

Law in the Cultivation of Hope, 1/21/2007

Work in progress, please do not cite, refer comments to krabrams@law.berkeley.edu & kerenhi@mscc.huji.ac.il

LAW IN THE CULTIVATION OF HOPE

Kathryn Abrams & Hila Keren

(forthcoming CAL. L. REV.)

Table of Contents

INTRODUCTION

I. INDIVIDUAL HOPE

A. *Conceiving Hope*

1. Hope and Human Agency
2. Hope, Fear, and Despair

B. *The Process of Hoping*

3. Becoming a “Subject of Hope”
4. Embracing Particular Hopes
5. Identifying Means to the End
6. Support for the Process of Hoping
7. From Particular Hopes to Hopefulness

C. *The Hazards of Hope*

II. CULTIVATED HOPE

A. *Beyond the Brothels*

B. *A Profile of a Beneficial Cultivation of Hope*

1. Precondition: Capacity to Cultivate Hope in Others
2. Communicating Recognition and Vision
3. Introducing an Activity that Allows for Individuation
4. Providing Resources
5. Supporting Agency
6. Fostering Solidarity

C. *The Perils of Cultivated Hope*

1. Disappointment
2. Reinforcing “Otherness”

D. *From Individual to Institutional Cultivation of Hope*

III. LAW IN THE CULTIVATION OF HOPE: THE CASE OF PROJECT HEAD START

A. *Head Start and the Law*

B. *The Hope in Project Head Start*

C. *The Legal Effort to Cultivate Hope*

1. Precondition: Capacity to Cultivate Hope in Others
2. Communicating Recognition and Vision
3. Introducing an Activity that Allows for Individuation
4. Providing Resources
5. Supporting Agency
6. Fostering Solidarity
7. The Effects of Legal Rhetoric

D. *The Perils of Cultivated Hope*

CONCLUSION

INTRODUCTION

Legal thought has been slow to engage the emotions. Classical legal scholarship, premised on a dichotomy between reason and passion, steered a wide course around the emotions in general, and the emotional effects of law, in particular. However, the narrative and epistemological dimensions of critical legal scholarship,¹ and interdisciplinary legal work drawing on the humanities and social sciences,² have challenged mainstream scholars to reconsider this view. Consequently, legal scholarship has begun to probe the emotions; yet much of this work has occupied a narrow ambit. The most sustained focus has been on the negative emotions that infuse criminal law: How does, or can, or should, the law manifest the indignation, anger, or disgust that “we” feel when shared norms embodied in the criminal law are violated?³

¹ See, e.g., Kathryn Abrams, *Legal Feminism and the Emotions: Three Moments in an Evolving Relationship*, 28 HARV. J.L. & GENDER 325 (2005) (exploring relationship between legal thought on the emotions and influences such as feminist and critical race work on experiential narrative, and feminist critiques of objectivist epistemology).

² See generally, THE PASSIONS OF LAW 1-15 (Susan A. Bandes ed., 1999) [hereinafter PASSIONS OF LAW]. For other works drawing on the humanities, see, e.g., WILLIAM IAN MILLER, THE ANATOMY OF DISGUST (1997); WILLIAM IAN MILLER, EYE FOR AN EYE (2006); MARTHA C. NUSSBAUM, UPHEAVALS OF THOUGHT: THE INTELLIGENCE OF EMOTIONS (2001); MARTHA C. NUSSBAUM, HIDING FROM HUMANITY: DISGUST, SHAME, AND THE LAW (2004). For works drawing on psychology, see e.g., Toni M. Massaro, *Show (Some) Emotions*, in PASSIONS OF LAW 80-120 (1999); Terry A. Maroney, *Law and Emotion: A Proposed Taxonomy of an Emerging Field*, LAW & HUM. BEHAV. (forthcoming, 2006); See also Susan Bandes, *Empathy, Narrative and Victim Impact Statements*, 63 U. CHI. L. REV. 361 (1996) (drawing on work in philosophy, psychology and psychoanalysis); Lynne N. Henderson, *Legality and Empathy*, 85 MICH. L. REV. 1574 (1987) (drawing on work in social psychology, psychoanalysis, anthropology and religious studies).

³ This body of scholarship includes works on the meaning of punishment, on alternative criminal sanctions, and on the death penalty and so on. See, e.g., Dan N. Kahan & Martha C. Nussbaum, *Two Conceptions of Emotion in Criminal Law*, 96 COLUM. L. REV. 269, 273 (1996) (identifying two concepts of emotion in criminal law, mechanistic and evaluative); Robert C. Solomon, *Justice V. Vengeance: On Law and the Satisfaction of Emotion*, in PASSIONS OF LAW, *supra* note 2; Danielle S. Allen, *Democratic Dis-ease: Of Anger and the Troubling Nature of Punishment*, in PASSIONS OF LAW, *supra* note 2; William Ian Miller, *Clint Eastwood and Equity: The Virtues of Revenge and the Shortcomings of Law in Popular Culture*, in *Law in the Domains of Culture* (Austin Sarat & Thomas Kearns eds., 1998); Susan Bandes, *Fear Factor: The Role of Media in Covering and Shaping the Death Penalty*, 1 OHIO ST. J. OF CRIM. L. 585 (2004).

Moreover, as this example suggests, much of this work assumes that law's role vis-à-vis the emotions is reflective or expressive.

More recently, a small but growing body of scholarship has begun to push the boundaries of work on the emotions in law. Some scholars have begun to explore relations between law and the emotions that go beyond the expressive.⁴ Some have asked, for example, whether criminal sanctions can or should *impose* shame.⁵ Others have focused on the role of law in *channeling or rationalizing* retributive urges.⁶ Yet another group of scholars has begun to explore positive emotions in contexts beyond criminal law. These works probe, for example, the ways that law helps to script popular conceptions of romantic love⁷ or the ways that legal processes can contribute to the emergence of forgiveness or reconciliation following genocide or violent ethnic conflict.⁸

In this Article, we contribute to this “second generation” of scholarship on law and the emotions by broadening its focus in two ways. First, we seek to highlight a relation between law and the emotions which has not been the subject of previous legal scholarship: the role of law in cultivating, or facilitating, the emergence of particular emotions. Conceiving of law as

⁴ Other scholars who have contributed to this broadening of focus have observed that relations between law and the emotions are not unidirectional, and argued that it is important to understand the ways that law both constructs and is constructed by various emotions. *See* Susan Bandes, *Repellent Crimes and the Limits of Justice: Emotion and the Death Penalty at the University of California, Berkeley Center for the Study of Law and Society - Papers Presented in Bag Lunch Speaker Series Paper 28* (November 22, 2005), <http://repositories.cdlib.org/cslls/lss/28>.

⁵ *See, e.g.*, Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 620-24 (1996).

⁶ *See, e.g.*, Solomon, *supra* note 3.

⁷ *See* Cheshire Calhoun, *Making up Imaginary People*, in *PASSIONS OF LAW*, *supra* note 2 at 217.

⁸ *See, e.g.*, MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998); MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY (Harvey M. Weinstein & Eric Stover, eds., 2004).

facilitative is not, in itself, a novel undertaking. The power of law to encourage – or in our term, facilitate – particular forms of *behavior* is a formative assumption in many areas of civil and criminal law. The prospect of civil liability in tort has encouraged care in the performance of daily activities and professional duties; the *Miranda Rule* has fostered less aggressive or coercive behavior by police officers towards a suspect in custody.

In this Article, however, we are concerned not with law's cultivation of *behavior*. We focus on a dimension of the law yet to be explored: its cultivation of *emotions*. Hypothesizing, and exploring, this kind of role for law assumes a more complete interpenetration of law and the emotions than previous work in this genre. At the minimum, we view the law as being capable of facilitating the emergence of emotion-states -- a view requiring a more careful renunciation of the dichotomy between legal 'rationality' and the passions. But the relation we describe between law and the emotions goes further. We suggest that the law may be deployed in this way not because engagement with particular emotions serves law's own traditional goals – inducing conformity to the norms reflected in the criminal law, for example – but because the emergence of such emotions is thought to be a social good which might be encouraged by the law.

Second, this Article highlights the positive emotion of hope – an emotion not yet addressed by legal analysis – in order to incite more sustained reflection on the relationships between law and the positive emotions.⁹ An emphasis on the positive emotions flows naturally from our interest in cultivating emotions through the law. One can imagine using law instrumentally to

⁹ This Article is a part of a larger project in which we examine not only the role of law in cultivating hope, but also other relations between law and hope such as, for example, the role of law in scripting or manipulating hope.

engender particular negative emotions. There may be contexts, for example, where it is socially valuable to cultivate anger or disgust in a population.¹⁰ But one can imagine many more settings in which law might serve broader social purposes by cultivating positive emotions such as forgiveness or trust, emotions rarely discussed in the legal literature.¹¹ Exploring the law's relation to these under-attended emotions – the promise and dangers of its role in helping to bring them into being – is a valuable new direction for work in this genre.

Given our interest in these relations, our choice of hope is not incidental. Not only is hope a tremendously valuable emotion that has often been misunderstood; but hope is also an emotion whose cultivation may be particularly appropriate for law, because of its immense importance for individuals or groups who face material disadvantage, inequality, or despair. If law effectively cultivates hope and hopefulness among the members of such groups, then highlighting and developing this tool could provide us with a new and powerful legal means of fostering social change.

Two qualities distinguish legally-cultivated hope from conventional legal interventions like protective remedies or programmatic funding. First, a sound cultivation of hope¹² has the potential to transform the orientation of its beneficiaries. Those energized by hope can fuel and

¹⁰ Allen, *supra* note 3 (discussing the uses of anger in criminal law in Athens).

¹¹ One interesting exception seems to be the use of law – in particular procedural vehicles such as truth commissions or international criminal tribunals – to facilitate the emergence of forgiveness or reconciliation following instances of genocide or other systematic humanitarian violations. *See, e.g.*, MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998); Laurel E. Fletcher & Harvey M. Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 *HUM. RTS Q.* 573, 622 (2002).

¹² *See infra* in Part II where we point to the traits of an effective cultivation of hope and in Part III where we extend these points to the legal context.

direct the resultant efforts at change, rather than continuing to rely on an impetus that comes from outside. Second, hope, like many other emotions, is “contiguous” in its effects.¹³ One may learn to embrace and pursue hopes as a result of sustained exposure to others who are hopeful. So the first beneficiaries who internalize a hopeful stance may have a beneficial influence over others.

Both these qualities suggest that the legal cultivation of hope may become an ongoing process which has its own momentum, and which continues to produce results long after the investment of initial resources. In other words, legal investment in fostering positive emotions -- and particularly the emotion of hope -- might be a fruitful addition to, or in some cases alternative to, more conventional legal interventions. Of course, recognizing this potential and actually delivering on it are two separate things. For this reason, this Article focuses on these central questions: how does one cultivate hope in another, and how, in particular can this cultivation be achieved through law.

The Article proceeds in three parts. The first part uncovers the structure of hope as an emotion. Although hope has traditionally been the domain of theologians, it is increasingly garnering the attention of philosophers and social scientists who stress its pragmatic and empowering aspects as well as its social importance. Following works of this kind, our account of hope seeks to counter a faith-based, passive image of hope, which remains prevalent in our

¹³ See PATRICK SHADE, HABITS OF HOPE: A PRAGMATIC THEORY 132-33, 156-57 (2001) (explaining how, in Steinbeck’s *Grapes of Wrath*, Rose of Sharon became more hopeful through sustained exposure to the hopeful disposition of Ma Joad).

culture. We formulate a workable definition of hope, and distinguish it from related terms such as wishing, planning, and optimism. We identify several qualities that are necessary for an individual to become capable of hope, or, as we put it, become a “subject of hope.” These qualities include the ability to imagine new possibilities not encompassed by one’s present condition; a sense of agency sufficient to consider oneself capable of pursuing, and attaining, distant objectives; and adequate imaginative, strategic, and material resources to develop, assess, and implement means for realizing such goals. We then examine the process through which an individual applies these resources to attain particular hopes. We illustrate the process of hoping with the example of Zana Briski, whose efforts to create new possibilities for a group of children in Sonagachi, a red light district in Calcutta, are documented in the film “Born into Brothels.”

Part II goes beyond hope in the individual context to consider a less discussed possibility: an active, external effort to cultivate emotions in others. In some situations, particularly where despair has taken over, it may be impossible for people to conceive alternative futures for themselves, or see themselves as capable of creating such futures. In these settings it may be necessary for individuals who are not so constrained to help cultivate hope in others. This Part develops a profile of a beneficial effort to cultivate hope in others, which reflects five central elements: communicating recognition and vision; introducing an activity that allows for individuation; providing resources; supporting agency; and fostering solidarity.

This section develops this profile by reference to two specific examples. The first is Zana Briski who used photography to instill hope for the future in children from Sonagachi. In the second example, Julie Su, an attorney with the Asian Pacific American Law Center of Southern

California, engaged in an individual effort to cultivate hope in others through recourse to the law. As a lawyer representing a group of exploited garment workers in El Monte, California, Su used the process of litigation, and the community organizing that surrounded it, to legitimate the workers' aspirations for their lives in their new country and to build their confidence in the ability of their voices to shape public debate over sweatshop labor.

We then observe that, given the systematic character of many of the social problems that give rise to despair, individual efforts – legal or otherwise -- may not be enough. It may be necessary to cultivate hope through institutional interventions, including those secured by law. This Part concludes by discussing the perils entailed in such an enterprise. These include many of the same dangers entailed in individual hope – dangers of disappointment, self-deception, and paralysis – but also include dangers distinct to the cultivation of hope through institutions; for example, the danger that the power inequality utilized to facilitate hope may be used to the advantage of the more powerful cultivator rather than the prospective hoper and the danger that efforts at cultivation may stereotype or label as “other” the beneficiaries of cultivation efforts.

Part III applies the preceding analysis to the cultivation of hope through institutions established by law. It examines an effort to cultivate hope through one such institution: Project Head Start. This program was inaugurated in the 1960's as part of President Johnson's War on Poverty and was aimed at offering poor children and their families new opportunities through preschool education and additional family resources made available at local centers. Our analysis finds many of the characteristics of a successful cultivation of hope in this effort, particularly in certain features of Head Start required or facilitated such as the involvement of parents in the

administration of the centers, and the strong solidaristic relationships nurtured among parent participants and between parents and center staff. Second, and more critically, our analysis also illustrates the materialization of some of the risks of cultivated hope in the context of Project Head Start.

The Article concludes by framing a series of questions arising from our initial exploration, and by highlighting several possible roles that law might play in cultivating hope. It calls for further investigation of the promising notion that by supporting the emergence of certain emotions, law may play an empowering and facilitating role in our lives.

I.

Individual Hope

A. Conceiving Hope

1. Hope and Human Agency

People understand hope in many different ways. Some view hope as synonymous with wish or desire. This conception comprehends both the monumental (e.g., a hope for world peace) and the mundane (e.g., “I hope it doesn’t rain today”). Other views of hope, which sometimes draw on religious understandings, emphasize persistent faith in the face of obstacles, often including a faith in extra-human providence: “Hoping against hope, [Abraham] believed that he would

become ‘the father of many nations,’ according to what was said.”¹⁴ In this Article, we take our bearings from a different conception, one succinctly articulated by St. Thomas Aquinas. Aquinas wrote that hope takes as its object “a future good that is arduous and difficult but nevertheless possible to obtain.”¹⁵

In this definition, as in the faith-based understanding, hope is oriented toward a goal. One attribute of the goal is its goodness. In aspiring to this desirable object, hope is not distinct from wishing or longing. But another, central attribute of hope’s object is its quality as “arduous and difficult but nevertheless possible to obtain.” This quality means that hoping is not just connected to a goal, or to a desire for a goal, but to the means that tie the subject to the object of her hopes. “Arduous and difficult but possible” underscores the human agency involved in hoping. Achieving particular ends presumably would not be “arduous” or “difficult” for a divine being. This definition also suggests that the process which connects the hoping subject with the object of her aspirations is a process of devising and implementing means toward the goal. The juxtaposition of “arduous and difficult” with “possible” suggests that in the course of achieving

¹⁴ *Romans* 4:18 - 22. We originally encountered this cite to the Apostle Paul’s address to the Romans, as well as the reference to hope in St. Thomas Aquinas discussed below, in PATRICK SHADE, *HABITS OF HOPE: A PRAGMATIC THEORY* (2001). See Shade, at 178 (Romans); 43 (Aquinas)

¹⁵ ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, trans., in *Fathers of the English Dominican Province*, (Benziger Brothers, Inc., 1947, EWTN Online, Hypertext ed., New Advent staff, Hypertext Version Copyrights 1995, 1996, New Advent, Inc., June 25, 1997), I –II.40.1 (numerical references are to Parts, Questions, and Articles; so the foregoing cite refers to the second part of the first part, question 40, article 1); See also Shade, *supra* note 13, at 43 (quoting Aquinas’s definition of hope). We should note that our understanding of hope diverges in significant ways from that of Aquinas: as Patrick Shade observes, for Aquinas, “[t]he proper end or object of hope . . . is eternal happiness, and its attainment is impossible apart from a proper relationship with God.” Shade, *supra* note 13, at 179. However, notwithstanding Aquinas’s treatment of hope as a theological virtue, and our contrasting emphasis on human goals and human agency, the several elements of his understanding make it a valuable springboard for developing our interpretation.

the goal, one may have to identify and implement means that are not presently at one's disposal. The process of working through to the object of one's hopes operates within the potentially-extended time horizon defined by the term "future."

These elements may help to distinguish hope from a range of related emotions or attributes. The goodness of the object distinguishes hope from fear, dread or avoidance, which encompass emotional or behavioral responses one might have to a *unappealing* future possibility. The arduousness or difficulty of the goal distinguishes hope from planning. If the means to a future goal are at our disposal, we may simply plan for it, or make arrangements to initiate the identified means to the end. When means are indeterminate or presently unavailable, we move from the realm of planning to the realm of hope. However, the possibility of achieving the goal – that is, of identifying means to the end – distinguishes hope from wishing or longing. Hope has a basis in a strategy we may plausibly envision, whereas wishing knows no such path. And finally, as noted above, the conjoined descriptor of "arduous and difficult but possible" points to a vision of hope based on the assertion of human agency as opposed to one which places its faith in the supernatural or extra-human.¹⁶ This element of agency, or purposive self-assertion or self-direction, also distinguishes hope from optimism, which can be understood as a more passive confidence, based in past experience or present information in good outcomes. "Optimism,"

¹⁶ This definition is not necessarily inconsistent with a view of hope that emphasizes extra-human agency. It might be that what is arduous and difficult is persisting in one's conviction that divine providence will bring about the desired object. However, the structure of the defining sentence suggests that the difficulty, arduousness and possibility all refer to the achievement of the task by the agent who brings it about (probably a human agent, who would be more likely to encounter difficulty), rather than having the difficulty and arduousness apply to the human agent's maintenance of faith, while the possibility relates to the capacity of the divine agent to accomplish the goal.

Cornel West observes, “adopts the role of the spectator who surveys the evidence in order to infer that things are going to get better . . . Hope entails the stance of the participant, who actively struggles against the evidence in order to change [our conditions].”¹⁷

2. *Hope, Fear, and Despair*

As an affective orientation toward the uncertainties of the future, many contrast hope with two other emotions: fear and despair. Fear is a strong aversive or defensive response to a prospective unfolding of events that is believed to be threatening.¹⁸ Fear may reflect a reasoned response to impending dangers, but it can also be a visceral, pre-rational response.¹⁹ Moreover, psychologists have observed that fear can be readily conditioned by exposure to ostensibly threatening stimuli.²⁰ Psychologists distinguish fear from other emotions by the physiological response of intense arousal (sometimes referred to as a “fight or flight”²¹ response), coupled with cognitive responses of increased vigilance and heightened sensitivity to any indicia of emergence of the perceived threat. Although it is not always paralyzing – fear can motivate strong cognitive and physical responses frequently associated with avoidance – fear tends to induce a profound

¹⁷ CORNEL WEST, *RESTORING HOPE: CONVERSATIONS ON THE FUTURE OF BLACK AMERICA*, xii (1997); *See also* Patrick J. Deneen, *The Politics of Hope and Optimism: Rorty, Havel, and the Democratic Faith of John Dewey*, 66 *SOC. RES.* 577, 577-609 (1999).

¹⁸ *See, e.g.*, JEFFREY ALAN GRAY, *THE PSYCHOLOGY OF FEAR AND STRESS* (2d ed. 1987); A. Ohman, *Fear and Anxiety as Emotional Phenomena: Clinical Phenomenology Evolutionary Perspectives and Information-Processing Mechanisms*, in *HANDBOOK OF EMOTIONS* (Michael Lewis & Jeannette M. Haviland eds., 1993).

¹⁹ *See, e.g.*, JOSEPH E. LEDOUX, *THE EMOTIONAL BRAIN: THE MYSTERIOUS UNDERPINNINGS OF EMOTIONAL LIFE* (1996).

²⁰ *See* LEDOUX, *supra* note 19, at 159-160; Ohman, *supra*, note 18 at; WILLIAM W. GRINGS & MICHAEL E. DAWSON, *EMOTIONS AND BODILY RESPONSES: A PSYCHO-PHYSIOLOGICAL APPROACH* (1978).

²¹ *See* GRINGS, *supra* note 20; JEFFREY ALAN GRAY, *THE PSYCHOLOGY OF FEAR AND STRESS* 3 (1971) (noting that fear produces three possible responses: freezing, flight, or fight).

caution. It inclines the subject toward risk aversion, and makes experimentation, improvisation and new learning difficult.²² Hope, in contrast, moves with eagerness toward an anticipated future. It is associated with a resourceful, improvisational attitude toward new possibilities, and makes its subject receptive to new forms of learning.

Some describe fear and hope as directly opposed: Daniel Bar-Tal, for example, writes that in circumstances of intractable ethnic conflict, partisans facing a nascent peace initiative are often poised between fear and hope.²³ But scholars have also described a more dynamic interaction between the emotions, in which fear operates not simply as the alternative to, or “flip-side” of hope, but as a persistent, if often inchoate, threat to its emergence. Fear, as Bar-Tal has argued,²⁴ may overwhelm hope with its stronger physiological concomitants, and its greater ease of conditioning. Fear is also capable of redirecting and subverting ill-defined or unmet hopes. Chantal Mouffe, for example, has emphasized that vague or unsatisfied political hopes may be harnessed to create reactionary politics of nationalistic exclusion by politicians playing on the fear of the disordered or unfamiliar,²⁵

²² See, e.g., G. L. Clore, N. Schwartz & M. Conway, *Affective Causes and Consequences of Social Information Processing*, in 1 HANDBOOK OF SOCIAL COGNITION 323-417 (Robert S. Wyer, Jr. & Thomas K. Srull eds., 2d ed, 1994); A.M. Isen, *The Influence of Positive and Negative Affect on Cognitive Organization: Some Implications for Development*, in PSYCHOLOGICAL AND BIOLOGICAL APPROACHES TO EMOTION 75-94 (Nancy L. Stein, Bennett Leventhal & Tom Trabasso eds., 1990); LEDOUX, *supra* note 19, at [].

²³ Daniel Bar-Tal, *Why Does Fear Override Hope in Societies Engulfed by Intractable Conflict, as It Does in the Israeli Society?* 22 POLITICAL PSYCHOLOGY 601, 601-627 (2001).

²⁴ *Id.* at 605 (concluding that “[f]ear is a fundamental mechanism, easily evoked, that governs human consciousness. [Hope] [h]ence, [has to] subdue the often irrational and spontaneous domination of fear . . . through reasoning and imagination.”)

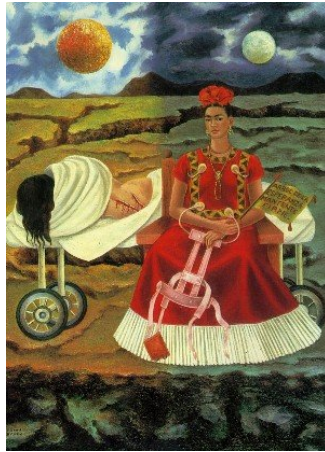
²⁵ Interview with Ernesto Leclau and Chantal Mouffe, in HOPE: NEW PHILOSOPHIES FOR CHANGE (Mary Zournazi ed., 2003).

Hope and despair are also frequently characterized as opposites; yet the relations between hope and despair are subtly different from that those of hope and fear. Despair does not prompt arousal or vigilant action; instead it enmires the subject in demoralization and paralysis. The despondency and immobilization characteristic of despair contrast markedly with hope's energy and sense of possibility. But hope and despair are often deeply intertwined, with each defining itself as against the other. Hope can shade over into despair, particularly when the hoper is not experienced in surmounting the barriers that are likely to arise in the pursuit of distant objects. However, a different pattern may also emerge. While a desperate situation may immobilize its subject, it may also produce a paradoxical effect, where hope may be ignited by an impulse – an instinctive self-assertion -- against an apparently hopeless circumstance.²⁶ This dynamic is particularly prevalent among those who have imagination and some sense of their own agency (two qualities which, as we argue below, are crucial to the ability to pursue particular hopes). Thus, unlike the contrasting emotion of fear, which not only opposes but threatens to overwhelm or subvert hope, despair – which often inflects the emotion of hope itself²⁷ – can *either* defeat *or* give rise to hope.

²⁶ See, e.g., Angus Fletcher, *The Place of Despair and Hope*, 66 SOC. RES. 521 (Special Issue on “Hope and Despair”, Arien Mack ed., 1999) (arguing that despair mates with hope in a twin relationship and neither will be present without the threat or promise of the other); Randolph M. Nesse, *The Evolution of Hope and Despair*, 66 SOCIAL RESEARCH 429 (Special Issue on “Hope and Despair”, Arien Mack ed., 1999) (arguing that hope and despair are intrinsically intertwined partners in the dance of desire and emphasizing the importance of acknowledging their interplay).

²⁷ Fear may also be present in the phenomenological experience of hope, in varied and discrete ways. The uncertain prospect faced by the hoper suggests that she must predictably harbor a certain anxiety about whether the object of her hopes can be achieved. The fact that political leaders can and do play on this aspect of political hope, suggests that fear may often lurk in the interstices of hope. See, e.g., Interview with Ernesto Leclau and Chantal Mouffe, *in* HOPE: NEW PHILOSOPHIES FOR CHANGE (Mary Zournazi ed., 2003). Moreover, because hope often requires the

The mutual dependence of hope and despair can be made more tangible by exploring visual representations of hope: Frieda Kahlo's painting, *The Tree of Hope* [figure 1], constitutes a powerful example.



[figure 1]

Kahlo's *The Tree of Hope* is a double self-portrait, in which a severely injured image of the artist is juxtaposed against her healthier image. The bleeding surgical incisions on the back of the prone figure refer directly to Kahlo's major source of despair. When she was eighteen, already disabled by childhood polio, Kahlo was involved in a bus accident which left her in intractable pain, ongoing medical treatment, and tremendous emotional distress.²⁸

hoping subject to explore unfamiliar or innovative means to reach her goal – or in Victoria McGeer's terms, to expand her own agency in the effort to secure her object -- the newness and unpredictability of her circumstances can themselves give rise to fear. However, despite these inflections, fear and hope are less widely characterized as integrally admixed, or mutually constitutive, than hope and despair.

²⁸ In the years preceding the creation of the *Tree of Hope* her physical decline had been becoming more acute.

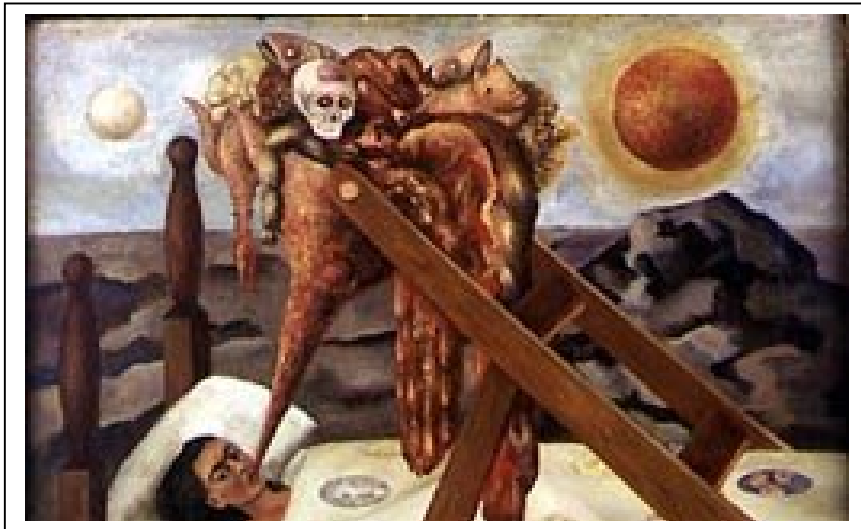
Many of Kahlo's paintings portray the stoic and determined response of the artist to her suffering. The Tree of Hope is unique in its dramatic juxtaposition of hope and suffering. Kahlo's sophisticated depiction of hope relies specifically on this imposing contrast: the elimination of the wounded figure in the background would leave the viewer with a portrait of a beautiful woman sitting in a formal pose that expresses no particular state of mind or emotional condition. The interdependence of hope and despair is distinctive, as many other emotions or states of mind (such as anger or disgust) define themselves independently of contrasting states. Kahlo's use of two images of the same person, rather than two different subjects,²⁹ ties hope and despair more tightly together, and questions whether it is even possible to hope without the presence, or prospect, of despair.

The composition of the images at the edge of an abyss further underscores the perception of hope as a response to despair, or to the likelihood that despair waits around the corner. In this sense, the stability of the chair that holds the hopeful Frida protects against the precariousness of the rolling hospital bed in which the injured Frida lies. The scene is full of restrained tension: remove the chair and the bed will roll straight into the abyss. Or, more generally, remove hope and those challenged by difficult circumstances will roll down the slope into a paralyzing despair.

The backdrop of the Tree of Hope is starkly divided as half of the scene is set under the burning sun while the other half is shrouded in darkness, broken only by the light of the full

²⁹ Compare, for example, with Gustav Klimt's *Hope II* in which hope is represented by a pregnant woman and contrasted with despair that is represented by a skull, a sign of death.

moon. This division not only enhances the contrast and interdependence between hope and despair; it also suggests that they struggle with each other for control. Kahlo's division of the background into equal halves suggests a moment of balance that is surrealistic. In nature, it is either the height of the day or the middle of the night, but never both in one place. Thus, this moment is fragile and temporary. Though the artist sustains this instant of equipoise, the viewer has the vertiginous sense that, at any moment, one of the contesting forces will overwhelm the other. Kahlo's brilliant depiction of this turf battle makes clear that to give up hope means to allow despair to take over – a theme that she chillingly depicted in Kahlo's *Without Hope* [figure



2]

Set against a background strikingly similar to the *Tree of Hope*, this painting depicts the artist, horizontal and immobilized in a large bed, sipping from a cup of horrors – a huge funnel filled with ghoulish and serpentine figures. A heavy and elaborate frame suspends this cup above her and a barren desert surrounds her. There appears to be no escape from her isolated, despondent state.

B. The Process of Hoping

In Part A above, we describe hope as entailing an extended process of conceiving, embracing and exploring means to achieve particular distant or challenging goals. One might reasonably ask whether this entire process of recognition, aspiration, and pragmatic problem-solving can appropriately be subsumed under the term ‘hope.’ In this section, we defend an affirmative answer to this question.³⁰ Unlike emotions such as anger, which frequently arise and dissipate, hope is a sustained or long-term emotion,³¹ with a trajectory that comprehends several phases. First, even before one can nurture any particular hopes, she must be, or become, what we will call a “subject of hope”: a person capable of aspiring to a goal that is “arduous and difficult but possible.” The subject must then take up a particular hope and begin to contemplate means to its achievement. The formulation and assessment of means may be an extended process, as the

³⁰ We would like here to acknowledge the influence of Patrick Shade’s wonderfully illuminating study, *HABITS OF HOPE*, in developing the conception of hope we advance here. Shade develops his conception from a “pragmatic scaffolding,” including a pragmatic conception of human beings as “complex biological organisms engaged in constant interaction with equally complex environments,” and a pragmatic understanding of habits as central to that ongoing interaction. See SHADE, *supra* note 13, at 14. While we do not share his biologically-based understanding of the human subject, and regard habits, perhaps less centrally, as one element in the development of hope, we endorse many elements of his understanding. In particular, we share his conviction that “hope should be treated as an activity, as hoping . . .” which involves both the embrace of ends and the identification and assessment of means. *Id.* at 14. Moreover, as analysts of law, and of social and legal institutions, we share his view that hope is “not a private mental state, but . . . an activity belonging to an organism in dynamic relation with its environment.” *Id.*

³¹ The question of what constitutes an emotion is a live, contested issue in the literatures of several disciplines. Perspectives lie on a set of continua that seem to respond, often critically, to the fundamental view of William James who theorized the emotions as more visceral surges of affect. Among these continua are those which move from body to mind, feeling to cognition, immediate to temporally extended, hot to cold, natural to acquired, primary/basic to secondary/complex, uncontrolled to regulated, violent to calm, individual to social, etc. For a more integrative view of the emotions see KEITH OATLEY, *EMOTIONS: A BRIEF HISTORY* 3-4 (2004); See generally DAVID C. EDWARDS, *MOTIVATION & EMOTION: EVOLUTIONARY, PHYSIOLOGICAL, COGNITIVE, AND SOCIAL INFLUENCES*, Ch. 4 (1998). We see hope as located more toward the latter end of each of the spectra, as opposed, for example to emotions such as anger or disgust that lie very close to the other end.

hoped-for object is, by definition, beyond the current capacity of the hoper to achieve. It may involve processes of imagination or experimentation. It may also require the hoper to develop capacities that she may not presently possess. In pursuing means, the hoping subject may be assisted by habits that help to cultivate hope, or by the support of others. Although this process may sometimes bring the hoper to the limits of her agency, rather than to the object of her hopes, it may also cultivate in her a quality of “hopefulness,” which transcends the quest for any particular hope.

In the following section, we will develop this conception of hope as a process in two ways. First, we will elaborate on the several phases of the process with reference to the ways in which at least some of these dimensions have been explored in the philosophic and sociological literatures on hope. Second, because the process of hoping, so conceived, is concrete and practical, we believe its meaning is best elaborated in the context of particular examples or narratives of hope. In this section, we will focus on one example: Zana Briski and Ross Kauffman’s award-winning documentary, “Born into Brothels.”³² This film documents Briski’s efforts to teach photography to a group of children from Sonagachi, a red-light district in Calcutta, with the goal of using photography to help escape their troubled environment. In the largest sense, the film explores how learning photography gave hope to some of these children. But much of its immediate focus concerns Briski’s efforts to realize her own hopes for their future. Through her painstaking and avid pursuit of these hopes, Briski avails herself of

³² BORN INTO BROTHELS (ThinkFilm, 2004).

surprising means and develops unexpected new capacities. The narrative of the film thus illustrates the several phases of hope we identify above as well as their interrelations.³³

1. Becoming a “Subject of Hope”

Not all human beings are “subjects of hope,” that is, self-consciously capable of embracing and pursuing goals that are “arduous and difficult but possible.” If a person sees herself as mired in her current circumstances, without even a distant possibility of change, she cannot be a subject of hope. Similarly, if she is not even aware that possibilities outside her immediate condition exist, she is incapable of hope.. Being, or becoming, a subject of hope is the first step in the process of hoping.

From the outset of *Born into Brothels*, Zana Briski, a Westerner and a career photojournalist as well as a subject capable of distant and challenging aspirations, heads off to India, eager to photograph its women, and to use her work to provide some form of assistance to those struggling with poverty and desperate conditions. When she decides to photograph the women of Sonagachi, she resolves to move into the dangerous and destitute red-light district, in order to live with her subjects and to interact with them on a more intimate basis. In Sonagachi she

³³ Our project, of demonstrating that we can cultivate hope through law, requires at least two kinds of reconceptualizations: we must recharacterize hope (in a way that emphasizes its imaginative and agentic features) and we must recharacterize law (in a way that show it to be capable of fostering particular emotions). In the following sections of the article, we take these reconceptualizations in sequence, first illustrating the process of hoping in ways that vividly demonstrates its imaginative and agentic character. The example on which we focus in this examination is not a legal example; but the process through which people embrace and pursue particular hopes is similar whether it occurs in a legal context or not. In Part III, where we explore the process through which *individuals cultivate hope in others*, we offer examples of both legal and non-legal cultivation. In Part IV, where we examine *the cultivation of hope through institutions*, we focus exclusively on an institution created and regulated by law.

encounters these women's children. Briski's bold schemes sometimes veer toward the incautious, a dangerous quality that can result from too much hope. However, it is clear that neither indeterminacy in her goals, nor the apparent difficulty of achieving them, prevent Briski from imagining these children's success.

2. Embracing Particular Hopes

For those who are capable of hoping, the next stage in the process of hoping involves embracing particular hopes. A subject embraces a particular hope on the basis of two distinct judgments. First, she perceives a goal that she judges to be *distant but valuable*; and second, she assesses this goal as *potentially* capable of being achieved, albeit by means that may be either presently indeterminate or beyond her present abilities. Zana Briski's experience demonstrates that these judgments may be developed simultaneously or reached in sequence over time.

This film does not explore Briski's initial plan to photograph Indian women which may have stemmed from professional curiosity, a desire for stimulation or success, or altruism. When she focused this plan by a chance visit to Sonagachi, Briski rented a room from a brothel owner so she could live closer to the women. As Briski witnessed the despair that suffused this environment, she may have developed the diffuse counter-hope that it might be possible to improve the lives of these women. But this hope for others crystallized as she came to know their children. The kids' fascination with her camera, and the revelations produced by a few initial photographs, persuaded Briski that teaching them photography could help her attain her goal. Her discovery is another common feature in growing particular hopes. The first taste of success

or satisfaction encourages one's sense that the goal might be achievable, which in turn supports and enhances the initial hope.

The narrative of the film makes clear that teaching photography to the children gave Briski at least three interrelated goals. Initially, she sought to expose them to an art form that had given her pleasure and sustenance, and in which they had expressed avid interest. The imagination and possibility expressed in these early photographs led Briski to conceive a second goal that could be achieved through the teaching of this art: helping the children to become, as we have described it here, “subjects of hope.” Not content simply to give them an experience of pleasure or interest, Briski began to envision giving them tools that would help them improve their own lives. As the children began to emerge as subjects with the capacity to imagine and value worlds different from their own, Briski began to pursue a final hope for the children: to enroll them in boarding schools, which would remove them from the red-light district and strengthen the abilities they were developing to pursue their hopes for themselves. While Briski’s own vocation, and imagination, pointed to a general vehicle for her effort, the project of getting the children out of Sonagachi into boarding schools required an elaborate and demanding search for means.

3. *Identifying Means to the End*

This investigation and assessment of means to one's hoped-for ends constitutes the most active, and often the most extended, phase of the process of hoping.³⁴ It requires, as a kind of condition precedent, the ability "to act as if" the goal can be achieved,³⁵ though one does not, in fact, know whether it will be accomplished. The distant character of their goals compels hopers to make a calculated guess about their possibility. To be a good hoper requires clear-sightedness in this assessment, but also a refusal to be deterred by what might appear to be the long odds on the accomplishment of such an objective. In this latter task, the ability to proceed "as if" is key. This assertion— which must take place in the face of great desire and great uncertainty— involves a suspension of doubt, an act of imagination or cognitive discipline. Briski, for example, had no idea whether she could bring the joy of artistic creativity to those living in the most destitute slums of Calcutta, or could raise the funds and secure the admissions to send the

³⁴ It may at this point be useful to consider a possible objection to this conceptualization: that the emotion or activity of "hoping" is comprehended by the espousal of assessing a particular hope – that is, the valuation of a particular good as desirable and "arduous and difficult but possible to achieve" – and the pursuit of that good is a separate activity. We reject this argument for at least two reasons. First, while we may separate these phases for purposes of analytic clarity, experientially, the perception of a good as valuable and arduous yet possible to achieve almost immediately entails reflection on the means to achieve it. One's mind almost imperceptibly shifts from the valuation and judgment of difficult to the assessment of means of mitigating that difficulty. Second, as suggested above, although the perception of the object of hope may temporally precede the assessment of means, as an initial matter, over time the two prove to be mutually constitutive. The perception of the value and difficulty of the goal ignites the exploration of means, and the investigation and assessment of means fuels the re-characterization of the goal and/or the sense of the plausibility of its achievement. We will see both of these patterns in our examination of *Born into Brothels* below.

³⁵ Philip Pettit, *Hope and its Place in Mind*, in 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 152-65 (SPECIAL ISSUE 'HOPE, POWER, AND GOVERNANCE' Valerie Braithwaite ed., 2004) (arguing that hope will consist of acting as if a desired prospect can be achieved, for purposes of investigating practical means to its achievement); SHADE, *supra* note 13, at 67-70 (noting that this acting as if is a reflection of the faith – dynamic and practical, rather than passive – that can be instrumental to hope).

children to boarding schools. Indeed, a more cautious individual might have quickly concluded that these goals were unattainable.³⁶ Yet Briski had to proceed as if these goals were manageable, or her doubts³⁷ and fears would have overwhelmed an already daunting process.

Hopers do not suspend doubt for its own sake, but for the purpose of exploring different means of achieving the valued good or object. Identifying means requires the hoper to imagine a range of possibilities, and to remain open to unfamiliar and potentially risky strategies. Briski had probably never contemplated the boarding schools of Calcutta. But as she realized that girls remaining in Sonagachi would mean, among other things, the rapid recruitment of the older girls into lives of prostitution, Briski recognized the importance of moving them away. The potential of boarding schools became plain. Once the hoper conceives a possible strategy, she must translate imagined means into practice, and engage in pragmatic assessments of their efficacy. While this exploration of means is aimed at producing change in the world, it also frequently produces changes in the capacities of the hoping subject. To implement particular means, the hoping subject may need to overcome fear or hesitation, or may need to develop skills that she previously lacked. The development of these additional capacities may, in turn, permit the subject to identify potential means that she initially failed to perceive.

³⁶ Even Briski herself notes at one point that it was almost impossible to get the children of prostitutes into boarding school, because schools did not admit children of those who had broken the law, and prostitutes were, by definition, criminals.

³⁷ We understand doubt to be not an emotion, but rather an intellectual orientation that tends to be connected with certain emotions. When one experiences doubt, in relation to a highly valued but distant goal, one dwells on the obstacles or risks implicit in its pursuit, which permits fear or despair to enter. Both the cognitive experience of doubt itself, and the fear or despair which may accompany it, can supplant the planful selection of means which represent the next phase of hope.

When Briski identified the goal of sending the children to boarding schools as well as the need to send Avijit, her most promising student, to an International Children's Jury in photography in Amsterdam, she realized that financing her goals would be the biggest challenge. Photography was once again a central means, but the effort to raise funds turned out to be an elaborate project with many complications and contingencies that required Briski to grow significantly as both an agent and as a hoper. As a Westerner without children who had spent her professional life doing photography, Briski had never orchestrated international exhibits or created foundations. She even acknowledges that she had never held a video camera, until she decided to film her efforts and create the documentary. Yet she was required to develop these skills to utilize the economic potential of the children's remarkable talents.

4. Support for the Process of Hoping

Two kinds of instrumentalities assist in developing means and the capacities to implement the process of hoping. The first is what pragmatist philosopher Patrick Shade has called the "habits of hope," which are developed by the hoper herself. The second is the assistance of other people who are capable of recognizing her hopes and helping her in various ways to achieve them.

Habits, Shade argues, "direct energy and enable more complex modes of interacting" with a multi-faceted and changing environment.³⁸ Habits play a particular role in relation to a temporally-sustained and cognitively-inflected emotion such as hope: they "enabl[e] us to persist

³⁸ SHADE, *supra* note 13, at 76.

in hoping, and prepar[e] us to act when conditions are appropriate”³⁹ The habits that are particularly important to hoping are persistence, which sustains us; resourcefulness, which permits us to explore and expand our agency; and courage, which supports the first two kinds of habits, by enabling us to “face arduous tasks.”⁴⁰ Persistence itself, Shade notes, comprises other habits such as patience, attentiveness, self-control, and the ability to keep active.

Because persistence alone can be limiting when it entails a commitment to a fruitless strategy, it must be combined with resourcefulness, which facilitates adaptability and change. Resourcefulness means the “ability to connect means with ends,”⁴¹ which in turn requires the ability to focus on the possible means at our disposal and to begin to imagine others. Resourcefulness also requires adaptation or “practical sensitivity”⁴² which helps us to bolster our abilities or shift our means when this is necessary to realize our ends. Courage means the willingness and ability to summon energies to face and overcome risks.⁴³ It is not a rash bravado, but “informed risk-taking . . . based on an intelligent assessment of means and ends.”⁴⁴ Courage helps those who hope to persist in the face of uncertainty or frustration, and permits them to follow their pursuit of means or expansion of their own capabilities into unfamiliar or challenging areas.

³⁹ *Id.* at 77.

⁴⁰ *Id.*

⁴¹ *Id.* at 89.

⁴² *Id.* at 104.

⁴³ *Id.* at 119.

⁴⁴ *Id.* at 117.

The creativity and resourcefulness hailed by Patrick Shade infuse many of Briski's efforts. The idea of exhibiting the photos as a fund raising vehicle provides one powerful illustration. Briski also demonstrated resourcefulness when identifying the educational opportunities that best suited each of the children⁴⁵ and by introducing the prospect of boarding school to parents.

The film also highlights the persistence that fueled Briski's assault on the governmental and educational bureaucracies responsible for administering the children's opportunities. The scenes detailing the frustrations that Briski confronts when compiling the materials for each application to boarding school, or the hours she spends waiting in line to obtain a visa for Avijit's trip to the Netherlands, aptly demonstrate the persistence that these tasks required her to develop.⁴⁶

Finally, the film underscores the role of courage in Briski's achievement of her aspirations for the children be it the courage of making a home in the destitute and sometimes dangerous conditions of the red-light district, the fortitude of plunging into the chaos of an Indian immigration office to fulfill an urgent and time-limited errand, or the steadfastness of explaining and re-explaining to one child's mother why she must leave for boarding school on a Thursday despite the ardent view of the mother that Thursdays are unlucky days for beginning any new undertaking.

These habits may be fueled by early success, which encourages their repetition and consolidation, and by the consistent example of friends, family or other intimates in which whom

⁴⁵ In one case there were opportunities specific to the unusual artistic skills of one child, Avijit; in other cases, there were schools that were only open to girls.

⁴⁶ In one memorable scene, Briski puts her head in her hands and says "if I have to deal with the ration card guy one more time, I think I'll jump off a bridge." Nonetheless, she does deal with him and so is able to secure what she needs from this apparently intransigent figure.

they are strongly developed.⁴⁷ But perhaps most important in developing successful habits and the hopes they fuel, is the support provided by others. A successful hoper must know how to tap the resources provided by other people, without becoming wholly dependent on them. Victoria McGeer has argued, for example, that “hoping well” requires hoping subjects to understand that the abilities and imaginations of other people must often be used to supplement, but cannot ultimately replace, their own agency in pursuing their goals. McGeer distinguishes two modes of ineffective hope, both of which involve an inability to appreciate the role that can be played by others in one’s hoping.

The first, which she calls “wishful hope”⁴⁸ remains over-reliant on the powers of others to achieve one’s hopes, and hope prevents the subject from exercising her own agency in achieving them, or recognizing when they have become impossible. The second, which she calls “willful hope”⁴⁹ invests one’s identity so greatly in the achievement of particular hopes that one begins to treat other people as means to achieving those ends. Both of these flawed forms can lead to too much hope, which holds out the risk of self-delusion, and ultimately disappointment or despair. In contrast, McGeer advocates a middle ground that she calls “responsive hope,” which draws on the material and, more importantly, the psychological assistance of well-meaning others to make one’s way to one’s objects.

⁴⁷ See SHADE, *supra* note 13, at 133-34, 151-59 (describing fictional and non-fictional accounts in which individuals develop hopefulness through exposure to the hopefulness of friends or family members).

⁴⁸ Victoria McGeer, *The Art of Good Hope*, in 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 110 (2004).

⁴⁹ *Id.*

Though in some of her efforts – for example, her navigation of certain glacially-slow administrative processes– Briski seems dauntingly alone, many of her tasks are supported and facilitated by the community she creates around the goal of disseminating the children’s work. She learns to be particularly adept in calling on the resources of New York photographers and philanthropists for organizational support, fundraising strategies, and technological assistance.⁵⁰ And she invites Ross Kauffman, an experienced cinematographer, to come to India to work with her and the children when she realizes that she has the makings of a documentary film on her hands.

5. From Particular Hopes to Hopefulness

Through careful cultivation of “habits of hope,” and measured reliance on the assistance of others, those who pursue particular hopes can also begin to develop hopefulness as an orientation. As Patrick Shade explains, habits fuel a set of characteristics that go beyond operational modes of pursuing one’s objects to become a quality of mind or disposition.⁵¹ As persistence and resourcefulness become more deeply ingrained, hoppers develop a sense of alert receptivity. Courage and persistence – often fostered by the moral and intellectual support of others – help to them to remain active in the face of disappointment, and attentive to shifts in circumstances and possibilities. Shade describes the hopefulness that emerges as

⁵⁰ Note the scene in which children are connected via computer simulcast to an exhibition in New York City. But perhaps note more generally that in the narrative of the film, these forms of assistance seem often simply to appear in Briski’s life; she does not focus in particular on the decisions she made in deciding to seek assistance from outside her immediate field and environment.

⁵¹ SHADE, *supra* note 13, at 135-40 (exploring relation between particular hopes and hopefulness).

...an energetic openness to promising possibilities which enables us to think, act and lives within a rich horizon of meaning. This horizon is dynamic, with a blend of determinacy and indeterminacy. On the one hand, it has enough determinacy that we sense there are concrete goods which we might pursue – specific ends which are continuous with ourselves and so meaningful to us. Yet this determinacy is coupled with adequate openness that we might truly change and develop. Time is fluid and fertile for the hopeful, indicating room for growth and experimentation ... Consequently, it enables us to transcend the present even as we live in and through it.⁵²

Although it is neither a linear nor in many cases a conscious process, the transition from particular hopes to hopefulness as a disposition is tremendously significant, and should speak even to those who are skeptical about the value of hope. The greatest promise in hoping may lie in the potential to develop this quality. The deep inclination toward aspiration and pragmatic self-assertion that hopefulness entails helps those who acquire it to surmount specific obstacles and recover from unavoidable disappointments. They are able to pursue not just one particular hope, but a series of aspirations that permit them to direct and transform their lives.

The hopefulness demonstrated by Briski reflects this idea, as well as the varied forms that this quality may display in individual lives. As the film unfolds, Briski presses forward persistently, though she does not always evince confidence in the success of her endeavor. She

⁵² *Id.* at 136.

frets audibly in the contemporaneous comments that document her responses to unfolding events: her first response is almost always to fear the impending collapse of her plans. “Potentially disastrous news,” she declares, when she learns that the children must be tested for AIDS in order to apply to boarding schools. “I’m *very* worried about him with this news,” Briski confides when she learns of the death of Avijit’s mother, later adding to a school official “if he doesn’t get out [of Sonagachi], he’s lost.” Briski’s persistent worrying, or anticipation of the worst, seems to function largely as a vent for her anxieties as she tackles a daunting series of unfamiliar tasks. It also offers a potent illustration of the difference between optimism and hopefulness. Briski is not optimistic: she recognizes the odds, or, as Cornel West puts it, the evidence, against her. Yet this seeming pessimism never stops her from being hopeful, from moving forward with her plans, or from devising a new strategy if an initial gambit fails to produce⁵³

Hopefulness also permits those who develop it to withstand the failure of particular hopes. Despite Briski’s assault on the boundaries of artistic philanthropy, Indian bureaucracy, and her own considerable capacities, her effort inevitably brings her up against the limits of her agency. The children are refused entry into some of the schools that Briski identifies. Some of the children’s families flatly refuse to permit them to leave Sonagachi. Avijit’s hard-won attendance at the International Children’s Jury is almost foiled by the grief and depression induced by the

⁵³ For example, Briski may be devastated by the news that the children will require HIV tests in order to apply to schools. But this does not stop her from finding a pathologist willing to perform the tests, overcoming the children's fear of needles, and obtaining the results that are required.

death of his mother, who has been burned in a punitive rage by her pimp. Briski must accept the fact that her hopeful efforts can expand the children's capabilities and, in some cases, their aspirations for themselves; however, they cannot insure the achievement of all of her specific objects.

Yet even as she encounters these limits, Briski demonstrates a potent tendency toward hopefulness -- in her case, a determined, industrious persistence in pursuing the achievable dimensions of her goals. A spirit of hope infuses the film that grew out of her efforts; and her experience in Sonagachi led Briski to create "Kids with Cameras," a foundation that supports the teaching of photography to help children achieve agency and hope in a variety of impoverished or war-torn contexts.⁵⁴ This quality of hopefulness permits Briski to challenge the limits on her present achievement of her goals. Through this "Kids with Cameras," for example, Briski hopes to fund the higher education of Gour, a highly intelligent boy who has had to remain in Sonagachi, but aims one day to attend university.

⁵⁴ See the organization's mission statement: "Kids with Cameras is a non-profit organization that teaches the art of photography to marginalized children in communities around the world. We use photography to capture the imaginations of children, to empower them, building confidence, self-esteem and hope." Kids with Cameras, <http://www.kids-with-cameras.org/mission/> (last visited Mar. 6, 2006). According to the website in addition to Calcutta, projects have been held at Haiti, Jerusalem and Cairo.

C. The Benefits and Hazards of Hope

1. The Benefits of Hope: Individual and Collective

Hope is essential in leading a meaningful life. It can give us firm direction and protect us from panic and demoralization.⁵⁵ Empirical research has begun to demonstrate hope's many advantages. People who are capable of hopeful thinking have greater happiness, less distress, superior coping skills, and enjoy more success at achieving their goals.⁵⁶ In fact, hope is so crucial to human life that many consider life without hope to be a kind of psychological death,⁵⁷ which may sometimes lead to physical death.⁵⁸ As the foregoing makes clear, the emotion of hope and the disposition of hopefulness confer important advantages on both individuals and the communities in which they flourish. We believe it may be useful, however, to specify the particular features of hope, or hopefulness, that give it these richly generative effects, as well as to observe that these effects may be experienced both by individuals and communities..

First, far from entailing a faith-laden surrender to super-human providence, hoping reflects and develops the agency, or purposive self-assertion, of the hoping human subject. Even a brief review of the process of hoping demonstrates that several different manifestations of agency are involved. These forms of agency are cultivated and enlarged by the pursuit of particular hopes, the development of habits of hope, and the emergence of hopefulness as a characteristic or

⁵⁵ Philip Pettit, *Hope and Its Place in Mind*, in 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 152, 160 (2004).

⁵⁶ C. R. SNYDER, THE PSYCHOLOGY OF HOPE (1994).

⁵⁷ *Id.* at 115-49.

⁵⁸ *Id.* at 149-61.

disposition. The subject of hope subscribes to a normative value system that permits her to identify certain goals as valuable. Although this value system will be shaped, to greater or lesser degree, by culture or context,⁵⁹ her ability to use it to identify a goal that is distant from her present circumstances suggests powers of will and imagination that have positive, agentic value. Her perception of a distant and challenging goal as potentially achievable, and her confidence in her ability to work concertedly to produce change in her present circumstances, manifest agency that can benefit her in a range of contexts. A person with these capacities is likely to be active and resourceful, rather than fearful or immobilized, when facing new or unexpected challenges. The ability to proceed “as if” reflects a cognitive discipline or focus. The ability to pursue means demonstrates a command of means-ends rationality, sound situational judgment, and the ability to navigate resourcefully in the face of difficulties. Many forms of self-direction rely on such practical, problem-solving skills. And the enhancement of the skills and capacities of the subject that can occur through the process of hoping reflect not just a manifestation but an enlargement of agency. Effective hoppers explore both imaginatively and in practice growth in their capacities, taking a curious and improvisatory attitude toward even their own present limitations.

Thus, through cultivation and over time, the process of hoping produces subjects who are more resilient in the face of difficulty, and more resourceful as individuals. As McGeer notes, “they adapt more easily to real world constraints without sacrificing their creative energy; they

⁵⁹ Possible observation: Where there is a high degree of conformity with a [paradigmatic] normative system produced by the subject’s culture or circumstances, her embrace or articulation of such a system may not in and of itself demonstrate agency.

explore more pathways toward reaching their goals; and they often discover reserves of untapped power in the process.”⁶⁰ These qualities explain why hope is such a unique resource for individuals. They also demonstrate why hope should matter to political communities, who might support it through law.

The tenacity, adaptability, and problem-solving capacities that enable good hopers to support their own flourishing also make them more likely to function well with others. The imagination and generativity that characterize effective hopers may help them to fuel discussion and stimulate thought in others. The development of means/ends rationality that arises from the process of pursuing hopes also permits hopers to contribute to collective planning and other kinds of decision-making. Effective hopers also understand the value of interdependence with others for material assistance, for insights that might spur the imagination, for the persistent questioning that can clarify the value of particular means and keep hopers on the path of particular goals, and generally, for support and encouragement in times of adversity. And the best hopers also understand the limits of such reliance. They recognize the need to question their own abilities and contributions as well as whether they have become too dependent on the agencies of others.

2. The Hazards of Hope

Either in spite of or because of the compelling character of hope, some scholars and cultures have viewed hope as a curse rather than a blessing: a sirens’ song that tempts or misleads us, or a

⁶⁰ McGeer, *supra* note 48, at 105.

recipe for wishful passivity when the situation requires clear-eyed action.⁶¹ Although we reject this unequivocally negative assessment, we also eschew those views of hope that are unqualifiedly sunny. We envision hope as a richly provident and enabling emotion, which is nonetheless subject to distinctive hazards. It is crucial to identify and analyze these hazards, even as we acknowledge hope's many benefits.

Because hope aims at a distant object whose achievement is, under the best circumstances, arduous and difficult, many of its most salient dangers concern the response of the hoping subject whose object proves elusive. A truly effective hoper, whose pursuit of numerous particular objects has fostered a disposition toward hopefulness, is usually capable of both recognizing and sustaining such setbacks. But those whose capacity for hope is less well developed may manifest a range of detrimental responses, including disappointment and delusion. From one perspective, these dangers might be seen as balancing the seductive appeal of hope. Writing about the fear of disappointment, Erich Fromm observed: "Perhaps this is good. If man did not experience the disappointment of his hope, how could he avoid the danger of being an optimistic dreamer?"⁶² Yet this possibility of counterpoise does not prevent each of these dangers from offering potent pitfalls to particular hopers.

⁶¹ SNYDER, *supra* note 56, at 2-3.

⁶² ERICH FROMM, *THE REVOLUTION OF HOPE*, 12 (1968). [FROM EXEC: SOURCE REQUESTED FROM NRLF].

Disappointment is perhaps the most straightforward of these negative responses.⁶³ Though a confident or experienced hoper can put her difficulties in perspective and turn her attention to the pursuit of new goals, one who holds tenuously onto hope may feel overwhelmed by the defeat of her aspirations. "Hope is often shattered so thoroughly," Fromm notes, "that a man may never recover it."⁶⁴ This may produce a distrust in or disillusionment with the process of hoping, leading to a diminution of energies and a despairing reluctance to extend oneself toward other objects. For example, Patrick Shade analyzes the story of Cedric Jennings, the focus of journalist Ron Suskind's nonfiction work, *A Hope in the Unseen*.⁶⁵ Cedric, a talented student with high aspirations, has struggled to survive the impoverished, corrosive environment of Ballou Senior High School, in one of the most troubled neighborhoods of Washington, D.C. He is thrilled when he is accepted to MIT's Minority Introduction to Engineering and Science, a program for promising students. But once he arrives in Cambridge, Cedric discovers that his academic preparation lags far behind that of the other students. Even more disappointingly, he finds himself as socially isolated as he had been at Ballou because his classmates, albeit students of color, typically come from wealthier backgrounds. Returning from a summer in which he persistently found himself both ill-prepared and alone, Cedric finds ydifficult to sustain his

⁶³ Marianne Horney Eckardt, *The Theme of Hope in Erich Fromm's Writing*, in 18 Contemporary Psychoanalysis 121-131 (William Alanson White Institute ed., 1982) reprinted in YEAR-BOOK OF THE INTERNATIONAL ERICH FROMM SOCIETY (1992) (presenting the theme of shattered hope and its consequences in Fromm's writings. Fromm pointed to several main negative results: hardening of the heart, a reaction of destructiveness and violence, a retreat into a resigned state of half aliveness, and also suffering and despair. Paradoxically, according to Fromm the risk of suffering or despair may become a source for an emergence of hope).

⁶⁴ FROMM, *supra* note 62, at 12.

⁶⁵ RON SUSKIND, *A HOPE IN THE UNSEEN: AN AMERICAN ODYSSEY FROM THE INNER CITY TO THE IVY LEAGUE* (1998).

hopes. As Suskind explains, before attending the program, “it seemed like [Cedric] was infused with hopefulness, that he had a plan . . . But it’s a lot harder to imagine all that now. He’s not even sure, at this point, if he even belongs at some top college. For what? To have this summer replicated for four years?”⁶⁶

Even more insidious are various forms of self-delusion, because these may follow closely on an ardent, if incompletely developed, sense of hope, and may be more difficult to distinguish from it. These hazards of hope (or defective forms of hope) diverge from the quality that we have examined above either by a defect or an excess of agency on the part of the hoping subject. Yet in many of these cases, notwithstanding the increasingly evident problems, these subjects persuade themselves that they are in fact moving closer to the object of their hopes.

The process of hoping, as we argue above, always begins with the embrace of a distant object, the acknowledgment of a desire which may be difficult to fulfill. But without self-assertion, which includes judgment about means and ends, the marshaling of resources and support, and ongoing recalibration of strategy, this desire remains a wish rather than a cornerstone in the process of hoping. The defect we identify as passive hoping is most likely to occur when hoppers focus their energies on sustaining a particular desire, rather than asserting themselves in order to bring it about. This may happen through a defect of character that disposes the prospective hoper more toward longing than toward activity. It may occur where a

⁶⁶ SUSKIND, *supra* note 65, at 100. It is worth noting, however, that Cedric’s hopes, and hopefulness, prove more resilient over the long-run than they initially appear when he returns from MIT. He is able to find out about an Ivy League college – Brown University – that seems more accepting of personal difference. And despite a long path, ruttled with setbacks, he is able to have a successful academic and social experience there.

prospective hoper with strong powers of imagination is constrained by a material context that offers her few resources with which to work toward her goal. But in many of these cases, the prospective hoper does not see herself as having stopped short at the first step of a more elaborate process. Rather, through a form of self-delusion, the desire component of hoping stands in for the whole process of hoping.

This synecdoche may occur when the hoper persuades herself that the urgency of her desire alone can somehow bring it closer to fulfillment. She may believe in extra-human provenance for some kinds of ardently sustained or meritorious desires. We may think of Abraham as steadfast and committed to the goal of becoming “the father of nations,” because we know the end of his story. But we might describe another eighty-year-old couple clinging to their dream of biological parenthood as passive hopers of this variety. The Melians, in Thucydides’ account of the Peloponnesian Wars, provide another example of a people who failed to perceive a mismatch between their desires and their ability to bring them into being. They sought to avoid surrendering to the Athenians, but lacked the military might to challenge them on the battlefield. When Athens confronted the Melians with superior strength, the Melians, buoyed by the ostensible justness of their cause, persisted in the hope of rescue, by Sparta or by divine provenance. This decision may be viewed as an example of passive hope.⁶⁷

⁶⁷ See THE COMPLETE WRITINGS OF THUCYDIDES: THE PELOPONNESIAN WAR 332-335 (Modern Library College Edition, 1951). Interestingly, the Athenian response to the position of the Melians refers to several of the defects of hope discussed here – including overconfidence, passivity, and reliance on extra-human agency -- although the Athenians characterize these as if they were the essence of hope rather than its defective forms:

Hope, danger’s comforter, may be indulged in by those who have abundant resources, if not without loss, at all events without ruin; but its nature is to be extravagant, and those who go so far

Sometimes those who have suffered a progressive attenuation of the means to achieve their aspiration find it easier to persist in pursuing the object of their desires than to confront the absence or diminution of their resources for achieving it. Passive hope can be a particular danger when one has lost momentum in a particular effort or when one is facing a process of change which has overtaken one's power or position. In such contexts, the passive hoper may prefer to maintain her position of "hoping for the best," rather than acknowledge her diminished circumstances. Vincent Crapanzano argues that this stance flourished among members of the white minority, as the anti-apartheid forces began to prevail in South Africa.⁶⁸ In each of these instances of self-deluding passivity, the forward trajectory we see as distinctive to hope is lost, including the strategizing and resourceful improvisation that comprise the most distinctive and valuable characteristics of hope. And the persistence in the desire itself can become a paralyzing or regressive influence.⁶⁹ It forms an excuse for "making do" with a painful or unsatisfying status quo, and avoids the "righting [of] the present."⁷⁰

as to put their all upon the venture see it in its true colours only when they are ruined . . . Let not this be the case with you, who are weak and hang on a single turn of the scale; nor be like the vulgar, who, abandoning such security as human means may still afford, when visible hopes fail them in extremity, turn to invisible, to prophecies and oracles, and other such inventions that delude men with hopes to their destruction.

Id. at 333 (internal quotations omitted).

⁶⁸ See Vincent Crapanzano, *Reflections on Hope as a Category of Social and Psychological Analysis*, 18 CULTURAL ANTHROPOLOGY 3, 18 (2003). See generally, VINCENT CRAPANZANO, WAITING: THE WHITES OF SOUTH AFRICA 42-47 (1986).

⁶⁹ In most contexts, the exclusive focus on the object of one's longing is not so much an analytic error as the vehicle for self-delusion by one who may not want or have the ability to take part in the more active phases of hoping. But confusion about the distinction between wishing and hoping, or a view of hope as consisting mainly in the identification and maintenance of a distant desire, is common in popular conceptions of hope and may account for the mistrust of this emotion.

⁷⁰ This language comes from Kay Ryan's evocative and revealing poem entitled "Hope":

If passive hoppers suffer a defect or diminution of agency, there are other flawed hoppers who suffer from its excess. Those who select goals which no conceivable means would permit them to achieve, or persist ceaselessly in a particular strategy which is unavailing, do not lack for powers of self-assertion. But their will or energy is not adequately combined with the judgment, or pragmatic ability to change course, that characterizes the most successful hoppers. We often view the resultant imbalance as over-confidence, stubbornness or inadequate flexibility, rather than a flawed form of hope. But it is also possible to describe these problems as a failure to develop the context-sensitive, improvisatory approach to the identification of means that comprises part of the process of hoping. Moreover, to the extent that experience with hoping gives hoppers confidence in their agency they may be more likely to develop this problem than the problem of passivity.⁷¹

Zana Briski, in her initial steps toward the brothels of Sonagachi, may have exhibited some overreaching or impulsiveness in the objects of her hopes. She headed to India to photograph women there, vaguely aspiring to contribute to a betterment of their circumstances through her work. Not only did this goal seem overly large, even potentially grandiose, it also did not display concerted or deliberate thought about the relation between the end of amelioration and the

What's the use/ of something as unstable/ and diffuse as hope/ the almost twin/ of making-do/
the isotope/ of going on:/ what isn't in/ the envelope/ just before/ it isn't./the always tabled/
righting of the present.

KARLENE KAY RYAN, *TO FIND HOPE: SIMPLE WISDOM FOR THOSE WHO GRIEVE* (1997).

⁷¹ One example of a hoper who did not lack for self-assertion, but lacked the ability to discern when it was time to change course in the pursuit of his hope is Jan Schlichtmann, the lawyer for the plaintiffs, in the lawsuit depicted in *A CIVIL ACTION*. Schlichtmann employed a strategy of displaying extravagant confidence – frequently reflected in the staging of opulent breakfast meetings in luxurious settings -- in order to bring opposing counsel to the settlement table. He failed to recognize, however, that this strategy was not working in the particular case at issue, and wound up not only failing to achieve the settlement he wanted, but squandering the resources of his practice.

photographic means. She refocused her goal when she was taken with the vitality and visual intricacy of Sonagachi's alleyways and resolved not only to photograph the women there but also to live alongside them in a destitute, unfamiliar and sometimes dangerous environment.

What saved Briski from impetuous or overreaching aspiration was her ability to recognize a promising object when it was presented to her and to understand when it was necessary to change strategies or curtail her involvement. Although the children initially suggested the idea of photography class, Briski immediately recognized it as a unique opportunity, ordering the point-and-shoot cameras and teaching herself in order to capture the whole thing on video. In addition, while applying herself relentlessly to the task of finding the children alternatives to life in Sonagachi, she also grasped the fact that at some point her efforts could become futile and she planned accordingly. At one point when Avijit threatened to reject the position that Briski painstakingly secured for him at a well-regarded private school because the principal proposed to put him back a grade or two, Briski observed, "if he does not take this opportunity, there is nothing more I can, *or want to*, do." Although Briski (as presented in the documentary) is capable of avoiding these dangers of individual hope, they remain palpable hazards that we must bear in mind as we proceed to other contexts.

II.

Cultivated Hope

A. Beyond the Brothels

So far we have discussed hope as a quality that emanates from the resources, characteristics and experiences of an individual hoping subject. One must not overstate the individuation or internality of such hope: no one who hopes well hopes in isolation. The support and shared hopes of others can be an important determinant of any subject's ability to conceive and pursue hopes. But of special interest to social and legal thought are those situations in which hope, perhaps counterintuitively, does not "spring internal"⁷² — that is, does not originate in an individual subject. The potential of hope to empower its subjects and combat the threat of despair induces many people to attempt to cultivate hope in *others*.

When Zana Briski gave cameras to the kids in the red light district, she acted on her own individual hopes. Yet, by reaching out to the children and offering them new tools— the physical cameras, competence to use them, and support necessary to experience artistic delight in the process—Briski also sought to plant a seed of hope *in them*, a seed that she cultivated until the children began to develop their own hopes. This newly seeded hope was not available to the kids and their families beforehand; it was catalyzed by a purposive, *external* effort by Briski herself.

⁷² Lionel Tiger, *Hope Springs Internal*, 66 SOC. RES. 611-623 (Special Issue on 'Hope and Despair', Arien Mack ed., 1999).

In this section, we will revisit Briski's example, with an emphasis on her cultivation of hope in the children of Sonagachi. We will also explore a second example of the external cultivation of hope, one which lies closer to our ultimate focus on the law. This example concerns the efforts of Julie Su, a lawyer for the Asian Pacific American Legal Center of Southern California (APALC), to organize and represent a group of severely exploited garment workers in El Monte, California. Shortly before dawn on August 2, 1995 the Immigration and Naturalization Service raided a residential complex in El Monte and found seventy two workers, recent immigrants from Thailand, who were manufacturing garments under armed guard, in a facility surrounded by barbed wire. When they were arrested and served as witnesses in the criminal prosecution of those who had effectively enslaved them, Su provided legal assistance. This was only the beginning of her relationship with what would become a larger and more heterogeneous group of workers. Su saw the opportunity to work on many legal fronts on behalf of these workers, such as developing a civil action to compensate them for their injuries and responding to pressing immigration concerns. She also saw the equally important work that needed to be done, in the areas of community organizing and public education. Su brought Thai workers together with a group of Mexican workers who had not been held under threat of violence, but had been employed under exploitative sweatshop conditions. Thus, she helped both groups recognize their common interests and find mutual support in acting together. She also encouraged them to speak of their experiences and used these compelling accounts to educate and mobilize the public.

By looking attentively at these two efforts, we can identify several important features of the process of cultivating hope in others. We will focus primarily on the positive lessons to be drawn

from the efforts of Zana Briski and Julie Su. However, toward the end of this characterization, we will also highlight some potential drawbacks, which may lead even well-intended efforts to unsatisfactory results. Beyond illuminating the dynamics through which hope may be cultivated by individuals, our goal is to identify norms or principles which may structure efforts to cultivate hope through law.

B. A Profile of a Beneficial Cultivation of Hope

In these individual efforts to cultivate hope, we can identify several distinct and valuable features. These characteristics, which emerge in the narratives of both Zana Briski and Julie Su, permit us to outline a general profile of a beneficial cultivation of hope and to give it concrete illustration.

1. Precondition: Capacity to Cultivate Hope in Others

As the first Part illustrates, Zana Briski had a hopeful disposition, strong individual habits of hope, and ample concrete hopes for the children she taught in the brothels. This combination of traits allowed her to instill hope in these children. In fact, it is unlikely that she could have succeeded without having them all. Julie Su's written work and testimony offer a more fleeting or interstitial account of her own role than we find in *Born into Brothels*. But it is clear from her development of a new civil claim for relief as well as from her persistent and creative efforts to forge community among the workers and fashion a new kind of relationship between herself and her clients, that she was capable of envisioning distant and ambitious goals, persevering through many obstacles and initial disappointments to achieve them. The general point should be clear:

the capacity to cultivate hope in others requires one to have this kind of resilient individual hope as well as an eagerness to share it with those who have less of it.⁷³

2. *Communicating Recognition and Vision*

The children Briski came to know in Sonagachi were in some ways the most stigmatized denizens of the district. They not only shared its harsh conditions, but their age and dependence rendered them virtually invisible; they were conceived almost as part of the backdrop, condemned to emerge only into the hopeless lives of their mothers and families. These children had never lived in, and had rarely encountered, the world outside the red-light district. Though some could articulate a *wish* for lives different from those of their mothers or other family members, the limits of their experience made it difficult for them to envision those lives.

How, for example, could a twelve-year-old boy like Avijit even imagine himself as a successful photographer when his basic needs were in jeopardy and everybody around him, including his drug-addicted father, was caught up in a struggle to survive the day? Yet, as philosopher Jayne Waterworth observes, an effective hoper “must be able to imagine herself and/or the world becoming otherwise than it is currently.”⁷⁴ It is precisely here, where the imagination is held captive by desperate circumstances, that the help of others becomes essential. An artist like Briski may be able concretely to visualize what Avijit is temporarily blocked from seeing.

⁷³ Of course the individual hope that we see as necessary is of the type characterized in Part I.

⁷⁴ JAYNE M. WATERWORTH, *A PHILOSOPHICAL ANALYSIS OF HOPE*, 18 (2004). [FROM EXEC: source missing].

In this phase of the process, cultivators must share two kinds of visions with prospective hopers. First, they must make clear that they *see* the prospective hoper as a full human subject. A person who does not see herself as capable of creativity and choice, who cannot see beyond the constraints of her daily life, may be unable to conceive and pursue distant goals. The cultivator's recognition of the prospective hoper and as a person with these kinds of capacities, may help her see herself differently and to take the first steps toward hope. The recognition of the subjectivity, capacity, and individual personality of the other, a process which may be called the "mirroring effect,"⁷⁵ often helps to engender energy and activity on the part of the participant. This may permit her to approach her environment, or accomplish particular tasks, in ways that would not previously have been possible. Briski's attentions helped to make the children visible to themselves and others. Her interest in how they might frame their world through the lens of the camera made them consider—perhaps in some cases for the first time—that they might have something to offer.

Second, the cultivator must be able to communicate to the prospective hoper that the prospective hoper's world— could be potentially different. Here the cultivator's imagination is a key because the limited horizons created by a desperate and encompassing condition can make it impossible even to conceive of such alternatives.⁷⁶ The cultivator must visualize alternatives that are appealing and potentially (if distantly) realizable, and have the capacity to communicate

⁷⁵ See MCGEER, *supra* note 48, at 107, 100-127 (arguing that those who support the efforts of a new hoper perform a "mirroring" function which is in some ways similar to that which a parent offers a developing child).

⁷⁶ See ANTHONY READING, HOPE AND DESPAIR: HOW PERCEPTIONS OF THE FUTURE SHAPE HUMAN BEHAVIOR, 7 (2004) (stressing the correlation between better socio-economic, cultural and educational conditions, on the one hand, and the capacity to develop future-oriented behavior on the other hand).

these possibilities to the prospective hoper. Briski saw the children as creators, as people whose depictions of their own lives might speak to others and might have the potential to alter the conditions under which they lived. She treated their efforts seriously, and over time, she created opportunities for others to see, purchase, and discuss their work. This made it possible for many of the children to see themselves in a different light, and glimpse, at least distantly, new trajectories for their lives.

In Julie Su's efforts with the workers of El Monte, we find both recognition and vision as well. As illustrated by the title of her article, *Making the Invisible Visible*, Su was alert to the issue of visibility which concerned not only the visibility of sweatshop labor but the visibility of the workers themselves.⁷⁷ Leading a struggle for human rights, Su was aware that the legal community and general public's recognition of the workers' personalities and basic human dignity would play a crucial role. Through her relationship with the workers, she sought to provide a mirror which would reflect the compelling character of their struggle. She sought to help the workers, and then the public, see what she herself saw: a group of people with basic human needs, dreams and aspirations for a better life, as well as legitimate expectations from their employers and their new country. Toward this end, Su became deeply involved in the lives of the workers. She visited with them in their homes and communities, explicitly rejecting elements of the traditional lawyer-client hierarchy which she believed "impersonalize[d] the

⁷⁷ See generally Julie A. Su, *Making the Invisible Visible: The Garment Industry's Dirty Laundry*, 1 J. GENDER RACE & JUST. 405 (1998).

workers and place[d] them in dependent relationship."⁷⁸ Instead, she insisted on listening to their voices, which she found as galvanizing as the texture of their experience emerged vividly through their limited English and nonlegal forms of expression. She emboldened the workers to speak not only to teach others, but to the public, by juxtaposing her image of them as "poetic and strong" with their own, initial view of themselves as speechless.⁷⁹

Second, Su was able to supplement the workers' highly constrained sense of possibility with her own visualization of a different future for them. In her testimony before the House of Representatives, Su depicted the circumstances that prevented workers from seeing a better future. "The worker is at a dead end," she explained, "with little choice but to keep working or starve."⁸⁰ What Su could offer the workers was an alternative, which they could not at that time conceptualize: the possibility of changing their working conditions by tapping into the professional self-confidence necessary to explore innovative, little-trod legal paths. As a well-housed, well-fed citizen of the United States, whose means of supporting herself were not at risk, Su had the freedom to envision possibilities beyond her (or her clients') immediate circumstances. Moreover, as a lawyer with an elite educational background, she had the creativity and professional self-confidence to deploy the law in unconventional ways. One example of this strategy was Su's decision to use the criminal charges against the exploiters to acquire a special type of a visa (s-visa) for the workers. This visa is granted to material witnesses

⁷⁸ *Id.* at 412.

⁷⁹ *Id.* at 413.

⁸⁰ Transcript of Testimony by Julie A. Su at the U.S. House of Representatives Committee on Education and the Workforce (The American Worker at a Crossroads Project), May 18 1998, http://www.house.gov/ed_workforce/hearings/105th/oi/awp51898/su.htm.

who provide critical testimony in ongoing criminal prosecutions, and who would face danger in their home countries.⁸¹ Even for a lawyer like Su, the resort to the s-visa required boldness and vision, as it had not been used for similar purposes before and necessitated a leap of imagination (as well as "endless twists and turns")⁸² to apply it to the sweatshops circumstances. There can be little doubt, however, that such a remote option went beyond what could be conceived by the workers themselves.

3. Introducing an Activity that allows for Individuation

This capacity for imagining possibilities beyond one's circumstances must not simply be shared by the cultivator, however. It must be nurtured in prospective hoppers in ways that permit it to take root. One important vehicle for achieving this is an activity which takes the prospective hoppers beyond their usual routines and capabilities and makes tangible new avenues for expression, participation and vision. Without the cameras Briski provided to the children, for example, the new vistas of learning and art that Briski offered through her own photography, and through the occasional chance to use her camera, might have remained unreachably abstract. With their own cameras in hand, the children were able to see themselves, if temporarily, as artists or creators. This allowed them to explore new roles while fueling their imaginative powers. By providing visibility and acknowledgment for their fledgling efforts, Briski allowed her students to see their emerging self-conceptions reflected in the eyes of others.

⁸¹ See Julie A. Su, *The Progressive Critique of the Current Socio-Legal Landscape: Corporations and Economic Justice*, 4 SEATTLE J. SOC. JUS. 237, 241-242 (2005).

⁸² *Id.* at 242.

This activity was additionally valuable because it allowed each child to use photography to express and realize her own individual talents. Unlike many photography classes, Briski's did not mandate specific tasks or aim to produce a particular style. Rather, the children simply spread out in their vicinity and reconsidered it, through the eyes of the camera. Each of them used the new resource in accordance with her or his individual character, inclination, and limitations. Curious and daring Puja, for example, ventured outside the brothels onto the external streets to take pictures of strangers.⁸³ Kochi preferred to escape her immediate environment by focusing on animals, gardens, and parks.⁸⁴ Still others, such as Suchitra and Shanti, photographed the quarters where they slept, or members of their families.⁸⁵ The cameras along with Briski's fluid teaching style, incited and encouraged this individual creativity. Before long, when the kids sat in a circle and reviewed their contact sheets, they were able to guess which photo was whose, recognizing the individual touch of their friends.

This experience suggests that the activities at the core of the cultivation effort should be open-ended enough to allow the hoppers to shape them to their own individual talents and needs. Providing this kind of space for individuation allows an unaccustomed freedom from constraint. It also permits a sense of self-discovery and authorship of what is being produced. By nurturing these attributes of human subjectivity, the cultivator helps those with whom she works to become subjects of hope.

⁸³ ZANA BRISKI, *BORN INTO BROTHELS: PICTURES BY THE CHILDREN OF CALCUTTA* 69 (2005).

⁸⁴ *Id.* at 51.

⁸⁵ *Id.* at 75, 83.

A similar kind of individual engagement was facilitated by Julie Su during the El-Monte litigation. Few people would tend to describe litigation as an opportunity for individual creativity and expression, particularly on the part of the client. Yet Su's unconventional view of the process transformed the El Monte litigation into an activity in which the workers played engaged and individuated roles. "Litigation," Su has written, "is an opportunity to articulate, document, and ultimately share [the worker's] story."⁸⁶ Not only did this general view put the workers' lived experience at the center of the legal effort, but also Su required that workers be actively and personally involved in the day-to-day life of the lawsuit. Notwithstanding their exigent circumstances, Su asked them to participate in meetings,⁸⁷ to tell their stories,⁸⁸ to spend hours responding to discovery requests,⁸⁹ and in general to be full participants in the process of litigation. This active presence was captured by the court illustrator, who depicted the workers testifying and committedly following the hearings.⁹⁰

⁸⁶ Su, *supra* note 81, at 244.

⁸⁷ Su, *supra* note 77, at 414.

⁸⁸ Su, *supra* note 81, at 243.

⁸⁹ Su, *supra* note 77, at 414.

⁹⁰ Courtroom sketches by Artist: Mary Chaney for KTTV/Fox 11, Los Angeles of former El Monte sweatshop workers testifying at the penalty hearings against their traffickers in *United States v. Manasurangkun*, 1995. Available online at <http://www.americanhistory.si.edu/sweatshops/elmonte/3t20.htm> (last visited June 8th 2006).



This active, individuated involvement was also reinforced by the almost seamless connection of the litigation with community organizing and education efforts. Exploring the connections within their own group, organizing themselves for action, and narrating their experience for an often-indifferent or ill-informed public created opportunities for the workers to discover and develop unrecognized abilities and strengths.

Engaging in litigation is in that sense very akin to the photography engagement of the brothels' children. As Su underscores, "litigation, if nothing else, is an opportunity to articulate, document, and ultimately share [the worker's] story."⁹¹

4. Providing Resources

For a hoper to achieve her goal, concrete resources must accompany and support the vision of an alternative future. Because life under harsh conditions may not provide neither the practical nor the attitudinal means for transforming aspirations into reality, the hoper needs external sources. For example, Avijit received a camera and took classes in photography which enabled

⁹¹ Su, *supra* note 81, at 244.

the photographer in him to emerge. Gour, who could only dream of leaving the brothels to gain access to higher education, required a mediator like Briski, whose energy, institutional savvy, and financial resources permitted her to bridge the enormous gap between Sonagachi and the apparently impenetrable system of higher education.

Thus, Briski offered not only cameras, a uniquely facilitative resource. She also provided the professional, institutional, and material support the children needed to make transformative use of the cameras. Without the skilled and sustained guidance she provided in the class, the camera might have served only as a pleasant diversion. Her expertise, and her commitment to fostering expertise in the children, permitted them to understand photography better as an activity, and see themselves as more serious practitioners. Moreover, Briski exposed the children to her professional networks and institutional knowledge, from the assistance. Her enlistment of skilled editors and organizers for the benefit exhibitions, to the ability as well as her willingness to shepherd forms through complex administrative processes. This exposure then, allowed the children to glimpse and negotiate new paths to their goals. Each of these resources, in its own way, helped to make the new possibilities yielded by photography less remote and more achievable.

A similar contribution of resources occurred in California. If the El Monte litigation became the functional equivalent of Zana Briski's photography class, it was not simply the litigation –

(albeit the “first federal action of its kind”)⁹² – that made the difference for the lives of the workers. Several other factors contributed to the well-being of the workers and their ability to communicate their message to the public. Among these was Su’s deep personal support for her “clients.”⁹³ This support gave Su’s clients an anchor in a community in which they were still strangers and helped them negotiate a range of personal and institutional challenges. Su also brought her expertise in legal projects that aimed to protect and empower low-wage workers. This included not only her legal acumen, but her institutional connections with APALC, and the network of supportive organizations that later became the coalition known as Sweatshop Watch.⁹⁴ Su also drew on her ability to influence the leading legal decision makers of the time, including then-Attorney General Janet Reno.⁹⁵ The community-organizing aspect of her experience permitted Su to offer the workers an additional kind of resource: the skills and professional connections that allowed her and her colleagues to shape the perceptions of the media and other state and national opinion leaders.

In both these cases, moreover, the activity and the contribution of resources were structured in a way that stimulated a sense of authorship and initiative among their beneficiaries. This development of capability, or agency, is discussed in the following section.

⁹² *Bureerong v. Uvawas*, 959 F. Supp. 1231 (C.D. Cal. 1997); *Bureerong v. Uvawas*, 922 F. Supp. 1450 (C.D. Cal. 1996).

⁹³ The term is in quotes here because it is a term that Su herself declines to use. We offer it here to emphasize the departure from a traditional lawyer-client relationship implicit in her relationship with the El Monte workers.

⁹⁴ Sweatshop Watch is a coalition of labor, community, civil rights, immigrant rights, women's and religious organizations committed to eliminating the exploitation that occurs in sweatshops. See Sweatshop Watch, <http://www.sweatshopwatch.org/index.php?s=1> (last visited June 6 2006).

⁹⁵ Su, *supra* note 81, at 242.

5. *Supporting Agency*

The sense of authorship described above connects to another central characteristic of Briski's cultivation efforts: her support for the children's emerging sense of agency. The camera, both metaphorically and literally, permitted the children to frame their world and represent it to others. At the same time, the photography class created a space in which the children could escape the destitution of Sonagachi by giving them a microcosmic sense of directing at least a portion of their lives. Suchitra, the oldest of the children, captured this experience of emerging subjectivity when she observed: "When I have a camera in my hands, I feel happy. I feel like I am learning something. I can be someone."⁹⁶

The children's sense of capability and control benefited from the careful, stagewise way in which Briski helped them to bring their photographic projects to completion. They shot pictures, analyzed and critiqued their work, edited what they had produced, and, eventually selected their favorites for exhibition. Moreover, Briski helped the children to understand the way that their work was producing change in their lives, for example, by explaining that Avijit was going to Amsterdam "to represent all of you," or enabling them to watch via internet their work being auctioned continents away.

The same sense of capability and control began to emerge among the workers of El Monte, who actively participated in the legal battle against those who had exploited them. In fact, as Su later explained her approach, this full participation was in large part *directed* at creating this

⁹⁶ BRISKI, *supra* note 83.

empowering effect: "Litigation that encourages and even demands our clients' full participation . . . gives individuals a sense of control over the circumstances of their lives, and it turns the legal system from a source of marginalization . . . into a tool for empowerment."⁹⁷ And indeed the seeds of agency planted by Su and cultivated throughout the legal proceedings ultimately produced strength. Graciela, one of the workers, later explained: "With what we have lived, and what we have learned about our rights, it is enough to give us courage to struggle for ourselves and others."⁹⁸

As both these cases show, the newly-acquired feeling of having some control over the circumstances of one's life, and its empowering consequences, are essential in nurturing the capacity for internal hopes. They permit prospective hopers to see themselves not as observers, or as passive "beneficiaries," but as leading actors in their own lives, as agents of change.

6. *Fostering Solidarity*

Briski's efforts went beyond the instruction she provided to each child, as the weekly photography class swiftly became a dynamic social process. The personal creative achievements of the children overlapped as they began to take pictures of each other and to review each other's work. They developed a sense of being part of something larger than each of them—a group of "kids with cameras"⁹⁹ who were not just children of the brothels, but shared an artistic passion and an emerging sense of possibility. This team spirit was later reflected at a group exhibition in

⁹⁷ Su, *supra* note 81, at 244.

⁹⁸ *Asian and Latino Workers Unite in Los Angeles*, 6 SWEATSHOP WATCH (Sweatshop Watch, Nikki Fortunato Bas & Lora Jo Foo eds.) Spring 2000, at 2, available at http://www.sweatshopwatch.org/media/pdf/newsletters/6_1.pdf.

⁹⁹ See *supra* note 83.

a Calcutta bookstore, which reinforced through its success the sense of solidarity among the kids. This growth of a collective hope was more than a by-product of Briski's cultivation of individual hope. She invested energies directly in this trajectory, for example, when she took the children on a day trip to a beach far beyond the brothels. This adventure allowed them the physical and emotional space in which they could interact and take pleasure in each other's company, as well as encounter new photographic subjects. This day trip is one of the most hopeful moments in the documentary, and led to one of the most beautiful photos taken by Avijit:



Fostering solidarity among prospective hoppers helps to break through the isolation that is typical of circumstances of despair. This connection with others who share similar challenges permits prospective hoppers to feel buoyed by a project that is more powerful than they are.¹⁰⁰ It fuels their emotional energies¹⁰¹ and, by engendering cooperation among them,¹⁰² brings them closer to their goals.

¹⁰⁰ Erica Summers-Effler, *The Micro Potential for Social Change: Emotion, Consciousness and Social Movement Formation*, 20 SOC. THEORY 41, 54 (2002).

¹⁰¹ *Id.* at 54.

However, this sense of shared goals, and of participation in a common effort to bring them about, must go beyond the horizontal connections between the prospective hoppers. Solidarity should also connect those who seek to cultivate hope with those who need their support. This “vertical” solidarity can be glimpsed in many subtle aspects of Briski’s interactions with the children. In her pedagogy, she queries, rather than directs, seeking to elicit their opinions and treating these opinions with respect as they emerge. The format of the class erodes rather than buttresses hierarchy, as Briski and the children sprawl comfortably on the floor, looking intently at contact sheets and exchanging exclamations and judgments about what they see.

Interestingly, Briski seems able to communicate this form of supportive, nonhierarchical engagement to many of the other adults who join her enterprise of cultivation. When Ross Kauffman arrives in Sonagachi, he, too, finds himself sitting cross-legged on the floor, deep in two-way exchanges with the animated children. In Briski’s fundraising and exhibition efforts, her emphasis on her newness at these tasks and her uncertainty about outcomes place her in a position similar to the children’s. And when they venture together into a new situation, be it a beach trip or a photographic exhibit, she places the children and their work product front and center. From her position in the background—often appearing to be little more than a delighted observer—she can share, rather than direct or mediate, their experiences. This sense of partnership is that the children can communicate readily with Briski (whom they refer to as

¹⁰² Valerie Braithwaite, *The Hope Process and Social Inclusion*, in *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE*, 128-151, 134 (Special Issue ‘*Hope, Power, and Governance*’, Valerie Braithwaite ed., 2004).

“Zana Auntie).” They draw on Briski’s resources and expertise, without being confined or held in place by them.

Horizontal and vertical solidarity were also central to the cultivation of hope in the El Monte case. Here the group of prospective hopers was much less homogeneous, which added to the basic challenge of breaking through their isolation and despair. The Thai workers diverged substantially from their Mexican counterparts, along the lines of race, language, and immigration status. Though she was an Asian-American, working for an Asian-American advocacy organization, Su was determined to include the Latino workers in the litigation efforts. She explicitly engaged herself in fostering solidarity among these two groups of workers despite the suspicion and the linguistic barriers that initially divided their members. As Su observed, the litigation obliged workers to confront not only the differences in their native cultures and employment circumstances, but also the challenges of communicating in three languages:

When we have had joint meetings with all the workers, each meeting takes three times as long because every explanation, question, answer and issue needs to be translated into three languages [English, Spanish, and Thai]. But the rewards are so precious . . . you feel the depth of that connection.¹⁰³

These efforts to achieve solidarity were undertaken in the face of stark external pressures to emphasize the divergence and the estrangement between the groups.¹⁰⁴ Employers stressed the atypical circumstances of the Thai workers’ employment, and the media resisted covering the

¹⁰³ Su, *supra* note 7777, at 411.

¹⁰⁴ Su, *supra* note 81, at 240.

emerging solidarity between the workers.¹⁰⁵ For the workers, however, this solidarity became a great source of empowerment and even ten years after the battle was over they have reported remaining "a tight-knit group" and being "close like a family."¹⁰⁶ As Su has explained, "The stories of how the workers struggled together, challenged each other, fought and laughed, shared their dreams and refused to quit are an integral part of the story of their victory."¹⁰⁷

In addition, Su has conceptualized her own relationship with these prospective workers as mutual partnership, aimed at achieving a shared goal. This conception of partnership involved explicitly renouncing the hierarchy that typifies traditional lawyer-client relations.¹⁰⁸ Traditional attorneys considered have challenged Su's nonhierarchical and highly personalized relations with the workers as a departure from, and even a threat to, "real" lawyering.¹⁰⁹ Despite such criticism, Su insisted, for example, on spending time with the workers in their homes in the evenings and addressing needs or problems which were not strictly legal.¹¹⁰ Reflecting on her role as the workers' lawyer, Su has seen herself as "working not for them, but with them," sharing her "life, work, and passion" with them. She sees a two-directional exchange, in which she not only assists, but learns and draws inspiration from those with whom she labors.¹¹¹

¹⁰⁵ Su, *supra* note 77, at 414.

¹⁰⁶ Laura Wides, *Workers Celebrate Decade of Freedom after El Monte Sweatshop Bust*, L. A. TIMES, Sept. 29, 2005, also available at Sweatshop Watch, <http://www.sweatshopwatch.org/index.php?s=49&n=44>.

¹⁰⁷ SWEATSHOP WATCH, *supra* note 98, at 1 (quoting Julie A. Su) (internal quotations omitted).

¹⁰⁸ An example of this view is Su's refusal to use the term client, which she argues focuses attention on the relation of the represented to *their lawyer*, rather than emphasizing their status as *workers*, which calls attention to the circumstances they seek to transform. See Su, *supra* note 77, at 412.

¹⁰⁹ *Id.* at 416-17.

¹¹⁰ *Id.* at 416.

¹¹¹ *Id.* at 417.

The kind of solidarity evident in Briski and Su's narratives is a solidarity that defies isolation and hierarchical structures by connecting kids with artists, prostitutes with nuns and school managers, Asians with Latinos, and lawyers with clients. Any attempt to cultivate hope demands this kind of solidarity. Such spirit of partnership is not only energizing for all the partners, but also creates channels of communication and companionship through which a reciprocal transference of hope between the cultivators and the prospective hoppers becomes possible.

C. The Perils of Cultivated Hope

If executed with care and imagination, the process of cultivating hope can develop in its beneficiaries a sustainable sense of efficacy, which in turn enables particular hopes, and contributes to a more enduring quality of hopefulness. Nevertheless, the process is connected with serious risks or dangers, including the threat of manipulation, disappointing the prospective hoper, and constructing the hoper as “other.” External efforts to cultivate hope may become manipulative undertakings that serve the goals of the cultivator rather than those of the prospective hoppers.¹¹² This can be a serious problem where an individual cultivator has undisclosed or unacknowledged motives, or in the case of institutional cultivation of hope, where institutional “motives” may be complex and difficult to discern. While Briski and Su’s

¹¹² See generally Peter Drahos, *Trading in Public Hope*, in THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 18 (2004) (presenting as a case study of the international efforts to regulate the market of life-saving medicines for AIDS and arguing that in this case people’s hope for better solutions for threatening sickness had been used to produce their assent, or at least to eliminate their resistance, to norms which will protect the revenues of the big pharmaceutical manufacturers).

cultivation efforts appear trustworthy and sincere, the dangers of disappointment and of reinforcing otherness persistently shadowed their projects.¹¹³

1. Disappointment

As with the pursuit of individual hopes, the process of cultivating hope risks failure and disappointment. In prospective hoppers, this danger may be greater for two reasons. First, prospective hoppers' hold on a more sustained hopefulness remains tentative because they have only recently begun to trust the possibilities that cultivators have extended to them. If the future they have begun to grasp disintegrates, this may precipitate a crisis for the emerging subjects of hope. They may experience severe disappointment and a sense of emptiness; the energies incited by the promise or prospect may dissipate, and participants may rapidly lose touch with the individual hope that had begun to grow within them. Second, the disappointment may be intensified because the hopes of the prospective hoppers and the cultivators are intertwined and more visible to one another. Paradoxically, the synergies that arise from hoping with others may "make the experience of loss, if experienced, more profound."¹¹⁴ Sadly, this collective loss of hope may throw ex-hoppers into deeper despair than that they experienced before being exposed to the cultivation process.

¹¹³ There is little doubt, following the completion of the award-winning documentary film, that this effort redounded to the benefit of Briski and Kauffman, as well as to that of the children. But it is difficult to identify in the film instances in which Briski faced a choice between, let alone made a choice in favor of, her own goals in relation to those of the children. Moreover the serendipitous way in which her aspirations unfolded (see the section on individual hope, above) seems to reinforce the claim that she was concerned with bettering the conditions and fostering the hope of her students.

¹¹⁴ Summers-Effler, *supra* note 100, at 55.

Disappointment is a danger that does not materialize, on screen, in “Born Into Brothels.”¹¹⁵ This is because the film is structured so as to have a fairly consistent upward trajectory, and it is temporally limited in its scope. However, in one scene, Avijit is absent from class following the death of his mother and the other children express concern over his absence. The viewer is left to wonder how the children would have responded had he not returned to class or attended the Jury in Amsterdam – or how they responded, for that matter, to the insistence of some families that their children remain in Sonagachi, or to Briski’s departure at the end of the project. The film does not dwell on this question, offering only a brief postscript on progress of each child, following Briski’s initial efforts.¹¹⁶

One critical response, however, suggests that the hopeful trajectory of the film’s narrative may have been premature. Partha Banerjee, a New Jersey-based immigration advocate who helped Briski translate the film’s tape from Bengali to English, has voiced deep reservations about the effects of Briski’s efforts. Banerjee, who visited the children a number of times following the filming, reported that “almost all the children are now living a worse life than they were before Ms. Briski began working with them The children’s despair has exacerbated

¹¹⁵ Disappointment is a danger that did not materialize in the El-Monte case either, at least not as much as the specific seventy two workers are concerned. The workers won more than \$4 million in lawsuit settlements against known clothing firms for which they made garments through subcontractors. They were also granted special visas saved for victims of human trafficking and their struggle eventually led to special legislation aimed at improving the work conditions of many other sweatshops workers.

¹¹⁶ In the moments immediately preceding the credits, the film reports, for example, that Avijit lives at the Future Hope home for boys and attends one of the best schools in Calcutta, and that, of the three girls for who Briski arranged admission to the well-regarded Sabera Foundation home for girls, one was removed by her parents, one left of her own accord, and one, Kochi, remains, studying English and computer skills. The companion book maintains a positive tone, even regarding those children who remain in Sonagachi. The book notes, for example that “Gour hopes to attend university, with the support of Kids with Cameras.” BRISKI, *supra* note 83, at 43.

because they'd hoped that with active involvement in Ms. Briski's camera project, there would be an opportunity for them to live a better life."¹¹⁷ Once awakened to the possibility of a different future, their (present) inability to achieve it left them more despondent than before.

Banerjee's concerns demonstrate the profound challenge of transforming the pursuit of particular hopes into a broader and more fruitful disposition of hopefulness, particularly in circumstances of unremitting adversity. Banerjee's report suggests particular perils, in this regard, for new hoppers. If cultivators do not assist them, on a sustained basis, in drawing properly measured conclusions from early successes, or in moving from an initial set of hopes to broader, yet still plausible, aspirations,¹¹⁸ the inevitable obstacles and disappointments that arise may turn them back toward despair rather than forward toward hopefulness.

2. Reinforcing "Otherness"

The same power inequalities that enable the cultivation of hope may also carry detrimental potential – patronizing the prospective hoppers and enhancing their marginalization or "otherness." Individuals who foster hope, even with good intentions, may objectify, and perpetuate the stigmatization of, their beneficiaries. Where the targets of those efforts are children living in poverty, this risk may be particularly acute, as the tendency toward patronizing

¹¹⁷ Seema Sirohi, *Zana's Shutters*, OUTLOOKINDIA.COM, MAGAZINE, Mar. 14, 2005. (internal quotations omitted). Banerjee was sufficiently concerned about these consequences that he wrote to the Academy of Motion Picture Arts and Sciences to raise questions about the film's entitlement to the Oscar for which it had been nominated.

¹¹⁸ It is not clear, from Sirohi's article, whether Banerjee believed that Briski fostered unreasonable hopes in the children (a mistep which is not reflected in the film but which may nonetheless have occurred), or whether the children, as inexperienced hoppers, drew unreasonable conclusions from the initial hopes that they were able to fulfill.

or treating beneficiaries as “other,” may be employed against their parents, extended families, neighborhoods, races or cultures.¹¹⁹

Even Zana Briski, whose commitment to the children of Sonagachi was ingenious and unflinching, occasionally fell into this pattern. Her portrait of the children’s families is unrelievedly bleak. The mothers are not only impoverished prostitutes, but also are frequently depicted as inadequate, dysfunctional and sometimes malicious as parents. Although she is consistently polite and patient with the adults who are raising the kids, Briski seems in some ways to hold them responsible for the blighted chances of their children, neglecting the structural factors that impede parents and children. Viewers are invited to share Briski’s palpable frustration, not only with an Indian bureaucracy that she often presents as irrational or primitive, but with the children’s parents and families, who cannot always recognize the opportunities Briski presents to them. The film dedicates an entire scene to an ill-explained, but brutal fight between a few mothers: a scene full of yelling, cursing and almost animalistic rage, whose objectifying portrait of the women involved lingers in the mind of the viewer.

In El Monte, the risk of rendering hopers as “other” emerged in a different way. It arose from Su’s strategic use of the media as a vehicle to expose the problem, gain public support, and exert pressure on the companies involved in exploiting the workers. Spurred by the media attention, workers were engulfed in a new phenomenon Su characterized as “celebrity goodwill.” In one case, a television talk show star handed out \$300 in cash to workers who had been denied

¹¹⁹ As we shall see through the analysis of Project Head Start in the next section, the risk of patronizing or stigmatizing the beneficiaries is especially great when the cultivators of hope are not individuals but institutions.

minimum wage and overtime after she realized that her outfit had been sewn in a sweatshop. While such gestures predictably garner headlines, they fail utterly to respond to the structural dimensions of the problem. Furthermore, as Su critically observes, media coverage of such “goodwill” portrays the workers as parasitic, passive, powerless and eager for handouts: precisely the stereotype of the marginalized immigrant that Su’s litigation sought to challenge.¹²⁰

The risk of stigmatizing prospective hoppers highlights the need for greater determination and care in cultivating of hope. In particular, it underscores the importance of facilitating agency and efficacy among the new hoppers, and fostering a genuine sense of partnership among all of those involved in a project, irrespective of status. No independent and sustainable hope will emerge unless cultivators regard the people with whom they work as complete persons, with a range of needs and competencies, not merely as despairing or marginalized individuals. If hoppers are treated with respect, the process of cultivation should ameliorate, rather than exacerbate, “otherness.”

D. From Individual to Institutional Cultivation of Hope

Social despair is often sufficiently encompassing or entrenched that more systematic efforts are necessary to foster internal hope.. And the challenge of transforming the pursuit of hopes into a disposition of hopefulness may require more sustained efforts, and better integration of support systems into a community of hoppers, than even a resourceful or committed individual can provide. In such contexts, institutions may play a crucial role in cultivating hope.

¹²⁰ Su, *supra* note 77, at 414.

The institutional cultivation of hope, however, is only rarely discussed. This may be because hope seems incompatible with the structural features of institutions. Institutions have organizational structure, priorities, budgets, and regulations, which may seem to fit oddly with internal hope, particularly if hope is conceived as a passive, wishful, affective stance. But this incompatibility with concrete institutional features begins to recede if internal hope is understood as cognitive, affective, and as comprehending both the embrace of particular ends and the active search for means.

Institutions may also seem better suited to the cultivation of hope when one recognizes that institutions – including legal institutions – are not limited to the project of proscribing or mandating particular human behaviors. They may encourage particular ways of thinking and feeling among those they can influence. Further, institutions may shape consciousness in ways that they see as beneficial, to foster sensibilities, states of mind or emotions. This type of institutional involvement, sometimes referred to as “governing the soul,”¹²¹ is a powerful and promising technology of governance, particularly in relation to positive or empowering sensibilities. The immense importance of hope to the motivation, energy, and agency of individuals – and the impossibility of cultivating it, in all contexts, through personal efforts -- make it vital to explore how institutions, both public and private, might purposively direct their efforts to the promotion of hope. However, because of the comparatively great power of institutions, for good and for ill, it is also important to investigate the ways in which institutions

¹²¹ NICHOLAS S. ROSE, *GOVERNING THE SOUL: THE SHAPING OF THE PRIVATE SELF* (1990).

can encourage good hoping – interactive, energizing, durable, and productive -- in individuals and groups.

The next Part takes up this challenge. Framed by the lessons drawn from *Born into Brothels*, it examines another effort to cultivate hope in poor children in urban America. As was true of the El Monte litigation, this example concerns the cultivation of hope through law. However, in the case of Project Head Start, we move from hope nurtured primarily by the effort of individuals to the cultivation of hope by governmental or legal institutions.

III. LAW IN THE CULTIVATION OF HOPE: THE CASE OF PROJECT HEAD START

A. *Head Start and the Law*

Project Head Start was launched in 1964 as an innovative, ambitious effort to create new prospects for poor children and their families. The following exploration of Head Start draws on a rich literature addressing this prominent program and examines the ways in which hope may have been engendered in one legally-instigated setting.¹²² In the process, we question what we can learn from the Head Start experience, as a case study, about the role of law – in particular, about the role of *legally-created institutions* -- in the cultivation of hope in society.

We start by arguing that Project Head Start reflects an effort to cultivate hope, although fostering hope was not the only motive for its initiation. Our main focus is on the legal mechanisms that helped to facilitate Head Start's emergence as a hopeful project. As legal

¹²² Unlike much of the available literature, our analysis does not seek to assess the program's educational achievements and flaws in general. Instead it focuses on the program's aspects that may impact the levels of hope.

scholar Lucie White has observed: “Head Start centers are good examples of social institutions that would not exist but for a dense web of federal statutes and regulations. In a very real sense, then, Head Start’s world is literally brought into being by law.”¹²³ Accordingly, we explore the legal design of the project and argue that this design manifests each of the features of the beneficial cultivation of hope profiled in the previous Part. Finally, we will return to the perils that threaten any attempt to cultivate hope and ask whether any of these risks have materialized in the context of Head Start.

B. *The Hope in Project Head Start*

“Hopeful Head Start” declared Time magazine, on September 10, 1965, capturing the spirit of optimism and excitement with which the Head Start Project was launched by President Lyndon Johnson. “The Head Start idea has such *hope* and challenge”,¹²⁴ wrote Lady Bird Johnson in her personal diary. Indeed, the Project was retrospectively described as “*a beacon of hope* for many children and families.”¹²⁵ The connection between Head Start and the cultivation of hope was not a creature of media hype; it was also reflected in the socio-cultural background of the program, and in its legal history.

¹²³ Lucie E. White, *Raced Histories, Mother Friendship, and the Power of Care: Conversations with Women in Project Head Start*, 76 CHI.-KENT. L. REV. 1569, 1572 (2001).

¹²⁴ PROJECT HEAD START: A LEGACY OF THE WAR ON POVERTY 44 (Edward Zigler & Jeanette Valentine eds., 1979) (emphasis in original).

¹²⁵ THE HEAD START DEBATES 543 (Edward Zigler & Sally J. Styfco eds., 2004) (emphasis added).

As with other efforts to instill hope, Head Start arose from a context of despair: the “discovery” of poverty by the American mainstream in the early 1960’s.¹²⁶ New data demonstrating that twenty percent of Americans— and almost half of African-Americans – were living in poverty, and works such as Michael Harrington’s *The Other America*,¹²⁷ forced many Americans glimpse, for the first time, the hardships endemic to many American lives. Middle-class Americans responded to this “discovery” with both concern and anxiety. After the urban uprisings of the 1960s, many feared that impoverished minority communities would violently revolt. This fear fueled an escalating perception of social deterioration.¹²⁸

Nevertheless, these harsh realities also incited a human impulse to avoid despair and downfall. This impulse flourished in the optimism of the Kennedy and Johnson administrations and hopefulness as well as a new determination to foster it in those who "live on the outskirts of hope,"¹²⁹ began to emerge. In part, this optimism drew upon social scientific advances that identified more effective tools for addressing poverty¹³⁰ and invigorated political will and determination. Armed with these tools, the "War on Poverty" was declared, and in it the law had a central role to play.

¹²⁶ MARIS A. VINOVSIS, *THE BIRTH OF HEAD START* (2005).

¹²⁷ MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1962).

¹²⁸ *See, e.g.*, DEBORAH CEGLOWSKI, *INSIDE A HEAD START CENTER: DEVELOPING POLICIES FROM PRACTICE* 18 (1998).

¹²⁹ As President Johnson declared in his 1964 State of the Union message: “Unfortunately, many Americans live on the outskirts of hope – some because of their poverty, some because of their color, and all too many because of both. Our task is to help replace destiny with opportunity.” N.Y. TIMES, Jan. 9 1964, at A16, col. 1.

¹³⁰ VINOVSIS, *supra* note 126, at 7.

Project Head Start was part of a larger legislative effort that sought to implement a new vision of social repair. The Project had its origins in the Economic Opportunity Act of 1964, which established a new federal agency, the Office of Economic Opportunity (OEO), specifically designed to lead the hopeful War on Poverty.¹³¹ This OEO introduced the Community Action Program (CAP), an institutional innovation aimed at encouraging the poor to become more active on their own behalf, and that equipped them with tools to support this effort. Project Head Start was conceived, developed, and later formalized through law¹³² under a CAP.

Head Start's genesis in CAP is legal history that deserves more attention as it uncovers the breadth of hopes that this law sought to foster. Beyond improving the education of preschool children, Head Start reflected hopes for the kids' families and communities as well. More importantly, this legal history indicates that Head Start was originally intended to cultivate – through active participation - reciprocal hope *in* these families and communities. And indeed, the trajectory through which parents were incorporated into the institutional lives of Head Start centers came to be associated with what might be described as a narrative of hope – a recurrent story of the ways that Head Start had opened vistas of possibility in highly constrained, or even

¹³¹ *Id.* at 147 (asserting that “antipoverty initiatives were major components of Johnson's 1964 legislative agenda. Rather than proceeding slowly and building on the scattered but promising existing programs, Johnson announced a massive War on Poverty and pledged to win it.”). In doing this President Johnson continued the legacy of President Kennedy whose assassination disrupted his intention to lead an antipoverty crusade. *See id.* at 146-47.

¹³² The Head Start program was created under the Economic Opportunity Act of 1964, Pub. L. No. 88-452, 78 Stat. 508 (codified as amended in scattered sections of 42 U.S.C.). It was reauthorized under the Head Start Act of 1981, Pub. L. No. 97-35, 96 Stat. 499 (codified as amended in scattered sections of 42 U.S.C.), and was amended by the Human Services Reauthorization Act of 1984, Pub. L. No. 98-558, 98 Stat. 2880 (codified as amended in scattered sections of 20 and 42 U.S.C.).

hopeless, lives. In the following sections, we assess Head Start as a vehicle for cultivating hope in a starkly disadvantaged population.

C. The Legal Effort to Cultivate Hope

In Part II, we identified a series of elements that comprise a beneficial cultivation of hope. In this section, we argue that these same elements infused the Head Start initiative. The elements include (1) the capacity to cultivate hope in others, (2) communicating recognition and vision, (3) introducing activities that allow for individuation, (4) providing resources, (5) supporting agency, and (6) fostering solidarity. However, while these elements in the camera project in Sonagachi were provided by one person, the resourceful Zana Briski; here, in the context of Head Start, they were the product of an institutional structure made possible by law .

Many of the architects of Head Start were both capable of individual hope, and willing to instill it in poor children, their families, and their communities. However, Sargent Shriver, the "founding father" of Head Start, had these qualities in more ample supply than most. As director of the War on Poverty¹³³ and of the new Office of Economic Opportunity, Shriver conceived Project Head Start and was dominant in developing the program's special features and rapidly gaining widespread support for his ideas.

Shriver demonstrated not only originality and leadership but demonstrated the habits of persistence and resourcefulness that enabled him to accomplish his imaginative goals. He devised the creative strategy of using Community Action Programs (CAPs) to educate and

¹³³ VINOVSIS, *supra* note 126, at 147.

mobilize economically disadvantaged groups. Moreover, as he glimpsed pervasive middle-class ambivalence towards helping impoverished adults, he resourcefully bypassed these objections by addressing the needs of parents through a program aimed at their children. Shriver also brought varied and abundant resources to this effort. He possessed the energy, the interpersonal networks, and the facility with governmental and administrative structures, to mount a breathtakingly rapid start-up. Within months of conceiving the program, he had appointed an interdisciplinary planning committee under the direction of the pediatrician-in-chief of Johns Hopkins Hospital, whose recommendations were transformed into a nationwide summer program serving over half a million children.¹³⁴ As distinct from hopers like Zana Briski, however, much of Shriver's sense of agency -- his confidence and his capacity to bring his imaginative program to fruition -- derived from the powers he was given by law.

As the Director of the new OEO, Shriver was broadly authorized under the Economic Opportunity Act of 1964 "to make grants to, or to contract with, appropriate public or private nonprofit agencies, or combinations thereof, to pay part of all of the costs of development of community actions programs." During the process of framing the new law, Shriver directed the drafters to "make the language as general as possible, because we want to be able to do anything that we think will lead to an improvement in the economic condition of people."¹³⁵ He also received an initial budget of \$340,000,000 for initiating the CAPS. This substantial allocation, combined with CAP's open-ended legal definition, left Shriver vast space in which to create

¹³⁴ PROJECT HEAD START, *supra* note 124, at 137.

¹³⁵ VINOVSIS, *supra* note 126, at 44.

Head Start as a CAP, to fund it heavily, and to establish it as a nationwide program.¹³⁶ As Shriver proudly related:

By the time July came around, I had committed almost \$70 million to the program! . . . I increased the funding myself! I didn't have to go to Congress; I didn't have to go to the president . . . Congress had appropriated money and if I wanted to spend it on Head Start, I could spend it on Head Start.¹³⁷

The initial legislation had, therefore, a distinctive facilitating role to play: it offered the means, and the authority, that permitted Shriver's team almost limitless freedom to lead. Moreover, in 1966, when Project Head Start was already "up and running," the Economic Opportunity Act of 1964 was amended to include Head Start as a specific type of CAP. By then the Project was so well-established and popular that it alone was funded at a level of \$352,000,000 – an amount greater than the entire CAP budget two years earlier.¹³⁸

Shriver's creativity, energy, and agency,¹³⁹ rapidly galvanized others and his vigorous sense of possibility turned contagious and was complemented by additional sources. Head Start's founding activists quickly coalesced around their shared aspirations, referring to themselves as "Poverty Warriors."¹⁴⁰ President Kennedy and Johnson's leadership and the renewed confidence of policymakers that their development of professional tools would enable

¹³⁶ *Id.* at 45-49.

¹³⁷ PROJECT HEAD START, *supra* note 124, at 56.

¹³⁸ *Id.* at 67 (stating that Head Start turned out to be the best funded CAP activity, and ultimately received 38 percent of all CAP monies).

¹³⁹ VINOVSIS, *supra* note 126, at 62 (remarking that those great qualities were not accompanied with matching administrating skills).

¹⁴⁰ THE HEAD START DEBATES, *supra* note 125, at 103.

them to address poverty played a role in fueling this sense of possibility. The enactment of the Economic Opportunity Act itself provided a boost to collective efforts and the new law was perceived as channeling energies toward the relief of poverty in a way Julius Richmond, the first Head Start director, described as “exciting.” Finally, Project Head Start’s emphasis on the horizon of young children, whose lives had not been irreparably shaped by poverty, created both a sense of opportunity and an impetus for energetic intervention.¹⁴¹ The stage was thus set for an institutional effort to cultivate hope.

2. Communicating Recognition and Vision

Stark deprivation often makes it difficult to imagine possibilities beyond one’s immediate existence or to mobilize the strategic or material resources to bring those possibilities into being. Consequently, external support or facilitation may be crucial to foster hope among those who are systematically disadvantaged. The policymakers and activists who developed and implemented Head Start could envision paths that might lead beyond the cycle of poverty, and to better futures for these children and their parents. The activists also embraced a view of the parents that projected a strong belief in their potential.

¹⁴¹ PROJECT HEAD START, *supra* note 124, at 44 (stating that soon after discussing the project for the first time Lady Bird Johnson wrote in her journal: “The Head Start idea has such *hope* and challenge. Maybe I could help focus public attention in a favorable way on some aspects of Lyndon’s poverty program.”) Lady Bird Johnson subsequently helped to launch Head Start, by organizing a tea party in the East Room of the White House. More than four hundred people – from leading society women to four-year-old beneficiaries of the program – mingled together, enjoying tea and cookies, as the national media prepared to report on the occasion under the soothing heading of “social” rather than “political” news. *See id.* at 117. The effect was to paint the new program in glowing, and innocuous, colors, adding to the popularity of Head Start, and making the hope for poor children a collective hope, reaching citizens in all walks of society.

A central aspect of Head Start emphasized involving the parents (read: mothers) of the young children. The architects of Head Start required that mothers volunteer to work with the kids – feed them, sing with them, care for them – based on the belief that these activities would help and empower the mothers as well. The vision of mothers living in poverty being capable of performing a valued institutional role -- was not available to many of these women before entering Head Start. As E.M., a long time Head Start mother, told Lucie White: "I love kids, but after having three children *you never dream* that you'd want to be bothered with a class full of children."¹⁴² And then she exclaimed: "But I enjoyed it!"¹⁴³ The experience of helping the kids, especially a boy and girl with whom she became close, went beyond a pleasurable surprise. E.M. described it as "therapeutic," explaining to White that ". . . the past few years it seemed like I couldn't help anybody. I couldn't help myself . . ."¹⁴⁴ However, the creators of Head Start *could* visualize mothers like E.M. providing significant help to others around them.

The materialization of this vision of mothers as competent skilled helped the Head Start mothers to embrace a new view of themselves – referred to earlier as the "mirroring effect"¹⁴⁵-- and to take on the challenges before them with new energies. The sense of wonder that arose from this transformation was captured by E.M.'s reflection on her work: "I really get choked up thinking about it. It's just so rewarding."¹⁴⁶

¹⁴² White, *supra* note 123, at 1583.

¹⁴³ *Id.*

¹⁴⁴ *Id.* [FROM EXEC: I added this footnote to give support to that quotation].

¹⁴⁵ See *supra* in Part II, next to note *

¹⁴⁶ White, *supra* note 123, at 1599.

Importantly, it has been the law that facilitated Head Start's mirroring effect. The legal construction of a respected space for the parents in the operation of each center and the conferral of an institutional status served crucially to acknowledge people whose disadvantage often rendered them invisible. This institutional role permitted them to feel trusted and seen, as people capable of contributing, influencing, changing, and being changed. The sense of growth that emerges from the conferral of a respected institutional place and status is a repeated theme in Head Start mothers' narratives; it is often compared by them to their past experiences of demoralizing invisibility. As E.M. characterized her experience with the welfare system before entering Head Start, "They don't even know you, and they treat you like dirt . . . *just like nobody* . . ."¹⁴⁷ Yet, E.M.'s interaction with Head Start and its administrators seemed different from the outset.¹⁴⁸ The difference stemmed from a vision of parents as multifaceted people, with more than their misery to offer, and whose ongoing involvement would permit them to contribute to the Head Start community. As Theresa, another Head Start mother, observed:

It's built my self-esteem up I feel better about myself Like going to Governing Board meeting and sitting beside the superintendentThen you feel, well *you are worth something*. And I didn't used to feel like that.¹⁴⁹

3. Introducing Activities that Allows for Individuation

¹⁴⁷ *Id.* at 1582 (emphasis added)

¹⁴⁸ *Id.*

¹⁴⁹ CRITICAL PERSPECTIVES ON PROJECT HEAD START: REVISIONING THE HOPE AND CHALLENGE 100 (Jeanne Ellsworth & Lynda J. Ames eds., 1998) (emphasis added).

As we learned from Briski's narrative, the activities at the core of the cultivation effort should be open-ended enough to allow prospective hopers to shape them to their own individual circumstances and needs. Envisioning the parents as involved participants probably would have been less valuable had it dictated rigid modes of participation. However, , Head Start's particular legislation, mainly its formation as a *Community Action Program*, which called for the active involvement of community members in initiating and perpetuating the process of change,, provided a space for the individual participants in the program.¹⁵⁰ This new approach, as one commentator noted, offered "a striking alternative to the prevailing model where institutions did things *to* the poor rather than *with* the poor."¹⁵¹

The Project's founders developed a blueprint for institutions, whose design and functioning supplied many of the benefits of Briski's cameras. They structured a role for parents that permitted them to be stimulated, supported, and engaged in their children's education and in the operation of the centers. However, this institutional participation was usefully open-ended based on localized administration of the program and the numerous roles that most centers made available to parents.

¹⁵⁰ Sec. 201 of Title II of the Economic Opportunity Act of 1964 declared that the purpose of such community action programs "is to provide stimulation and incentive for urban and rural communities to mobilize their resources to combat poverty" Today Sec. 9837 of the Head Start Act mandates Head Start agencies to go even further and "perform community outreach to encourage individuals *previously unaffiliated with Head Start programs* to participate in its Head Start program as volunteers." 42 U.S.C. § 9837 (2006) (emphasis added).

¹⁵¹ CRITICAL PERSPECTIVES, *supra* note 149, at 3; Kathryn R. Kuntz, *A Lost Legacy: Head Start's Origins in Community Action*, in CRITICAL PERSPECTIVES ON PROJECT HEAD START: REVISIONING THE HOPE AND CHALLENGE 3 (Jeanne Ellsworth & Lynda J. Ames eds., 1998).

As early as 1966, it was apparent that providing individuated, participatory opportunities was one of the program's major goals. The Equal Opportunity Amendments of 1966 emphasized that "the provision of appropriate activities to encourage the participation of parents of such children and the effective use of their services" was a major objective of the Project.¹⁵² The accompanying regulations also guaranteed parents' participation, stating: "Grantee and delegate agencies must establish and maintain a formal structure of shared governance through which parents can participate in policy making or in other decisions about the program."¹⁵³

Thus, parents could select, according to their own tastes and capabilities, among different activities, each of which could expand the range of their experience, and provide a spur to imagination and self-discovery.

E.M.'s experience offers several examples of this individually-tailored participation, but her story about recording the minutes for her center's policy council is most emblematic of individuation. E.M. announced her candidacy for the position of the secretary and to her surprise, she was elected. Carefully crafting her own role as volunteer, she had decided not to run for the position of chairperson and proudly explained her choice as the product of self-knowledge, and of tailoring her contribution to her particular talents: "You see, I'm good with paperwork. I'm good. And I got my notebooks together. And I got the plastic covers . . . and I

¹⁵² Economic Opportunity Amendments of 1966, Pub. L. No. 89-794, 80 Stat. 1451, 1462.

¹⁵³ 45 C.F.R. § 1304.50 (2005).

had categories set up, and I had it just perfect. . . . I conducted my little position like a professional."¹⁵⁴

4. Providing Resources

The same regulations that called for parents' participation in the leadership of the centers also mandated that each center offer parents educational and enrichment opportunities, such as parenting, nutrition, and literacy classes.¹⁵⁵ The regulations also gave local grantees the latitude to "consider the development of adults a key objective,"¹⁵⁶ and to allocate their resources accordingly. The Head Start center in which E.M. participated, for example, offered parents forward-looking, informational resources, such as a nutrition class taught by an instructor equipped with materials from the federal [Agricultural] Extension Service.¹⁵⁷

More broadly, the regulations provided parents with access to institutional and informational resources that enable them to improve their lives. As a result volunteering in Head Start classrooms alongside experienced teachers increases parental involvement in the education of their children and can enhance parents' capacities as teachers and learners. Parenting and nutrition classes provide parents with knowledge that can enhance both material and relational

¹⁵⁴ White, *supra* note 123, at 1588-1589. It is worth noting that E.M.'s individual tailoring of her participation was enabled not only by the legal structure that allows the freedom for such self-direction. It was also stimulated by the recognition of a colleague and mentor at the center. One of the teachers at the center, who had herself volunteered as a Head Start mother, had seen this potential in E.M. and, as White relates, "urged her to run on the ETI Head Start's policy council." *Id.* at 1588.

¹⁵⁵ The enrichment activities are legally mandated under Sec. 9837 of the codified Head Start Act, which requires Head Start Centers to "offer . . . to parents of participating children, family literacy services and parenting skills training." 42 U.S.C. § 9837(b)(5).

¹⁵⁶ White, *supra* note 123, at 1573.

¹⁵⁷ While White notes that the mothers expressed some amusement at how heavily-scripted this instructor seemed, at times; they also "express[ed] a sense that the class is worthwhile." *Id.* at 1579.

aspects of their families' lives. And ongoing involvement in the work of the center provides parents a hands-on lesson in institutional functioning that improves their ability to navigate this and other institutional settings. Both the broad institutional role prescribed by Head Start for parents, and its more particularized regulatory mandates, confer these valuable resources on parent-participants.

5. Supporting Agency

Involving parents in classrooms and in the decision-making processes of individual centers also facilitated their sense of agency. From the first invitation to volunteer in the classroom, parents were encouraged to act rather than to wait passively for help. The practices developed by individual centers for involving parents¹⁵⁸ in a stagewise fashion, permitted parents to become more confident, and to exercise more independent judgment and creativity as their capacities and responsibilities expanded.

The legal structure, which encouraged active participation at different levels of a center's activity, facilitated an empowering trajectory and emphasized the potential for growth and progress. Parents who enjoyed or gained competence in these contexts were encouraged by staff

¹⁵⁸ Though we have thus far tracked the practice of policymakers in using the gender-neutral word "parents," the use of such language is, in descriptive terms, erroneous. In the Head Start context, where education and very young children are the focus, "parents" are in fact "mothers"; fathers or other male caregivers are a rarity. Thus the story of generating hope through solidarity, as it will be told and theorized here, is for the most part a story of mothers and women and of their ways of establishing empowering or "scaffolding" relationships with each other. *See generally* PEGGY A. SISSEL, STAFF, PARENTS AND POLITICS IN HEAD START: A CASE STUDY IN UNEQUAL POWER, KNOWLEDGE AND MATERIAL RESOURCES 163-168 (1999). *See also* CRITICAL PERSPECTIVES, *supra* note 149, at 221-22.

members or by other parents to run for positions on the center's governing bodies. Some parents were also ultimately offered employment as teachers or administrative staff.¹⁵⁹

As she traces E.M.'s progress through the program, White documents the emergence of this kind of agency. Highlighting E.M.'s particular efforts to reach two emotionally disturbed children, White states:

Her work with the children helped her regain a sense of her capacity for moral agency . . . The gradual responsiveness of these children to her efforts at connection gave E.M. living proof that she had, or could bring forth from herself, what it took – the creativity, the patience, and the sheer, groundless hope – to be an effective agent of change.¹⁶⁰

These emerging qualities not only permitted E.M. to help others; they also allowed her to make changes in her own life, including leaving her abusive husband.

6. Fostering Solidarity

Some of the most important benefits to flow from parental involvement in Head Start centers arise from the relationships that such involvement engenders between parents and among parents, teachers, and directors. These relationships assist parents in utilizing the resources offered by the centers; they equip them with institutional savvy that can help them negotiate contexts outside the Head Start environment; and they provide crucial scaffolding as parents

¹⁵⁹ Note that both Lucie White's narrative of E.M. and Wendy Kirby's narrative illustrate this stagewise progression of parental activities. As told earlier they both started as volunteering mothers and became involved in the higher management of their respective centers. Interestingly this was also the path of E.M.'s mentor, J.G.: see White, *supra* note 123, at 1596.

¹⁶⁰ *Id.* at 1599.

begin to embrace and pursue hopes in their own lives. Such relationships, too, are facilitated by the regulatory framework of the program, which requires, among other things, that Head Start centers offer parents “opportunities to share experiences with other parents.”¹⁶¹ This unusual legal intervention, with its focus on human emotion and connection, lays the groundwork for the unfolding of solidarity and collective hope.

When E.M. began volunteering at the center, she became a member of the informal community of Head Start mothers. Through her relationship with the other mothers, E.M. not only “found a place to get basic social support around the day-to-day stresses of her life,”¹⁶² but also learned how to negotiate within the system; for example, learning through informal conversations “which field administrators had the most clout in the central office when you wanted to get a ‘real’ Head Start job.”¹⁶³ Participating in the more formal “parent involvement” events, such as nutrition classes and policy council meetings, exposed E.M. to the mothers’ discourses about their lives and the influence Project Head Start has had over them. It equipped her with the language, and with the cognitive frames, necessary to structure a more hopeful story of personal change.¹⁶⁴ Her connections with other parents conferred on E.M. a sense of *belonging* to a larger group of people, all of whom were in need, but who found the energy and agency to *give actively* to their peers. This experience of solidarity with other parents also allowed E.M. to

¹⁶¹ The Head Start Act, 42 U.S.C. § 9837 (b)(6)(C) (2006) (emphasis added).

¹⁶² White, *supra* note 123, at 1591

¹⁶³ *Id.*

¹⁶⁴ *Id.* at 1591-92.

see that a positive trajectory was possible, because it had been possible for others in circumstances not unlike her own.

But perhaps the greatest support to E.M. in her movement towards hope was her close friendship with J.G., a veteran teacher at the center and a former Head Start mother herself. E.M.'s words clearly connect her new friendship with an emerging sense of possibility. As she told White: "I got very close with J.G. . . . I was very depressed when I got there. . . . And so she [J.G.] just kind of talked to me, and let me know that things don't stay the same" ¹⁶⁵ The connection between E.M. and J.G. not only initiated hope in E.M., but also nourished that hope as the relationship evolved. Their common background and experience within the Center permitted E.M. to trust J.G.; as a result, J.G. was able to reach out to E.M. in effective ways. As their friendship matured from fondness and mutual understanding to deeper involvement, J.G. was successful in convincing E.M. to become increasingly active and productive within the center.

E.M.'s friendship with J.G. meant the end of the isolation that had fueled her depression. The support from someone who had come from her position to assume substantial responsibility within the center, confirmed and extended the message that E.M. had derived from her engagement with the other mothers. And J.G.'s ongoing, committed mentorship, and individualized attention kept E.M. moving toward greater agency and a greater sense of possibility, even when she encountered obstacles in her path. J.G.'s mentoring provided the

¹⁶⁵ *Id.* at 1586-87.

model for the highly supportive relationship that E.M. established with the girl and boy mentioned earlier and her relationship with the children eventually allowed her to recognize her own agency and to leave an abusive relationship.¹⁶⁶

7. The Effects of Legal Rhetoric

The transition from an individual effort to cultivate hope, such as Briski's project, to an institutional and legalized endeavor enhances the importance of language and tone. The declaratory and performative aspects of the law – the fact that legal pronouncements reach broadly and in some respects enact what they declare -- increase the potential efficacy of the venture, and the potential impact of its rhetoric. The facilitative orientation of the Head Start program is reflected even in the language of the regulations; its legal rhetoric creates or intensifies many of the dynamics we have just discussed. According to the statutory language, Head Start agencies are required to "*offer*" the parents training and assistance, to "*provide*" them with counseling regarding their needs and benefits, and to "*enable*" them to feel "*full partners*" in the program.¹⁶⁷ Far from the punitive, prohibitive, or even incentivizing roles more characteristic of law, the law here speaks in the language of scaffolding, reaching out to the parents and seeking to empower them.

However, as we shall see below, it is precisely these rhetorical and institutional effects that increase the risks involved in legal attempts to foster hope.

¹⁶⁶ *Id.* at 1601.

¹⁶⁷ The Head Start Act, 42 U.S.C. § 9837(b)(6)(C) (2006) (emphasis added).

D. The Perils of Cultivated Hope

As we pointed out earlier, the attempt to cultivate hope in others entails significant risk. Even if those cultivating hope act with the best intentions, they may end up disappointing their ostensible beneficiaries or reinforcing their otherness. In institutional contexts such as Head Start, disillusionment may occur in substantially the same way that it occurs in the case of hope that an individual cultivates. However, the danger of stigmatizing and constructing prospective hoppers as others seems more acute in the institutional context. Given the scope of many institutional efforts and the power of institutions to communicate implicit and explicit messages about those they serve, the risks to the beneficiaries of institutionally-cultivated hope may sharply increase.

Manipulation of hope, to serve the purposes of the cultivator rather than the ostensible beneficiaries, is also a danger that may increase in the context of institutionally-cultivated hope. For example, Peter Drahos has described how a consortium of developed countries and NGOs persuaded many developing nations that their best hopes for treating disease lay in preserving stringent intellectual property protections for patented medications, although this course radically restricted the availability of low-cost, generic medicine for treating AIDS and other imminent medical threats.¹⁶⁸ As a result, many less developed countries subscribed to agreements protecting their intellectual property rights in the products of medical research that they should have rejected. The ambiguity or obscurity of institutional “motives” in advancing particular

¹⁶⁸ Drahos, *supra* note 112.

visions of hope, as well as the vast inequalities of power between institutions and their often - disempowered beneficiaries make this kind of danger particularly acute. It may be useful to our exploration of Head Start as an act of hope, to examine the extent to which these varied dangers have materialized in the implementation of that program.

Perhaps the least worrisome risk, in the Head Start context, is the co-optation or manipulation of hopes for the benefit of the more empowered institutional participants. Manipulation is less of a problem where efforts to cultivate hope encourage the target population's active internalization of professed goals as opposed to their passive acquiescence. This risk also diminishes when the project seeks to inculcate in its target population the independent judgment necessary to look critically at the program and the agency necessary to pursue hopes in other areas. The Head Start program appears to meet each of these conditions. In contrast to the Drahos' case study, where researchers simply asked the ostensible beneficiaries to acquiesce in a regime, program organizers, as the study has illustrated, invited parents, indeed required them, to help bring the program into being. Program organizers may ask the parents to demonstrate their involvement by subscribing to goals that undergo constant localized re-articulation and application. Of course, parents are only one part of a complex institution so they have only limited power to shape the goals. This may result in divergent views over the goals or strategies of a particular center, which the more powerful institutional actors may resolve in their

favor.¹⁶⁹ But even such disagreements may function as evidence that program organizers are asking Head Start parents to make contributions to bringing a collective goal into being. The resolution of these disagreements may very well reflect and perpetuate power inequalities. However, this is a distinct problem from that of manipulation.

Second, the experience of working as productive laborers,¹⁷⁰ the substantive knowledge that parents gain through parenting and nutrition classes, and the institutional insight that they will acquire by navigating the decision-making processes of the program, enable parents to function as subjects of hope in other areas of their lives. Equipped with these new resources the parents can then start developing expectations from themselves and their environment. As one mother testified in congressional hearings, "I am not sure what path my life is going to take in the near future, but I am sure it will be rich with opportunity and confidence gained through my Head Start experience."¹⁷¹ The investment of educational and other material resources in beneficiaries of the program also suggests that organizers are making efforts to enhance parents' capacities, rather than simply to advance distinct goals of the program's organizers. In Drahos' case study, the ostensible beneficiaries of hope received little more than a cliché, telling the sick to wait. In contrast, Head Start's investment of institutional budgets and energies in providing the recipients

¹⁶⁹ This outcome may disappoint participating parents, a danger we discuss below. Alternatively, the result may create conflict among particular centers and the program's national administration. In one reported incident, known as "the Mississippi Controversy", the OEO actually closed down a Head Start center whose mobilizations on behalf of its particular goals observers viewed as counterproductively radical. *See, e.g., VINOVSIS, supra* note 126, at 97-99.

¹⁷⁰ As one academic observer confirmed: "I saw women – Head Start parents – actively engaged in meaningful work, in ways that I felt were empowering and authentic." *See SISSEL, supra* note 158, at 10. Note that this active orientation also strengthens the previous point of internalization since investing personal energy in achieving a goal often results in embracing that goal, even if only unconsciously.

¹⁷¹ CRITICAL PERSPECTIVES, *supra* note 149, at 329 (Quoting Ms. Phetteplace who testified on February 10, 1994).

means to “hope well,” suggests that the effort is genuine rather than artificial and manipulative.¹⁷² So while manipulation remains a potent threat in contexts in which agents mobilize legal institutions to cultivate hope or other positive emotions, it does not appear to have materialized in the Head Start context.

The evidence is more equivocal regarding hazards discussed earlier. Critics claim that supporters of Head Start fail to recognize its limited success in ameliorating systematic social problems like racism, sexism and poverty. Such delusions of this kind are particularly risky: they may fuel the embrace of a flawed program whose perpetuation achieves nothing, or worse than nothing, at all.¹⁷³ Some opponents have compared Head Start to treating a serious injury with a simple band-aid, arguing that this inadequate remedy "may inhibit a real solution since it gives the illusion of addressing the problem".¹⁷⁴ If this charge is true, commitment to the program may generate not adaptable, agentic hope, but passive hope, or indiscriminate persistence in a fruitless strategy.

While excessive individual hope has a tendency to breed self-delusion, too much institutionally-cultivated hope may raise special concerns. The institutional cultivation of hope may persuade supporters and other observers that the policymakers have chosen the correct

¹⁷² Notwithstanding the range of critiques that have been offered regarding the Head Start program none of the critics has alleged that Head Start founders or administrators manipulated the hopes of its beneficiaries to some distinct set of ends. *See, e.g.*, CRITICAL PERSPECTIVES, *id.* at 334-341 (summarizing some of the more critical voices that focus on parents' involvement and then asserting: "Despite the severe challenges we have documented there is still the hope.") (emphasis in original). *Id.* at 340.

¹⁷³ *Id.* at 339.

¹⁷⁴ *Id.* at 340. It would be fair to note that even the strongest supporters of this line of argument say that until society identifies better solutions, we must not remove the band-aid and let the bleeding begin in earnest.

policy, and no one should question them. This risk is particularly acute when a program spawns a culture of hope or gives rise to triumphalist narratives of progress, as has often been the case with Head Start. Some critics have argued that the Project's dominant narratives are so reassuring that popular support for the program – and participants' support for a particular center — can become uncritical: people *choose* to adhere to a rosy vision of the Project, as if they were saying "We want to believe the program does good, damn the evidence."¹⁷⁵

Arguably, the most insidious problem that may arise with the cultivation of hope is the risk of patronizing the recipients and constructing them as “other.” Where the beneficiaries of such a project are children living in poverty, this risk may be particularly acute, as the tendency toward patronizing or treating them as “other,” may harm their parents, extended families, neighborhoods, races or cultures.

For the Head Start Project, much of the risk stems from its invocation of a kind of a "deficit theory" according to which poverty arises from individual and/or cultural failure. These failures provide the conceptual groundwork for a program that places great emphasis on the education of parents alongside their children. Yet, this hypothesis seems to point a blaming finger at parents and their culture: inadequate or incompetent parents absent institutional intervention may neglect their kids and find it difficult to provide them with tools that are essential for becoming successful members of American society.

¹⁷⁵ *Id.* at 338.

In some respects, these assumptions are confluent with the phenomenon of society historically judging poor families or communities of color with disfavor for not complying with the white and middle-class standards of raising children.¹⁷⁶ While “good” parents, for example, consistently tell their children bed-time stories, “other” children “may never have seen a book”.¹⁷⁷ Thus, the benefits of encouraging Head Start parents to read more frequently with their children came with a price: perpetuating the notion that poor parents are incompetent caregivers who cannot provide for their children as “normal” parents would. Essays aimed at recruiting young middle-class women to volunteer in the Project, for instance, talked about “these children” and “these people” as if they came from an exotic and unknown tribe. Authors of these essays exhorted readers to self-righteous alarm when they described “a mother so preoccupied with her own terrible troubles that she literally cannot speak a loving word” These authors acted as if loving words came hand in hand with financial means or were never absent in middle class families. These intimations of parental inadequacy may also “deflect[] attention,” as Jeanne Ellsworth puts it, “from the unyielding inequities of institutions” and “the machinations of power and privilege.”¹⁷⁸

Accounts of this sort could contribute to portraying the Head Start population as an inferior group, while keeping the mainstream view of who is “normal” and who is “other” distressingly intact. Furthermore, such perspectives offer implicit support for segregation of the normal and

¹⁷⁶ See, e.g., DOROTHY ROBERTS, *KILLING THE BLACK BODY : RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1999).

¹⁷⁷ CRITICAL PERSPECTIVES, *supra* note 149, at 327 (quoting from a description of Head Start children in *Seventeen* magazine from 1965).

¹⁷⁸ CRITICAL PERSPECTIVES, *supra* note 149, at xi.

the other by suggesting that Head Start will take care of the problem locally, where poverty lies, without bringing it to the better neighborhoods. Ellsworth has argued that such segregation reinforces division along the lines of race because critics have portrayed Head Start from its first days as predominantly serving black families.

Due to Head Start's structure, the program risks patronizing and objectifying the people that it aims to help. In theory at least, the idea of empowering the children's families, which stands at the heart of Project Head Start, might have been a bulwark against the risk of patronizing and rendering its target population as "others." And parental involvement does, to some degree, resist this notion accentuating the fact that here, at least, the "others" are capable of improving their life situations and may eventually cross the line and merge into mainstream society. In reality, however, the project is still subject to this hazard as its very structure makes every local center a separate micro-cosmos and allows every administrator or volunteer become a potential source of objectification and discouragement.

Wendy Kirby's story of gaining hope and then losing it to frustration over not being heard illustrates how patronizing attitudes of professionals or administrators who too readily assume they know better can undermine the valuable goal of involving parents.¹⁷⁹ Kirby began as an active parent-participant who made great strides in educating herself and taking responsibility for the functioning of her center. However, she became disillusioned because she felt that

¹⁷⁹ *Id.* at 337 (arguing that "A most powerful challenge to the promise of head start is the very notion that professionals know better than lay parents and that teaching and learning occurs from staff to mom and child, and never vice versa.")

administrators were, ultimately, unwilling to share power with involved parents, either by hiring them as teachers or involving them in meaningful roles in the decision-making process.¹⁸⁰ As a result of the dissonance, Kirby lost her energy and drive; she and felt an acute sense of disappointment. Moreover, the dissonance also reflected more broadly on the Program's conception of its beneficiaries. Kirby's experience suggested that Program administrators saw parents as perpetual apprentices, capable of bettering themselves to a degree, yet unworthy of being full-fledged decisionmakers.

Interestingly, however, Kirby's journal suggests that participants viewed the Head Start regulations as establishing the norm of treating families with respect. They saw the law as offering protection against the risks of devaluation. In Kirby's protest against the Center's failure to abide by its own constitutive rules, we can sense the significant role that legal rules play in shaping, defining, and protecting the understandings that move poor mothers and their children toward hope. One might conclude that while the risk of stigmatizing treatment persists, it may be possible to craft a legal framework that will serve as a resource which can be deployed against

¹⁸⁰ Kirby first failed to achieve employment within Head Start, and then confronted difficulties participating in the governance of her organization. She wrote in despair: "No matter what I try to do to make this agency run by its own rules it doesn't work." Eventually Kirby resigned her position as the policy council chairperson, voicing disappointment in the promises that had been broken: "one of the most special things about Head Start is that it's supposed to be a collective decision-making program! That is how parents and staff alike feel motivated and dedicated to the program. Unfortunately this is now gone..." Wendy L. Kirby, *Personal Growth in Head Start*, in *CRITICAL PERSPECTIVES*, *supra* note 149, at 247, 258.

administrators' tendencies to devalue families,, or can offer moral support to participants seeking to redefine themselves, as they move toward greater opportunity.¹⁸¹

As a case study, Project Head Start demonstrates the vast potential inherent in legal efforts to cultivate hope in a beneficial fashion. It also points toward the kinds of awareness that are essential to avoid damaging those whom the law aims to assist. We aimed to draw from our analysis a more systematic approach to understanding how agencies can use law to cultivate hope, while mitigating the risks that inevitably arise in this effort.

CONCLUSION

This Article has proposed a *facilitative* role for law which we believe merits further attention and inquiry. Our conception of law as facilitative focuses on the cultivation not of *behaviors*, but of *emotions* which may or may not be associated with particular behaviors. The hope that Project Head Start fostered may have helped participants like E.M. play a larger role in her child's education, to secure a job, and to assert herself more effectively in her family life. However, the many requirements through which the program sought to engage, equip, and authorize parents aimed at something more open-ended than any of these specific behavioral responses. These requirements sought to foster in E.M. a sense of efficacy and a breadth of imagination which would help her guide her family, in many different ways, toward a better life.

¹⁸¹ It is noteworthy that in Kirby's protests against the marginalization of parental efforts, she cites the law as a source of the norm of parental inclusion and collective decision-making. Seeking to buttress her contention that parents' influence is the most essential ingredient of Head Start, Kirby refers repeatedly to specific sections of the law, and to bulletins and reports that interpret them. *Id.* at 253-54, 258 (March 21, 1995).

This example highlights a second way in which our conception of legal facilitation diverges from pre-existing notions. Many analyses of legal promotion of different goals assume incentivization – usually through the imposition of negative incentives or sanctions – as the primary instrumentality through which such promotion occurs. Private or governmental actors adopt particular patterns of behavior because the law threatens government with civil liability or criminal sanctions (or the inability to impose civil liability or precipitate the application of criminal sanctions), if they do not. Although incentivization may sometimes facilitate the emergence of particular emotion-states, our research thus far has highlighted other instrumentalities which have not been emphasized in previous scholarship. These instrumentalities seem to us to be potentially more fruitful, particularly in cultivating positive emotions such as hope. Engagement in shared projects that stimulate imagination and fuel a sense of capability is one instrumentality that emerges from this example; mentorship which is more open-ended and solidaristic than directive or hierarchical is another.

A. New Legal Contexts, New Legal Instrumentalities

In this article, we have examined two legal vehicles for the implementation of these strategies: institutional programs established and regulated by law; and litigation deployed as a form of community organizing. Both of these legal vehicles might be – and in some cases are being – used in other settings, to cultivate hope in disadvantaged populations. Let us briefly sketch some other legal contexts in which the law may be used as a part of a process for cultivating hope.

Prison re-entry programs provide another context in which legislated programs offering focused, enabling activities, and solidaristic mentorship might be used to build a sense of possibility and capacity in those on the verge of despair. The Ready4Work Program, for example, was recently established as a joint venture of the Department of Labor's Employment and Training Administration, the Department of Justice, and two private foundations. This program creates an active and individuated role for participants: staff members involve recently-released prisoners in a variety of activities aimed at preparing them for employment. It also emphasizes vertical and horizontal solidarity, as mentors, or "life coaches," support each phase of participants' re-engagement with their communities, through work with small groups, or on a one-to-one basis.¹⁸²

In the realm of legal representation, community lawyering programs may hold out promise for using individual lawyering to foster hope. Julie Su used the El Monte litigation to develop confidence and competencies among the workers, and to develop bridges between two distinct

¹⁸² See generally, Linda Jucovy, *Just Out: Early Lessons from the Ready4Work Prisoner Reentry Initiative*, Field REPORT SERIES: PUBLIC/PRIVATE VENTURES 1 (2006). Although the program is too new, and our information too incomplete, to provide any serious assessment, it is noteworthy that the primary features of the program conform to many aspects of the framework for cultivating hope discussed above. With the program's assistance, the returning prisoner applies his or her effort and individual creativity to the task of securing employment. More generally, the prisoner works to create a stable, self-supporting way of life outside of prison. The case manager and, particularly, the individual mentor that the program assigns, and assumes the roles of direct cultivation which Zana Briski, Julie Su, and E.M espoused. These mentors meet with their clients weekly or bi-weekly, and may speak with them by phone as often as once a day. The needs and desires of the clients determine the agendas for the meetings and may concern matters as varied as avoiding contact with old acquaintances or securing state assistance in obtaining child support. The mentors' solidaristic support and stagewise, multifaceted fostering of the agency of the competency that the client needs to negotiate a steady and sometimes overwhelming set of obstacles and temptations. As one participant said of the program's mentors, "[t]hey keep my mind on the right track and keep me thinking positive. If I'm feeling depressed, they give you words of encouragement to keep you from doing stuff that you really don't want to do." *Id.* at 15.

subcommunities. But non-litigation-based forms of community lawyering may serve as well.¹⁸³ In Provo, Utah, for example, a community lawyering effort, launched by law students at Brigham Young University School of Law, built capacity and solidaristic self-assertion among residents at the Boulders, an apartment complex housing more than 1400 mixed-income, multi-lingual, multi-religious tenants.¹⁸⁴ Through a collaborative process orchestrated by student-lawyers, the residents discovered a shared interest in public safety, and ended by establishing a new, onsite police substation, which metamorphosed into a vibrant community resource center.

Beyond legislated programs and non-traditional lawyering, other legal instrumentalities may also serve the goal of cultivating hope. International tribunals, and alternative legal processes, may play a role, particularly in response to mass violence. The relation between legal process and the emotions was a focus of attention during the “due process revolution”¹⁸⁵ of the 1960s and 70s. It has received renewed attention in recent years as legal actors across the globe have struggled with the aftermath of genocide and ethnic violence. Activists and scholars have

¹⁸³ This approach – or more accurately, constellation of approaches, encourage lawyers to collaborate actively with their clients, in evaluating solutions to their clients legal problems and to the many non-legal challenges their clients face. These approaches laud community empowerment as their ultimate goal. *See, e.g.*, William P. Quigley, *Reflections of Community Organizers: Lawyering for Empowerment of Community Organizations*, 21 OHIO N.U. L. REV. 455, 455-56 (1994). To achieve this goal of empowering clients individually and collectively, these lawyering methods encourage clients to participate actively in developing strategies and solutions to their legal problems. Significantly to our interest in cultivating hope, the lawyer’s role in these alternative approaches is that of a facilitator, who promotes community building through activism, participation, and strengthening of solidarity among members. *See generally* Binny Miller, *Give Them Back Their Lives: Recognizing Client Narrative in Case Theory*, 93 MICH. L. REV. 485, 503-06 (1994); Ascanio Piomelli, *Appreciating Collaborative Lawyering*, 6 CLINICAL L. REV. 427, 440-41 (2000) (emphasizing client centeredness of community lawyering approaches).

¹⁸⁴ *See* David Dominguez, *Community Lawyering*, UTAH BAR JOURNAL, June 11, 2004, available at http://www.utahbar.org/barjournal/archives/2004_06.html.

¹⁸⁵ *See, e.g.*, Jerry L. Mashaw, *Administrative Due Process: The Quest for a Dignitary Theory*, 61 B.U. L. REV. 885 (1981).

highlighted the role of international tribunals, truth commissions, and local institutions in moderating or satisfying the desire for vengeance, or moving participants closer to forgiveness or reconciliation.¹⁸⁶ In addition to these much-discussed emotional effects, such institutions might also foster the emergence of a particular kind of *hope*: a sense of possibility, shared by the disparate members of a divided and ravaged community, that together they might create a negotiable co-existence and, over time, a shared future. Legal institutions might play a role in several phases of this effort, including fact-finding, or the connection of fact-finding with devices of legal, and moral accountability (i.e., retributive or restorative justice).¹⁸⁷ The law might also play a crucial, enabling role, by structuring the encounters, or quotidian collaborations, between estranged neighbors, which might establish the foundation for trust, or at least for shared endeavor.¹⁸⁸

Finally, legal tools that have traditionally functioned as vehicles for future planning, such as contract, might also serve as instruments for cultivating hope. In many jurisdictions, contracts have been used to establish legal bonds, which carry enforceable rights and obligations, in contexts where the law does not yet recognize a formal relationship – such as the partnership of

¹⁸⁶ See generally, Siri Gloppen, *Roads to Reconciliation: A Conceptual Framework*, in *ROADS TO RECONCILIATION* 27-37 (Elin Skaar, Siri Gloppen & Astri Suhrke eds., 2005); MARTHA MINOW, *BETWEEN VENGEANCE AND FORGIVENESS: FACING HISTORY AFTER GENOCIDE AND MASS VIOLENCE* (1998) (citing chapter on truth commissions, and South African Truth and Reconciliation Commission).

¹⁸⁷ See generally, Eric Stover & Harvey M. Weinstein, Conclusion: A Common Objective, A Universe of Alternatives, in *MY NEIGHBOR, MY ENEMY: JUSTICE AND COMMUNITY IN THE AFTERMATH OF MASS ATROCITY* 323 (Eric Stover & Harvey M. Weinstein eds., 2004); Elin Skaar, Siri Goppen & Astri Suhrke, *Introduction*, in *ROADS TO RECONCILIATION*, *supra* note 186, at 23.

¹⁸⁸ Laurel E. Fletcher & Harvey M. Weinstein, *Violence and Social Repair: Rethinking the Contribution of Justice to Reconciliation*, 24 *HUM. RTS. Q.* 573, 622 (2002).

same sex couples, or the relation between a surrogate mother and the couple who seeks to adopt the child she bears. Contracts not only facilitate the embrace of distant goals, by permitting those within contractually-ordered relationships to move planfully toward the future; they may also support the hopes of parties for the long-term social integration and acceptance of their non-traditional relationships. Martha Ertman has argued, for example, that, contracts may serve as a positive bridge that helps groups to make the transition from the lowest condition of the ‘other’ under law (in which the other is denounced or even criminalized), to the highest peak of the other's legal positioning (in which the group is fully and formally protected under law and enjoys all possible rights on an equal basis).¹⁸⁹ The longer-term vista of social acceptance which may be implied by contractual regulation, as well as the ability to provide, in the short-term, for one’s material security, may foster a sense of possibility and capability in those who have recourse to contract. Here again the law may be seen as encouraging the growth of agency and providing the means necessary to respond to life's obstacles – features we have highlighted as essential to the development of hope.

B. Future Questions

As we begin to explore the many directions implied by this vision, a series of questions come to the fore. One line of questions concerns the cultivation of hope and other positive emotions. What cautions should arise as we contemplate the legal intervention in emotions or feeling-states – particularly intervention of a purposive or productive variety? Emotions such as

¹⁸⁹ Martha M. Ertman, *Sexuality: Contractual Purgatory for Sexual Marginalities: Not Heaven, But Not Hell Either*, 73 DENV. U. L. REV. 1107 (1996).

hope are easy to evoke rhetorically and harder to coax into being. Are there contexts in which emotions are more likely to be deployed rhetorically than genuinely fostered, and how might we identify these contexts in advance?

A range of more practical or instrumental questions also arise. How explicit should legal actors be about their cultivation of hope? The law's power, as an institution, gives it great performative potential: to announce a legislative project of fostering hope in particular populations may, in itself, fuel to the emergence of hope in those groups. Yet this potential must also be balanced against the possibilities of disappointing or misleading the public. Thus it is crucial that we continue to investigate the approaches or instrumentalities that are likely to be useful in the facilitation of hope, or other positive emotions. Our profile of the beneficial cultivation of hope – including such elements as engagement in shared, enabling projects, and solidaristic mentorship – begins this task; it also points to the need for further exploration of different legal contexts. In addition, it will be necessary to develop means of assessing whether we have actually succeeded in cultivating hope or other emotions, through legal intervention.

In its facilitative role, law is interwoven with other institutions for governing behavior and cultivating emotions. For example, in the Head Start case, both legal regulation and the day-to-day operation of the child care centers, which law brings into being, support the development of hope in parents. Yet notwithstanding such interrelation, law has many distinctive characteristics, which cannot readily be duplicated by most other kinds of institutions. Law commands unique authority and often comparatively abundant resources; it publicizes, it legitimates, it is in many ways performative. It will be important to consider the specific kinds of collaborations through

Law in the Cultivation of Hope, 1/21/2007

Work in progress, please do not cite, refer comments to krabrams@law.berkeley.edu & kerenhi@mscc.huji.ac.il

which agents of change can best achieve this intertwined yet distinctive role.. This question extends to the details of implementation as well as the broader contours of conceptualization or design. Could one conceivably put a dozen legal decisionmakers in a room and ask them to structure a program that could foster hope? Legal actors would need to know how, and where, to seek collaboration and assistance in such a venture. It will require both resourcefulness and a professional or disciplinary humility, which are not always in abundant supply among legal decisionmakers.

Yet these varied challenges seem to us eminently worth pursuing, Not only could they contribute to the emergence of emotions that would enable and enrich the lives of those affected, but they would permit us to glimpse and to explore a new kind of potential in the law itself.