

## LAW IN THE CULTIVATION OF HOPE

### Abstract

In recent years scholars have begun to question the longstanding dichotomization of (legal) reason and the passions, and have offered significant understanding of the connection of law and the emotions. Much of this work, however, has been done within a fairly narrow ambit. This Article seeks to broaden this scholarship in two ways. First, it points to an unexplored relation between law and the emotions: the role of law in cultivating the emergence of emotions. And second, it moves beyond the negative emotions, and directs attention to positive emotions and their interplay with the law outside the criminal context. Following these two new directions, the Article focuses on the role of law in the *cultivation of hope*. It suggests a role for law that has not been explored before: facilitating the emergence of positive emotions, and thus empowering law's beneficiaries.

The Article first uncovers the structure of hope as an emotion, and identifies the necessary qualities for developing individual hopes: the ability to imagine new possibilities not encompassed by one's present condition; a sense of agency sufficient to envision oneself pursuing distant objectives; and adequate resources that enable bringing such goals about. After characterizing individual hope, the Article turns to a less-discussed possibility: the active, external effort to cultivate hope in people whose deprivation prevents them from envisioning and pursuing alternative futures for themselves. A *profile* of a beneficial effort to cultivate hope in others is then developed, drawing on the narrative of the award-winning documentary film "*Born into Brothels*". This original profile reflects five elements that are central to such an effort: communicating recognition and vision; introducing an activity that allows for individuation; providing resources; supporting agency; and fostering solidarity. However, given the systematic character of the social problems that give rise to despair, individual efforts at cultivation may not suffice and institutional interventions, including those secured by law, may be indispensable. This Part concludes by discussing the perils entailed in such an enterprise.

Finally the Article applies its analysis to the cultivation of hope through law. It explores the example of Project Head Start, which was enacted as a core component of the War on Poverty. For decades the Project has served to engage poor children and their families in new opportunities for personal and collective growth. Remarkably, this study finds many of the characteristics of a successful cultivation of hope in certain features of the Project that are required or facilitated by law: the involvement of parents in the operation of the Project's local centers, and the strong solidarity that has emerged among parents, and between parents and Project staff. It further illustrates how some of the predicted risks of cultivating hope have materialized in this context, while others have not. The Article concludes by calling for further investigation of the promising notion that, by drawing on its capacity to cultivate positive emotions, the law may play an empowering role in the lives of individuals and groups.

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# LAW IN THE CULTIVATION OF HOPE

## 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. More recently, mainstream scholars have been challenged to reconsider this view, by the narrative and epistemological dimensions of critical legal scholarship,<sup>1</sup> and by interdisciplinary legal work drawing on the humanities and the social sciences.<sup>2</sup> Consequently legal scholarship has begun to probe the emotions; however, much of this work has been done within a fairly narrow ambit. The most sustained focus has been on the negative emotions that infuse the criminal law: how does, or can or should, the law manifest the indignation, anger, or disgust that “we” feel at the violation of those shared norms embodied in criminal law?<sup>3</sup> Moreover, as this example suggests, much of this work assumes that law’s

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<sup>1</sup> See e.g., Kathryn Abrams, *Legal Feminism and the Emotions: Three Moments in and Evolving Relation*, 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).

<sup>2</sup> See, generally, THE PASSIONS OF LAW (Susan Bandes ed., 2001) and more specifically its introduction by Susan Bandes (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 (2003); 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; Terry A. Maroney, *Law and Emotion: A Proposed Taxonomy of an Emerging Field*, LAW & HUMAN BEHAVIOR (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).

<sup>3</sup> This body of scholarship includes works on the meaning of punishment, on alternative criminal sanctions, 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; Danielle S. Allen, *Democratic Dis-ease: Of Anger and the Troubling Nature of Punishment*, in PASSIONS OF LAW; 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

role vis-à-vis the emotions is reflective or expressive. While a few scholars have discussed the way that criminal sanctions can or should *impose* shame,<sup>4</sup> or the way that law can or should *channel or rationalize* retributive urges,<sup>5</sup> legal thinkers have not, as a general matter, sought to parse the possible relations between the emotions and the law with any specificity.<sup>6</sup>

In this Essay, we seek to broaden legal scholarship relating to the emotions, in two ways. First, we seek to focus on a relation between law and the emotions which has not been the subject of previous legal scholarly attention: the role of law in cultivating, or facilitating, the emergence of particular emotions. Conceiving of law as 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 role-specific duties; the *Miranda Rule* has fostered less aggressive or coercive behavior by police officers toward a suspect in custody.

In this Essay, however, we are concerned not with law's cultivation of *behavior*. Our focus is on a dimension of its role that has not yet been 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, the law is here conceived as being capable of facilitating the emergence of emotion-states -- a view requiring a more thoroughgoing renunciation of the dichotomy

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CULTURE (Austin Sarat and Thomas Kearns eds., 1998); Susan Bandes, *Fear Factor: The Role of Media in Covering and Shaping the Death Penalty*, 1 OHIO STATE JOURNAL OF CRIMINAL LAW, 585 (2004).

<sup>4</sup> See e.g., Dan M. Kahan, *What Do Alternative Sanctions Mean?*, 63 U. CHI. L. REV. 591, 620-24 (1996).

<sup>5</sup> See e.g., Solomon, *supra* note 3.

<sup>6</sup> The last few years have seen a few more typological works on the relations between law and the emotions. See Abrams, *supra* note 1; Bandes, Introduction, *supra* note 2; Maroney, *supra* note 2. However, these typologies are not necessarily aimed at specifying the different roles that law might play in relation to emotions.

between legal ‘rationality’ and the passions. But the relation we describe between law and the emotions goes beyond that. 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, toward which end the law might be used as an instrument.

Second, this effort directs legal scholarly attention to a new set of emotions, those whose valence we might describe as *positive*, rather than negative. One can imagine using law instrumentally to engender particular negative emotions: there may be contexts in which is socially valuable to cultivate anger or disgust in a population.<sup>7</sup> 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 which have only rarely been discussed in the legal literature.<sup>8</sup> Exploring the law’s relation to these under-attended emotions and investigating how it might be utilized to help bring them into being seems to us a valuable new direction for work in this genre.

Following these two new directions, this Essay examines the role of law in the *cultivation of hope*. This choice is not incidental: hope is a positive emotion whose cultivation may be particularly appropriate to law, because of its immense importance for individuals or groups who face material disadvantage, inequality, or despair.

The Essay 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

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<sup>7</sup> Allen, *supra* note 3 (discussing the uses of anger in criminal law in Athens).

<sup>8</sup> 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 (1999).

increasingly garnering the attention of philosophers and social scientists who stress its pragmatic and empowering aspects, and 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 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”: 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 bringing such goals about.

The second Part goes beyond hope that arises in the individual 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 bringing them such futures into being. In these settings it may be necessary for individuals who are not so constrained, to help cultivate hope in others. Drawing on one central example, this Part develops a profile of a beneficial effort to cultivate hope in others. The profile is conditioned on a capacity to cultivate hope in others, and reflects five elements that are central to that effort: communicating recognition and vision; introducing an activity that allows for individuation; providing resources; supporting agency; and fostering solidarity. We then observe that, given the systematic character of many of the social problems that give rise to despair, individual efforts may not be enough and 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 includes dangers distinct to the cultivation of hope: 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 render “other” the beneficiaries of cultivation efforts.

Part three applies the analysis offered in the preceding parts to the cultivation of hope through law. It examines one example of an effort to cultivate hope through an institution established by law: 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 that were required or facilitated by law, 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. And second, and more critically, it illustrates the materialization of some of the risks of cultivated hope in the context of Project Head Start.

The Essay concludes by framing a series of questions that arise from this exploration of law’s role in the cultivation of 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*

Popular conceptions of hope span a wide range of understandings. 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”). Others 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.”<sup>9</sup> In this Essay, 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.”<sup>10</sup>

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

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<sup>9</sup> 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, *Id.* at 178 (Romans), 43 (Aquinas).

<sup>10</sup> St. Thomas Aquinas, *Summa Theologica, trans.*, in FATHERS OF THE ENGLISH DOMINICIAN PROVINCE, (Benziger Brothers, Inc., 1947, EWTN Online, Hptertext 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.). 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, *Ibid* , 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.

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. And it 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 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.”

The several elements of this understanding 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: emotional or behavioral responses one might have to a future possibility that was unappealing. 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; but 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 be able to 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.<sup>11</sup> This element of agency,

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<sup>11</sup> 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,

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,” 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].”<sup>12</sup>

### B. *The Process of Hoping*

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.<sup>13</sup> Unlike emotions such as anger, which frequently arise and dissipate, hope is a sustained or long-term emotion,<sup>14</sup> with a trajectory that comprehends several phases. First, even before any particular hopes

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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.

<sup>12</sup> CORNEL WEST, *HOPE: CONVERSATIONS ON THE FUTURE OF BLACK AMERICA*, xii (1999). *See also* Patrick J. Deneen, *The Politics of Hope and Optimism: Rorty, Havel, and the Democratic Faith of John Dewey*, 66:2 *SOCIAL RESEARCH* 577-609 (1999).

<sup>13</sup> 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,” (*see* Shade, *supra* note 9, at 14), and a pragmatic understanding of habits as central to that ongoing interaction. 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*...” (*Id.* at 14), which involves both the embrace of ends and the identification and assessment of means. 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.” *Ibid.*

<sup>14</sup> 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. *See generally* DAVID C. EDWARDS, *MOTIVATION AND EMOTION: EVOLUTIONARY, PHYSIOLOGICAL, COGNITIVE, AND SOCIAL INFLUENCES*, CH. 4 (1998). For a more integrative view of the emotions *see* KEITH OATLEY, *EMOTIONS: A BRIEF HISTORY* (2004), 3-4. 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.

can be nurtured, one 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 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 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.

Because the process of hoping, so conceived, is both 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.”<sup>15</sup> This film documents Briski’s efforts to teach photography to a group of children from Sonagachi, a red-light district in Calcutta, and to use their photographic work to help the children escape the hold of their environment. In the largest sense, the film explores the ways that learning photography made hope possible for 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 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.

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<sup>15</sup> Ross Kauffman & Zana Briski, *Born into Brothels* (ThinkFilm, 2004).

## 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 one sees oneself as enmired in one’s current circumstances, without even a distant possibility of change, one cannot be a subject of hope. Similarly, if the present circumstances comprehend one’s entire horizon -- if one is not even aware that possibilities outside one’s immediate condition exist -- one is not capable of hope. Thus being, or becoming, a subject of hope is the first step in the process of hoping.

Zana Briski is, from the outset of the film, a subject capable of distant and challenging aspirations. A Westerner and a career photojournalist, she 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 encounter their lives on a more intimate basis: this is where she encounters their children. Her bold schemes sometimes veer toward the incautious, a quality which can be a danger of too much hope. But it is clear that neither indeterminacy in her goals, nor the apparent difficulty of achieving them, prevent Briski from imagining their success or embracing them as aspirations.

## 2. Embracing Particular Hopes

For those who are capable, the next stage in the process of hoping involves the embrace of particular hopes. A subject espouses 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 they may be reached in sequence, over time.

Briski's initial plan to photograph Indian women – which may have stemmed from professional curiosity, a desire for stimulation or success, or a diffuse sense of altruism – is not explored in the film. When this plan was focused by a chance visit to Sonagachi, Briski rented a room from a brothel owner, to be able to live more closely with the women who would be her subjects. As Briski witnessed the despair that suffused this environment, she may have developed a diffuse counter-hope: that it might be possible to improve the lives of these women.<sup>16</sup> 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 was the most promising path. This is another common feature in the growth of particular hopes: one's sense that the goal might be achievable is encouraged by the first taste of success or satisfaction, which in turn supports and enhances the initial hope. And indeed, the narrative of the film makes clear that teaching photography to the children produced in Briski at least three interrelated goals.

Initially, she sought to expose them to an art form which had given her pleasure and sustenance, and in which they had expressed avid interest. The imagination and

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<sup>16</sup> Hope and despair are widely regarded as opposites: hope responds to an uncertain prospect with an energetic sense of possibility, while despair prompts demoralization and paralysis. Yet this contrast does not always entail separation or disengagement. On the contrary, hope and despair are often intertwined, each defining itself as against the other. Though a desperate situation may immobilize its subject, it may sometimes produce a different effect: hope may find its origins in an impulse, or an instinctive self-assertion, against an apparently hopeless circumstance. See, e.g., Angus Fletcher, *The Place of Despair and Hope*, 66:2 SOCIAL RESEARCH, (Special Issue on 'Hope and Despair', Arien Mack ed.) 521-529 (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*, 66:2 SOCIAL RESEARCH, (Special Issue on 'Hope and Despair', Arien Mack ed.) 429-469 (1999) (arguing that hope and despair are intrinsically intertwined partners in the dance of desire and emphasizing the importance of acknowledging their interplay).

possibility expressed in these early photographs led Briski 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.” As the children began to emerge as subjects with the capacity to envision 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.<sup>17</sup> It requires, as a kind of condition precedent, the ability “to act as if” the goal can be achieved,<sup>18</sup> though one does not, in fact, know whether it will be accomplished. This assertion -- which must often 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

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<sup>17</sup> 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 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.

<sup>18</sup> See, Philip Pettit, *Hope and its Place in Mind*, in 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, pp.152-65, 158 (Special Issue ‘*Hope, Power, and Governance*’, Valerie Braithwaite ed.) (2004) (arguing that hope will consist in acting *as if* a desired prospect can be achieved, for purposes of investigating practical means to its achievement); SHADE, *supra* note 9, 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).

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 children to boarding schools. Indeed, a more cautious individual might have quickly concluded that these goals were unattainable.<sup>19</sup> Yet Briski had to proceed as if these goals were manageable, or her doubts 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 remaining in Sonagachi would mean, among other things, the rapid recruitment of the older girls into lives of prostitution, she recognized the importance of moving them to alternative residential settings, and 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 assessment 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.

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<sup>19</sup> 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.

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. Here the camera was once again a central means; but the effort to raise funds turned out to be an elaborate project, with many complications and contingencies, which required Briski to grow significantly both as 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, in order to utilize the economic potential of the children's remarkable talents.

#### 4. Support for the Process of Hoping

This process, of developing means and the capacities to discover and implement them, is crucially assisted by two kinds of instrumentalities. 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, play a particular role in relation to temporally-sustained and cognitively-inflected emotions such as hope: they "enabl[e] us to persist in hoping, and prepar[e] us to act when conditions are appropriate"<sup>20</sup> The habits that are particularly important to hoping are: resourcefulness, which permits us to explore and expand our agency; persistence, which sustains us; and courage, which supports the first two kinds of habits, by enabling us to "face arduous tasks.

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<sup>20</sup> SHADE, *supra* note 9, at 77.

The creativity and resourcefulness hailed by Patrick Shade infuse many of Briski's efforts. The idea of exhibiting the photos as a fundraising vehicle provides one powerful illustration. Resourcefulness was also required to identify the educational opportunities that best suited each of the children<sup>21</sup>, and to introduce the prospect of boarding school to each child's parents.

The film does a particularly acute job of highlighting the persistence that fueled Briski's assault on the governmental and educational bureaucracies responsible for administering the children's opportunities. The scenes detailing the dead ends and frustrations that Briski confronts 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.<sup>22</sup>

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.

In developing these habits and in pursuing the hopes they fuel, it is also crucial to know how to tap the resources that can be provided by others. 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

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<sup>21</sup> 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.

<sup>22</sup> 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 so and is able to secure what she needs from this apparently intransigent figure.

ultimately replace, their own agency in pursuing their goals.<sup>23</sup> McGeer observes that there are dangers in relying either too little or too much on the resources of others in achieving one's hopes. The optimal strategy is what she calls "responsive hope," in which the hoper draws on the material and, particularly, the psychological assistance of well-meaning others, to make her way to her objects.

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. This is why, for example, she invites Ross Kauffman, an experienced cinematographer, to come to India to work with her, 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.<sup>24</sup> 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: a deep inclination toward aspiration and pragmatic self-assertion that *transcends* specific obstacles and unavoidable disappointments.

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<sup>23</sup> Victoria McGeer, *The Art of Good Hope*, 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, pp.100-127 (Special Issue 'Hope, Power, and Governance', V.Braithwaite ed.) (2004).

<sup>24</sup> SHADE, *supra* note 9, at 135-40 (exploring relation between particular hopes and hopefulness).

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, but she does not always evince confidence in the success of her endeavor. She 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 produce<sup>25</sup>

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

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<sup>25</sup> 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.

almost foiled by the grief and depression induced by the 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, in some cases, their aspirations for themselves; but 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.<sup>26</sup> This quality of hopefulness permits Briski to challenge even 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, for the time being, in Sonagachi, but aims one day to attend university.

### *C. The Hazards of Hope*

Despite – or perhaps because of – the potent, transformative force of hope, it is a quality with its own distinctive hazards. 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 disappointments. But those whose capacity to hope is less well developed may

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<sup>26</sup> 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." at <http://www.kids-with-cameras.org/mission/> (last visited March 6<sup>th</sup> 2006). According to the website in addition to Calcutta projects have been held at Haiti, Jerusalem and Cairo.

manifest a range of injurious responses. "Hope is often shattered so thoroughly" argued Erich Fromm, "that a man may never recover it."<sup>27</sup> Disappointment, leading to a diminution of energies and a despairing reluctance to extend oneself toward other objects, is perhaps the most straightforward of these negative responses.<sup>28</sup> 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. Hoppers may delude themselves about the efficacy of particular strategies or means for achieving their goal, persisting when they ought to reassess or change course. Or they may begin to see the urgency or intensity of their desire as a substitute for effective means, awaiting, with increasing passivity, an impossible outcome. In one sense, the hazards of disappointment and delusion might be seen as balancing each other. Writing about the fear of disappointment Fromm wrote: "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?"<sup>29</sup> Yet this possibility of counterpoise does not prevent each of these dangers from offering potent pitfalls to particular hoppers.

In Briski's case these risks do not materialize. This is partly because she is resourceful – and perhaps lucky – enough to achieve many of her objectives. But even when she is threatened with failure, she seems unwilling to delude herself about possible outcomes or to persist in failing strategies. In one case, when Avijit threatens to reject the position she has secured for him at a

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<sup>27</sup> ERICH FROMM, *THE REVOLUTION OF HOPE*, 12 (1968).

<sup>28</sup> Marianne Horney Eckardt, *The Theme of Hope in Erich Fromm's Writing*, in 18 *CONTEMPORARY PSYCHOANALYSIS*, (January 1982), edited by the William Alanson White Institute and reprinted in *THE YEAR-BOOK OF THE INTERNATIONAL ERICH FROMM SOCIETY*, pp. 121-131 (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.)

<sup>29</sup> FROMM, *supra* note 27, at 12.

well-regarded private school, she observes, “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, which we should bear in mind as we move into 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; and 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 does not “spring internal”<sup>30</sup> – that is, does not originate in an individual subject. The potential of hope to empower its subjects, and to 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, as we have seen, on her own individual hopes. Yet, by reaching out to the children and offering them new tools -- the physical cameras, the competence to use them, and the 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.

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<sup>30</sup> Lionel Tiger, *Hope Springs Internal*, in 66:2 SOCIAL RESEARCH (Special Issue on 'Hope and Despair', Arien Mack ed.) 611-623 (1999).

By looking attentively at this project, we can identify several important features of the process of cultivating hope in others. For the most part, we will focus on the positive lesson to be drawn from *Born into Brothels*; but toward the end of this characterization, we will 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 help us to structure of the cultivation of hope through law.

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

Zana Briski's effort offers a foundation for sketching a more general profile of a beneficial cultivation of hope. The several distinctive qualities that typify Briski's efforts to cultivate hope in the children of Sonagachi will be illustrated and analyzed in the following sections.

#### 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. The general point should be clear: the capacity to cultivate hope in others requires one to have resilient individual hope, and an eagerness to share it with those who have less of it.<sup>31</sup>

#### 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

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<sup>31</sup> Of course the individual hope that we see as necessary is of the type characterized in Part I.

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 12 year old boy like Avijit even imagine himself as a successful photographer, when his basic needs are in jeopardy, and everybody around him, including his drug-addicted father, is 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.”<sup>32</sup> 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.

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 doesn't 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. As the cultivator makes clear that she recognizes the prospective hoper, and sees her as a person with these kinds of capacities, it may help her see herself differently, and 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

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<sup>32</sup> JAYNE M. WATERWORTH, A PHILOSOPHICAL ANALYSIS OF HOPE, 18 (2004)

“mirroring effect,”<sup>33</sup> 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 – in some cases, perhaps, for the first time -- that they might have something to offer.

Second, the cultivator must share her vision of the world – the prospective hoper’s world – as potentially different than it currently is. 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.<sup>34</sup> The cultivator must visualize alternatives that are appealing and potentially - if distantly - realizable, and have the capacity to communicate 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. The seriousness with which she treated their efforts, and, over time, the opportunities she created for others to see, purchase, and discuss their work, made it possible for many of them to see themselves in a different light, and glimpse, at least distantly, new trajectories for their lives.

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<sup>33</sup> Victoria Mcgeer, *The Art of Hope*, in 592 ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, pp.100-127, 107 (Special Issue ‘*Hope, Power, and Governance*’, Valerie Braithwaite ed.) (2004) (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).

<sup>34</sup> 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).

### 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 the 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.

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: the children simply spread out in their vicinity and reconsidered it, through the eye 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.<sup>35</sup> Kochi preferred to escape her immediate environment by focusing on animals, gardens and parks;<sup>36</sup> still others, such as Suchitra and Shanti photographed the quarters where they

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<sup>35</sup> ZANA BRISKI, *BORN INTO BROTHELS: PICTURES BY THE CHILDREN OF CALCUTTA* (2005), at 69.

<sup>36</sup> *Id.* at 51.

slept, or members of their families.<sup>37</sup> Both the cameras, and Briski's own 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 of 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.

#### 4. Providing Resources

The newly imagined alternatives must also be accompanied by suitable concrete resources to make them realistic and achievable. As life under harsh conditions may not provide the means – either practical or attitudinal – for transforming aspirations into reality, external sources are essential. To return to Avijit: receiving a camera and classes in photography, which his family could not afford, enabled the photographer to emerge in this talented boy. For Gour, who could only dream of leaving the brothels to gain access to higher education, it was crucial to have 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 necessary to make transformative use of them. Without the skilled and sustained guidance she provided in

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<sup>37</sup> *Id.* at 75, 83.

the class, the camera might have served only as a pleasant diversion; her expertise – and her commitment to fostering expertise in them – permitted the children to understand photography better as an activity, and see themselves as more serious practitioners. The professional networks and institutional knowledge Briski was able to command – from the assistance of skilled editors and organizers for the benefit exhibitions, to the ability to shepherd forms through complex administrative processes – helped the children to glimpse and negotiate the new paths opened up by this exposure. Each of these resources, in its own way, helped to make the new possibilities yielded by photography less remote and more achievable. This constitutive power of these resources was also enhanced because they were structured so as to stimulate a sense of authorship and initiative in the children – a point that is discussed in the following section.

## 5. Supporting Agency

This sense of authorship connects to another central characteristic of Briski’s cultivation: 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 being framed entirely by the destitution of Sonagachi; it gave 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.”<sup>38</sup>

The children’s sense of capability and control was also enhanced by the careful, stagewise way in which Briski helped them to bring their photographic projects to

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<sup>38</sup> BRISKI, *supra* note 35, at 83.

completion: they shot pictures, analyzed and critiqued their work, edited what they had produced, and, when circumstances arose, 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 their work being auctioned, continents away, via an internet connection. This kind of support is essential in nurturing the capacity for internal hopes: it permits prospective hoppers 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: the weekly photography class in the red light district 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 others work. They developed a sense of being part of something larger than each of them – a group of “kids with cameras”<sup>39</sup> who were not just children of the brothels, but shared an artistic passion and an emerging sense of ambition. Later, as Briski's hopes grew bigger and necessitated additional financial resources, this team spirit was reflected at a group exhibition in a Calcutta bookstore, which – through its success -- reinforced 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

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<sup>39</sup> See *supra* note 26.

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 to 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:<sup>40</sup> it fuels their emotional energies<sup>41</sup> and, by engendering cooperation among them,<sup>42</sup> brings them closer to their goals.

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 work in a multi-dimensional manner, connecting those who seek to cultivate hope with those who need their support. This “vertical” solidarity can be glimpsed in many subtle dimensions of Briski’s interactions with the children. Her pedagogy is querying rather than directive, she seeks to elicit their opinions and treats them with respect as they emerge. The format of the class erodes rather than buttresses

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<sup>40</sup> Erica Summers-Effler, *The Micro Potential for Social Change: Emotion, Consciousness and Social Movement Formation*, 54, 20 *SOCIOLOGICAL THEORY* (2002).

<sup>41</sup> *Id.* at 54.

<sup>42</sup> Valerie Braithwaite, *The Hope Process and Social Inclusion*, *THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE*, 128-151, 134 (Special Issue ‘*Hope, Power, and Governance*’, Valerie Braithwaite ed.) (2004).

hierarchy: 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, non-hierarchical engagement to the other adults who join her enterprise of cultivation. When Ross Kauffman or other artistic consultants arrive in Sonagachi, they, too, find themselves 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 which has much in common with that of the children. 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. The result of this sense of partnership is that the children can communicate readily with Briski (whom they refer to as “Zana Auntie”); they draw on Briski's resources and expertise, without being confined or held in place by them.

This solidarity which defies hierarchical structures – connecting kids with artists, and prostitutes with nuns and school managers – is crucial in any attempt to cultivate hope. This 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 described above 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 of cultivating hope is connected with serious risks or dangers, which bear consideration.

Some scholars have argued that external efforts to cultivate hope may become manipulative undertakings that serve the goals of the cultivator rather than those of the prospective hoppers.<sup>43</sup> 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. However, for the purposes of the following section, where we are focused on Briski’s project, there appears to be little reason to doubt that the cultivation is trustworthy and sincere.<sup>44</sup> Yet even where manipulation is not a problem, two other main dangers threaten: disappointing the prospective hopper, and constructing her as “other.”

### 1. Disappointment

As with the pursuit of individual hopes, the process of cultivating hope risks failure and disappointment. This danger may be greater, in fact, because prospective hoppers have only recently begun to trust the possibilities that cultivators have extended to them. Their hold on a more sustained hopefulness remains tentative. 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

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<sup>43</sup> Peter Drahos, *Trading in Public Hope*, THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE, 18 (2004). (Presenting as a case study 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.).

<sup>44</sup> 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.

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.

These consequences may be intensified by the fact that each individual hope is intertwined with others – both those of other prospective hoppers and those of the cultivators. The synergies that arise from hoping with others may, paradoxically, “make the experience of loss, if experienced, more profound”.<sup>45</sup> This is particularly true because those who hope together begin to reveal their emotions rather than keeping them “private”: thus, one person’s disappointments may be more readily observable by others. Sadly, this collective loss of hope may throw ex-hoppers into deeper despair than that they experienced before being exposed to the cultivation process.

Disappointment is a danger that does not materialize, on screen, in “Born Into Brothels.” This is because the film is structured so as to have a fairly consistent upward trajectory, and it is temporally limited in its scope. There is one scene, following the death of Avijit’s mother, where he is absent from class, and the other children ask, with some concern, where he is. One 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.<sup>46</sup>

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<sup>45</sup> Summers-Effler, *supra* note 40, at 55.

<sup>46</sup> 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 whom Brisk 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

At least one account, however, suggests that the hopeful trajectory of the film's narrative may have been premature. As reported in Outlook India last year, Partha Banerjee, a New Jersey-based immigration advocate who helped Briski translate the film's tape from Bengali to English, has voiced 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 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."<sup>47</sup> Once awakened to the possibility of a different future, their (present) inability to achieve it left them more despondent than before. Though Banerjee's concerns may or may not accurately reflect the aftermath of Briski's effort – it is also conceivable that, notwithstanding this disappointment, the photography class succeeded in cultivating in some of the children a sense of imagination and efficacy that could be asserted in other ways to produce change -- his conclusions document the grave consequences of disappointed hopes, and suggest that this danger may have materialized, even in this promising effort.

## 2. Reinforcing "Otherness"

As distinct from the case of individual hope, the external source of hope in a cultivation effort yields additional danger: that of patronizing the prospective hopers and enhancing their marginalization or "otherness".

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book notes, for example that "Gour hopes to attend university, with the supported of Kids with Cameras.." Briski, *supra* note 35, at 43.

<sup>47</sup> Seema Sirohi, *Zana's Shutters*, OUTLOOKINDIA.COM, MAGAZINE, March 14, 2005. 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.

Even Zana Briski, whose commitment to the children of Sonagachi was ingenious and unflagging, occasionally fell into this pattern. Her portrait of the children's families is unrelievedly bleak: the mothers are not only impoverished prostitutes, but are, not infrequently, 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 recognize the opportunities Briski presents to them. She also 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.

Observing Briski's occasional drift into "othering" we can infer that the same power inequalities that enable the cultivation of hope may also carry a detrimental potential: those 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 or treating beneficiaries as "other," may be employed against their parents, extended families, neighborhoods, races or cultures.<sup>48</sup>

The risk of stigmatizing prospective hoppers calls for greater determination and care in cultivating of hope. In particular, it underscores the importance of facilitating of

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<sup>48</sup> 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.

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 sustainable and helpful hope will emerge unless cultivators of hope would regard the people they reach out to as complete persons with a range of needs and competencies, and not merely as despairing or marginalized individuals. If handled with respect, the process of cultivating hope should not exacerbate “otherness,” but should, rather, play a role in its amelioration,

#### *D. From Individual to Institutional Cultivation of Hope*

No matter how valuable in particular contexts, individual injections of hope such as Briski's project are simply not enough. The many instances of social despair are sufficiently encompassing or entrenched that more systematic efforts are necessary to foster internal hope. Just as Briski's individual acts worked to fuel aspirations and to facilitate the agency required bringing them about, so can institutions foster hopefulness in members of societies. 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 it is conceived as a passive, wishful, affective stance. But if internal hope is understood as we suggest here -- as cognitive as well as affective, when as comprehending both the embrace of particular ends and the active search for means -- this incompatibility with concrete institutional features begins to recede. 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 also seek to encourage particular ways of thinking and feeling

among those they can influence: they may endeavor to 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”,<sup>49</sup> 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 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 into another effort to cultivate hope in poor children – this time in the neighborhoods of urban America. And as our narratives shifts from the efforts of the committed Zana Briski to complex governmental initiative embodied in Project Head Start, we turn from hope nurtured by an individual to a cultivation effort inaugurated and structured by law.

### 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

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<sup>49</sup> NICHOLAS ROSE, *GOVERNING THE SOUL: THE SHAPING OF THE PRIVATE SELF* (1991).

Head Start draws on a rich literature addressing this prominent program; yet unlike much of the literature, it does not seek to assess the program’s achievements and flaws. Rather, it seeks to explore the ways that hope may have been engendered in one legally-instigated setting. In so doing, the main question is what we can learn from the Head Start experience, as a case study, about the role of law in the cultivation of hope in society. We will start by arguing that Project Head Start reflects an effort to cultivate hope, although we do not suggest that fostering hope was the only motive for its initiation. The main focus will then be on the legal mechanisms that helped to facilitate Head Start’s emergence as a hopeful project. As 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.”<sup>50</sup> Accordingly, we will explore the legal design of the project: we will 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; we will 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<sup>th</sup> 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”,<sup>51</sup> wrote Lady Bird Johnson in her personal diary; indeed, the Project was

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<sup>50</sup> 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).

<sup>51</sup> EDWARD ZIGLER & JEANETTE VALENTINE, (eds.), *PROJECT HEAD START: A LEGACY OF THE WAR ON POVERTY*, 44 (1979) (emphasis in original).

described in a later, retrospective analysis, as “a beacon of hope for many children and families.”<sup>52</sup> This connection between Head Start and the cultivation of hope, however, was not a creature of media hype: it was also reflected in the socio-cultural background of the program, and in its legal history.

As with other efforts to instill hope that we have discussed above, Head Start arose from a context of despair: the “discovery” of poverty by the American mainstream in the early 1960’s.<sup>53</sup> New data demonstrating that 1 in 5 Americans – and almost 1 in 2 African-Americans – were living in poverty, and works such as Michael Harrington’s *The Other America*,<sup>54</sup> caused many Americans to glimpse, for the first time, the hardships that confronted those beyond their comfortable environs. Middle-class Americans responded to this “discovery” with both concern and anxiety: the extent of poverty, and the expressions of anger and frustration by the minority groups disproportionately affected, fueled a fear of violence, and an escalating sense of social deterioration.<sup>55</sup>

If these harsh realities triggered anxiety among more privileged Americans, they also fueled a human impulse to avoid despair and downfall. This impulse flourished in the optimism of the Kennedy and Johnson administrations: hopefulness, and a new determination to foster it in those who “live on the outskirts of hope,”<sup>56</sup> began to emerge. Part of this renewed hope arose from advances in social science that made academics of the period feel that they had more effective tools for addressing this problem.<sup>57</sup> But it

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<sup>52</sup> EDWARD ZIGLER & SALLY J. STYFCO, *THE HEAD START DEBATES*, 543 (2004).

<sup>53</sup> MARIS VINOVSIS, *THE BIRTH OF HEAD START* (2004).

<sup>54</sup> MICHAEL HARRINGTON, *THE OTHER AMERICA: POVERTY IN THE UNITED STATES* (1964).

<sup>55</sup> See, e.g., DEBORAH CEGLOWSKI, *INSIDE A HEAD START CENTER: DEVELOPING POLICIES FROM PRACTICE*, 18 (1998). The assassination of President Kennedy surely added to this sensation of rapid loss of social control.

<sup>56</sup> 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.

<sup>57</sup> VINOVSIS, *supra* note 53, at 7; ZIGLER & VALENTINE, *supra* note 51, at 136.

was hardly unique to academicians: the "War on Poverty" had been declared, and the law had a central role to play in it.

Project Head Start was part of a larger legislative effort which 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), specially designed to lead the hopeful war on poverty.<sup>58</sup> This agency introduced the Community Action Program (CAP): an institutional innovation which aimed at encouraging the poor to become more active on their own behalf, and equipped them with tools to support this effort. Project Head Start was conceived, developed, and later formalized through law,<sup>59</sup> under the auspices of this new agency, within the structure of a community action program. This often-overlooked legal history is important to the understanding of the kind of hopes that this law sought to foster. These hopes were broader than improving the education of preschool children; they included hopes for the families of these children, as well as for their communities. More importantly, they included an intention to cultivate – through active participation - reciprocal hope *in* these families and these 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

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<sup>58</sup> VINOVSIS, *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* VINOVSIS, *id.* at 146-147.

<sup>59</sup> 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.).

even 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. However, while these elements, in the camera project in Sonagachi, were provided by the resourceful Zana Briski; in the context of Head Start, they were components of an institutional structure made possible by law.

#### 1. Precondition: Capacity to Cultivate Hope in Others

Among the architects of Head Start were many who were both capable of individual hope, and willing to instill it in poor children, their families and their communities. None, however, had these qualities in more ample supply than Sargent Shriver, the "founding father" of Head Start. As director of the War on Poverty;<sup>60</sup> and of the new Office of Economic Opportunity, Shriver conceived Project Head Start: the main special features of the program emerged from his views and rapidly gained the support of numerous others.

Shriver had an imaginative goal in mind; he also demonstrated the habits of persistence and resourcefulness that enable good hopers to accomplish their desires. He devised the imaginative strategy of using Community Action Programs (CAPs) to educate and mobilize economically disadvantaged groups. Moreover, as he glimpsed the extent of middle-class ambivalence, he resourcefully bypassed 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

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<sup>60</sup> VINOVSIS, *supra* note 53, at 147.

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.<sup>61</sup> 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, he 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 specifically admonished 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."<sup>62</sup> He also received an initial budget of \$340,000,000 for initiating Community Action Programs. This substantial allocation, combined with the open-ended legal definition of Community Action Program, left Shriver vast space in which to create Head Start as a Community Action Program, and fund it heavily, in order quickly to establish it as a nationwide program.<sup>63</sup> 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

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<sup>61</sup> ZIGLER & VALENTINE, *supra* note 51, at 137.

<sup>62</sup> VINOVSIS, *supra* note 53, at 44.

<sup>63</sup> *Id.* at 45-49.

didn't have to go to the President ... Congress had appropriated the money and if I wanted to spend it on Head Start, I could spend it on Head Start.<sup>64</sup>

The initial legislation had, therefore, a distinctive facilitating role to play: it offered the means, and the authority, that permitted Shriver's team to lead, without limiting their horizons. 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 community action program. 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 budget reserved for community action programs two years earlier.<sup>65</sup>

Shriver's creativity, energy and agency,<sup>66</sup> rapidly galvanized others. Coalescence quickly emerged among Head Start's founding activists as they shared their aspirations, and became a group defined by common goals: this transition was apparent even in the way that they referred to themselves as the "Poverty Warriors."<sup>67</sup> This energetic sense of possibility was fueled by other sources as well. The leadership of Presidents Kennedy and Johnson, and the renewed confidence of policy makers that their developing professional tools would enable them to address poverty, played a role. The enactment of the Economic Opportunity Act itself had given a boost to collective efforts: 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

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<sup>64</sup> ZIGLER & VALENTINE, *supra* note 51, at 56.

<sup>65</sup> *Id.* at 67. (Stating that Head Start turned to be the best funded CAP activity, and ultimately received 38 percent of all CAP monies).

<sup>66</sup> VINOVSIS, *supra* note 53, at 62 (remarking that those great qualities were not accompanied with matching administrating skills).

<sup>67</sup> ZIGLER & STYFCO, *supra* note 52, at 103.

intervention.<sup>68</sup> The stage was thus set for an institutional effort to cultivate hope: we now turn to the features of its implementation.

## 2. Communicating Recognition and Vision

The constraints associated with stark deprivation often make it difficult to imagine alternate possibilities, or to mobilize the strategic or material resources to bring them into being. So, to foster hope among those who are systematically disadvantaged, external support or facilitation may be crucial. The policymakers and activists who developed and implemented the Head Start could envision paths that might lead beyond the cycle of poverty, to different futures for these children and their parents. They also had a view of the parents that projected a strong belief in their potential.

One central part of the Head Start vision was focused on the parents, mainly the mothers of the young children. The requirement that mothers volunteer to work with the kids – feed them, sing with them, care for them - was viewed by the architects of Head Start as a means of helping these women themselves. This special 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, had 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."<sup>69</sup> And then she

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<sup>68</sup> See ZIGLER & VALENTINE, *supra* note 51, 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.

<sup>69</sup> White, *supra* note 50, at 1583.

exclaimed: "But I enjoyed it!"<sup>70</sup> 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: "...the past few years it seemed like I couldn't help anybody. I couldn't help myself..." However, the creators of Head Start *could* visualize mothers like E.M. providing significant help to others around them.

The materialization of this vision often produced dramatic effects. Being seen in a new and capable way helped the Head Start mothers to embrace a new view of themselves – something we earlier referred to as the "mirroring effect,"<sup>71</sup> 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."<sup>72</sup>

In the case of Head Start, this mirroring was importantly facilitated by law. The legal construction of a respected space for the parents in the operation of each center, 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. said of 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*..."<sup>73</sup>. "Yet", White emphasizes,

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<sup>70</sup> *Id.* at 1583.

<sup>71</sup> *See supra* in Part II, next to note 33.

<sup>72</sup> White, *supra* note 50, at 1599.

<sup>73</sup> *Id.* at 1582 (emphasis added)

"from her first contact with Head Start, things seemed different."<sup>74</sup> What made the difference was a vision of parents as multifaceted people, with more than their misery to offer: people 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 superintendent... Then you feel, well *you are worth something*. And I didn't used to feel like that."<sup>75</sup>

### 3. Introducing Activities that Allows for Individuation

Envisioning the parents as involved participants would probably have been less valuable, had it dictated rigid modes of participation. 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. Although the founders of Project Head Start faced a national problem of overwhelming scope and depth, they managed to leave such a space for the individual participants in the program.

Paradoxically, this enabling flexibility was also facilitated by law. As mentioned earlier, Head Start was enacted as a *Community Action Program*, which called for the active involvement of community members in initiating and perpetuating the process of change.<sup>76</sup> This new approach, as one commentator noted, offered "a striking alternative

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<sup>74</sup> *Id.*

<sup>75</sup> JEANNE ELLSWORTH & LYNDIA J. AMES, *CRITICAL PERSPECTIVES ON PROJECT HEAD START: REVISIONING THE HOPE AND CHALLENGE*, 100 (1998) (emphasis added).

<sup>76</sup> 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."

to the prevailing model where institutions did things *to* the poor rather than *with* the poor.”<sup>77</sup>

The founders of Head Start 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, given the localized administration of the program, and the numerous roles that most centers made available to parents, this institutional participation was usefully open-ended. The goal of providing individuated, participatory opportunities was apparent as early as 1966, when the program was first authorized under its name. A provision that was added to the original 1964 Act emphasized that a major object of the Project was “the provision of appropriate activities to encourage the participation of parents of such children and the effective use of their services.”<sup>78</sup> Additional detailed regulations were later created to guarantee parents’ participation. One relevant part of these regulations states that:

“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.”<sup>79</sup>

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. Perhaps the best is her story about keeping the minutes for the policy

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<sup>77</sup> ELLSWORTH AND AMES, *supra* note 75, at 3.

<sup>78</sup> Economic Opportunity Act 1966.

<sup>79</sup> 45 C.F.R. 1304.50

council of her center. E.M. announced her candidacy for the position of the secretary of her center's policy council; to her surprise, she was elected. Carefully crafting her own role as volunteer, she had decided not to run for the position of chairperson. E.M. 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 had categories set up and I had it just perfect. ... I conducted my little position like a professional."<sup>80</sup>

#### 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.<sup>81</sup> The regulations also gave local grantees the latitude to "consider the development of adults a key objective,"<sup>82</sup> and to allocate their resources accordingly. The Head Start center in which E.M. participated, for example, provided a hot, nutritious meal for E.M. and her kids, on each day that she volunteered.<sup>83</sup> It also offered parents forward-looking, informational resources, such as a nutrition class, which was taught by an instructor equipped with materials from the federal [Agricultural] Extension Service.<sup>84</sup>

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<sup>80</sup> White, *supra* note 50, 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." White, *id.* at 1588.

<sup>81</sup> The enrichment activities are legally mandated under Sec. 9837 of the Head Start Act, which requires Head Start Centers to "offer ... to parents of participating children family literacy services and parenting skills training."

<sup>82</sup> White, *supra* note 50, at 1573.

<sup>83</sup> *Id.* 1580-1581 ("One of the perks of volunteering in your child's Head Start classroom, which E.M. did on a daily basis, was that the program would feed you and your younger children a hot meal")

<sup>84</sup> 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.

More broadly, the legal framework's substantial focus on parents gives them access to institutional and informational resources that enable them to improve their lives. Volunteering in Head Start classrooms alongside experienced teachers can enhance parents' capacities as teachers and learners; it increases their involvement in the education of their children. Parenting and nutrition classes provide parents with knowledge that can enhance both material and relational 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 decisionmaking processes of individual centers also provided a spur to 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 parents<sup>85</sup> in a stagewise fashion, permitted parents to grow in confidence, 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

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<sup>85</sup> 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 PEGGY SISSEL, STAFF, PARENTS AND POLITICS IN HEAD START: A CASE STUDY IN UNEQUAL POWER, KNOWLEDGE AND MATERIAL RESOURCES, PP. 163-168 (1999). See also Ellsworth & Ames, *supra* note 75, AT 221.

growth and progress. Parents typically began by volunteering in their children's classrooms, and attending occasional enrichment classes; those who enjoyed or gained competence in these contexts were encouraged, by staff 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.<sup>86</sup>

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 the girl and boy mentioned earlier, 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."<sup>87</sup> These emerging qualities not only permitted E.M. to be of help to others; they also allowed her to make changes in her own life, including taking leave of an 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 begin to embrace and pursue hopes in their own lives. Such relationships, too, are facilitated by the regulatory framework of the program,

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<sup>86</sup> Note that both Lucie White's narrative of E.M. and Wendy Kirby's narrative illustrate this stagewise progression of parental activities. This was also J.G.'s path: see White, *supra* note 50, at 1596.

<sup>87</sup> *Id.* at 1599.

which requires, among other things, that Head Start centers offer parents “opportunities to share experiences with other parents.”<sup>88</sup> 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”,<sup>89</sup> 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.”<sup>90</sup> 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.<sup>91</sup> 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 *give actively* to their peers. This experience of solidarity with other parents also allowed E.M. to 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

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<sup>88</sup> The Head Start Act, sec. 9837 [sub-section (b)6(c)]

<sup>89</sup> White, *supra* note 50, at 1591

<sup>90</sup> *Id.*

<sup>91</sup> White, *supra* note 50, at 1591-1592.

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.”<sup>92</sup> 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 the 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. White reveals the impact of J.G.'s support in helping E.M. to leave an abusive relationship; J.G.'s mentoring provided the model for the highly supportive relationship that E.M. established with the girl and boy mentioned earlier.<sup>93</sup>

## 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.

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<sup>92</sup> *Id.* at 1587.

<sup>93</sup> *Id.* at 1601.

Remarkably, 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.<sup>94</sup> Far from the punitive, prohibitive or even incentivizing roles more characteristic of law, the law here speaks in the language of scaffolding: of 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.

#### *D. The Perils of Cultivated Hope*

As we pointed earlier, the attempt to cultivate hope in others is not risk-free: and even with the best of intentions, those cultivating hope may end up disappointing their ostensible beneficiaries or reinforcing their otherness. In the institutional context relevant to Head Start, disillusionment may occur in substantially the same way as with hope cultivated by an individual. However, the danger of stigmatizing and constructing prospective hoppers as other 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 be sharply increased.

Manipulation of hope, to serve the purposes of the cultivator rather than the ostensible beneficiaries, is also a danger that may be enhanced in the context of institutionally-cultivated hope. For example, Peter Drahos has described how a

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<sup>94</sup> Head Start Act, sec. 9837 (emphasis added).

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 medication for treating AIDS and other present medical threats.<sup>95</sup> As a result, many less developed countries subscribed to agreements protecting intellectual property rights in the products of medical research that they should have rejected. The ambiguity or obscurity of institutional “motives,” in advancing particular visions of hope, and 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 context 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 active internalization of professed goals by the target population, as opposed to their passive acquiescence. This risk is also diminished where the project seeks to cultivate in its target population the independent judgment necessary to look critically at the program, and the agency necessary to pursue hopes in other areas. Each of these conditions appears to be met in the Head Start context. As opposed to Drahos’ case study, where the ostensible beneficiaries were simply asked to acquiesce in a regime; Head Start parents, as was illustrated, are invited, indeed required, to help bring it into being. Parental involvement may ask them to subscribe to goals which undergo constant localized re-articulation and application, and which – as one part of a complex institution – they have only limited

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<sup>95</sup> Drahos, *supra* note 43.

power to shape. This may result in divergences of view about the goals or strategies of a particular center, which may well be resolved in favor of the more powerful institutional actors.<sup>96</sup> But even such disagreements may be viewed as evidence that Head Start parents are being asked to make contributions to bringing a collective goal into being; while their resolution may reflect (and perpetuate) power inequalities, this is a distinct problem from that of manipulation.

Second, the experience of productive labor,<sup>97</sup> the substantive knowledge gained through parenting and nutrition classes, and institutional insight acquired by navigating the decisionmaking 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."<sup>98</sup> The investment of educational and other material resources in beneficiaries of the program also suggests that effort is being made to enhance their capacities, rather than simply to advance distinct goals of the program's organizers. In Drahos' case study, the ostensible beneficiaries of hope were offered little more than a cliché, telling the sick to wait. In contrast, Head Start's investment of institutional budgets and energies in giving the recipients means to "hope well," suggests that the

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<sup>96</sup> This kind of outcome may result in disappointment on the part of participating parents, a danger we discuss below, or in conflict between particular centers and the national administration of the program. 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 came to be viewed as counterproductively radical. *See, e.g.,* Vinovskis, *supra* note 53, at 97-99.

<sup>97</sup> 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 85, 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.

<sup>98</sup> ELLSWORTH AND AMES, *supra* note 75, at 329 (Quoting Ms. Phetteplace who testified on February 10, 1994).

effort is genuine rather than artificial and manipulative.<sup>99</sup> So while manipulation remains a potent threat in context where legal institutions are mobilized to cultivate hope or other positive emotions, it does not appear to have materialized in the context of Head Start.

As to other hazards discussed above, the evidence is more equivocal. Critics claim that supporters of Head Start fail to recognize the limited inroads it makes on systematic social problems of racism, sexism and poverty. 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.<sup>100</sup> 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".<sup>101</sup> 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 self-delusion is always a hazard of excessive hope, it may raise special concerns when it comes to institutional efforts to induce hope in others. The institutional cultivation of hope may persuade supporters and other observers that the policy chosen is the correct one, and policymakers should not be questioned. 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*

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<sup>99</sup> 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.*, ELLSWORTH AND AMES, *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).

<sup>100</sup> *Id.* at 339.

<sup>101</sup> *Id.* at 340. It would be fair to note that even the strongest supporters of this line of argument say that until improved solutions would be found we must not remove the band-aid and let the bleeding begin in earnest.

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."<sup>102</sup>

Perhaps the most insidious problem that can 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 be employed against 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 grounding for a program which places great emphasis on the education of parents alongside their children. Yet this hypothesis may seem 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.

These assumptions are in some respects confluent with a line of thought in which poor families or communities of color have historically been judged for not complying with the white and middle class standards of raising children.<sup>103</sup> While "good" parents, to use an example, consistently share bed-time stories with their children, "other" children "may never have seen a book".<sup>104</sup> Thus the benefits of encouraging Head Start parents to read more frequently with their children came with a price: the suggestion that poor parents are incompetent caregivers who can't provide for their children as "normal"

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<sup>102</sup> *Id.*, at 338.

<sup>103</sup> *See e.g.*, DOROTHY ROBERTS, *KILLING THE BLACK BODY : RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1999).

<sup>104</sup> ELLSWORTH AND AMES, *supra* note 75, 327 (quoting from a description of Head Start children in *Seventeen* magazine from 1965).

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: readers were exhorted to self-righteous alarm, for example, by accounts of "a mother so preoccupied with her own terrible troubles that she literally cannot speak a loving word..." -- 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".<sup>105</sup>

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

In theory at least, the idea of empowering the children's families, which stands the heart of Project Head Start, might have been a bulwark against the risk of patronizing and rendering "other." 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

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<sup>105</sup> ELLSWORTH AND AMES, *supra* note 75, at xi.

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 the way the valuable goal of involving parents may be undermined by the patronizing attitudes of professionals or administrators who too readily assume they know better.<sup>106</sup> 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 administrators were, ultimately, unwilling to share power with involved parents, either by hiring them as teachers or involving them in meaningful roles in the decisionmaking process.<sup>107</sup> This dissonance produced in Kirby a diminution of energies and a feeling of stasis and disappointment; but it 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, but 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 hear how significant legal

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<sup>106</sup> *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.")

<sup>107</sup> 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 ELLSWORTH AND AMES, *Id.* at 247, 258.

rules can be 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 be a resource which can be deployed against administrators' tendencies toward devaluation, or can offer moral support to participants seeking to redefine themselves, as they move toward greater opportunity.<sup>108</sup>

As a case study, Project Head Start suggests the vast potential of 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. Our goal has been to draw from our analysis a more systemized knowledge, which can help us use law to cultivate hope, while mitigating the risks that inevitably arise in this effort.

## CONCLUSION

This Essay has proposed a *facilitative* role for law which we believe merits further attention and inquiry. Our conception of law as facilitative is concerned with cultivation not of *behaviors*, but of *emotions* which may or may not be associated with particular behaviors. The hope fostered by Project Head Start may have helped participants like E.M. to play a larger role in her child's education, to secure a job, or to assert herself more effectively in her family life. But 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: they sought to foster in E.M. a

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<sup>108</sup> 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 decisionmaking. 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. Kirby, *Id.* at 258 (March 21, 1995).

sense of efficacy and a breadth of imagination which would help her to guide her family, in many different ways, toward a better life.

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 they are threatened 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 be of use in facilitating the emergence of particular emotion-states, our research thus far has highlighted other instrumentalities which have not been emphasized in previous scholarship, and which seem to us to potentially more fruitful, particularly in cultivating positive emotions such as hope. Engagement in shared projects which 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.

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 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 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, the parents' role is shaped both by legal regulation, and by the day-to-day operation of the child care centers that law brings into being. 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 which this intertwined yet distinctive role will be best realized. 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 a 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.