollingstone.com/music/music-features/new-protest-songs-george-floyd-black-lives-matter-1010037/> (quoting LL Cool J’s untitled rap performed on social media including, in part, “For 400 years you had your knees on our necks.”); Simon de Bruxelles, *Calls for Redesign of Royal Honour Over ‘Offensive’ Image*, THE GUARDIAN (June 22, 2020), <https://www.theguardian.com/uk-news/2020/jun/22/calls-for-redesign-of-royal-honour-over-offensive-image>.
50. It is important to note that although I knew Alexander Hamilton’s story before watching the film, I did not understand the parallels between history and present day until I heard the story from the nontraditional storytellers, people of color like me. Lawyers and law students may be in the best position to understand this multitruith dynamic, given that our primary role in the courtroom is as storytellers who must prove our version of the truth to our audience, a jury or a judge, being presented with (at least) two versions of the truth.
51. When asked what he thought a future chronicler of Broadway would say, Ron Chernow, the historian who wrote the biography of Alexander Hamilton on which the musical is based, responded: “My guess is 25, 50, 100 years from now, people will be concerned with not only the way we perceived and portray these figures of the founding era but also what it says about our own time, because this is a show that straddles two worlds. You walk into the theater, and there are all these figures from the 18th century. But at the same time, they’re also recognizably figures of the 21st century.” Tim Baker, *Meet Ron Chernow, the Biographer Who Inspired Broadway Musical Hit ‘Hamilton,’* NEWSWEEK (Sept. 26, 2016), <https://www.newsweek.com/hamilton-biographer-ron-chernow-502295>.

In its own way, *Hamilton* hands us Prudentia's mirror, and in it a reflection of the origins of Colonial America's history. Through this reflection, we can more clearly see the challenges—racial injustice and other dimensions of systemic oppression—that America continues to face today. Ordinarily I might acknowledge that hindsight is 20/20, but that seems to give the founding white men more credit than they deserve. There are several instances during the founding story in which prudence could have remained a virtue and not been transformed into the vice of cowardice. It is through deliberate action, among other things, that modern-day leaders can avoid a similar fate (that is, being the villains in (his)story). Below, the parallels to which I refer.

In one scene, *Hamilton* reminds Thomas Jefferson that Virginia is wealthy because it exploits labor (though admittedly stops short of acknowledging that America was built on the backs of kidnapped, traded, and enslaved African men and women). In the decades that followed, racism loitered on the dark street corners, closets, alleyways, and Deep South plantations of America. The founders, all white men, swept enslavement of Africans and genocide of Native Americans under the rug for 250 years. It is no shock that Native Americans are not mentioned, and slavery is mentioned only in passing in *Hamilton*. Similarly, some versions of the *La Llorona* story do not include infanticide as part of the story of lost affection.<sup>52</sup>

Recognizing that *Hamilton* is based on a book whose author is situated within his own cultural, social, and political lens,<sup>53</sup> I say the following, not as a criticism of the filmmakers or Lin-Manuel Miranda, but to highlight an important lesson: The longer the leaders of the United States ignore systemic racism, the longer it will fester and the uglier the true reckoning will be.

Perez reminds us that we have to do our part to confront these demons, “those that were unleashed upon us and those of our making, if we are to chart *La Llorona*'s future and our own.”<sup>54</sup> Alexander Hamilton seems to foreshadow the same in asking, “If you stand for nothing, [Aaron] Burr, what will you fall for?”<sup>55</sup> In other words, if leaders do not stand for equality of all people, will they fall for that?

52. PEREZ, *supra* note 3, at 11.

53. HAMILTON, *supra* note 7. When asked about his first impressions of seeing the scenes played by the diverse cast, Ron Chernow remarked, “I remember going up there mid-afternoon one weekday and opening the door, and there were eight actors standing in front of eight music stands and my first thought was, ‘Oh my God, they’re all black and Latino.’ I really had not given much thought to the casting, but, you know, for someone of *my generation*, a show on the founding fathers meant something like 1776—a bunch of middle-aged white guys with wigs and buckled shoes.” Baker, *supra* note 51 (emphasis added).

54. PEREZ, *supra* note 3, at 9.

55. Interestingly, a similar quote has been attributed to Malcolm X, an African American Muslim minister who denounced white supremacy but whose methods of pursuing racial justice were controversial. *Malcolm X: Quotes*, MALCOLMX.COM (2021), <https://www.malcolmx.com/quotes/> (“A man who stands for nothing will fall for anything.”).

At another point in the film, arguing that France provided significant help in the colonists' win in the war against Great Britain, Thomas Jefferson pleads to the nation's first Cabinet for aid to assist France in its war. The Cabinet declines. Centuries later, Navajo Code Talkers would save the United States during a world war. Reminiscent of Jefferson's futile pleas to reciprocate France's help, this summer, U.S. Representative Debra Haaland pleaded for already-approved government aid to be paid to the Navajo Nation and other nations where the situation was dire, as Native Americans died at excessive rates from the virus.<sup>56</sup> Rather than provide the infrastructure, culturally appropriate education, healthcare, food, water, and safety, the federal government has been promising to Native Americans for centuries, the federal government wrote the latest in its series of IOUs.<sup>57</sup> Meanwhile, non-Native people argued passionately about whether a national football team should still be named after a racial/ethnic/political slur.

Some critics have asked, is *Hamilton* celebrating the wrong heroes? The more pressing question is: Are we? Today, our heroes—healthcare professionals, emergency responders, and essential workers—are treated as anything but during this global pandemic. Doctors and nurses plead on their social media profiles for people to send personal protective equipment instead of “thank you” banners. Essential workers, primarily Latina/x/o people, risk their lives cleaning hospitals and schools, delivering products, and working in meat factories and on farms so their children might live better lives. The heirs of the Navajo Code Talkers are among the most marginalized in society. In the same way I watched Alexander Hamilton and his wife cradle their son as he died from a gunshot wound, I picture a true heroine, Judge Esther Salas, holding her son as he died from being shot in cold blood in late July 2020 after a white man, acting in a fit of sexist and racist rage, visited her home and shot her son as he opened the front door.<sup>58</sup> Another Latina heroine, Vanessa Guillén stationed at Fort Hood, went missing and was murdered by a fellow soldier, and the people still cry #JusticeforVanessa.<sup>59</sup> It is no wonder women of

56. Acee Agoyo, ‘We Waited for Weeks’: Tribal Governments in Line for Additional Coronavirus Relief, *WWW.INDIANZ.COM* (May 12, 2020), <https://www.indianz.com/News/2020/05/12/we-waited-for-weeks-tribal-governments-a.asp>.

57. Rory Taylor, *6 Native Leaders On What it Would Look Like if the US Kept its Promises*, *VOX* (Sept. 23, 2019), <https://www.vox.com/first-person/2019/9/23/20872713/native-american-indian-treaties>.

58. *Racism and Misogyny: How the Attack on Judge Esther Salas Speaks to American Reality*, *BELATINA DAILY* (July 23, 2020), <https://belatina.com/racism-misogyny-how-attack-on-judge-esther-salas-speaks-american-reality/> (“Female judges didn’t bother me as long as they were middle age or older black ladies,” [the gunman] writes when discussing a lawsuit he filed that went before Judge Salas, the first Hispanic woman appointed a federal judge in New Jersey. “They seemed to have an understanding of how life worked and were not about to be conned by any foot dragging lawyer. Latinas, however, were usually a problem—driven by an inferiority complex.”).

59. The #IAmVanessaGuillen and #JusticeforVanessaGuillén movements inspired hundreds of women to reveal their stories of sexual assault while serving in the military. See Jennifer Steinhauer, *A #MeToo Moment Emerges for Military Women After Soldier’s Killing*, *N.Y. TIMES* (July 31,

color take verbal assaults in court, social media, blogs, newspapers, or student evaluations so seriously, because they can be deadly.

Later in the film, Philip Hamilton stands before George Eacker, challenging him to a duel to defend his father Alexander Hamilton's honor. Similarly, congressional Representative Alexandria Ocasio-Cortez of New York stood before Congress, donning a blood-red blazer, to defend the honor of her parents in response to a white male congressperson's offensive language. "I am here because I have to show my parents that I am their daughter and that they did not raise me to accept abuse from men."<sup>60</sup> The man responded that he has a wife and daughter, to which she then defended the honor of all women in saying, "Having a wife does not make a decent man. Treating people with dignity and respect makes a decent man."<sup>61</sup> I wonder if Thomas Jefferson also harbored the false belief that he was a decent man, despite being a slave owner, because he was in a sexual relationship with one of his slaves, Sally Heming (who is, interestingly, the only slave depicted in *Hamilton*, albeit for just a moment at the beginning).

There are differences, too. Alexander Hamilton's story is inspiring, I think, because he was a lower-class immigrant (using the term loosely) from the West Indies who rose to the top ranks of the new nation's government. But things have changed. Today, immigrants are less likely to be welcomed in the same way. Asian American people have been the victims of hate crimes. DACA recipients live in constant fear of losing their status. I will never understand why a nation founded by immigrants—that owes its growth and prosperity to immigrants—constantly rejects them. Worse, it detains them, including children, at the Southern border. I can only assume it is because they are brown.

#### RELEASE THE BROWN CHILDREN DETAINED AT THE BORDER.

We are reminded in *Hamilton* that Alexander Hamilton was the son of a woman who had an extramarital affair (no, not really a "whore," as the song in the musical defames her). He later finds himself in the throes of his own extramarital affair and bribery, often cited as the sole reason he never became President of the United States. Today, an extramarital affair and payoff, *and* allegations of rape, and leaked audio of sexist "locker room talk," among other behaviors, do not disqualify someone from the highest offices and most powerful positions.

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2020), <https://www.nytimes.com/2020/07/11/us/politics/military-women-metoo-fort-hood.html>. To learn about and support the #JusticeforVanessaGuillen movement, visit <https://www.facebook.com/findvanessaguillen/>.

60. *AOC's Takes on Sexism and Abusive Speech Toward Women: How the Media Covered It*, BU TODAY (July 24, 2020), <https://www.bu.edu/articles/2020/alexandria-ocasio-cortez-ted-yoho-speech/> (consolidating media coverage of the incident and transcribing the video recording of the speech).

61. *Id.*

Alexander Hamilton died too soon, they argue, in the famous duel with Aaron Burr. Over 600,000 did too, from the coronavirus.<sup>62</sup> Another 1000 people have died from police shootings in 2020 alone, and another 999 in 2019.<sup>63</sup> The difference is that Alexander Hamilton's death was the product of his own choices and deliberate risks; the deaths of so many are the product not of poor decisions but of systemic oppression perpetuated by an inept and seemingly uninterested federal government.

But how can we save ourselves from the vice of cowardice? How do we separate the new America we envision from the Colonial mistakes and overreach of the Colonial attitudes and moral failings into modern days? La Llorona has been the "avatar of social and cultural conflict," and the fact that she is a staple of oral storytelling traditions for almost 500 years suggests that she and her legend can accommodate even the dramatic intersection of historical inequities based on race, class, and gender.<sup>64</sup> Thus La Llorona and *Hamilton* become powerful symbols for millennial Latina/x/o "as we move into this new era, a reminder of our past and of the obligations that come with power."<sup>65</sup>

Alexander Hamilton's story is an important lesson about power. Starting a new nation was not easy then, and reforming or transforming it will not be easy now. The virtue prudence must be our guide; we need Prudentia. Brendan Cook in his discussion of prudence in Greek, Latin, and other literature notes, "Utopians seems to fear that even 'the most prudent' model of government can be corrupted and subverted by cunning citizens whose foresight does not extend beyond their immediate self-interest."<sup>66</sup> That is the first lesson.

62. Between January 1, 2020 and July 24, 2021, a total of 603,504 people died in the United States from COVID-19. *Provisional COVID-19 Death Counts by Sex, Age, and State*, CDC DATA (last visited Aug. 3, 2021), <https://data.cdc.gov/NCHS/Provisional-COVID-19-Death-Counts-by-Sex-Age-and-S/9bhg-hcku/data>. Over the same period, 858,110 people died of pneumonia, influenza, or COVID-19. *Id.* BIPOC have the highest incidence of death, according to an independent lab. *The Color of Coronavirus: COVID-19 Deaths by Race and Ethnicity in the U.S.*, APM RESEARCH LAB (last visited Aug. 3, 2021), <https://www.apmresearchlab.org/covid/deaths-by-race> (showing that the mortality rate for Blacks, Indigenous, Pacific Islanders, and Latinos is each more than double the mortality of whites between December 8, 2020 and March 2, 2021).

63. Statista Research Department, *Number of People Shot To Death By the Police in the United States From 2017 To 2021, By Race*, <https://www.statista.com/statistics/585152/people-shot-to-death-by-us-police-by-race/> (last visited Aug. 3, 2021) ("Additionally, the rate of fatal police shootings among Black Americans was much higher than that for any other ethnicity, standing at 36 fatal shootings per million of the population as of April 2021."). See also Sarah DeGue et al., *Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009-2012*, 51(5) AM. J. PREV. MED. S173 (2016), <https://doi.org/10.1016/j.amepre.2016.08.027>.

64. PEREZ, *supra* note 3, at 13.

65. *Id.*

66. Cook, *supra* note 5, at 49.

A second lesson I find in *Hamilton* is that although the film's protagonist was an elite financial mogul who owned slaves and believed people should answer to the government and not the other way around, he was also a *lawyer*. Lawyers have a lot of power in shaping democracy and public policy; so too do their educators.

A third lesson is that, along with his status as a lawyer, Alexander Hamilton's power and influence were tied to his understanding of and control over the national financial system. Money is a critical feature of power, politics, and oppression.

When faced with a pivotal moment, government leaders must be cautious (to protect life and foster equality), but not overly cautious (allowing business and financial prosperity for the majority or the elite to supersede), guided by the hindsight of Prudentia's mirror and the foresight of Prudentia's ethical decision-making. Law professors in particular must use their positions of power and privilege to work toward the prosperity of all lives, not just a handful of elites who are far removed from the challenges and stresses of living in poverty. Voices of the marginalized and vulnerable must be included in the blueprints, founding documents, declarations, banking systems, and law schools, and more. If history is any guide, the oppressed will eventually find a way to pull up a folding chair<sup>67</sup> to the tables in the "room where it happens" anyway.

*B. "This is Not a Moment: It is the Movement."<sup>68</sup>*

Patrick Henry, at the Second Virginia Convention on March 23, 1775, at St. John's Church in Richmond, Virginia, wishing to get funding for a militia to protect Virginia, passionately stated in his speech: "Give me liberty or give me death!"<sup>69</sup> Thomas Marshall told his son John Marshall, who later became the secretary of state and then the Chief Justice of the United States that the speech was "one of the boldest, vehement, and animated pieces of eloquence that had ever been delivered."<sup>70</sup> The same can be said of George Floyd's last words, "I can't breathe." They both wanted liberty. For what good is freedom without liberty? We all want liberty.

67. Shirley Chisholm once famously said, "If they don't give you a seat at the table, bring a folding chair." Tim Ott, *10 Shirley Chisholm Quotes That Show Her Determination and Fortitude*, BIOGRAPHY.COM (Feb. 10, 2021), <https://www.biography.com/news/shirley-chisholm-quotes>. See also Kimberlé Williams Crenshaw, *The First Decade: Critical Reflections, or "A Foot in the Closing Door,"* in CROSSROADS, DIRECTIONS AND A NEW CRITICAL RACE THEORY 9, 261 (Francisco Valdes et al., eds., 2002) ("The task ahead is to pull up a seat and stake out our positions in large and small ways, as individuals and as groups, as discrete formations and as broad coalitions.").

68. HAMILTON, *supra* note 7.

69. Evan Andrews, *Patrick Henry's "Liberty or Death" Speech*, HISTORY.COM (Aug. 22, 2018), <https://www.history.com/news/patrick-henrys-liberty-or-death-speech-240-years-ago>.

70. PAUL ARON, WE HOLD THESE TRUTHS 87-88 (2008) <https://archive.org/details/weholdthesetruthoaron/page/86/mode/2up>.

But unlike Patrick Henry, George Floyd did not offer death as an alternative. Nor did he deserve it. He pleaded for breath in his last moments. He wanted his constitutional right to be free from unreasonable search and seizure to coexist with his right to be free from a police department-issued boot on his neck. We should all want to live in a world where liberty and breath can coexist. Had they coexisted in the way the founders apparently intended (or at least imagined in the stories we are told), George Floyd and the people whose lives were cut short would still be breathing today. The people whose lives were cut short by coronavirus would be too. Perhaps with breath in place of death, they might have had the privilege of appearing before Congress and requesting funding to protect them from overcautious and overly prudent local police and overly passive and under prudent federal government by exclaiming, in a rhetorical sense, “Give me liberty or give me death!” Instead they would have been heard and would have taken a deep breath rather than their last breath.

A pivotal moment in history, similar to the one depicted in *Hamilton*, is happening right now.<sup>71</sup> The founders, despite their seemingly good intentions, saw their destinies as ones that depended on exploitation and oppression of generations of Black and Indigenous people, and later, Chicana/x/o farmworkers. Those ghosts continue to haunt America today. The pandemic exposed the systems of oppression such as the justice, healthcare, economic, and labor systems, among others, which have existed since that time. But we cannot expect the poor to sacrifice more lives for this cause; and we cannot expect the rich to take notice and sacrifice their profits for this cause.

According to James Chowning Davies, a twentieth-century American sociologist, the conditions for revolution are ripest “when a prolonged period of objective economic and social development is followed by a short period of sharp reversal.”<sup>72</sup> Indeed, if you look at the French Revolution or the Russian Revolution, those who felt the promise of hope felt the deepest indignation. Davies calls it “the revolution of rising expectations.”<sup>73</sup> “[T]he rise in student

71. *Compare Alexander Hamilton’s Financial Program* (2021), [https://www.digitalhistory.uh.edu/disp\\_textbook.cfm?smtid=2&psid=2973](https://www.digitalhistory.uh.edu/disp_textbook.cfm?smtid=2&psid=2973) (“The most pressing problems facing the new government were economic. As a result of the revolution, the federal government had acquired a huge debt: \$54 million including interest. The states owed another \$25 million.”) with CONGRESSIONAL BUDGET OFFICE, AN UPDATE TO THE BUDGET OUTLOOK 2020-2030, at “At A Glance” (Sept. 2, 2020), <https://www.cbo.gov/system/files/2020-09/56517-Budget-Outlook.pdf> (“CBO projects a federal budget deficit of \$3.3 trillion in 2020, more than triple the shortfall recorded in 2019 . . . . At 16.0 percent of gross domestic product (GDP), the deficit in 2020 would be the largest since 1945. . . . As a result of those deficits, federal debt held by the public is projected to rise sharply, to 98 percent of GDP in 2020, compared with 79 percent at the end of 2019 and 35 percent in 2007, before the start of the previous recession. It would exceed 100 percent in 2021 and increase to 107 percent in 2023, the highest in the nation’s history. The previous peak occurred in 1946 following the large deficits incurred during World War II.”).

72. James C. Davies, *Toward a Theory of Revolution*, 27(1) AM. SOC. REV. 5, 6 (Feb. 1962).

73. *Id.* at 6, 10-14. See also Derek Thompson, *The Liberal Millennial Revolution*, THE ATLANTIC (Feb. 29, 2016), <https://www.theatlantic.com/politics/archive/2016/02/the-liberal-millennial-revolution/470826/>.



loans, the rise in youth unemployment, the fall in wage growth, and social unrest...a long period of economic progress followed by a concentrated period of financial strain is precisely what creates the perfect conditions for upheaval.”<sup>74</sup> This historic moment is not just a moment, it is a movement.

In 2020, more Black, Indigenous, and Latina/x/o lives have been claimed by the unrelenting spread of the coronavirus as unemployment rose to nearly thirty percent and, concurrently, budgets of higher education were cut by hundreds of millions. As of November 2020, fifteen states have declared racism a public health issue and public health crisis.<sup>75</sup> The distinct combination of growth, followed by sharp reversal and disappointed expectations, created the conditions we find ourselves in today—on the brink of transformation in law and society.

As law professors, we have a distinct role in this transformation. Prudence tells us that law professors and lawyers can lead the transformation of America in which *both* liberty and life are possible, not mutually exclusive, and no one’s happiness depends on the exploitation of another. A more prudent vision of due process and equality honors men and women of all races and ages, especially those who are marginalized and invisibilized, not “regardless of race” or status as oppressed people, but because of it.

### III. “If We Don’t Stop It, We Aid and Abet It”<sup>76</sup>

Although *Hamilton* ends when Eliza Hamilton shares Alexander Hamilton’s story with the world, minoritized communities know that the ending was far from happy. Eventually slavery officially ended, but the disregard for Black lives continued through discriminatory government policy for another hundred years,<sup>77</sup> the effects of which are seen today in lower and slower accumulation of

74. Thompson, *supra* note 73.

75. *Racism is a Public Health Crisis*, AM. PUB. HEALTH ASS’N, <https://www.apha.org/topics-and-issues/health-equity/racism-and-health/racism-declarations> (last visited Nov. 1, 2020).

76. HAMILTON, *supra* note 7.

77. See, e.g., Danyelle Solomon et al., *Systemic Inequality: Displacement, Exclusion, and Segregation: How America’s Housing System Undermines Wealth Building in Communities of Color*, CTR. FOR AM. PROGRESS (Aug. 7, 2019), <https://www.americanprogress.org/issues/race/reports/2019/08/07/472617/systemic-inequality-displacement-exclusion-segregation/> (“This report examines how government-sponsored displacement, exclusion, and segregation have exacerbated racial inequality in the United States. It first looks at how public policies have systematically removed people of color from their homes. It then considers how federal, state, and local policies have fortified housing discrimination.”); Michelle Alexander, *The New Jim Crow*, 9 OHIO ST. J. CRIM. L. 7 (2011), <https://www.pewresearch.org/social-trends/2019/02/14/millennial-life-how-young-adulthood-today-compares-with-prior-generations-2/> (discussing the evolution of racism from slavery and Jim Crow segregation laws to a drug war incarcerating Black people for nonviolent offenses, which resulted in voting disenfranchisement, discrimination in accessing public benefits, employment, and housing among other things); Sarah DeGue, Katherine A. Fowler, & Cynthia Calkins, *Deaths Due to Use of Lethal Force by Law Enforcement: Findings From the National Violent Death Reporting System, 17 U.S. States, 2009-2012*, 51(5) AM. J. PREV. MED. S173 (2016), <https://doi.org/10.1016/j.amepre.2016.08.027> (“Victims were majority

wealth by BIPOC communities, which is now affecting the second generation post-Civil Rights Act of 1965: millennials.<sup>78</sup>

### *A. The Racial Wealth Gap Continues*

According to economists at the Institute on Assets and Social Policy, the largest contributing factor to the racial wealth gap is the difference in number of years of homeownership.<sup>79</sup> The second-largest contributor is average family income.<sup>80</sup> Other factors include unemployment, college education, and financial support/inheritance.<sup>81</sup> Together all of those factors account for nearly two thirds of the proportional increase in the wealth gap.<sup>82</sup>

First, delays in homeownership can be attributed in part to increasing tuition costs and student loan debt,<sup>83</sup> more costly housing for millennials

white (52%) but disproportionately black (32%) with a fatality rate 2.8 times higher among blacks than whites. Most victims were reported to be armed (83%); however, black victims were more likely to be unarmed (14.8%) than white (9.4%) or Hispanic (5.8%) victims.”).

78. Darrick Hamilton & Christopher Famighetti, *Housing*, PATHWAYS, Spec. Issue 2019, at 40 (“The New Deal’s housing reforms, however, were replete with racially disparate implementation and housing discrimination. The resulting benefits of homeownership—such as the accumulation of wealth and housing stability—disproportionately accrued to white Americans. These injustices were in turn responsible for generating an asset-based middle class for whites but not for blacks.”); THOMAS SHAPIRO ET AL., *THE ROOTS OF THE WIDENING RACIAL WEALTH GAP: EXPLAINING THE BLACK-WHITE ECONOMIC DIVIDE I* (Feb. 2013), <https://heller.brandeis.edu/iasp/pdfs/racial-wealth-equity/racial-wealth-gap/roots-widening-racial-wealth-gap.pdf> (“In 2009...the median wealth of white families was \$113,149 compared with \$6,325 for Latino families and \$5,677 for black families.... Tracing the same households during that [twenty-five-year] period, the total wealth gap between white and African-American families nearly triples, increasing from \$85,000 in 1984 to \$236,500....”).
79. SHAPIRO ET AL., *supra* note 78, at 2 (“Among households with positive wealth growth during the 25-year study period, . . . number of years of homeownership accounts for 27 percent of the difference in relative wealth growth between white and African-American families, the largest portion of the growing wealth gap.”).
80. *Id.* at 4-5 (concluding that Black earners earned less income than white earners even when controlling for the same educational attainment across households).
81. *Id.* at 3.
82. *Id.*
83. Mario L. Small & Maleah Fekete, *Social Networks*, PATHWAYS, Spec. Issue 2019, at 44 (“Yet income and wealth inequality have reached historic heights...The educational debt of millennials is greater than that of any preceding generation. And the cost of housing is far greater than it has ever been, leaving many millennials to wonder if they will ever own a home.”).

after the 2008 recession,<sup>84</sup> and stagnant wages.<sup>85</sup> For BIPOC millennials in particular, in comparison with their white counterparts, they often do not have the benefit of family accumulated wealth through the forms of inheritance and family gifts to assist them in purchasing their first home.<sup>86</sup> Being the most diverse<sup>87</sup> and most educated generation<sup>88</sup> in the workforce today means millennials have the highest rates of student loan debt and lower rates of homeownership, in part because of historical injustices against their parents and grandparents, than any other generational cohort.<sup>89</sup>

Owing significantly more student loan debt than other generational cohorts is one barrier to homeownership.<sup>90</sup> This is due in part to exponential increases

84. Hamilton & Famighetti, *supra* note 78, at 40 (“The racial gap in young-adult homeownership is larger for millennials than for any generation in the past century. Although the housing reforms after the civil rights era reduced the racial homeownership gap, all those gains have now been lost...The homeownership rate for blacks, which increased by 17 percent between 1990 and 2005, fell back after the Great Recession to the 1990 baseline.”). See generally Mark Hugo Lopez, et al., *Financial and Health Impacts of COVID-19 Vary Widely by Race and Ethnicity*, PEW RSCH. CTR. (May 5, 2020), <https://www.pewresearch.org/fact-tank/2020/05/05/financial-and-health-impacts-of-covid-19-vary-widely-by-race-and-ethnicity/>.
85. Julie Margetta Morgan & Marshall Steinbaum, *The Student Debt Crisis, Labor Market Credentialization, and Racial Inequality*, ROOSEVELT INST. 4 (Oct. 2018) (“Given rising student debt and postsecondary attainment, we would expect to see improvements in earnings. However, the distribution of earnings in the labor market has remained relatively unchanged over time. And to the extent that individuals see an income boost based on college attainment, it is only relative to falling wages for high school graduates.”).
86. Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, FEDS NOTES (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm> (“Among young families, about 46 percent of White families own their home, compared to just 17 percent of Black families. This gap may partially reflect differences in parental wealth, as previous research has found that Black families are far less likely to receive down payment assistance from their parents, delaying transitions into homeownership.”).
87. Kristen Bialik & Richard Fry, *Millennial Life: How Young Adulthood Today Compares to Prior Generations*, PEW RSCH. CTR. (Jan. 30, 2019), <https://www.pewsocialtrends.org/essay/millennial-life-how-young-adulthood-today-compares-with-prior-generations/> (“When the Silent Generation was young (ages 22 to 37), 84% were non-Hispanic white. For Millennials, the share is just 55%.”).
88. *Id.* (“Among Millennials, around four-in-ten (39%) of those ages 25 to 37 have a bachelor’s degree or higher, compared with just 15% of the Silent Generation, roughly a quarter of Baby Boomers and about three-in-ten Gen Xers (29%) when they were the same age.”).
89. See generally Rachel Fishman, *The Wealth Gap PLUS Debt: How Federal Loans Exacerbate Inequality for Black Families*, NEW AM. (last updated May 15, 2018), <https://www.newamerica.org/education-policy/reports/wealth-gap-plus-debt/> (“Among the college educated, in part due to an inability to accumulate and transfer wealth through generations and labor-market discrimination, racial economic inequality is at its greatest.”).
90. Alvaro Mezza et al., *Can Student Loan Debt Explain Low Homeownership Rates for Young Adults?* 1 CONSUMER & CMTY. CONTEXT 2, 5 (2019), <https://www.federalreserve.gov/publications/files/consumer-community-context-201901.pdf> (concluding that “a little over 20 percent of the overall decline in homeownership among the young can be attributed to the rise in

in higher education tuition and costs<sup>91</sup> along with less favorable student loan programs. The problem is even more pressing considering skyrocketing education costs and the lifelong impact for BIPOC millennials who take on more student loan debt,<sup>92</sup> during a time when homeownership is key to long-term wealth accumulation.<sup>93</sup> With less income, inheritance, or parental subsidizing from which to draw, Black, Indigenous, and Latina/x/o millennial students, especially those who do not complete their degree programs, default more often than their white peers.<sup>94</sup>

A study titled “The Emerging Millennial Wealth Gap” by New America considers what role high-interest student loans have on the wealth accumulation and upward mobility in class for millennials.<sup>95</sup> The multi-disciplinary scholars

student loan debt. This represents over 400,000 young individuals who would have owned a home in 2014 had it not been for the rise in debt.”).

91. Steven Rattner, *We're Making Life Too Hard for Millennials*, N.Y. TIMES (July 31, 2015), <https://www.nytimes.com/2015/08/02/opinion/sunday/were-making-life-too-hard-for-millennials.html> (“[C]ollege is becoming less affordable even as it has become increasingly necessary. Since 1993, average tuition has risen by 234 percent, far above the 63 percent overall inflation rate.”); Abby Jackson, *This Chart Shows How Quickly College Tuition has Skyrocketed Since 1980*, BUS. INSIDER (July 20, 2015), <https://www.businessinsider.com/this-chart-shows-how-quickly-college-tuition-has-skyrocketed-since-1980-2015-7> (“In 1980, the average cost of tuition, room and board, and fees at a four-year post-secondary institution was \$9,438, according to the Department of Education. That number has since climbed to \$23,872.”).
92. Hamilton & Famighetti, *supra* note 78, at 42 (“rate [of homeownership] for black millennials has now reverted and is worse than in any other generation...Moreover, the surge in student debt may be spilling over to hurt millennials in the housing market, especially black millennials.”). See also Morgan & Steinbaum, *supra* note 85, at 4 (“Credentialization is compounded for people of color, who already have to pursue more education than their peers for the same or similar positions. Given that people of color have less individual and community wealth, students of color take on a disproportionate amount of student debt, further contributing to disparities in debt by race and exacerbating economic disadvantages.”); Jason N. Houle & Fenaba R. Addo, *Racial Disparities in Student Debt and the Reproduction of the Fragile Black Middle Class*, 5 SOCIO. RACE & ETHNICITY 562 (2018) (noting that Black men start their careers as young professionals with more student loan debt); Fenaba R. Addo et al., *Young Black, and (Still) in the Red: Parental Wealth, Race, and Student Loan Debt*, 8 RACE & SOC. PROB. 64, 70 (2016) (concluding that Black college students report having 68.2% more student loan debt than their white counterparts, which translates, in actual dollar amounts, to \$22,000 for a white young adult to \$36,960 for a Black young adult).
93. Hamilton & Famighetti, *supra* note 78, at 42 (“Given the compounding nature of wealth creation, the early life course is important because an early investment in a home may secure a pathway of wealth building and asset security thereafter.”).
94. Approximately forty-nine percent of Black borrowers in undergraduate programs will default within twelve years of borrowing, compared with thirty-five percent of Latina/x/o and only twenty-one percent of white students. Judith Scott-Clayton, *What Accounts for Gaps in Student Loan Default, and What Happens After*, 2 EVIDENCE SPEAKS REPS. #57 (2018), <https://www.brookings.edu/research/what-accounts-for-gaps-in-student-loan-default-and-what-happens-after/>. Native American students do not appear to be represented in the study but are an equally important subgroup who are likely impacted by student loan debt.
95. REID CRAMER ET AL., THE EMERGING MILLENNIAL WEALTH GAP: DIVERGENT TRAJECTORIES, WEAK BALANCE SHEETS, AND IMPLICATIONS FOR SOCIAL POLICY (Oct. 2019), <https://www.newamerica.net/publications/the-emerging-millennial-wealth-gap/>.

note that while prior generations had historically begun to accrue wealth by their thirties, millennials have accumulated rising levels of consumer and student loan debt, owing a significant amount of the total outstanding federal student loan debt in the United States.<sup>96</sup> Scholars from the Center for American Progress and Generation Progress note that the dramatic rise in student loan debt must be addressed so as not to undermine the future wealth-building and economic security of millennials.<sup>97</sup> A scholar from the Washington Center for Equitable Growth points out the relationship between family economic resources and a child's outcomes, including later intergenerational mobility.<sup>98</sup> These studies were completed before the pandemic, which has widened disparities.

Second, lower family income in BIPOC communities can be attributed in part to a lack of diversity and inclusion in high-paying professions, including law;<sup>99</sup> and a significant wage gap between white men and BIPOC men and more so for BIPOC women.<sup>100</sup> For BIPOC millennials in particular, the 2008 and now 2020 recessions have resulted in higher unemployment, stagnant wages, and fewer positions with benefits. But for the availability of larger poverty safety nets to millennials as compared with other generations, millennials in general would be the poorest across generations at similar ages.<sup>101</sup> However, rollbacks of key poverty safety nets may threaten this status.<sup>102</sup> The 2020 pandemic has taken a toll on BIPOC millennials, who work a greater share of

[newamerica.org/millennials/reports/emerging-millennial-wealth-gap/](https://newamerica.org/millennials/reports/emerging-millennial-wealth-gap/).

96. *Id.* at 14-15.

97. *Id.* at 16.

98. *Id.* at 15-16.

99. Bourree Lam, *The Least Diverse Jobs in America*, THE ATLANTIC (June 29, 2015), <https://www.theatlantic.com/business/archive/2015/06/diversity-jobs-professions-america/396632/> (noting that eight out of every ten lawyers are white and listing several other professions with minorities being underrepresented relative to their proportion of the general population).

100. Eileen Patten, *Racial, Gender Wage Gaps Persist in U.S. Despite Some Progress*, PEW RSCH. CTR. (July 1, 2016), <https://www.pewresearch.org/fact-tank/2016/07/01/racial-gender-wage-gaps-persist-in-u-s-despite-some-progress/> (noting that the average hourly wages for white men were \$21, but only \$14 for Black men, \$15 for Hispanic men, \$13 for Black women, and \$12 for Hispanic women in 2015).

101. Marybeth Mattingly et al., *Poverty and the Safety Net*, PATHWAYS, Spec. Issue 2019, at 38, [https://inequality.stanford.edu/sites/default/files/Pathways\\_SOTU\\_2019\\_SafetyNet.pdf](https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2019_SafetyNet.pdf). (“Were it not for resources coming from government programs, the millennial poverty rate at age 30 would be the *highest* across the four generations.... [P]rograms like the Earned Income Tax Credit (EITC) and Supplemental Nutrition Assistance Program (SNAP) have especially contributed to lowering the poverty rate among millennials.”).

102. Nathalie Baptiste & Jessica Washington, *Trump Isn't Waging a War on Poverty. He's Waging a War on Poor People*, MOTHER JONES (Feb. 14, 2020), <https://www.motherjones.com/politics/2020/02/trump-isnt-waging-a-war-on-poverty-hes-waging-a-war-on-poor-people/> (summarizing policy changes to SNAP, housing assistance, cash assistance, Medicaid, and Supplemental Security Income for Disability Benefits programs under the Trump administration).

essential, hospitality, and service jobs;<sup>103</sup> have contracted or died of the virus at higher rates than white people of the same age group<sup>104</sup> (albeit all significantly less than older generational cohorts who are disproportionately impacted overall); and were more likely to lose their jobs or see a reduction in income.<sup>105</sup>

The millennial experience is unique to its generational cohort,<sup>106</sup> and it is important to consider how policy contributes to or mitigates the slow accumulation of wealth by BIPOC millennials. Larger burdens of student loan debt, when coupled with the “cumulative effects of a half-century of

103. Maria Godoy & Daniel Wood, *What Do Coronavirus Racial Disparities Look Like State By State?*, NPR.ORG (May 30, 2020), <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state> (noting that Black and Latino workers make up a greater share of essential workers on the front lines, and therefore more of the deaths and infections, respectively; and noting that Latinos may not have as many deaths because three-quarters of their population are millennials or younger); Katherine Schaeffer, *The Most Common Age Among Whites in U.S. is 58—More Than Double That of Racial and Ethnic Minorities*, PEW RSCH. CTR. (July 30, 2019), <https://www.pewresearch.org/fact-tank/2019/07/30/most-common-age-among-us-racial-ethnic-groups/> (reporting census data showing the most common age of Hispanics was eleven, in comparison with twenty-seven for Blacks, twenty-nine for Asians, and three for people identifying as being more than one race, as of July 2019); Sean Collins, *Why the Covid-19 Economy is Particularly Devastating to Millennials, in 14 Charts*, VOX.COM (May 5, 2020), <https://www.vox.com/2020/5/5/21222759/covid-19-recession-millennials-coronavirus-economic-impact-charts> (“In March, the sectors with the greatest job losses were in leisure and hospitality; health care and social services; professional services (like consulting, administrative, and IT roles); and retail sectors. And all four of those rely heavily on millennial labor.”).
104. Jeva Lange, *Millennial Pandemic*, THE WEEK (July 21, 2020), <https://theweek.com/articles/926491/millennial-pandemic> (“[T]he spiking cases among millennials, who are a favorite generational scapegoat for just about everything, are likely because young people are also the ones returning to work in droves at the behest of governors who view the health of the economy as more vital than their constituents’ physical wellbeing. Nearly 60 percent of all bar employees, 49 percent of all restaurant and food service employees, and 41 percent of hair salon employees in 2017 were people between the ages of 21 and 36, *Business Insider* estimated last year. It’s people in such service industry jobs who are among the most at risk of exposure to COVID-19, being as they are among the least financially free to choose not to return to work.”).
105. Collins, *supra* note 103 (“[B]ased on data from a poll of 4,917 adults (taken from April 7 to 12, with a 2.1 percentage point margin of error) those between ages 18 and 29 have been the most affected by layoffs, with 35 percent saying they or someone in their household has lost their job. That cohort has been most affected by pay cuts as well, with 45 percent reporting reduced wages in their household.”); Lopez et al., *supra* note 84 (reporting that sixty-one percent of Hispanic Americans and forty-four percent of Black Americans said in April 2020 that they or someone in their household experienced a job or wage loss because of the coronavirus outbreak).
106. Susan Dynarski, *Student Debt*, PATHWAYS, Spec. Issue 2019, at 13, [https://inequality.stanford.edu/sites/default/files/Pathways\\_SOTU\\_2019\\_StudentDebt.pdf](https://inequality.stanford.edu/sites/default/files/Pathways_SOTU_2019_StudentDebt.pdf) (“Millennials hit a perfect storm, facing crowded colleges and higher tuition than previous generations of students. They borrowed to make their tuition payments. They left school only to hit a labor market of high unemployment and low earnings. And this precipitated a takeoff in loan defaults.”); Morgan & Steinbaum, *supra* note 85, at 4 (Oct. 2018) (“[T]he data show that many more Americans have debt, and the burden of that debt is more significant now than for previous generations.”).

rising inequality, declining prime-age employment, and related neoliberal developments”<sup>107</sup> ensure that BIPOC millennials will similarly have less wealth to transfer to their children<sup>108</sup> if the racial wealth gap continues to widen.<sup>109</sup>

### B. Prudence Must Guide Our Decision-Making

The status of the economy alone is not necessarily cause for concern on the basis of some racial or age injustice against millennials.<sup>110</sup> But once viewed in the context of historic injustices (such as housing and lending discrimination, or slavery left out of the *Hamilton* story) and present-day injustices (such as continued wage gaps, police violence, or other ghosts and monsters depicted in the revised story of La Llorona), the need for policy shifts becomes clear, with an emphasis on mitigating the burden of student debt.<sup>111</sup> Although entering the labor market during a recession carries unique consequences for the entry-level workforce,<sup>112</sup> BIPOC millennials face additional burdens particular to student debt that are likely to affect such outcomes as (1) willingness to go to

107. Addo et al., *Young Black*, *supra* note 90, at 64 (“increasing costs of higher education and corresponding rise in student loan debt are creating a new form of stratification for recent cohorts of young adults, and that student loan debt may be a new mechanism by which racial economic disparities are inherited across generations.”).
108. Yunju Nam, *Bootstraps Are for Black Kids: Race, Wealth, and the Impact of Intergenerational Transfers on Adult Outcomes* (Sept. 2015), <https://insightcced.org/wp-content/uploads/2015/07/Bootstraps-are-for-Black-Kids-Sept.pdf> (finding that parental financial support was much higher for white than Black students and translated to higher educational attainment, family income, homeownership, and net worth).
109. Jen Mishory et al., *How Student Debt and the Racial Wealth Gap Reinforce Each Other*, THE CENTURY FOUND. (Sept. 9, 2019), <https://tcf.org/content/report/bridging-progressive-policy-debates-student-debt-racial-wealth-gap-reinforce/> (“[T]he racial wealth gap, high student debt levels, and unequal higher education access and outcomes for students of color—and particularly women of color—continuously reinforce each other.”).
110. Alexander A. Boni-Saenz, *Age Diversity*, 94 S. CALIF. L. REV. \_\_\_ (forthcoming 2021) (“The historical racial injustice that undergirds some of the normative rationales for racial diversity simply does not exist for age and age diversity.”).
111. Dynarski, *supra* note 106, at 13 (“We can’t do much about the luck of bad timing. What we can do is use social and economic policy to buffer the effects of economic downturns. In the case of postsecondary education and the millennials, we failed at this spectacularly.”).
112. Hannes Schwandt & Till von Wachter, *Socioeconomic Decline and Death: Midlife Impacts of Graduating in a Recession*, IZA Institute of Labor Economics Discussion Paper No. 12908 at 3-5 (Jan. 28, 2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3525236](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3525236) (studying the effect of entering the labor market during a recession on mortality and the longer-term adverse effects on mental health, fertility, and more).

graduate school;<sup>113</sup> (2) probability of choosing public interest as a career;<sup>114</sup> and (3) ability to qualify for a home loan.<sup>115</sup> For law students specifically, excessive student loan debt can also prevent admission to the state bar.<sup>116</sup> Of course, the burdens of student loan debt impact the career choices and lives of only those students who require student loans in order to access the legal profession in the first place—often BIPOC millennial students who have fewer financial resources and whose families have had less opportunity to accumulate wealth.<sup>117</sup> In essence, students with the most wealth have more freedom to choose the

113. William Gale et al., *Student Loans Rising: An Overview of Causes, Consequences, and Policy Options*, BROOKINGS INSTIT. 3 (May 2014) (“higher student loan debt causes a higher rate of employment among recently graduated women and appears to reduce the likelihood of attending graduate school.... student loan borrowers are roughly 60 to 70 percent less likely to apply to graduate school—after controlling for other factors—than non-borrowers.”) (internal cites omitted).
114. *Id.* (“[S]tudent loan debt drives graduates away from low-paying and public-sector jobs. Specifically, they find that each \$10,000 in student loan debt reduces the likelihood that a graduate will find employment in the government, non-profit, or education sectors by about 6 percentage points, with especially strong impacts on graduates taking jobs in education.”); ILLINOIS STATE BAR ASSOC., FINAL REPORT, FINDINGS & RECOMMENDATIONS ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES (June 22, 2013), <https://www.isba.org/sites/default/files/committees/ISBA%20Law%20School%20Debt%20Report.pdf> (noting that excessive debt prevents graduates from doing pro bono work, providing quality legal services to lower- and middle-class people, from working for legal aid longer than two to three years, and from working in rural areas; and threatens both diversity and professionalism in the state bar); ABA COMMISSION ON LOAN REPAYMENT AND FORGIVENESS, LIFTING THE BURDEN: LAW STUDENT DEBT AS A BARRIER TO PUBLIC SERVICE 14 (2003) (noting that for law schools specifically, higher tuition costs and higher student loan debts meant fewer law graduates could take lower-paying legal positions serving the poor).
115. Gale et al., *supra* note 113, at 3 (“High student loan burdens may disqualify students from taking on mortgage debt, and debt aversion may dissuade student loan holders from purchasing a home even if qualified to do so. Brown and Caldwell (2013) show a stark divergence between 2003 and 2013 in the credit scores—a key indicator of ability to undertake a mortgage—of student loan borrowers and non-borrowers (Figure 1). In 2003, there was essentially no difference between the two groups but by 2012, a 30 year-old with student loan debt has an average credit score that is 24 points lower than one without debt.”).
116. Susana Kim, *Ohio Supreme Court Denies Law License for Grad with \$170,000 in Student Loans*, ABC NEWS (Jan. 17, 2011), <https://abcnews.go.com/Business/ohio-supreme-court-denies-law-license-law-grad/story?id=12632984> (giving examples of law graduates who were denied bar admission because of excessive loan amounts).
117. Glater argues that variable interest rates in the private market would reinforce existing distributions of wealth because they would disproportionately affect students of color; the same argument applies to student loans more generally. Jonathan D. Glater, *Law School, Debt, and Discrimination*, 68 J. LEGAL EDUC. 548, 556 (2019) (“Only students who needed to borrow would be subject to having their studies, careers, and lives shaped by the policy. Those students with greater financial resources could continue to study whatever they wanted, seek whatever jobs they wanted, and live free of the obligation to repay student debt. Students of color disproportionately have fewer financial resources and borrow more, so they would correspondingly be disproportionately affected.”). See also *Trends in Student Aid 2019*, COLL. BD., at 4, <https://research.collegeboard.org/pdf/trends-student-aid-2019-full-report.pdf> (“In 2015-16, 33% of black bachelor’s degree recipients accrued \$40,000 or more in student debt, compared with 17% of white graduates, 13% of Hispanics, and 9% of Asians.”).



careers they pursue after graduating, while at the same time public interest and government employers who pay less do not have the benefit of BIPOC borrowers working for their organizations.

This is a pivotal moment in which law professors and law students must exercise prudence. Ethical foresight requires that law professors, aware of the inner workings of how policy has perpetuated systemic injustice, work to discontinue the oppression of intergenerational BIPOC communities.<sup>118</sup> We cannot be sure what the full impact of the COVID-19 virus will be. What we can be sure of is that the worst is yet to come. Prudence gives us a tool for making decisions about the future based on what we know. “*Memory* (knowledge and experience from the past) and *intelligence* (exact sense of reality) are used to foresee and provide the future by *providence* (anticipation in the knowledge, the forecast).”<sup>119</sup>

For their part, law professors must acknowledge the history of racism, the current status of student loan debt for BIPOC millennials, and make decisions about how macro policymaking and micro policies within legal education should evolve. A somewhat obvious choice would be to advocate for law school tuition to be more affordable and accessible for millennials and Gen Z so that future law graduates are not saddled with so much debt. But exercising prudence must be deeper than that. Beyond memory, intelligence, and providence, other “[i]ntegral parts of prudence are ... reason (ability to deliberate when there is time), sagacity (ability to value the pros and cons when there is scarcely time to reason), docility (aptitude to receive advice), ... circumspection (attention to the circumstances) and caution (forecast of the possible obstacles in the execution of a decision).”<sup>120</sup>

First, more broadly speaking, ethical decision-making requires law professors work to ensure legal education remains accessible and does not contribute to the widening wealth gap of different races. Specifically, assuming the impact of the 2020 recession will be similar to the impact of the 2008 recession, law professors may be in a position to consider spikes in tuition to mitigate decreases in state funding to public universities.<sup>121</sup> Law professors must advocate for tuition freezes regardless of state cuts,<sup>122</sup> expansion of loan

118. Frank W. Munger & Carroll Seron, *Race, Law & Inequality, Fifty Years after the Civil Rights Era*, ANNUAL REV. OF LAW & SOC. SCI. 333 (May 30, 2017), <https://www.annualreviews.org/doi/pdf/10.1146/annurev-lawsocsci-110316-113452> (“[O]ur need, above all at this moment in our history, [is] for public scholarship changing the discourse, politics, and law perpetuating racial inequality.”).

119. Morales-Sánchez & Cabello-Medina, *supra* note 9, at 723 (emphasis in original).

120. *Id.*

121. David B. Grusky et al., *Millennials in the United States*, PATHWAYS, Spec. Issue 2019, at 5 (“Because the Great Recession reduced state subsidies to public education, cash-strapped administrators had no choice but to respond by either raising tuition or restricting enrollments, both of which led in the end to increased borrowing.”).

122. Kery Murakami, *State Cuts Grow Deep*, INSIDE HIGHER ED (May 15, 2020), <https://www.insidehighered.com/news/2020/05/15/size-state-budget-cuts-becomes-clearer>.

and aid programs that have more favorable terms, such as Pell grants (which do not have to be paid back), Stafford subsidized loans (on which the government pays the interest while students are in school), and American Opportunity Tax Credit (which refunds some expenses) to graduate programs; and funding of scholarships specifically for BIPOC students from the lower and middle class. Another option is to support BIPOC millennial candidates for public office<sup>123</sup> or law faculty who will advocate for the concerns and needs of BIPOC millennials.

Second, although self-interest might tempt law professors to pursue increases in tuition with the hope of gaining modest raises or more funding for travel to conferences or research grants, they should reconsider. BIPOC students may be less likely to serve their BIPOC community when saddled with student loan debt, thus inhibiting access to justice by those groups who have been historically denied access to justice.<sup>124</sup> The impact of seemingly modest increases for the latest edition of a textbook or a student fee for online coursework during the pandemic or for a newer laptop are significant because of compounding interest over time. The high-cost loans, in the aggregate, perpetuate the preexisting distribution of wealth based on race in the United States.

Law professors must exercise prudence and encourage tuition waivers rather than loan repayment assistance so that students with higher debts from undergraduate degree programs are not forced to take on more debt and consequently gravitate toward higher-paying private-sector jobs.<sup>125</sup> Law professors should also advocate for more robust forgiveness or repayment relief.<sup>126</sup> Law professors could also seek policy changes or take on cases seeking

123. Boni-Saenz, *supra* note 110 (“We may be entering another period of intergenerational conflict and misunderstanding between those Baby Boomer activists of the 1960s, now grown up and in positions of political power, and the younger generations of Millennials and Generation Z. In such circumstances, including descriptive representatives from younger cohorts might reduce the harm to the deliberative process created by the lack of age diversity in various representative bodies.”).

124. See generally Deborah L. Rhode, *Access to Justice: A Roadmap for Reform*, 41 *FORDHAM URB. L.J.* 1227, 1230 (2014) (identifying structural barriers to providing access to justice); Jonathan D. Glater, *Law School, Debt and Discrimination*, 68(3) *J. LEGAL EDUC.* 548, 563 (Spring 2019) (“[T]he impact of federal aid policy on law student decision-making deserves considerably more study, and analysis of the access gap within the civil justice system must include assessment of the role that indebtedness plays.”).

125. Public interest law placements are roughly one-third higher when law students are offered tuition waivers instead of loan repayment assistance. Glater, *supra* note 124, at 548.

126. Gale et al., *supra* note 113, at 4 (stating policy options thus far proposed would “generally focus[] on one of three goals: reducing the after-tax cost of tuition; alleviating the debt burden on students, without necessarily changing the amount of money owed; or limiting federal support for educational institutions that do not adequately prepare their students for “gainful employment.”).

discharge of student loans in bankruptcy proceedings so that forgiveness becomes more common and acceptable.<sup>127</sup>

Third, in exercising prudence we must perceive the current dilemma correctly. “The decision problem in Ethics is not only ‘to choose’, but to ‘construct’ the problem correctly, because the alternatives are not given to us, but we give them to ourselves. We not only choose among alternatives: we choose the alternatives too.”<sup>128</sup> The global pandemic has highlighted new possibilities. Concerned about millennials’ ability to pay their student loans, the federal government instituted an automatic zero percent interest rate and administrative forbearance on all student loans.<sup>129</sup> It proved two things: (1) that it is possible for the government to offer no-interest student loans, and (2) how financially fragile millennials are as a result of student loan debt. Given the status of the economy and 2020 recession, there is no question that these administrative programs must continue, and that they will require broad support across generations.

Finally, BIPOC millennials in law, as they gain access to the higher echelons of the legal career ladders, must similarly advocate for a greater social safety net in support of educational attainment and wealth accumulation for Gen Z, which is even more diverse than the millennial generation. “Our goal should not simply be racial equality among the wealthy. It should be more wealth equality among all races.”<sup>130</sup> Continuing the work of racial justice requires taking up the work of economic justice. (Indeed the original Broadway cast of *Hamilton* have been strong advocates for both racial justice and economic justice, through, for example, reallocating, redistributing, and donating profits to anti-racism work.)<sup>131</sup> Hamilton, Dr. Martin Luther King Jr., and other visionaries recognized that finances play a significant role in power dynamics. Similarly, prudence, or ethical decision-making, must play a role in seeking racial, economic, and social justice.<sup>132</sup>

127. A federal judge in New York discharged \$221,385.49 in student loan debt for a borrower in bankruptcy proceedings under the “undue hardship” provision of federal law at 11 U.S.C. § 523(a)(8), but it is still not policy. *In re Rosenberg*, Case No. 18-35379 (Jan. 7, 2020) <https://assets.documentcloud.org/documents/6660178/Rosenberg-SDNY.pdf>.

128. Morales-Sánchez & Cabello-Medina, *supra* note 9, at 724 (emphasis in original) (internal cites omitted).

129. Coronavirus Aid, Relief, and Economic Security Act (CARES Act) of 2020, Pub. L. No. 116-136, 134 Stat. 281 (section 3513 relief for federal student loan borrowers); Memorandum on Continued Student Loan Payment Relief During the COVID-19 Pandemic 85 Fed. Reg. 49585 (Aug. 8, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-08-13/pdf/2020-17897.pdf>.

130. Peter Dreier, *There’s no Racial Justice Without Economic Justice: Shortcomings of Clinton’s Race Initiative Report*, 29(2) SOC. POLICY (1998).

131. Kelly Kessler, *Hamilton’s Streaming Debut is an Accidental Gift to an American Uprising*, PRIMETIMER (June 23, 2020), <https://www.primetimer.com/features/hamiltons-streaming-debut-is-an-accidental-gift-to-an-american-uprising>.

132. Jernej Pisk, *Cardinal Virtues in Sport: Prudentia*, 67(1) PHYSICAL CULTURE & SPORT STUD. & RSCH. 13, 16, 18 (2015), [https://www.researchgate.net/publication/285385148\\_Cardinal\\_Virtues\\_](https://www.researchgate.net/publication/285385148_Cardinal_Virtues_)

Temporary student loan relief for 40 million borrowers will end on September 30, 2021, for borrowers across generations, and the impact of student loan debt, including for law programs, will burden many BIPOC families and their children for generations. Any gains in diversity and inclusion or access to justice in communities historically underrepresented in the legal profession will no doubt regress. Because law schools, generally speaking, have contributed to the borrowers' owing approximately five percent of the national student loan debt, or \$7 billion,<sup>133</sup> they must follow their special obligation to support open access to the legal profession,<sup>134</sup> law professors must take the lead in advocating for relief from student loan debt, further wealth accumulation, and mitigate racial injustice in law and society.

### Conclusion

In the act of prudence, "what we ought to do is defined by what we are and where we are and takes the circumstances into consideration."<sup>135</sup> The causes of the financial fragility of BIPOC millennials can be summed up as some combination of the 2008 and 2020 recessions (which caused increases in tuition and therefore student loan debt) and discriminatory policies that have caused a lack of wealth accumulation by BIPOC families over generations. Those ghosts, originating in the colonial origins depicted in *Hamilton* and for which stories like *La Llorona* have prepared us to face, are also preventing BIPOC millennial lawyers from pursuing the much-needed and valuable work of public interest and improving access to justice for their communities. If

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in\_Sport\_Prudentia ("[T]he prerequisite of justice is truth—the truth of cognition.... Prudence and justice are more closely connected than they might appear at first sight. There is no justice without prudence.... Because prudence is the foundation and source for all other virtues, it is not possible to educate people about justice, fortitude, or temperance, if they are not prudent.").

133. Compare U.S. NEWS & WORLD REPORT, *Best Grad Schools 2019*, [https://www.usnews.com/best-graduate-schools/top-law-schools/grad-debt-rankings?\\_sort=indebt-desc](https://www.usnews.com/best-graduate-schools/top-law-schools/grad-debt-rankings?_sort=indebt-desc) (last visited July 10, 2020) (listing the average levels of student loan debt ranging from \$201,867 to \$55,186) with Christopher J. Ryan, Jr. *Paying for Law School: Law Student Loan Indebtedness and Career Choices*, 2021 U. ILL. L. REV. 97, 99, 100 (noting that 5% of the national student loan debt, or \$7 billion, is owed by law students and law school graduates and that students on average borrowed \$115,481 in 2018 not including debt from undergraduate degree programs).
134. See, e.g., Susan Sturm, *Reaction: Law Schools, Leadership, and Change*, 127 HARV. L. REV. F 49 (2013) (describing the special role that law schools, through the lawyers they train, play in society); *Grutter v. Bollinger*, 539 U.S. 306, 332 (2003) (observing that "universities, and in particular, law schools, represent the training ground for a large number of our Nation's leaders"); AALS, LAW PROFESSORS IN THE DISCHARGE OF ETHICAL AND PROFESSIONAL RESPONSIBILITY (amended July 12, 2017), <https://www.aals.org/about/handbook/good-practices/ethics/> ("The fact that a law professor's income does not depend on serving the interests of private clients permits a law professor to take positions on issues about which practicing lawyers may be more inhibited. With that freedom from economic pressure goes an enhanced obligation to pursue individual and social justice. For the same reason, engaging in law reform activities or advocating for improvements in law and the legal system is a valued role of academics.").
135. Pisk, *supra* note 132, at 16.

lawyers and law professors could wield their influence and power, and practice prudence, we might restore due process, rid ourselves of the ghosts of deep-rooted racism, and, more importantly, live to breathe a little longer. As George Washington once sang in a musical, “History has its eyes on you.”<sup>136</sup>

136. HAMILTON, *supra* note 7.