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The Right To Hope: A New Perspective Of The Right To Have Expectations, Opportunities And Plans

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The Right To Hope: A New Perspective Of The Right To Have Expectations, Opportunities And Plans

Juan Carlos Riofrio*

ABSTRACT

Hope has been considered to be an important and constitutive aspect of the human person, not only by philosophers of all backgrounds, but also by international and national courts of several countries especially in the last decade. As an existential aspect of each person, hope has multiple manifestations in private and public life. Up until now, authors and some cases have been discussing particular manifestations of the right to hope. While in the past these courts were more aware of the hopes raised in judicial litigation and ordinary life, now the inmates' hope of being released is the major point of debate. This normative Article is devoted to study, not just particular manifestations, but the right to hope itself as a whole.

We believe that this more comprehensive scheme will allow us to better understand the right to hope, as well as many correlated doctrines that deal with ordinary hopes, such as the doctrines of legitimate expectations and loss of a chance.

For that purpose, after delimiting the essence of hope, with a subjective and objective dimension, we will analyze the possible legal justifications and scope of the right to hope, taking into account numerous American case law that explicitly mention the right to hope, international jurisprudence, the doctrine of renowned philosophers, and some theological arguments.

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I. Introduction

In the last decade, courts from several countries have been recognizing the right to hope for prisoners and shaping its scope.¹ This jurisprudential movement seems to be triggered by a case in

1. Sarah Trotter, *Hope's Relations: A Theory of the 'Right to Hope' in European Human Rights Law*, 22 HUM. RTS. L. REV. 1, 5 (2022) (“[T]he idea of a ‘right to hope’ emerged in European human rights law, and since then, it has been both embedded in the case law of the [European Court of Human Rights] and drawn on more widely too.”) [perma.cc/675L-UGHX].

2010, where the U.S. Supreme Court dealt with the issue of the life without parole sentence for juvenile offenders.² According to *Graham v. Florida* (2010),³ life prison “means denial of hope”⁴ and “gives no chance for fulfillment outside prison walls, no chance for reconciliation with society, [and] no hope.”⁵ Later cases will follow the line drawn in 2010, getting deeper into the content of the right.⁶ For instance, the European Court of Human Rights (ECtHR) will extend this right to any inmate, despite their age,⁷ and other countries have committed to adhere to the same right.⁸

2. See *Graham v. Florida*, 560 U.S. 48, 52 (2010) (“The issue before the Court is whether the Constitution permits a juvenile offender to be sentenced to life in prison without parole for a nonhomicide crime.”).

3. 560 U.S. 48 (2010).

4. See *id.* at 70 (“[T]his sentence ‘means denial of hope; it means that good behavior and character improvement are immaterial; it means that whatever the future might hold in store for the mind and spirit of [the convict], he will remain in prison for the rest of his days.’”) (quoting *Naovarath v. State*, 779 P.2d 944 (1989)).

5. *Id.* at 79.

6. See *Miller v. Alabama*, 567 U.S. 460, 479 (2012) (determining that sentence of life imprisonment without the possibility of parole violates the Eighth Amendment’s prohibition on cruel and unusual punishment when levied against a juvenile defendant); *United States v. Rivera-Ruperto*, 884 F.3d 25, 47 (1st Cir. 2018) (“[L]ife sentences without the possibility of parole raise special constitutional concerns.”); see also *State v. Majors*, 940 N.W.2d 372, 411 (Iowa 2020) (Appel, J., dissenting) (discussing the “prospect of being released” as an aspect of atonement or rehabilitation).

7. See *Vinter v. U.K.*, App. No. 66069/09, ¶ 101–03 (July 9, 2013) (recognizing that it is a violation of human dignity to sentence a defendant to life imprisonment without the possibility of future release or review); see also *Trabelsi v. Belg.*, App. No.140/10, ¶ 135 (Sept. 4, 2014) (concluding that extradition of a detainee to a jurisdiction with life sentences without the possibility of parole sentence is a violation of the Convention for the Protection of Human Rights and Fundamental Freedoms). *But see Hutchinson v. U.K.*, App. No. 57592/08, ¶ 37 (Feb. 3, 2015) (allowing for “whole life orders” in “exceptional cases.”).

8. See *R. v. Bissonnette*, [2022] S.C.R. 23, ¶ 8 (Can.) (affirming the Canadian approach which holds life imprisonment without a “realistic possibility of parole” to be “incompatible with human dignity”); *Dodo v. State* 2001 (3) SA 382 (CC) at ¶ 35 (referencing the South African Constitution’s prohibition on “cruel, inhuman or degrading” treatment in the context of sentencing, though without expressly mentioning the right to hope).

For the *status questionis* in France, see Marion Vannier, *A right to hope?: life imprisonment in France*, in *LIFE IMPRISONMENT AND HUMAN RIGHTS* (Dirk Van Zyl Smit and Catherine Appleton eds., 2019); in Poland, see Maria Ejchart-Dubois, Maria Niełacznna, and Aneta Wilkowska-Plóciennik, *The Right to Hope for Lifers: An Analysis of Court Judgments and Practice in Poland*, *LIFE IMPRISONMENT AND*

Certainly, the idea of a “right to hope” for prisoners has become commonplace in the legal literature.⁹ However, these were not the first cases in which the judiciary courts broached this right.¹⁰ There have been at least a dozen previous cases in which the right to hope was mentioned in passing or discussed for different purposes, unrelated to prisoners.¹¹

The “right to hope” has also been used profusely by the authorities and citizens in diverse contexts for centuries.¹² Usually, its usage has had more poetic overtones than legal ones, and has been used to express the longings of the human heart for greater things.¹³ It often appears in the debates of Congress, in the official correspondence of several authorities and in public documents to emphasize certain aspirations.¹⁴ In 1871, for

HUMAN RIGHTS, 373 (Dirk van Zyl Smit & Catherine Appleton eds., 2016); in Spain Jon-Mirena Landa Gorostiza, *Prisión perpetua y de muy larga duración tras la LO 1/2015: ¿Derecho a la esperanza? Con especial consideración del terrorismo y del TEDH*, 17-20 REVISTA ELECTRÓNICA DE CIENCIA PENAL Y CRIMINOLOGÍA 1 (2015).

9. See e.g., Matei-Ciprian Graur, *The Convict’s Right to Hope. Difficulties Regarding the Prejudice Payment Conditions in the Matter of Conditional Release*, 2019 J. E.-EUR. CRIM. L. 99, 101–03 (2019) (surveying the standards for excessive punishment across European jurisdictions in the context of a right to hope); J. M. Kirby, *Graham, Miller, & the Right to Hope*, 15 CUNY L. REV. 149, 172 (2011) (analyzing the implications of *Graham* and *Miller* on American sentencing jurisprudence in regards to hope, rehabilitation, and redemption); Egidijus Kuris, *The Right to Hope: The (R)evolution of the Case-Law of the European Court of Human Rights*, 18 TEISES APZVALGA L. REV. 9, 10–11 (2018) (tracing the impact of *Vinter* in European caselaw).

10. See Derrick Bell, *The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 Cap. U. L. Rev. 571, 584 (1993) (explaining the right to hope in context of racism); Marvin E. Frankel, *Book Review: Mr. Justice Frankfurter and the Constitution by Philip B. Kurland*, 85 HARV. L. REV. 354, 356 (1971) (highlighting the right to hope in context of reliance on someone’s professional judgment).

11. See Frankel, *supra* note 10, at 356–57 (discussing a Supreme Court Justice’s “bedrock faith in democracy” as a throughline of his reasoning in cases).

12. See Kirby, *supra* note 9, at 172 (discussing the right to hope in the context of education, punishment, communication, and race); see e.g., Proclamation No. 7671, 68 Fed. Reg. 23827 (Apr. 30, 2003) (transcribing President George W. Bush’s proclamation regarding teaching young Americans about hope and freedom).

13. See Proclamation No. 7671, *supra* note 12 (speaking about hope in soaring language).

14. See Exploring a Right to Try for Terminally Ill Patients Before the S. Comm. on Homeland Sec. & Gov’t Affs., 114th Cong. 661 (2016) (statement of Ron

instance, Women Republicans reaffirmed their “right to hope and believe that the mission of their party as a reformatory organization is not yet ended.”¹⁵ Fast forward to 1965, a Lutheran theologian, Paul Tillich, advocated for a more religious right to “ultimate hope, even in view of the end of all other hopes, even in the face of death.”¹⁶ Several institutions,¹⁷ scholars,¹⁸ and religious communities¹⁹ have contributed to the topic trying to enlarge the possible applications of this right, and Pope Francis has even dared to affirm that the right to hope is “the first and most fundamental human right.”²⁰ However, no one has been able to piece together this puzzle made up of numerous aspirational, religious, moral, and legal rights.

This normative Article intends to single out, justify, and define the contours of the general right to hope of all citizens (not just prisoners), restructuring the multiple considerations given to this right on a broader conciliatory scheme. As an existential aspect of human life, hope has shown to have countless manifestations in

Johnson, Chairman, S. Comm. on Homeland Sec. & Gov’t Affs.) (advocating for new legislation regarding a “right to try”).

15. *The Republican Party and Women’s Suffrage*, WOMAN’S J. (Oct. 7, 1871) at 316.

16. PAUL TILlich, *THEOLOGY OF PEACE* 189 (Ronald H. Stone, ed., 1990).

17. See e.g., Anna Peterson, *Climate Change and the Right to Hope*, 30 TIKKUN 42, 42 (2015) (referencing the right to hope in the context of working to reduce climate change); *One World Art – The Right to Hope*, WORLD ENV’T LIBR. (2021) (describing UNESCO’s organization of the The Right to Hope project with “asserts the importance of social and cultural values in national and international affairs, as a means towards allowing humankind to live sustainably on planet Earth”) [perma.cc/U9CB-X5NS].

18. See, e.g., Trotter, *supra* note 1 (describing the right to hope as the foundation and vision of European Human Rights law).

19. See Olav Fykse Tveit, General Secretary, World Council of Churches, *The Right to Hope at the Human Rights Council* (Feb. 6, 2015) (“Our faith convictions express and nurture the hope for the future, for next generations, for one earth and for one humanity.”); Nancy Petty, *The Right to Hope*, PULLEN (Oct. 21, 2015) (applying scholars’ thoughts on the right to hope to religious hopes, such as “hope for policies that are built on valuing creation as God’s firstborn”) [perma.cc/3XKL-AG3X].

20. See Carol Glatz, *Most Fundamental Human Right is Hope, Pope Says*, CRUX (Jun. 15, 2018) (“‘The first and most fundamental human right, for young people most of all,’ is hope, he said, ‘the right to hope.’”) [perma.cc/7YM5-XSKD].

private and public life.²¹ Therefore, we will analyze the legal dimension of ordinary and transcendental hopes: ordinary hopes like the *expectations* of having something to eat at dinner or to be heard by an impartial judge, and transcendental hopes like the hope of being loved, having a family, and enjoying everlasting life. We will discuss in this Article when these hopes deserve protection, and under which conditions.

Rights can be classified in several ways. For instance, depending on its foundations, they could be *constitutional rights* if they are grounded in the constitution, *human rights* if they are recognized in human rights declarations, treaties or documents, or *religious rights* if their foundations require the acceptance of a specific faith.²² Most of this Article is devoted to the secular right to hope. However, we dedicate several considerations and one section of this Article to the religious right.

Defining the scope and limits of a general right to hope requires, first, thoroughly understanding what hope is. That is precisely the aim of Chapter II. It will show how philosophers from different schools assess and define hope. With this background, Chapter III will examine whether there is a general legal justification for the right to hope. After detecting a possible general justification for this right, Chapter IV will be more specific testing the grounds for hope to explore which kinds of hopes deserve legal protection. The content and scope of the right is outlined in Chapter V, which shows the four elements that the right to hope protects. At this point, we will have collected enough information to assess in Chapter VI whether the right to hope is an autonomous right that should be singled out.

21. See Vincent Crapanzano, *Reflections on Hope as a Category of Social and Psychological Analysis*, 18 CULTURAL ANTHROPOLOGY 3, 6–9 (2003) (introducing views of the concept hope from various theologians and religious denominations).

22. See *Constitutional Rights*, LEGAL INFO. INST. (last updated Aug. 2022) (“Constitutional rights are the protections and liberties guaranteed to the people by the U.S. Constitution.”) [perma.cc/RNJ9-G44Y]; G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 2 (Dec. 10, 1948) (“Everyone is entitled to all the rights and freedoms set forth in this Declaration”); U.S. CONST. amend. I (“Congress shall make no law respecting an establishment of religion.”).

II. Notion of hope

Hope has never been an easy topic for philosophers or theologians, and even less for lawyers. Some have considered hope to be a passion, others a feeling, a vice or a virtue.²³ The vast majority of authors emphasize the positive value of hope.²⁴ Among them there is Aristotle defending the courageous hope²⁵ and the Judeo-Christian tradition that put the hope “against hope”²⁶ of Abraham as a model of virtue. Nevertheless, some ancient and modern authors have given a negative assessment to hope. They see hope as an attitude of naïve people with insufficient knowledge towards false things, as “empty hopes” of an uncertain future,²⁷ as something that produces anxieties “projecting our thoughts far ahead of us instead of adapting ourselves to the present,”²⁸ as one of the causes of superstition,²⁹ and amounts to “presumption, an overestimation”.³⁰

In either case, it is still possible to detect certain similarities in these antagonist positions. For both sides, hope has an

23. See E. J. Dionne Jr., *Opinion: Hope is a Virtue, Not a Feeling. And it's Practical, Too.*, WASH. POST (July 9, 2023, 6:30 AM) (“[H]ope is a demanding virtue, not a sunny disposition.”) [perma.cc/ST72-FHY5]

24. See Adam P. Stern, *Hope: Why It Matters*, HARV. HEALTH PUBL'G (July 16, 2021) (“[H]ope is also beginning to reveal its value in scientific studies. Among young adults with chronic illnesses, greater degrees of hope are associated with improved coping, well-being, and engagement in healthy behaviors. It also protects against depression and suicide.”) [perma.cc/S6S3-LDSF].

25. See ARISTOTLE, NICOMACHEAN ETHICS 45–47 (W.D. Ross, trans., 2009) (“The coward, then, is a despairing sort of person; for he fears everything. The brave man, on the other hand, has the opposite disposition; for confidence is the mark of a hopeful disposition.”).

26. See *Romans* 4:18 (King James) (“Who against hope believed in hope, that he might become the father of many nations, according to that which was spoken, So shall thy seed be.”).

27. See JOHN DAVID LEWIS, *SOLON THE THINKER: POLITICAL THOUGHT IN ARCHAIC ATHENS* 85 (2006) (“Then we wail forthwith, and then gaping openmouthed we are entertained by foolish hopes.”).

28. SENECA, *Letter V*, in *LETTERS FROM A STOIC* 36, 38 (Robin Campbell, trans., 1969).

29. See BARUCH DE SPINOZA, *ETHICS* Part III Proposition L (R.H.M. Elwes, trans., 1997) (“Things which are accidentally the causes of hope or fear are called good or evil omens.”).

30. FRIEDRICH NIETZSCHE, *HUMAN, ALL TOO HUMAN* 347 (Helen Zimmern & Paul V. Cohen, trans., 2009) (1878).

ambivalent meaning. *Hope usually*³¹ *deserves a positive value when it is considered “rational,” which generally means that it is well-founded and has good outcomes.*³² Otherwise, hope would receive a negative valuation. This explains why Aquinas maintains that hope in God is a virtue and the unfounded hope of a drunk is a vice,³³ and also explains why atheists, like Friedrich Nietzsche, criticize the “irrational” hope in God, but willingly accept other kinds of hopes based on mere human powers.³⁴ The same happens with the French philosopher Albert Camus, known to be one of the bitterest critics of hope.³⁵ Despite his pessimistic view of the world, at one point he had to confess that it is almost impossible to live without hope, even if one wishes to be free of hope.³⁶

Be that as it may, most authors will agree that hope has two sides, one more subjective and another more objective. “Hope that *p*” is a two-sided coin.³⁷ The *subjective dimension* comprehends the “*I wish-want-believe . . .*”: it includes the corporeal, psychological or spiritual dispositions of the person, and the acts performed

31. See SØREN KIERKEGAARD, *WORKS OF LOVE* 251–61 (Howard V. Hong & Edna H. Hong, eds. & trans., 1995) (1847) (stating that only positive hope is the hope towards the eternal that transcends all understanding).

32. See *id.* at 250–53 (explaining that hope is not merely a wish and is defined by both the nearness and the distance of the desired outcome).

33. See THOMAS AQUINAS, *SUMMA THEOLOGIA*, II.I, question 40, art. 6 (Fathers of the English Dominican Province, eds., 1947) (1274) (“[D]runkards are wanting in steadiness; since their minds are easily changed. Therefore . . . drunkenness [is] not [a] cause[] of hope.”).

34. See NIETZSCHE, *supra* note 30 at 81–105 (outlining his views on religion and its lack of reason).

35. See ALBERT CAMUS, *Summer in Algiers*, in *THE MYTH OF SISYPHUS AND OTHER ESSAYS*, at 104, 113 (Justin O’Brien, trans., 1st ed., 1955) (“From Pandora’s box, where all the ills of humanity swarmed, the Greeks drew out hope after all the others, as the most dreadful of all. I know more stirring symbol; for, contrary to the general belief, hope equals resignation. And to live is not to resign oneself.”).

36. See *id.* at 83 (“At this point I perceive, therefore, that hope cannot be eluded forever and that it can beset even those who wanted to be free of it.”).

37. See Ariel Meirav, *The Nature of Hope*, 22 *RATIO* 216, 218–19 (2009) (explaining the “Standard Account of the nature of hope” which requires “the desire for some prospect” and the “belief that the prospect is in some degree probable”); ADRIENNE M. MARTIN, *HOW WE HOPE: A MORAL PSYCHOLOGY* 13 (2014) (presenting the “orthodox definition” of hope which comprises of an object and a range of possibility).

under this disposition.³⁸ The *objective dimension* of hope contains “*p*”: the thing the subject wants, expects, desires, or foresees.³⁹ This side is often called “the object of hope.”⁴⁰

Both sides are partially interconnected and partially independent. Although all bingo players have the same prize and statically the same possibilities of winning (object of hope), not all of them harbor the same feeling of hope. Some will be more enthusiastic, others more pessimistic. However, certain objective circumstances could increase the subjective appreciation of hope for most participants: if the players know that the prize is tremendously big, that the numbers are coming according to what was expected, and that the cards of the opponents are empty, the subjective hope of these players might be increased. Each time the caller announces one number that matches, the player would have more hope of winning. The increase of one dimension of hope often resonates with the expansion of the other.⁴¹ Thus, the subjective experience of hope is increased when the value and possibilities of reaching the goals are increased.⁴²

Let us explain first the **objective dimension of hope**. Hope is always tilted towards the future.⁴³ Nobody hopes to win the race

38. See *id.* at 220 (defining the subjective aspect of hope as “a measure of the strength of one’s belief, or the level of one’s confidence, in the proposition”).

39. See *id.* at 218–19 (designating *p* as the object of hope or a “proposition”).

40. *Id.*; see also *Hope*, STAN. ENCYC. PHIL. (last updated Mar. 21, 2022).” (exploring the “orthodox definition” which analyzes “hope that *p*” as showcased by R.S. Downie, J.P. Day, and other prominent philosophical scholars) ([perma.cc/Q2NR-VFUZ]).

41. See Emma Pleeing et al., *Characterizing Hope: An Interdisciplinary Overview of the Characteristics of Hope*, 17 APPLIED RSCH. QUALITY LIFE 1681, 1697 (2021) (noting that hope fluctuates based on perceived outcomes and changing evaluations of chances of success).

42. See *id.* (“As such, hope becomes a cyclical process; how we evaluate our circumstances might affect how we feel, which in turn can spark motivation, which again changes how we perceive our situation.”).

43. See Victoria McGeer, *The Art of Good Hope*, ANNALS AM. ACAD. POL. & SOC. SCI., Mar. 2004 at 100, 104 (arguing that hope is always future-oriented because it always involves “engaging with our own current limitations in affecting the future we want to inhabit”). *But see* Martin, *supra* note 37, at 68 (characterizing desires oriented toward the outcome of past events as hope). It could lead us to consider hope as an analogous notion that admits partial applications to the past, especially when that past is good, possible, and uncertain.

after losing it, nor to buy a house that is already part of one's properties. Hope points to the future, to one specific future: *a future that we consider is good⁴⁴ and possible but not yet granted.*⁴⁵ That future could contain earthly or heavenly goods, and could be very specific or open to multiple possibilities.⁴⁶

At least from the point of view of the subject, hope is something in between what is absolutely impossible and what is absolutely granted.⁴⁷ What is conceived⁴⁸ as absolutely impossible cannot be expected or even hoped for. Indeed, hope fades before things are lost forever. For example, most sane people do not expect to live two hundred years on this earth, because that looks impossible. Some hope for the resurrection of the body and that a miracle can overcome the laws of nature, but these hopes are seen subjectively as something possible because they are anchored in superior forces.⁴⁹ These people usually believe that what is impossible for us is possible for God.⁵⁰ At the same time, what is

44. See IMMANUEL KANT, *CRITIQUE OF PURE REASON* 677 (Paul Guyer & Allen W. Wood trans., Cambridge University Press 1998) (1781) (concluding that “all hope concerns happiness”); see also AQUINAS, *supra* note 33, at II.II, question 21, art. 3 (defining hope as a longing or desire for a future good); cf. IMMANUEL KANT, *RELIGION WITHIN THE LIMITS OF REASON ALONE* 43 (Theodore M. Greene & Hoyt T. Hudson trans., 1960) (1792) (discussing one’s own moral progress as an object of hope).

45. See IMMANUEL KANT, *Toward Perpetual Peace: A Philosophical Sketch*, in *TOWARD PERPETUAL PEACE AND OTHER WRITINGS ON POLITICS, PEACE, AND HISTORY* 67, 95 (Pauline Kleingeld ed., David L. Coelasure trans., 2006) (finding that while human reason cannot predict the consequences of actions, humans may still hope that they are in accord with their wishes).

46. See GABRIEL MARCEL, *HOMO VIATOR: INTRODUCTION TO THE METAPHYSICS OF HOPE* 32, 45 (Emma Craufurd trans., 1962) (1945) (exploring the distinction between “hope that” and hope without a determinate object); see also PATRICK SHADE, *HABITS OF HOPE: A PRAGMATIC THEORY* 138–39 (2001) ([H]opefulness is an openness to possibilities that are *meaningful* and *promising for us*.”).

47. See J.P. Day, *Hope*, 6 AM. PHIL. Q. 89, 89 (1969) (describing hope as requiring a belief that the desired outcome has a degree of probability, “however small”).

48. See ANDY MUELLER, *BEINGS OF THOUGHT AND ACTION: EPISTEMIC AND PRACTICAL RATIONALITY* 45 (2021) (noting the impossibility of “hoping that p” with the “knowledge that not-p”).

49. See *Acts* 24:14–15 (King James) (“[T]his I confess unto thee . . . so worship I the God of my fathers . . . [a]nd have hope toward God . . . that there shall be a resurrection of the dead, both of the just and the unjust.”)

50. See *Luke* 18:27 (King James) (“[T]he things which are impossible with men are possible with God”).

absolutely granted in an unchangeable mode could be expected but not hoped for in a more strict sense. We just wait for what is absolutely granted. Years will pass, the cascade's water will fall, death will come, and after winter the sun of spring will rise again. We count on these things because we believe they are guaranteed. We just wait for these things to come.⁵¹

The object of hope contains a certain possibility that we do not consider guaranteed yet, is still “uncertain”,⁵² and has some degree of probability superior to zero percent⁵³ and inferior to one hundred percent. No owner expects to buy their own property (that property is already guaranteed) but hopes to maintain it at peace (peace is not always guaranteed).⁵⁴ Dealing with the virtue of hope, Aquinas highlights that the object of hope is something that requires a particular effort or it is difficult to obtain.⁵⁵

Additionally, we have the **subjective dimension of hope**. In philosophical literature hope sometimes rests on the will⁵⁶ or on the feelings,⁵⁷ while others consider hope to be more rational,⁵⁸ and

51. See R.S. Downie, *Hope*, 24 PHIL. & PHENOMENOLOGICAL RSCH. 248, 249 (1963) (“[O]ne cannot hope that something will occur if one already knows that it will; knowledge overshoots the criterion of probability.”).

52. See THOMAS HOBBS, LEVIATHAN 36 (Ian Shapiro ed., 2010) (1651) (defining hope as “*appetite* with an opinion of attaining”); DAVID HUME, A TREATISE OF HUMAN NATURE 281 (David Fate Norton & Mary J. Norton eds., 2003) (1738) (“When either good or evil is uncertain, it gives rise to FEAR or HOPE, according to the degrees of uncertainty on the one side or the other.”).

53. See RENÉ DESCARTES, *The Passions of the Soul*, in THE PHILOSOPHICAL WRITINGS OF DESCARTES 328, 350–51 (John Cottingham et al. trans., 1985) (1649) (finding hope to be directly proportionate to the perceived likelihood of the desired end).

54. See Downie, *supra* note 51 (finding that objects of hope must fall “within a range of physical probabilities which includes the improbable but excludes the certain and the merely logically possible”).

55. See AQUINAS *supra* note 33, at II.I, question 40, art. 1 (“The object of hope is the future good considered, not absolutely, but as arduous and difficult of attainment . . .”).

56. See *id.*, at art. 3 (concluding that hope lies in the will).

57. See Michael Milona & Katie Stockdale, *A Perceptual Theory of Hope*, 5 ERGO: OPEN ACCESS J. PHIL. 203, 211 (2018) (“[L]ike other emotions, part of what it is like to hope is to experience some kind of feeling.”).

58. See CLAUDIA BLÖSER, *Enlightenment Views of Hope*, in HISTORICAL AND MULTIDISCIPLINARY PERSPECTIVES ON HOPE 61, 75 (Steven C. van den Heuvel ed., 2020) (summarizing Kant’s view of hope as founded in rational conclusions about the existence of God and immortality).

since the 1950s the psychological base of hope has been greatly stressed out.⁵⁹ In my opinion, hope must embrace the whole subject and all its parts,⁶⁰ including the corporeal and psychological feelings, emotions and inclinations that move the individual to reach something, the dispositions of the intellect and the will before a desirable future (which include the passion and the virtue of hope), and the actions performed under these dispositions (e.g., athletes who train hard on the hope of winning the race).⁶¹ All these bodily and spiritual elements are manifestly interconnected. For instance, science knows today that genetic heritage is one of the causes of depression,⁶² and that depression makes it harder to work at an office with hope.⁶³ On the contrary, the feeling of being loved can raise our hopes, mood, health, and projects very high.⁶⁴ The presence of hope in any part of the human being reverberates on all sides.

59. See Jerome Frank, *The Role of Hope in Psychotherapy*, 5 INT'L J. PSYCHIATRY 383, 395 (1968) (demonstrating a mid-century analysis of hope's utility in achieving positive results in therapy); see also Matthew W. Gallagher et al., *Hope in Contemporary Psychology*, in THE MORAL PSYCHOLOGY OF HOPE 189, 189–203 (Claudia Blöser & Titus Stahl eds., 2020) (providing an overview of contemporary professional approaches to hope).

60. See DESCARTES, *supra* note 53 at 389 (“[Hope] is caused by particular movement of the spirits, consisting of the movement of joy mixed with that of desire.”).

61. Aquinas observes that hope is ambivalent and distinguishes the passions and the virtue of said hope. See AQUINAS, *supra* note 33, at II.I, question 40, arts. 5, 6 (exploring the causes of hope, including experience, virtue, and youth).

62. See Johnathan Flint, *The Genetics of Major Depression*, 81 NEURON 484, 495 (2014) (“Genetics provides a way of testing the diagnostic uniqueness or otherwise of [major depression] by determining the degree of genetic correlation between diseases.”).

63. See Yuanling Tao et al., *Hope and Depression: The Mediating Role of Social Support and Spiritual Coping in Advanced Cancer Patients*, 22 BMC PSYCHIATRY 345, 349 (2022) (“Depression is negatively correlated with hope, social support, and positive spiritual coping, and positively correlated with negative spiritual coping.”).

64. See Barbara L. Fredrickson, *The Role of Positive Emotions in Positive Psychology*, 56 AM. PSYCH. 218, 221 (2001) (“[C]ertain discrete positive emotions . . . including joy, interest, contentment, pride, and love . . . all share the ability to broaden people’s momentary thought-action repertoires and build their enduring personal resources, ranging from physical and intellectual resources to social and psychological resources.”).

Certainly, hope is an attitude or disposition of expectation.⁶⁵ However, it is much more than mere expectations. Charles Snyder, one of the most prominent developers of the psychological theory of hope, includes *the agency component*, “a sense of successful determination in meeting goals,”⁶⁶ in his notion of hope. His considerations are exposed in the frame of the human behavior analysis, in which the discussion of “agency” fits perfectly.⁶⁷ However, there could be other examples of hope that do not include any “call to action,” such as the hope for events that do not depend on us, like the hope that the war in Ukraine ends or that a vaccine is discovered.⁶⁸

It is widely accepted that hope is an attitude of expectation that includes *desire along with belief*.⁶⁹ These two elements are the essence of hope for the so-called “standard account.”⁷⁰ The phrase “I wish I could fly” only expresses desire, not hope, because there is no reason to expect to fly on our own. Hope requires three beliefs: the belief that the outcome hoped for is good (otherwise it would not be wanted or desired), that the outcome is possible and, finally,

65. See Devika Duggal et al., *The Impact of Hope and Resilience on Multiple Factors in Neurosurgical Patients*, 8 CUREUS 10, 10 (2016) (“Hope is an optimistic attitude of mind based on an expectation of positive outcomes.”).

66. See Charles R. Snyder et al., *The Will and the Ways: Development and Validation of an Individual-Differences Measure of Hope*, 60 J. PERSONALITY & SOC. PSYCH. 570, 571 (1991) (explaining how psychological hope has three essential components: goals, pathways, and agency, presupposing that the individual possesses a goal, conceives of a path to achieve it, and believes that one has the agency to execute that pathway towards the established goal).

67. See *id.* at 570 (stating that Snyder’s notion of hope is produced in “a goal-setting framework,” a similar practical approach that has the Thomistic perception of the virtue and passion of hope); see also AQUINAS, *supra* note 33, at II.I, question 40, art. 1 (highlighting that the object of hope requires a particular effort or it will be difficult to obtain).

68. See generally David J. Javier-Aliaga et al., *Hope and Resilience Related to Fear of COVID-19 in Young People*, INT’L J. ENV’T RSCH. & PUB. HEALTH, Apr. 2022; Mary Claire Evans, *Hope Remains Despite Emotional, Economic Strain in Ukraine*, GALLUP (Oct. 26, 2023) [perma.cc/2PYF-BPDQ].

69. See Tim Gorichanaz, *Theorizing Information Sources for Hope: Belief, Desire, Imagination, and Metacognition*, INFO. RSCH., 1, 3 (Oct. 2022) (“[H]ope involves a conjunction of belief and desire: a belief in what is possible, and a desire for a particular possibility.”).

70. See Meirav, *supra* note 37, at 218–19 (explaining how the “Standard Account” reduces hope to a proposition: “hope that *p*”).

that it is not yet granted.⁷¹ That conception could be based on a rigorous calculation of probabilities, in experience and induction,⁷² in intuitions, in unawareness, or even produced under alcoholic effects.⁷³ There could be several degrees of rationality in hope.⁷⁴ Anyhow, hope only requires us to consider that our desires are possible, no matter how low the odds of success could be.⁷⁵

Finally, we must add one last element to the definition. *Hope is a positive attitude of expectation towards a future that we consider good and possible but not yet granted.*⁷⁶ The positive element is required to overcome the so-called “despair objection” against the “standard account.”⁷⁷ According to this objection, even in the case that two individuals have identical desires and beliefs about the possibility of an outcome (for example, when they navigate in the middle of a storm), one of them may expect the best and the other the worst.⁷⁸ Hope always expects a good future with positive feelings.⁷⁹ This positive attitude is more than mere

71. See Gorichanaz, *supra* note 69, at 3 (“Hope is a positive attitude oriented toward a possible (yet uncertain), desired outcome.”).

72. See ARISTOTLE, *supra* note 25, at 48 (describing the courage of a soldier who appears more courageous than the average man because he has experience in the battlefield).

73. See Dean Burnett, *Drink and Be Merry: Why Alcohol Makes Us Feel Good, Then Doesn't*, GUARDIAN (Nov. 29, 2016, 8:05 AM) (explaining how alcohol chemically affects the brain and hampers rational thinking) [perma.cc/AB6L-RTSJ].

74. See AQUINAS, *supra* note 33, at II.I, question 40, art. 6 (explaining how for Aquinas, rational hope is a virtue and irrational hope is more a passion or a vice).

75. See Gorichanaz, *supra* note 69, at 3 (defining hope as a positive attitude toward a possible outcome).

76. *Id.* (same).

77. See Meirav, *supra* note 37, at 219 (“Note that . . . views [of despair (Standard Account)] allow for cases of hope in which one assigns extremely low probability, and none of them implies that there is any positive (non-zero) lower bound to the probabilities that are compatible with hope.”).

78. See *id.* at 225–27 (listing examples and providing explanations on instances where one may expect the best while the other may expect the worst in similar circumstances).

79. See *id.* at 217–18 (“Since it seems impossible to despair of and hope for the same thing at the same time, this means that the conditions proposed by the Standard Account as well as those proposed by its critics are compatible with *not* hoping. And so hope cannot consist in these conditions.”).

optimism.⁸⁰ Such things cannot be faced with mere optimism but with hope.⁸¹

III. Legal Justifications of the Right to Hope

There are three major legal justifications of rights. Something is a right when it acquires formal recognition from the authorities (e.g., parliament, courts, constitutional assembly) or from society, especially in places where customary law plays a major role, and, finally, when it is reasonable and evident for everyone that they deserve legal protection.⁸² Why do we respect the right of life of our neighbors? Certainly not because a great group of American or French revolutionaries approved life as a right or because it gained formal recognition, but mainly because we see the eyes of our neighbors and we realize that their life deserves protection.⁸³

These three sources of rights are mentioned, to some extent, in some recent cases. The U.S. Supreme Court has explained what could be considered as a *constitutional right*.⁸⁴ First, of course, we have those rights explicitly recognized in the text of the Constitution.⁸⁵ Although the court has been reluctant to recognize rights that are not literally mentioned there,⁸⁶ a certain space is

80. See TERRY EAGLETON, HOPE WITHOUT OPTIMISM 2 (2015) (“An optimist is not just someone with high hopes. Even a pessimist can feel positive on a particular issue An optimist is rather someone who is bullish about life simply because he is an optimist.”).

81. See *id.* at 1 (“[T]here is a sense in which optimism is more a matter of belief than of hope. It is based on an opinion that things tend to work out well, not on the strenuous commitment that hope involves.”).

82. See Randy E. Barnett, *A Law Professor’s Guide to Natural Law and Natural Rights*, 20 HARV. J.L. & PUB. POL’Y 655, 669–71 (differentiating between rights that are created by a legislature or judge (legal rights) and natural rights which are inherent to a person).

83. See *id.* at 670 (“What makes natural rights natural is the type of given-if-then reasons that are offered in support of its conclusions, based as they are on the ‘givens’ of human nature and the nature of the world in which humans live.”).

84. See *Griswold v. Connecticut*, 381 U.S. 479, 481–86 (1965) (considering rights explicitly enumerated in the Constitution, as well as rights which are implied by the Constitution).

85. See *Collins v. Harker Heights*, 503 U.S. 115, 125 (1992) (analyzing a § 1983 claim by enumerating the rights listed in the Due Process Clause of the Fourteenth Amendment).

86. See *id.* (“[T]he Court has always been reluctant to expand the concept of substantive due process . . .”).

still open for those rights that are “deeply rooted in this Nation’s history and tradition” and “implicit in the concept of ordered liberty.”⁸⁷ Something similar has been said about *international human rights*.⁸⁸

Hope does not appear explicitly as a right in any constitution or human rights declaration.⁸⁹ However, *as long as hope is a deeply existential aspect of human life, hope has constant manifestations in private and public life* that are often recognized worldwide by the courts.⁹⁰ Nobody can live without hope,⁹¹ no healthy mind can grow without hope in a positive future,⁹² no free action could be done without harboring hopes of reaching their goals, and no policy could be adopted without the hope of success. People do not go to a market if they do not expect to find what they need. The lack of hope paralyzes the economy.⁹³ Hope is more than a “national tradition,” and deeper than an “international custom.” Hope is something connatural to the everyday life of any individual and community.

87. *Washington v. Glucksberg*, 521 U. S. 702, 710–21 (1997); *see also Dobbs v. Jackson Women’s Health Organization*, 142 S.Ct. 2228, 2242 (2022) (referencing *Glucksberg’s* test for recognizing Constitutional rights).

88. These are the rights recognized in international and regional instruments, by international customary law, and by various international courts and institutions. Their justification is similar to that mentioned above. *See* John Tasioulas, *Human Rights, Legitimacy, and International Law*, 58 AM. J. JURIS. 1, 2 (2013) (“[I]t is not simply that the tradition of natural rights thought is part of the historical lead-up to contemporary human rights discourse, but that the ethical idea at the core of the latter is essentially that of a natural right.”); *see also* ARYEH NEIER, *THE INTERNATIONAL HUMAN RIGHTS MOVEMENT: A HISTORY* 7 (2012) (recognizing international law and institutions as an essential part of the development of international human rights).

89. *See* Kimberley Brownlee, *Punishment and Precious Emotions: A Hope Standard for Punishment*, 41 OXFORD J.L. STUD. 589, 591 (discussing the right to hope as recognized by scholars, philosophers, and the European Court of Human Rights, rather than by codification or declaration).

90. *See* Sarah Trotter, *supra* note 1, at 3–5 (discussing the jurisprudence European Court of Human Rights in protecting the right to hope in the context of life sentences).

91. Paul Tillich, *Speech at Memorial Church at Harvard University: The Right to Hope* (Mar. 1965).

92. *See* Snyder, *supra* note 66, at 582 (connecting higher levels of hope with increased mental and physical health).

93. *See* CAROL GRAHAM, *THE POWER OF HOPE: HOW THE SCIENCE OF WELL-BEING CAN SAVE US FROM DISPAIR* 1–5 (2023) (“Despair in the United States today is a barrier to reviving our labor markets and productivity.”).

At the same time and for the same reason, hope is “implicit in the concept of ordered liberty.”⁹⁴ I would add that hope is something connatural to any single freedom. As said, who does not harbor at least a minimum of hope to reach one goal, who does not believe that one good thing exists and can be reached, then does not have the freedom to move towards that goal.⁹⁵ Nobody goes to McDonald’s to buy doors; people do not *expect* to purchase doors in McDonald’s but hamburgers. Free actions require the belief that the goal exists and is possible to reach (that is to say, hope).⁹⁶ The hope of being heard is connatural to freedom of expression because without the hope of being heard people normally do not talk. The hope of finding people to meet is connatural to freedom of assembly because without this hope nobody will try to meet anyone. And the hope of reaching one place is connatural to freedom of movement because without this hope traveling does not make sense.⁹⁷

In the preliminary stages of this research, I found more than a dozen cases that mentioned, for one purpose or another, the “right to hope.”⁹⁸ After the first reading, my feeling was that we are facing many different rights that can hardly be unified. Still, all those cases shared one thing in common: there were some expectations that, according to the judges, deserved certain protection.⁹⁹ Now I realize that hope is an existential aspect of human life, so rooted in our being and behavior, that has countless manifestations in every single human action. Since we were born, we hope to reach an incredible variety of goods and goals: to satisfy

94. *Washington v. Glucksberg*, 521 U. S. 702, 710–21 (1997) (setting qualifications for the recognition of legal rights).

95. See Dana Jensen, *Sustaining Hope in Uncertain Times*, HARV. BUS. REV. (Mar. 15, 2022) (“[H]ope is essential to our satisfaction, motivation, health and performance.”) [perma.cc/AT3L-KYED].

96. See Meirav, *supra* note 37, at 217 (defining the elements in the standard account of hope as belief and possibility).

97. See Henry V. Cobb, *Hope, Fate, and Freedom: A Soliloquy*, 52 ETHICS 1, 5 (1941) (connecting hope with freedom throughout history). We will discuss in Chapter VI if the right to hope is part of other rights and freedoms. Now I am just highlighting that hope is *connatural* to them.

98. See Trotter, *supra* note 1, at 3–21 (2022) (examining the history of the right to hope in the European Court of Human Rights).

99. See *id.* at 19 (“[T]he appeal to law involves the construction of hope as a remainder: as something that must not be taken away from life and that warrants legal protection.”).

hunger and survive, to enjoy our properties peacefully, to be a star dancer and succeed in our profession, to win the lawsuit and reach heaven, to be released from prison, to be loved and to love. These are not hypothetical examples. These are the hopes mentioned by the American courts when they talk about the “right to hope,” which we will analyze in the following chapters.

So, we are not promoting here the creation of any new right devoid of legal justification. On the contrary, we are only trying to better understand the scope of an old right repeatedly documented in several case law since at least 1840,¹⁰⁰ a right deeply rooted in the history and tradition of every country that, at the same time, is “implicit in” (and even *connatural to*) “the concept of ordered liberty.”¹⁰¹

It does not mean that all kinds of hope deserve legal protection. In the next Chapter we will see what kind of hopes have enough ground to receive that protection.

IV. Grounds for hope

As Pope Francis said, the right to hope cannot be grounded in mere optimism, in “a pat on the back or an empty word of encouragement, uttered with an empty smile.”¹⁰² This right cannot be founded on a positive mood or other subjective foundations.

People harbor hopes based on certain grounds. The nature of these grounds determines if the hope deserves legal protection and to what extent. For instance, hopes grounded in mere friendship, like the hope of seeing the smile of a friend after greeting him, do not deserve legal protection. On the contrary, hopes grounded in legal duties, like the duty of non-discrimination or the promise of

100. See *Attwood v. Taylor* [1840], 133 Eng. Rep. 340, 304 (Scot.) (introducing the right to hope in jury instructions, which stated that “the defendant had as much a right to hope for success on their part as the plaintiff had on his”).

101. See *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997) (analyzing the recognition of a right based on its history and whether it is “implicit in the concept of ordered liberty”); see also *Dobbs v. Jackson Women’s Health Organization*, 142 S.Ct. 2228, 2246 (2022) (“In deciding whether a right falls into either of these categories, the question is whether the right is ‘deeply rooted in [our] history and tradition’ and whether it is essential to this Nation’s ‘scheme of ordered liberty.’”)

102. See Pope Francis, *Easter Vigil Homily* (Apr. 11, 2020) (transcript available at perma.cc/J8CU-JGWW).

paying at the end of the month, certainly deserves legal protection.¹⁰³

Hopes could have four different grounds. They could be based on others' duties or free will, on the metaphysical possibilities¹⁰⁴ of the world (as we expect the sunrise every morning), on ourselves (our means, efforts, desires, and possibilities), and on God and his promises. We will explore now if these grounds justify the legal protection of hope.

A. Hopes Based on Others

1. Specific Duties of Others

Specific duties of others create in individuals the expectation that people will fulfill them in the most natural way.¹⁰⁵ People have the right to hope that the offers made by the seller, the promises of the counterparty, and any pact will be fulfilled in due time.¹⁰⁶ The same happens with the legal duties of the authorities. Whoever calls the police reporting an accident can legally expect the police will come.¹⁰⁷ If the seller, the party, or the police fail,

103. See Daniel Moeckli, *Equality and Non-Discrimination*, in EQUALITY AND NON-DISCRIMINATION UNDER INTERNATIONAL LAW 66 (Routledge, 1st ed. 2015) (“The obligation to protect imposes a duty on states to prevent discrimination by non-state actors.”).

104. See *Hope*, STAN. ENCYC. PHIL. (last updated Mar. 21, 2022) (“Bloch develops an integrated theory in which hope is not merely a subjective combination of desires and beliefs about probabilities or facts, but rather a reflection of metaphysical possibilities in the world and part of a range of human capacities . . .”) [perma.cc/Q2NR-VFUZ].

105. See *Special Obligations*, STAN. ENCYC. PHIL. (Aug. 6, 2019) (“It is plausible to suppose that the fundamental or basic justification of why we have natural duties is the intrinsic nature of persons . . .”) [perma.cc/5TFE-AWKR].

106. See Randy E. Barnett & Mary E. Becker, *Beyond Reliance: Promissory Estoppel, Contract Formalities, and Misrepresentations*, 15 HOFSTRA L. REV. 443, 443 (1987) (“Contract law holds the promisor to his word and gives the other party what was promised.”).

107. See, e.g., VA. CODE ANN. §§ 46.2-371–73 (2011) (mandating that the vehicle operator report an accident to law enforcement and that the officer record the investigation); DEL. CODE ANN. tit. 21, § 6827 (2022) (requiring a vehicle operator to report accidents involving personal injury to law enforcement).

there would be grounds to denounce their negligent behavior.¹⁰⁸ In these cases hope is *connaturally attached* to the legal duty because people normally expect that others will obey the law and fulfill their pacts. Thus, the violation of legal or contractual duties always disappoints the expectations of those who have the right to claim them.

During the last century, most common law countries have adopted the *doctrine of legitimate expectations*, based on the duties of natural justice.¹⁰⁹ Expectations are ordinary hopes, that is to say, positive attitudes towards a future that people consider good and possible but not yet granted.¹¹⁰ According to this doctrine, promises made by public authorities and reasonable expectations of being treated in a certain way by public servants due to a constant practice, cannot be changed when that change affects the patrimony of the citizens.¹¹¹ For instance, whoever wins a public tender for the construction of a state house and buys materials for that purpose, can sue the state if the government changes its mind and decides to stop the project.¹¹² Winning a public tender, or even

108. See, e.g., Paul J. Weber, *One Year After Uvalde Shooting, Investigation of Police Response Continues*, ASSOC. PRESS (May 24, 2023) (describing the social and legal backlash when officers failed “to prioritize saving innocent lives over their own safety”) [perma.cc/7H56-G3NK]; Barnett *supra* note 106, at 443 (describing the ramifications of torts and contract violations).

109. See MATTHEW GROVES & GREG WEEKS, *The Legitimate Expectation as an Instrument of Common Law Change*, in LEGITIMATE EXPECTATIONS IN THE COMMON LAW WORLD 7–9 (Matthew Groves & Greg Weeks, eds., 2017) (outlining various common law countries’ rationale of recognizing legitimate expectations, including under fairness and natural justice).

110. See Meirav, *supra* note 37 at 217–19 (explaining the Standard Account definition for hope).

111. See Philip Sales, *Legitimate Expectations*, 11 JUD. REV. 186, 186 (2006) (“The doctrine of legitimate expectations operates as a control over the exercise of discretionary Powers conferred upon a public authority.”); see also Christopher Forsyth, *Legitimate Expectations Revisited*, 16 JUD. REV. 429, 432 (2011) (connecting the idea of legitimate expectations to trust in public authorities); see also Schmidt v. SOS for Home Affs. [1968] EWCA (Civ) 1, 1 All Eng. Rep. 904 (Eng. & Wales) (appeal taken from Wales) (introducing the concept of legitimate expectations in regards to a non-citizen’s expectation to stay in the United Kingdom); O’Reilly v. Mackman [1983] 2 A.C. 237 (HL) (incorporating legitimate expectations into judicial review).

112. Cf. Mary B. Powers & Debra K. Rubin, *Texas, Missouri Sue Feds Over Cancelled Border Wall Contracts*, ENG’G NEWS-REC. (Oct. 23, 2021) (describing a lawsuit in which state officials claimed that the President “does not have the constitutional or statutory authority to refuse to spend the funds as directed”).

just participating in it, creates important expectations that cannot be unreasonably disregarded.

Some hopes embrace a wide range of doubts. One of the earliest mentions of the right to hope appears in 1840, when a British court clarified that the parties of the process do not have the right to ask the judge for a favorable decision, but “a right to hope that [the case] might be decided in his favor.”¹¹³ One century later a U.S. Court said something similar about a legal business.¹¹⁴ The 7th Circuit Court of Appeals recognized that each party had “a right to hope that its interpretation would prevail,” but precisizing that does not mean that the party can necessarily act “on the premise that either its interpretation was correct.”¹¹⁵ In both cases this right to expect specific outcomes seems to be *more grounded* when the arguments and evidence of the party are more robust, because they would ground better hopes of winning the case. We can anticipate that a more grounded expectation will create a more solid right to hope.

2. Duties to Respect Dignity and Human Rights

Since the end of the Second World War, the notion of human dignity has played a key role in developing the international human rights protection framework.¹¹⁶ Dignity was also the main argument for recognizing the right to hope of prisoners with life sentences.¹¹⁷ The European Court of Human Rights stated in 2013:

113. See *Attwood v. Taylor* [1840], 133 Eng. Rep. 340, 303 (Scot.) (opining that each side had a right to hope the case would come out in their favor).

114. See *Colfax Envelope Corp. v. Loc. No. 458-3M, Chi. Graphic Commc'ns Int'l Union, AFL-CIO*, 20 F.3d 750, 754 (7th Cir. 1994) (referencing a right to hope in weighing each party's arguments regarding the correct interpretation of a contract).

115. *Id.*

116. See Roberto Andorno, *Human Dignity and Human Rights*, 4 HANDBOOK GLOB. BIOETHICS 45, 45–46 (2014) (“The concept of intrinsic human dignity operates in modern times as the bedrock of the international human rights system that emerged in the aftermath of the Second World War.”).

117. See Dirk van Zyl Smit, *Life Imprisonment and the Right to Hope*, PENAL REFORM INT'L (July 24, 2013) (distilling *Vinter v. United Kingdom*'s reasoning to “the idea that recognition of the human dignity of all offenders requires that, no matter what they have done, they should be given the opportunity to rehabilitate themselves”) [perma.cc/A6LS-YLLH].

[H]ope is an important and constitutive aspect of the human person. Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change. Long and deserved though their prison sentences may be, they retain the right to hope that, someday, they may have atoned for the wrongs which they have committed. They ought not to be deprived entirely of such hope. To deny them the experience of hope would be to deny a fundamental aspect of their humanity and, to do that, would be degrading.¹¹⁸

The rationale here is that without the hope of being released, inmates will have no incentive for rehabilitation and will fall in despair.¹¹⁹ As the experience of hope is an essential component of human dignity, condemning someone to a punishment that causes despair would be degrading and against human dignity.¹²⁰

This argument that links human dignity and inmates' hope will be largely developed later by other courts worldwide. For instance, the basic idea of *Vinter*—*if hope is a constitutive aspect of the human person, its denial implies treating someone not as a person but as a thing*—was used in Canada to secure the “*faint hope clause*” (an extreme judicial recourse that aims to be released) to all prisoners.¹²¹ I do believe that the same idea could be transported from prisons to other human affairs because nobody can live without hope.

That is precisely the argument that Tillich provides to justify the right to hope: “nobody can live without hope, even if it were

118. *Vinter v. U.K.*, App. No. 66069/09 (July 9, 2013) (Power-Forde, J., concurring).

119. See Efrat Vignansky et al., *Despair Will Hold You Prisoner, Hope Will Set You Free: Hope and Meaning Among Released Prisoners*, 98 PRISON J. 334, 337 (2018) (“The road to therapy or rehabilitation is not easy; the greater a person’s hope, the more able he is to deal with them and reach his goal without loss of motivation.”).

120. See van Zyl Smit, *supra* note 117 (applying the European Court of Human Rights’ reasoning in *Vinter* to argue against sentences that deprives someone of the possibility of rehabilitation).

121. See *R. v. Bissonnette*, [2022] S.C.R. 23, ¶¶ 33–34 (Can.) (“This clause allowed persons who had been sentenced to life in prison for first or second degree murder without eligibility for parole for more than 15 years to apply for a review of their parole ineligibility period once they had been incarcerated for at least 15 years.”).

only for the smallest things which give some satisfaction even under the worst of conditions, even in poverty, sickness and social failure.”¹²² We have seen that even the worst critics of hope accept that it is nearly impossible to live without hope.¹²³ This belief is also present in literature. “Who does not hope, dies,” affirms one verse of the Italian poet Lorenzo Stecchetti.¹²⁴ However, this is more than poetry and exceeds the theoretical discussion.

We have evidence that in some critical situations the lack of hope puts life at stake. During the war, troops without hope easily surrender before powerful enemies.¹²⁵ The Austrian psychiatrist Victor Frankl, who survived various Nazi concentration camps, realized that convicts who had more hope or meaning in their life would have more life expectancy because they had a cause to fight for.¹²⁶ Frankl identifies three psychological reactions experienced by all inmates in Auschwitz: the initial shock when entering the camp, the apathy after becoming accustomed to camp life, and the reaction of “depersonalization,” of bitterness and disillusionment if the inmate survives and is liberated.¹²⁷ Prisoners without a meaning of life, without a reason to survive, could not overcome the last reaction; many of them might commit suicide or just let death come. Similar things happen now in America. Many inmates, often robust guys, commit suicide.¹²⁸ Indeed, in the last

122. Tillich, *supra* note 91.

123. See ALBERT CAMUS, *The Myth of Sisyphus*, in *THE MYTH OF SISYPHUS AND OTHER ESSAYS*, at 88, 89–90 (Justin O’Brien, trans., 1st ed., 1955) (examining the tortuous, but necessary role of hope in the Myth of Sisyphus).

124. See LORENZO STECCHETTI, *XLVII. Spes, ultima dea*, in *POSTUMA* (1881), at 86 (“I have said to the heart, to my poor heart: —Why then hope if love is dead? And he answered me: —Who does not hope, dies.”) (author’s translation).

125. Section C.2 of Chapter IV will discuss this case and the reasonableness of criminalizing acts that demoralize the troops.

126. See Steve Backlund, *Viktor Frankl’s Revelation of Hope*, *IGNITING HOPE* (“Viktor Frankl in his book, *Man’s Search for Meaning*, recounts how hope for the future was the single most important factor in determining whether his fellow prisoners survived the Nazi concentration camps in World War II.”) [perma.cc/8Q46-6R9W].

127. See VIKTOR FRANKL, *MAN’S SEARCH FOR MEANING* 8 (Ilse Lasch trans., Beacon Press 2006) (1946) (introducing the idea that there are “three phases of the inmate’s mental reactions to camp life” in the context of his time in a Nazi concentration camp).

128. See Jon T. Mandracchia & Phillip N. Smith, *The Interpersonal Theory of Suicide Applied to Male Prisoners*, 45 *SUICIDE & LIFE-THREATENING BEHAV.* 1, 1

decades, suicide has been the leading cause of death in local jails, making up roughly less than a third of all deaths there.¹²⁹

The protection of hope becomes here the protection of life itself. One lower court has stressed this link between hope and life saying, in passing, that “[o]ur most modern fallout shelters attest to the fact that everyone still desires the right to hope for survival and a place to hide.”¹³⁰ On the one hand, the law should punish those who demoralize people to the extent that they want to commit suicide.¹³¹ Whoever destroys the hopes of the dying for living at the same time attacks human dignity, giving the deceased the worst possible humane treatment.¹³² On the other hand, authorities should be aware that in some places, the rate of despair is higher (e.g., prisons, hospitals, and metro stations) to give hope to those who are considering ending their lives abruptly.¹³³ It makes absolute sense to control who is walking around the metro rails, and to promote “suicide hotlines” in strategic places, to give hope to those that are falling into despair.¹³⁴ In these places the state has special duties of fostering hope.¹³⁵

(2016) (“Suicide is a leading cause of death in US prisons. As in the general population, male prisoners are at significantly greater risk for suicide compared to women.”).

129. See BUREAU OF JUST. STAT., U.S. DEP’T OF JUST., MORTALITY IN LOCAL JAILS, 2000–2019—STATISTICAL TABLES 2 (“Suicide was the leading single cause of death in local jails in 2019 (355 deaths or 30% of all deaths) . . .”).

130. Commonwealth v. Brinkley, 362 S.W.2d 494, 498 (Ky. Ct. App. 1962).

131. Cf. Guyora Binder & Luis Chiesa, *The Puzzle of Inciting Suicide*, 56 AM. CRIM. L. REV. 65, 67 (2019) (“If inciting suicide is widespread and detectable, we could be punishing it quite a lot. And if it causes death, we arguably should be punishing it quite severely. Yet it seems we do neither. Why?”).

132. See van Zyl Smit, *supra* note 117 (connecting human dignity to the potential for release from incarceration).

133. See Scott Robinson, *Inspiring Hope in Place of Despair*, NAT’L ENDOWMENT FOR HUMANS (Apr. 2, 2018) (discussing the government’s efforts in specific programs across the United States to increase hope in prisons) [perma.cc/GLB4-GJQ6].

134. See Kyle Anderson, Photograph of Metro Station Suicide Hotline Sign, FLICKR (Apr. 10, 2018) (“You talk. We listen. Together we survive.”) [perma.cc/SRN7-BC2E].

135. See *Rail Suicide Prevention Resource Page*, U.S. DEP’T TRANS. VOLPE CTR. (“The Federal Railroad Administration (FRA) has long focused on safety improvements to reduce grade crossing and trespass deaths, but suicide was not historically considered alongside those efforts. However, in 2011, FRA began

However, hope is not only related to the right to physical life.¹³⁶ As an existential aspect of human life, hope is also linked with other human rights, like the right to corporeal and psychological health, family rights, religious freedom, and with freedom in general.¹³⁷ Let us begin with mental health. Psychology began to explore the role of hope in the human mind in the mid-twentieth century, with the emergence of positive psychology.¹³⁸ This new branch of science required the presence of some positive psychological attributes for a healthy mental life, such as happiness, encouragement, love, forgiveness, and hope.¹³⁹ It was discovered that hope shows significant cross-sectional relationships with these attributes and also predicts subsequent success and overall well-being.¹⁴⁰ Thus, if hope is an essential attribute of mental health required for a peaceful life, we can

collecting suicide data and actively participating in suicide prevention efforts and studies.”] [perma.cc/3992-FJQU].

136. See Carlos Laranjeira & Ana Querido, *Hope and Optimism as an Opportunity to Improve the “Positive Mental Health” Demand*, 13 FRONTIERS PSYCH. 1, 2 (2022) (discussing hope’s positive influence on physical and psychological health).

137. See Pope John Paul II, Letter to Families from Pope John Paul II ¶ 12, 14, 16 (Feb 2, 1994) (connecting hope to many aspects of family life, including religion and medicine) (transcript available at perma.cc/CU6A-4B4W).

138. See Karl Menninger, *The Academic Lecture on Hope*, 116 AM. J. PSYCHIATRY 481, 485–87, 491 (1959) (discussing the importance of hope in scientific spaces, specifically psychology).

139. See Jeffrey J. Froh, *The History of Positive Psychology: Truth Be Told*, 16 NYS PSYCH. 18, 18 (2004) (introducing “positive psychology” and its emphasis on “human strengths and virtues that make life worth living”).

140. See Philip R. Magaletta & J. M. Oliver, *The Hope Construct, Will and Ways: Their Relations with Self-Efficacy, Optimism, and General Well-Being*, 55 J. CLINICAL PSYCHOL. 539, 548–49 (1999) (studying the intersection of hope with self-efficacy and optimism); see also Charles R. Snyder, *Hope Theory: Rainbows in the Mind*, 13 PSYCHOL. INQUIRY 249, 258 (2002) (“High-hope persons consistently fare better than their low-hope counter-parts in the arenas of academics, athletics, physical health, psychological adjustment, and psychotherapy.”); Liz Day et al., *Hope Uniquely Predicts Objective Academic Achievement Above Intelligence, Personality, and Previous Academic Achievement*, 44 J. RES. PERSONALITY 550, 552 (2010) (discussing the crucial role of hope in education).

conclude that its protection is covered by the right to health and the right to an adequate standard of living as well.¹⁴¹

Regarding family rights, one court in California recognized in 2001 the orphans' "right to hope to be adopted by a family who will love, care, and nurture him."¹⁴² Children without care and nutrition cannot survive.¹⁴³ Basic things to survive must be secured for everyone before other things, and this protection begins by securing the hope of achieving them because individuals will be unwilling to work to reach them without hope.¹⁴⁴

Great hopes and ordinary hopes must also be protected for the sake of freedom. As seen, no free action is possible without the hope of reaching some objectives.¹⁴⁵ Denying all ordinary hopes would be the denial of the dynamicity of the human person, which means treating the person as dead nature. Unreasonable attacks that destroy human hopes are degrading because they paralyze the person by hindering the possibility of setting goals and moving towards them.¹⁴⁶ Fear freezes us, leaving us like a dead block of ice.¹⁴⁷

The right to hope grounded in the duty to respect dignity and human rights has one principal responsible: the state. According to the United Nations principles, the state is the first responsible of *respecting, protecting, and fulfilling*¹⁴⁸ each human right, and

141. See G.A. Res. 217 (III) A, *supra* note 22 at art. 25(1) (linking both rights by stating "everyone has the right to a standard of living adequate for the health and well-being . . .").

142. *In re Jeremy S.*, 107 Cal. Rptr.2d 280, 289 (Cal. Ct. App. 2001).

143. See *Nurturing Care for Early Childhood Development*, WORLD HEALTH ORGANIZATION [WHO] (May 18, 2018) (defining "nurturing care" to include conditions to "ensure children's good health and nutrition") [perma.cc/2L36-7R4Q].

144. See Abraham Maslow, *A Theory of Human Motivation*, 50 PSYCH. REV. 370, 372 (1943) (explaining the necessity of fulfilling physical needs before being able to address psychological needs).

145. See Meirav, *supra* note 37, at 217 (defining the elements of hope as belief and possibility).

146. See Snyder, *supra* note 140, at 263 (discussing the negative impact of neglect or abuse on children's hope).

147. See Norman B. Schmidt et al., *Exploring Human Freeze Responses to a Threat Stressor*, 39 J. BEHAV. THERAPY & EXPERIMENTAL PSYCH. 292, 292–93 (2008) (describing the freeze response to threatening situations).

148. See Ida Elisabeth Koch, *Dichotomies, Trichotomies or Waves of Duties*, 5 HUM. RTS. L. REV. 81, 82 (2005) ("The obligation to *respect* requires States to

must seek to accomplish their highest standards progressively.¹⁴⁹ The protection of hope many times could be done by punishing attacks unreasonably directed to destroy human hopes (for example, destroying the trust in the market with fake news about the bankruptcy of an important bank).¹⁵⁰ Furthermore, the promotion of the right to hope could be done with measures that tackle the despair in those places where hope is at risk (prisons, hospitals, metro stations), like the “suicide hotlines,” medical assistance, or other reliefs.

3. Free Will of Others

Most of the time we expect others will act in a certain way, without believing that the law requires that.¹⁵¹ At the bus stop we expect that the next-door passenger does not smell too bad and is relatively friendly or, at least, complies with the basic rules of etiquette. These trivial hopes usually do not have legal effects.

In three cases courts have stated, in passing, that the parties have “a right to hope for if not expect” that certain favorable actions of others, that are out of their control, could happen.¹⁵²

refrain from interfering with the enjoyment of human rights. The obligation to *protect* requires States to prevent violations of such rights by third parties, and the obligation to *fulfill* requires States to take appropriate legislative, budgetary, judicial and other measures towards the full realization of such rights.”)

149. See G.A. Res. 217 (III) A, *supra* note 22, at art. 25 (charging States with the responsibility of protecting citizens).

150. See Ullrich K. H. Ecker et al., *The Psychological Drivers of Misinformation Belief and Its Resistance to Correction*, 1 NATURE REV. PSYCH. 13, 18 (2022) (“[W]hen misinformation downplays a risk or threat . . . corrections that provide a more accurate risk evaluation operate partly through their impact on emotions such as hope, anger and fear.”).

151. See Stefano Fiori, *Formal and Informal Norms: Their Relationships in Society and in Economic Sphere*, 76 REV. OF SOC. ECON. 198, 198 (2018) (describing the impact of informal norms on society and the connection between informal and formal norms).

152. See *McDaniels v. Gen. Ins. Co. of America*, 1 Cal. App. 2d 454, 462 (Cal. App. 1934) (stating there was a right to hope by his counsel the client would appear at trial); *Universal Steel Co. v. Comm’r*, 5 T.C. 627, 638 (U.S.T.C. 1945) (noting that petitioner had a right to that restrictions would be lifted); *Myron’s Enters. v. United States*, 548 F.2d 331, 335 (9th Cir. 1977) (explaining that individuals “had a right to hope, if not expect” someone would sell to them in the near future).

Here floats the idea that vague hopes only produce vague rights that hardly can justify any judicial action. On the contrary, it seems that better grounds for hope produce more consolidated rights. Precisely talking about the expectations of one party, the Supreme Court of Delaware has affirmed more firmly that, after three years of inactivity, the litigant has the “right to hope and to conclude that the litigation was finally at an end”¹⁵³ (today some courts would call it “legitimate expectations”¹⁵⁴). These cases show that even if hope is just based on the free will of the people, there is still a right to hope that is progressively consolidated according to the circumstances.

One interesting case decided by the 7th Circuit Court of Appeals in 1994 deals with the desires of a company related to the destruction of some documents.¹⁵⁵ It was observed that, although the law prohibits litigants from destroying evidence, such law does not oblige third parties.¹⁵⁶ Therefore, “[w]hile Camaro Trading could not destroy these records, it had every right to hope that its bank would.”¹⁵⁷ In this way, the right to hope becomes the support of the legitimate interest necessary to intervene in the process.¹⁵⁸

There are also more substantial things that people expect from others that are not required by the law.¹⁵⁹ Everyone longs to love and be loved, to have a well-natured family and be well-received at home. Obviously, lack of kisses does not produce legal liability. Notwithstanding that, the California case mentioned above stated that orphans have “the right to hope to be adopted by a family who

153. Schremp v. Marvel, 405 A.2d 119, 121 (Del. 1979) (emphasis added).

154. See Sales, *supra* note 111, at 186 (explaining that legitimate expectations are generally a result of some formally prescribed requirement that is meant to result in a specific right, allowance, or result).

155. See Nissei Sangyo Am. v. United States, 31 F.3d 435, 439 (7th Cir. 1994) (describing a third party’s interest in preserving the privacy of documents).

156. See *id.* at 439 (finding no legal obligation to prevent Camaro Trading’s bank from destroying documents in its regular course of business).

157. *Id.* at 440.

158. See *id.* (asserting that Camaro Trading has a legal interest to intervene because the “object of [the] suit” was the bank’s destruction of documents that the defendant would likely need).

159. See Jennifer Daehler, *Professional Versus Moral Responsibility in the Developing World*, 9 GEO. J. LEGAL ETHICS 229, 233 (1995) (distinguishing the higher values and morals of the individual from the professional code of ethics).

will love, care, and nurture him.”¹⁶⁰ Despite its terseness, the phrase shows two things: that there is a right to desire love (the right to the internal acts of hope) and that orphans have a vital interest in seeking what fulfills their lives.¹⁶¹ This right to hope, these legitimate interests, will justify authorities to spend resources to build orphanages and adopt other measures to help minors.¹⁶²

Then, the right to these existential hopes would be like other social rights (*e.g.*, the right to work, social security, and the standard of living) that do not entitle citizens to ask directly for specific things (*e.g.*, to be hired in certain company, to get the desired insurance plan or a hammock to rest) but to require the government the implementation of a minimum number of policies needed to reach the consolidation of these rights progressively.¹⁶³ These policies will increase the hopes of the vulnerable populations.

B. Hopes Based on the World

Sometimes we do not ground our hopes in people but in things. Talking about the right to hope, Tillich focuses his attention on the seed of a tree: “We have no assurance that it will develop. But our hope is genuine.”¹⁶⁴ Hoping that the earth and stars will move according to cosmological laws seems legitimate and secure. Less secure is the hope of having good weather during the weekend or no storms when traveling. In either case, these are facts: they

160. *In re Jeremy S.*, 107 Cal. Rptr. 2d 280, 289 (Cal. Ct. App. 2001).

161. *See In re Jayson T.*, 97 Cal. App. 4th 75, 90 (Cal. App. 2002) (stipulating that a child’s right to hope for adoption is statutorily obligated because “*somebody*, however, has to be able to protect the child’s interest if the adoption doesn’t come to fruition”) (emphasis in original).

162. *See id.* at 88–89 (reversing the trial court’s ruling that created a legal orphan because “children who are taken from their parents and put into the juvenile dependency system deserve nothing less than that the courts’ primary concern should be *their interests*”) (emphasis in original).

163. We will develop the argument in Chapter V, section B.

164. Tillich, *supra* note 91.

cannot ground tort cases in courts.¹⁶⁵ People do not sue the winds or the sky, the moon or the earth for not providing what they want.

However, “our hope is genuine.”¹⁶⁶ On the one hand, genuine human hopes deserve at least minimal protection.¹⁶⁷ It would be unfair to destroy the honest hopes of others without a minimal reason.¹⁶⁸ Fishing up on the mountain for personal consumption could be a just reason to destroy the hopes of other fishermen that are down-stream to catch fish, but changing the riverbed for industrial purposes is not enough to destroy the hopes of a community, that lives down in the valley, of having water. Their hope of having water, accentuated by a longstanding experience of the neighbors, cannot be easily disappointed.

Genuine hopes entitle authorities to adopt policies to protect the environment, even if their outcomes are somehow uncertain.¹⁶⁹ The measures adopted to combat climate change are a good example of that.¹⁷⁰ Nobody knows if these measures will ever succeed, but they are justified in the hope of that success.¹⁷¹

165. See *U.S. Aviation Underwriters, Inc. v. United States*, 567 F. Supp. 2d 1407, 1410 (Ga. M. D. Ct. 2008) (finding that even when making grossly negligent predictions about weather conditions, the Government is shielded from tort liability under the Federal Tort Claims Act).

166. Tillich, *supra* note 91.

167. See *id.* (“[We] have learned how hard it is to preserve genuine hope.”).

168. See *id.* (“Without hope, the tension of our life toward the future would vanish, and with it, life itself.”).

169. See Catriona McKinnon, *Climate Change: Against Despair*, 19 ETHICS & ENV'T 31, 34 (2014) (distinguishing hope from despair in that one may have hope in an uncertain outcome, but despair occurs when the objective moves to “contra-certainty”).

170. See *id.* at 45 (“Hope keeps open a space for agency between the impossible and the fantastical; without it, the small window in time remaining for us to tackle climate change is already closed.”).

171. See *id.* at 38 (“[U]ncertainty provides the context for hope rather than despair.”).

*C. Hopes Based on Ourselves**1. Our Means and their Possibilities*

Hopes grounded in personal properties could justify the right to hope.¹⁷² For instance, the taxi owner has the right to hope to earn some dollars every day by driving his cab, farmers have the right to hope to sell their harvest, and shareholders to get profits at the end of the year. According to a classical principle of tort law, who damages the taxi, crops or business of another might be obliged to pay both the cost of the property and a compensation for what had been expected to be obtained with these means (future fees, charges, sales, or profits).¹⁷³ As long as these expectations match perfectly with the definition of hope, they should be part of the right to hope.

Tort law easily justifies the compensation for the frustrated expectation in the previous cases, because the benefits can be measured and are relatively secure.¹⁷⁴ The historical fees, sales, and profits, and the current circumstances of the market can also help to measure them.¹⁷⁵ However, when the frustrated expectation is uncertain, tort law is hesitant about the duty of compensation.¹⁷⁶ The courts occasionally even use a different terminology to define a right to compensation outside of a traditional tort liability situation: instead of “lost profits” or

172. See Leonard W. Levy, *Property as a Human Right*, 5 CONST. COMMENT. 169, 171 (1988) (connecting the individual’s quest for personal property with liberty by describing cases where the Supreme Court vigorously defended occupational rights).

173. See LESTER S. JAYSON & ROBERT C. LONGSTRETH, *HANDLING FEDERAL TORT CLAIMS* § 10.04 (2023) (“[R]ecovery has been allowed in FTCA suits for such items as lost profits, the loss of use of property, and repair costs.”).

174. See *id.* (noting that when evaluating property and personal damages, courts must estimate damages with reasonable certainty).

175. See *id.* (listing the numerous factors considered by triers of fact when evaluating damages in tort).

176. See Ariel Porat & Alex Stein, *Liability for Uncertainty: Making Evidential Damage Actionable*, 18 CARDOZO L. REV. 1891, 1919–25 (1997) (outlining where harm and expectations are uncertain and courts’ reactions).

“unpaid fees,” a court may use words like “expectations,” “loss of a chance” or “the right to hope.”¹⁷⁷

The Supreme Court of Maine has discussed “the right to hope” in two occasions, first denying this right and later accepting it. In *Cook v. Colby College*, the Court analyzed the case of a woman who completely lost an impaired eye in an accident.¹⁷⁸ Before the accident, had feeble vision the eye could only distinguish between light and darkness, detecting some very close objects as shadows.¹⁷⁹ The Industrial Accident Commission granted compensation for presumed total incapacity, noting that “[s]he had a right to hope that with the advancement of medical science the sight in her eye might in the future be improved”.¹⁸⁰ The decision was confirmed by the Superior Court but overruled by the Supreme Court of Maine, which observed that the eye was technically blind, at least for industrial purposes, and did not deserve the compensation established in the law.¹⁸¹ The decision did not even recognize proportional compensation.¹⁸²

Nevertheless, the same Supreme Court of Maine had the opportunity to recognize “the right to hope” years later in *Chenell v. Westbrook College*¹⁸³ to a woman who had trained as a professional dancer, even becoming a member of the “Rockettes” dance team at one point.¹⁸⁴ Unfortunately, a 475-pound cabinet

177. See *Facchina v. Mut. Benefits Corp.*, 735 So. 2d 499, 502 (Fla. Dist. Ct. App. 1998) (noting that expectation damages forms the boundary between pure contract law and tort law); *Almonte v. Kurl*, 46 A.3d 1, 24–25 (R.I. 2012) (explaining that the loss of chance doctrine is a more expansive theory of tort liability); *Bendix Home Appliances, Inc. v. Radio Accessories Co.*, 129 F.2d 177, 182 (8th Cir. 1942) (noting that a party may have a right to hope for profitability, but that this provides no right of recovery under other law).

178. 154 A.2d 169 (Me. 1959).

179. See *id.* at 307 (the parties stipulated that “prior to her accident the Petitioner had a vision of not more than 20/400 in the right eye that was injured.”).

180. *Id.* at 310 (adding there that “she had something of value present prior to this accident, and as a result of the accident she has lost it.”).

181. *Id.* 307 (“the real injury which the Workmen’s Compensation Act is designed to meet is blindness from industrial accident, not removal or enucleation of the eye as such.”).

182. *Id.* at 318.

183. 324 A.2d 735 (Me. 1974).

184. *Id.* at 737 (“[P]rior to this accident plaintiff had ‘definitely outstanding’ ability as a dancer.”).

collapsed on her legs one day, pinning them to the gymnasium floor.¹⁸⁵ The ruling in favor of the plaintiff pointed out “her right to hope that she would one day become a second Isadora Duncan.”¹⁸⁶ Her “outstanding” skills justified a higher compensation.¹⁸⁷ In both cases the value of the means (i.e., eyes, limbs, skills, health) and its possibilities were considered to determine the admissibility of compensation. No functional eye means diminished hopes and no compensation; exceptional skills and health mean elevated hopes and substantial compensation.¹⁸⁸ In either case, the rationale seems to be: *the greater the means, the greater the hope, the greater the right to hope.*

The previous idea would apply to any means: properties, ideas, skills, or unique qualities of people. Personal efforts are also part of those means necessary to achieve our hopes.¹⁸⁹ Whoever works harder to reach a goal typically has more of a right to achieve it. Such an idea connects with the right to “the pursuit of happiness.”¹⁹⁰ This pursuit requires hardworking hope (agency): personal effort aimed to achieve the desired goal seen as possible.¹⁹¹ No pursuit of happiness is possible without hardworking hope. One Brazilian case of 2011 has highlighted the

185. *Id.* at 737–38 (resulting in injuries including the tearing of the medial meniscus, a condyle fracture, and resulting in chondromalacia all of which resulted in a permanent impairment of her leg).

186. *Id.* at 737.

187. *See id.* at 738 (“That a finding that this damage would be translated into money terms in the sum of [only] \$7,500 is so clearly wrong that the conclusion cannot be left to stand.”).

188. *See Cook*, 154 A.2d at 171 (“the claimant prior to the accident was practically blind in her right eye”); *Chenell*, 324 A.2d at 737–38 (“A permanent impairment of her leg resulted from the injury so received.”).

189. *See NIETZSCHE*, *supra* note 30, at 29–30 (discussing the notion of creating our world versus inheriting it).

190. *See THE DECLARATION OF INDEPENDENCE* para. 2 (U.S. 1776) (“We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.”); *see also* NIHONKOKU KENPŌ [KENPŌ] [CONSTITUTION] May 3, 1947, art. 13 (Japan) ([T]he pursuit of happiness shall . . . be the supreme consideration in legislation”); DAEHANMINKUK HUNBEOB [HUNBEOB] [CONSTITUTION] July 12, 1948, preamble (S. Kor.) (“[T]o ensure security, liberty and happiness”).

191. *See Snyder*, *supra* note 66, at 570 (“First, we hypothesize that hope is fueled by the perception of successful *agency* related to goals.”) (emphasis in original).

intrinsic connection between these two rights.¹⁹² For the Supreme Court of that country, the right to hope is an aspect of the right to the pursuit of happiness and, because of that, everyone is entitled to have the hope of being happy.¹⁹³ Therefore, these hopes backed by life efforts must be protected, especially for the sake of the right to the pursuit of happiness.¹⁹⁴

Following the previous examples of the dancer and the visually impaired woman, it would seem that the outstanding dancer had a specific professional hope well-founded on her current remarkable skills and hard work.¹⁹⁵ She was earnestly committed to her career and showed high levels of *agency*,¹⁹⁶ one of the elements of serious hopes.¹⁹⁷ In contrast, the woman who permanently lost her defective eye in an automobile incident only had a vague hope that someday, somewhere in the world, an unknown researcher would find a cure for her illness.¹⁹⁸ In both cases, the passage of time would most likely increase the chances of obtaining what was expected.¹⁹⁹ However, clearly, the dancer had a bit more control over her future than the other. The former had the right to carve out her future and hope for a better time to

192. See S.T.F., ADI 4277, ADPF 132, Relator: Ayres Britto, 05.05.2011 (noting the correlation between the right to happiness and the right to hope).

193. See Laís Kondo Claus & Luciana Romano Morilas, *The Right to the Pursuit of Happiness and the Right to Access Medical Treatment: Recent Developments in Brazilian Jurisprudence*, 2 PEACE HUM. RTS. GOVERNANCE 119, 125 (2018) (The decision mentions that the pursuit of happiness as a right is an implicit constitutional postulate, as an expression of the essence of the principle of human dignity.”).

194. See AQUINAS, *supra* note 33, at II.II, question 17, art. 2 (“[T]he proper and principal object of hope is eternal happiness.”).

195. See *Chenell v. Westbrook Coll.*, 324 A.2d 735, 738–39 (Me. 1974) (describing the remarkable dancer and her case).

196. See Snyder, *supra* note 66 at 570–71 (discussing the relationship between agency and hope).

197. See *id.* (considering the level of agency involved in one’s hope).

198. See *Cook v. Colby College*, 154 A.2d 169, 170–71 (Me. 1959) (explaining the woman who lost her eye and her case).

199. See Snyder *supra* note 66, at 570–71 (showing that the subjective experience of hope increases when the value and possibilities of reaching the goals are increased).

come forged by her activity and initiative.²⁰⁰ For this reason, she had more grounds to hope than the latter.

2. *Our Desires and Longings*

I did not find any court that explicitly protects irrational hopes, like the drunk's hope of flying. However, at least in theory, these irrational hopes—and of course others more rational—could find a small shelter in the nuclear protection of the right to freedom of thought and conscience,²⁰¹ and the right to hold opinions without interference.²⁰² This immunity²⁰³ is considered an “absolute” right, with no possible exception when their exercise remains in the inner space of the mind (*forum internum*).²⁰⁴ If hope is a mix of belief and desire, then the internal acts of hope (those that remain in the human mind and heart) must receive the absolute protection of the law, no matter how irrational the hope could be.

Nevertheless, the right to freedom of thought, conscience, and religion has its limits when beliefs, desires, and opinions are

200. See Pope Francis, Address of His Holiness Pope Francis to Participants at the National Convention of the Italian Masters of Labour Federation (June 15, 2018) including the right to carve out one's own future in the right to hope) (transcript available at perma.cc/7N3Y-CQ93).

201. See G.A. Res. 217 (III) A, *supra* note 22, at art. 18 (“Everyone has the right to freedom of thought, conscience and religion”); see also G.A. Res. 2200 (XXI) A, International Covenant on Civil and Political Rights, art.18 (Dec. 16, 1966) (“Everyone shall have the right to freedom of thought, conscience and religion.”).

202. See G.A. Res. 217 (III) A, *supra* note 22, at art. 19 (Dec. 10, 1948) (“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”); see also G.A. Res. 2200 (XXI) A, *supra* note 201, at art. 19. (“Everyone shall have the right to hold opinions without interference.”).

203. See Luca Fiorito & Massimiliano Vatiere, *Beyond Legal Relations: Wesley Newcomb Hohfeld's Influence on American Institutionalism*, 45 J. ECON. ISSUES 199, 201 (Mar. 2011) (explaining Hohfeld's use of the word “rights” as an immunity in which a person “cannot have a particular relation changed by another”).

204. See Susie Alegre, *Rethinking Freedom of Thought for the 21st Century*, 3 EUR. HUM. RTS. L. REV. 221, 221 (2017) (“This inviolable freedom has been described as ‘the foundation of democratic society’ and ‘the basis and origin of all other rights.’”).

expressed externally.²⁰⁵ Therefore, the external expression of hope will inherit the same limits of these freedoms.

Getting physically into the brain of people to change their beliefs and desires represents an extremely complicated enterprise. However, external methods like propaganda can change some minds in a fair or unfair way.²⁰⁶ Countries usually ban—and even criminalize during war times—the diffusion of the propaganda aimed at demoralizing soldiers to protect the hopes of those who fight on the front line.²⁰⁷ Without hope troops easily surrender before powerful enemies. In the Second World War, the Nazis used this technique to divide the enemy, dropping leaflets on African-American soldiers fighting across Europe that said: “There have never been lynchings of colored men in Germany. They have always been treated decently,” or with a comparison of salaries between the frontier soldiers who risk their lives (fifteen dollars) and public servants who work at home (forty-five dollars).²⁰⁸ The U.S. government repelled all communications that

205. See *id.* at 223.

These rights are all related to freedom of thought and freedom of opinion in that they represent the external manifestations of our thoughts and opinions. I choose to use my freedom of expression to tell you what I am thinking or to get access to the ideas of other . . . But these rights may all be limited in certain circumstances and it is this scope for limitation which has given rise to a complex network of law and regulatory policy mapping out the ways in which they can be legitimately curtailed.

206. See Gregory Asmolov, *The Effects of Participatory Propaganda: From Socialization to Internalization of Conflicts*, 6 J. DESIGN & SCI. 2, 6 (Aug. 7, 2019) (“Propaganda aims either to support or change an existing relationship to an object, or to construct a new object that requires the subject’s activity. The intentional construction of subject-object relationships may rely on manipulative psychological techniques, as well as on the dissemination of disinformation.”).

207. See NELSON RIBEIRO ET AL., *THE HANDBOOK OF EUROPEAN COMMUNICATION HISTORY* 102–03 (1st ed. 2020) (discussing how the British criminalized the publication of news considered likely to aid the enemy, banned journalists from the front line, imposed military censorship, and hesitated to print “bad” war news); see also *id.* at 173 (explaining how some cross-border broadcasts “aimed to demoralize the enemy” and others “boost[ed] the morale of the military and of the populations living under foreign occupation”).

208. See US Holocaust Museum, *How Nazi Germany Weaponized the Race Card Against the U.S. Army*, MEDIUM (Feb. 13, 2017) (demonstrating how the “Nazis exploited people of African descent in their propaganda for political and military purposes” and encouraged “African-American soldiers to surrender to

tended to demoralize troops and citizens or advance totalitarian ideologies.²⁰⁹ The propaganda of the enemy's ideology during the war,²¹⁰ all war propaganda²¹¹ and the incitement to commit crimes²¹² are usually prohibited and criminalized.²¹³ While some hopes are strongly protected by the law (e.g., the hope of the warriors), the promotion of other hopes is not very welcomed (e.g., when it fosters evil effects), and occasionally could be banned (e.g., the Nazis' promotion of treason).²¹⁴

After analyzing those hopes grounded in ordinary desires, we can focus our attention on the hope based on the deepest desire of the human heart, the long for the eternal. To be honest, it is not easy to justify the right to hope in the eternal with sound arguments able to convince everyone. Three doctrines have been

German troops rather than serving as cannon fodder for a white America that denied them equality") [perma.cc/FZW8-KX5M].

209. See DOM CARISTI ET AL., COMMUNICATION LAW: PRACTICAL APPLICATIONS IN THE DIGITAL AGE 62 (3rd ed. 2018) (showing that the Sedition Act, amended in 1918, and the Espionage Act of 1917 banned these actions); see also *Schenck v. United States*, 249 U.S. 47, 52–53 (1919) (ruling against the secretary of the American Socialist party, who distributed 15,000 leaflets that discouraged young men from enlisting in the military, by using the “clear and present danger test”); *Gitlow v. New York*, 268 U.S. 652, 673 (1925) (demonstrating the Court's adoption of the common law “bad tendency test” which courts used during World War I to assess government criticism and ruled in favor of the government's anti-seditious behavior almost without fail).

210. See Louis Fiset, *Return to Sender: US Censorship of Enemy Alien Mail in World War II*, PROLOGUE MAG. (Spring 2001) (describing the United States government's censorship of the mail during World War II in order to block Japanese propaganda) [perma.cc/RGG2-PB9E].

211. See G.A. Res. 2200 (XXI) A, *supra* note 201, at art. 20.1 (showing that 173 countries are parties to the covenant that prohibits any propaganda for war).

212. See 18 U.S.C. § 373(a) (prohibiting corroboration, solicitation, commandment, inducement, or other persuasion of another to commit a felony); see also *Brandenburg v. Ohio*, 395 U.S. 444, 449–50 (1969) (allowing a degree of incitement unless it imminently encourages lawless action).

213. See Michael G. Kearney, *supra* note 210 (emphasizing the prohibition of propaganda by individual countries); see also G.A. Res. 2200 (XXI) A, *supra* note 201 (highlighting the global initiative to prohibit propaganda for war); see also 18 U.S.C. § 373(a) (demonstrating the United States' legislation regarding the incitement of criminal activities).

214. See William Sweet, *The Volksgerichtshof 1943–45*, 46 THE J. OF MOD. HIST. 314, 316–21 (1974) (discussing the expansion of the definition of treason in Germany in the years preceding World War II).

exposed here: the experiential foundation, the pragmatic thesis, and the anthropological need.

Tillich defends the experiential foundation.²¹⁵ He justified the right to the “ultimate hope” in the ordinary experience of the eternal.²¹⁶ According to the author, in our hours of peace or ecstasy of love or in the contemplation of beauty, among other events, we experience the presence of the eternal.²¹⁷ After describing these experiences, he concludes that “we have a right to such ultimate hope, even in view of the end of all other hopes, even in the face of death.”²¹⁸ So, little experiences of the eternal allow us to foresee our eternal future, and to justify the right to hope in that future.²¹⁹ The argument is beautiful but has two shortcomings. It presupposes that people continuously have little experiences of the eternal, something that could be tested. In addition, the argument hardly explains why people who have had extreme experiences of love and beautiful things could fall into despair. That was the case of Judas Iscariot, who experienced the close friendship of the Messiah and saw incredible miracles that no one had ever seen before; nonetheless, he fell into despair and committed suicide.²²⁰

For the pragmatic thesis, instead, there is no need for any prior experience or foundation of hope.²²¹ No matter how proven or unfounded hope for the eternal is, it is always better to live with a

215. See Tillich, *supra* note 16 (discussing how moments of happiness inspire belief in eternal life).

216. See *id.* (“For we experience the presence of the eternal in us and in our world here and now.”).

217. See *id.* (“We experience it in moments in which we feel: This is a holy place, a holy thing, a holy person, a holy time; it transcends the ordinary experiences; it gives more, it demands more, it points to the ultimate mystery of my existence, of all existence.”).

218. *Id.*

219. See *id.* (Where this is experienced, there is awareness of the eternal, there is already, however fragmentary, participation in the eternal. This is the basis of the hope for eternal life; it is the justification of our ultimate hope.).

220. *Matthew 27:3–10* (King James).

221. See Sarah Stitzlein, *Pragmatist Hope*, in *THE MORAL PSYCHOLOGY OF HOPE* 189, 189–203 (Claudia Blöser & Titus Stahl eds., 2020) (summarizing the pragmatic conception of hope of Charles Peirce, William James, John Dewey, Richard Rorty, Judith Green, Cornel West, Patrick Shade, and Colin Koopman).

utopian hope than to fall into despair.²²² These authors are aware that life makes no sense if everything ends here: without the eternal people must endure existential despair,²²³ the feeling of absurdity²²⁴ and futility, of being useless, which progressively increases as one approaches death. To overcome this existential problem, Kant *postulated* (without any proof) the existence of God and the immortality of the soul, because his categorical imperative required us to assume the possibility of both things.²²⁵ A similar thing Kierkegaard did, when he presented the hope for the eternal, a hope that is beyond all understanding, as the sole antidote to the despair caused by the frustration of earthly hopes.²²⁶ Even if there is nothing more than a black curtain after death, it is better to hope for the best.

A middle point between the previous doctrines is the thesis of the human need. Some anthropologists have found certain traces of the eternal in the human spirit. They observe that the human spirit is drastically open to the eternal.²²⁷ From a static point of

222. See Christopher Kaczor, *Man Needs Hope to Live*, CATH. ANSWERS MAG. (summarizing a speech by Pope Benedict XVI by stating that “most of all, we need the fundamental hope of attaining heaven with the help of God”) [perma.cc/L2SF-B8HH].

223. See SØREN KIERKEGAARD, EITHER/OR 53 (Victor Eremita, ed., Alastair Hannay, trans., 1992) (1843) (“Is there anything that could divert me? Yes, if I caught sight of a fidelity that stood every trial, an enthusiasm that sustained everything, a faith that moved mountains; if I came by a thought that bound together the finite and the infinite.”)

224. See ALBERT CAMUS, *An Absurd Reasoning*, in THE MYTH OF SISYPHUS AND OTHER ESSAYS, at 1, 9–10 (Justin O’Brien, trans., 1st ed., 1955) (“The climate of absurdity is in the beginning. The end is the absurd universe and that attitude of mind which lights the world with its true colors to bring out the privileged and implacable visage which that attitude has discerned in it.”).

225. See IMMANUEL KANT, CRITIQUE OF PRACTICAL REASON 126–36 (Lewis White Beck, trans. 1956) (1788) (explaining that it is “morally necessary to assume the existence of God” and the immortal soul).

226. See SØREN KIERKEGAARD, EIGHTEEN UPBUILDING DISCOURSES 215 (Howard V. Hong & Edna H. Hong, eds. & trans., 1990) (“There is a hope that is heaven’s fatherly gift to the child, a hope that grows with the child, a hope which the young person goes out to life. This hope guarantees everything for him.”); see also KIERKEGAARD, *supra* note 223, at 53 (discussing God being the solution to existential despair).

227. See José Víctor Orón, *Leonardo Polo’s Integrative Dynamic as a Philosophical Framework for Understanding Neuroscience*, 2 JOURNAL POLIAN STUDIES 109 (2015) (explaining that, according to Polo, a human being can be understood as a system with two features: openness and freedom).

view, many philosophers accept that the subsistence of the soul after death is a truth achievable by mere reason.²²⁸ However, what could happen after death with the immortal soul, a soul designed to work in tandem with the brain and body, is still a mystery.²²⁹ Philosophers can foresee the subsistence of the soul, but not predict how happy or painful life could be after death.²³⁰ Without the contribution of the faith, the only thing that could be done here is to face death crossing fingers.

From a dynamic point of view things are similar. It is also evident that human behavior is extremely open to new actions, projects, and experiences.²³¹ While the bodily powers are circumscribed to specific objects (e.g., the sight can detect only colors, and the ear only sounds), the intellect and will have no limits.²³² Anything can fall into these two spiritual powers: all material and immaterial things, the whole universe and all possible universes. Lastly, the spiritual powers are open to the infinite and long to reach it.²³³ The human person is never satisfied

228. See Juan Fernando Selles, *¿Dirección o asociación entre alma y cuerpo? ¿Inmortalidad? Propuestas de algunos pensadores españoles*, 1 COLLOQUIA, ACAD. J. CULTURE & THOUGHT, 63 (2014) (analyzing the immortality theories of some philosophers, such as Miguel de Unamuno, José Ortega y Gasset, Xavier Zubiri, Julian Marias, Pedro Lain Entralgo, Antonio Millan-Puelles and Leonardo Polo); MARK S MCLEOD-HARRISON, *THE RESURRECTION OF IMMORTALITY: AN ESSAY IN PHILOSOPHICAL ESCHATOLOGY* (2017) (listing potential definitions of immortality and arguing for the impossibility of personal annihilation).

229. See David K. Johnson, *Do Souls Exist?*, 12 THINK 61, 64–75 (2013) (weighing philosophical arguments for and against the existence of a soul).

230. See Ambrose of Milan, *De excessu fratris sui Satyri*, II.47, in 73 CORPUS SCRIPTORUM ECCLESIASTICORUM LATINORUM 274 (O. Faller ed. 1955) (fourth century) (“without the assistance of grace, immortality is more of a burden than a blessing”).

231. See Luke Smillie, *Openness to Experience: The Gates of the Mind*, SCI. MAG. (Aug. 15, 2017) (discussing the cognitive benefits of change and trying new behaviors) [perma.cc/E52A-3NRT].

232. See David P. Lang, *Aquinas’s Impediment Argument for the Spirituality of the Human Intellect*, 11 Medieval Phil. & Theo. 107, 111 (2003) (“Not only is the human potential intellect uncomposed of matter itself, but it cannot even operate directly through a corporeal organ . . .”).

233. See LEONARDO POLO, *EL ACCESO AL SER* 36-8, 184-91 (1964) and *INTRODUCCIÓN A LA FILOSOFÍA* 27 (2015) (both providing his famous anthropological proof of the existence of God, based on the openness towards the infinite of the human spirit: if the will is for something more than to choose between two alcoholic drinks—or any other finite thing—the Infinite must exist).

with any achievement, and always wants and expects more.²³⁴ Without infinity, the human heart will remain frustrated, condemned to existential anguish.²³⁵ People would be nothing more than flesh for cemeteries, a passion for the infinite frustrated beforehand, as the existentialists point out.²³⁶

Although under the anthropological thesis the existence of the infinite is still a mystery, at least it shows the evidence of the human longing. Based on this modest evidence (not only in a mere postulate or something that is “beyond” the reason), the legal argument concludes that, if we cannot cancel these natural longings for the infinity of the human heart, whosoever unreasonably harms or destroys them, will harm and destroy at the same time the human dynamic and the person itself. Consequently, people should be entitled to ask for respect, protection, and promotion of the eternal hope.²³⁷ Yet, the content of this hope is still unclear. Eternity would be pretty different for Christians, Muslims, pantheists, and atheists.²³⁸

D. Hope Based on God

The deepest longings of the human heart border on lack of foundation and being meaningless if there is no superior being capable of making possible what is impossible for human beings. Christian faith believes that the deepest longs of the human heart

234. See Ron Carucci, *Why Success Doesn't Lead to Satisfaction*, HARV. BUS. REV. (Jan. 25, 2023) (“Our brains’ reward system, especially the neurotransmitter dopamine, drives us to achieve goals and rewards us with a great sense of pleasure when we do. But that pleasure is short lived, as our brains are hardwired to also seek balance from extreme emotional states.”) [perma.cc/M2GM-BFTN].

235. See KIERKEGAARD, *supra* note 223, at 53 (taking solace in the possibility of the infinite).

236. See JEAN-PAUL SARTRE, BEING AND NOTHINGNESS 615 (Hazel E. Barnes ed., 1943) (concluding an existentialist essay with the phrase “[m]an is a useless passion”).

237. See Koch, *supra* note 148 (defining the three main duties of the State related to human rights).

238. See THE ROUTLEDGE COMPANION TO STUDY OF RELIGION 113 (John Hinnells, ed. 2010) (listing the “ultimate goals” of various world religions in terms of eternity).

are not there by chance, but by an expressed desire of God.²³⁹ “You have made us for Yourself, O Lord, and our heart is restless until it rests in You,” said Augustine in the fifth century.²⁴⁰

As seen in Chapter II, hope in God, in everlasting life and resurrection, is only rational for those who accept the possibility of these things.²⁴¹ Given the likelihood that God exists, loves us, and has promised good things, it is reasonable to hope in his promises. As the Apostle said, for this hope we “have no confidence in the flesh” but in faith.²⁴² And because this theological hope cannot arise without faith, the right to this hope cannot be claimed outside of the religious community that believes in such things. It would then be only a “religious right,” not a secular one.²⁴³

This hope based on faith is *better justified* than the secular hope for the eternal. It is based on the omnipotence and love of God and on his immutable promises of salvation.²⁴⁴ That is why the Christian tradition artistically represents hope with the metaphor of a secure anchor.²⁴⁵ According to the Bible, redemption was already accomplished by Jesus Christ on the cross, who with his passion and resurrection won for us heaven and our own resurrection, which will be materialized on the last day.²⁴⁶ These events are the main foundation of the Christian hope: “if Christ be

239. See *Job* 28:1–28 (King James) (presenting a metaphor for wisdom of God is akin to metal being drawn from the earth and smelted or refined).

240. AUGUSTINE OF HIPPO, *CONFESSIONS* 1 (Jack Miles & Peter Constantine, trans., 2018).

241. See *Romans* 8:28 (King James) (“God works for the good of those who love him . . .”).

242. *Philippians* 3:3 (King James).

243. See Tasioulas, *supra* note 88, at 4 (distinguishing religious rights from human rights and legal rights).

244. See *Galatians* 2:16 (King James) (“Knowing that man is not justified by the works of the law, but by the faith of Jesus Christ . . .”).

245. See *Hebrews* 6:10–20 (King James) (“Which hope we have as an anchor of the soul”, verse 19). See also Franco Lever, *Christian Art as a Locus Theologicus and the Digital Media*, 75 *SALESIANUM* 349 (2013) (considering liturgy and sacred art as a source of theological reflection).

246. See *Hebrews* 9:15 (King James) (claiming that Christ died to set man free from the sin of the first covenant); see also *Galatians* 3:13 (King James) (arguing that Christ saved man so that heaven is open to those with faith).

not raisen, then is our preaching vain, your faith is also vain,” and our hope as well.²⁴⁷

In the last speech that Pope Francis dedicated to the right to hope, he maintained that this right was acquired on the night of the resurrection.²⁴⁸ All conditions required for the great hope suddenly became possible on that night: firstly, the crucifixion and resurrection manifest the existence of one infinitely good Being who loves humankind immeasurably.²⁴⁹ Second, they show how each person can be united with the Infinite: taking up the cross of Christ to resurrect with Christ.²⁵⁰ Finally, the resurrection is how we overcome the deadliest death,²⁵¹ our path to eternal life,²⁵² to that kind of life that is endless love.²⁵³ That is why mystics, saints, and theologians see the pierced Heart of Jesus as heaven’s door, and an antique liturgical hymn presents that Heart as the “sole

247. *1 Corinthians* 15:14 (King James).

248. Pope Francis, *supra* note 102 (proclaiming that at the Easter Vigil we are given the right to hope).

249. *See John* 15:13 (King James) (“Greater love hath no man than this, that a man lay down his life for his friends.”).

250. *See Matthew* 10:38 (King James) (“And he that taketh not his cross, and followeth after me, is not worthy of me.”); *see also Matthew* 16:24 (King James) (“Then said Jesus unto his disciples, If any man will come after me, let him deny himself, and take up his cross, and follow me.”); *Luke* 9:23–24 (King James) (“And he said to them all, If any man will come after me, let him deny himself, and take up his cross daily, and follow me. For whosoever will save his life shall lose it: but whosoever will lose his life for my sake, the same shall save it.”); *see also Mark* 8:34 (King James) (“And when he had called the people unto him with his disciples also, he said unto them, whosoever will come after me, let him deny himself, and take up his cross, and follow me.”)

251. *See Genesis* 2:17 (King James) (“ . . . in the day that thou eatest thereof thou shalt surely die.”); *see also* SCOTT HAHN, *FIRST COMES LOVE* 61-6 (2002) (explaining that the original text of *Genesis* 2:17 uses twice the word *die*, a Hebrew idiom to indicate a superlative. When translated verbatim, the text reads: “you shall die die” or “you shall die the death.”).

252. *See Romans* 6:8 (King James) (“Now if we be dead with Christ, we believe that we shall also live with him . . .”).

253. *See* Pope Benedict XVI, Encyclical Letter *Spe Salvi* of the Supreme Pontiff Benedict XVI to the Bishops, Priests, and Deacons, Men and Women Religious, and All the Lay Faithful on Christian Hope, § 27 (Nov. 30, 2007) (transcript available at perma.cc/7JLM-Z96A) (“[L]ife in its totality is a relationship with him who is the source of life. If we are in relation with him who does not die, who is Life itself and Love itself, then we are in life. Then we ‘live.’”).

hope of the human race.”²⁵⁴ In short, without a God who directs everything towards the good, without promises of salvation, redemption, and resurrection, there is no right to the fundamental hope but only illusions of reaching the unattainable.

At the same time, the hope based on faith *embraces more content* than the secular hope for the eternal. Both expect that something will happen to us after death. Without faith the intellect and the will subsistence could be expected, but not much more.²⁵⁵ Instead, Christians hope for an unending and deepest union with the infinite God; they hope that love will never die, that an eternal reward is waiting for us, and that justice will triumph.²⁵⁶ The faithful Christian can claim into their religious communities the respect, protection, and promotion of the right to hope in these things, according to the general protection of hope.²⁵⁷ We will see in the next Chapter the scope of this protection.

V. What Does the Protection of Hope Include?

Not all hopes deserve legal protection. When they have enough grounds to be protected, its protection should cover the subjective and objective dimension of hope which embraces four elements: the internal acts of hope (wish, aspire, plan, and believe), the right to have certain opportunities, the possibilities of one’s means to achieve what is expected, and some consolidated chances. The following sections will discuss each one of these elements.

A. The Right to Wish, Aspire, Plan, and Believe

The protection of hope begins with the protection of the *subjective dimension of hope*, which includes a bunch of internal

254. See *Little Office of the Sacred Heart of Jesus*, PRECES-LATINAE (“O heart, victim of love, / everlasting Joy of heaven, / Comfort of mortal man, Sole Hope of the human race”) [perma.cc/UMD2-JF2Q].

255. See Ambrose of Milan, *supra* note 230 (observing the problem of the soul’s subsistence without the body in a place devoid of material contact with others).

256. See *1 Corinthians* 13:8–10 (King James) (explaining that Christians hope for an infinite love and relationship with God).

257. See *Jeremiah* 29:11 (King James) (“For I know the thoughts that I think towards you, saith the LORD, thoughts of peace, and not of evil, to give you an expected end.”).

acts of the mind.²⁵⁸ Without them there is no possible hope. This protection must be very strong in the *forum internum*,²⁵⁹ and extended to some external manifestation of hope.

For Snyder, the psychological hope has three essential components: goals, pathways, and agency.²⁶⁰ It means that hope requires: first, that the individual possesses a goal that previously was considered good, possible, but not yet granted (belief); second, the conception of a path to achieve that goal; and third, that one has the agency to execute that pathway towards the established goal.²⁶¹ While low agency creates only a “wishful hope,” high levels of conviction or commitment create an “aspirational hope.”²⁶²

In parallel with these psychological considerations, the American philosopher Melvin Rader and Pope Francis include similar components in the *right* to hope. In regards to the first component, with a more philosophical approach, Rader agrees that the right to hope requires choices and belief in some goals, in some “hypotheses that make life substantially better.”²⁶³ And from a more theological perspective, the Pope includes into the right to hope “the *right to know* that there are beautiful and lasting realities in life, that are worthwhile putting yourself at stake for,” and “the *right to believe* that true love is not something ‘disposable’

258. See Emma Pleeging et al., *The Relations Between Hope and Subjective Well-Being: A Literature Overview and Empirical Analysis*, APPLIED RSCH. QUALITY LIFE (Dec. 2019) (studying the more emotional aspect of hope).

259. See Jan Christoph Bublitz, *Freedom of Thought in the Age of Neuroscience: A Plea and a Proposal for the Renaissance of a Forgotten Fundamental Right*, 100 ARCHIVES FOR PHIL. OF L. AND SOC. PHIL. 1, 2–5 (2014) (asserting that when the acts of hope remain in the *forum internum* they deserve unconditional protection).

260. Snyder, *supra* note 66, at 570–71.

261. See *id.* at 570 (“First, we hypothesize that hope is fueled by the perception of successful agency related to goals. The agency component refers to a sense of successful determination in meeting goals in the past, present, and future.”).

262. See *id.* at 571 (“[A]gency/pathways and pathways/agency iterations continue throughout all stages of goal-directed behavior; as such, hope reflects the cumulative level of perceived agency and pathways.”).

263. See MELVIN RADER, *THE RIGHT TO HOPE* 1–21 (1981) (explaining that there are three conditions for the existence of the right to hope: the presence of a “genuine option” meaning an option that is *living*, *forced*, and *momentous*, second is uncertainty, the lack of enough evidence, and the third is that it aims to make life substantially better).

and that work is not a mirage to reach for, but a promise for each one, a promise that must be kept.”²⁶⁴ Thus, two personal elements are included here: the belief in the existence of the goal and a certain positive attitude before the goal (possession, choice, or desire).²⁶⁵

Regarding the “pathway,” Rader observes that the right to hope requires a “living” option, an option that appeals to act, demanding one’s care.²⁶⁶ Similarly, the Pope links the right to hope with the required personal initiative, stressing the importance of the subjective dimension of hope over the means.²⁶⁷ “The hope for a better future always starts from one’s own activity and initiative, then from one’s work, and never from the material means available.”²⁶⁸ Plans are also relevant in the *political dimension of hope*. As seen, the right to hope entitles authorities to adopt some policies to combat climate change, to keep the judicial system operating,²⁶⁹ and, in general, to better secure human rights, no matter how uncertain their outcomes could be.²⁷⁰

The last element is “agency,” a product of believing in the achievability of the goal and desire of reaching it.²⁷¹ Believing that certain unwanted things will happen does not create hope but fear. Wishing for certain goals without believing they can be reached does not create hope but frustration. Hope needs both things, belief and desire. The lowest agency is just a simple wish that something

264. Andrea Tornielli, “Reject Populist Slogans and Those Shouts Aimed at the Stomach”, *La Stampa* (Oct. 2, 2017, 10:57AM) [perma.cc/LDE9-U488].

265. See Philip Pettit, *Hope and Its Place in Mind*, 592 ANNALS AM. ACAD. POL. & SOC. SCI. 152, 161 (2004) (observing that fantasizing about the outcome and developing positive feelings of anticipation allow people to plan better and put more effort to achieve the end).

266. RADER, *supra* note 263, at 9.

267. See Pope Francis, *supra* note 200 (encouraging attendees to make a contribution, large or small, to their own happiness and the common good).

268. *Id.*

269. See John Rawls, *The Law of Peoples*, 20 CRITICAL INQUIRY 36, 51 (1993) (proposing that a belief in a common good conception of justice is required to keep the legal system operating).

270. See McKinnon, *supra* note 169, at 38 (exploring manifestations of despair in the face of climate change).

271. See Snyder, *supra* note 66, at 570 (defining agency as a sense of successful determination in meeting goals).

good could come in the future.²⁷² That is the wish of the older man seated on a bench who meekly waits in the park to see if any good thing happens. On the contrary, the entrepreneur who works hard every day to carry out his projects shows a higher level of commitment and agency. *The higher the belief, the higher the will, the higher the agency, and the more serious the hope.*²⁷³

The promotion of the right to hope begins with promoting the belief and desire for good things, and limiting actions that spur fears. That is why Pope Francis said that the right to hope includes the duty of publishing “positive news”²⁷⁴ that raise human hopes, the right “not to be invaded on a daily basis by the rhetoric of fear and hatred,”²⁷⁵ the right to avoid disturbing populist messages, fake news, depressing stories,²⁷⁶ as well as the right “to grow up free from the ‘fear’ of the future.”²⁷⁷ The idea was somewhat anticipated by President Roosevelt in his famous *Four Freedoms* speech, in which he promoted the “freedom from fear” of war,²⁷⁸ by the movement against violence and hate speech on social media,²⁷⁹ and by some cases that limit freedom of expression, like the *bad tendency test* case mentioned in Chapter IV.²⁸⁰

272. See *id.* at 570 (defining agency as an individual’s level of determination).

273. See *id.* (stating that the components of hope are “reciprocal, additive, and positively correlated”).

274. See Tornielli, *supra* note 264 (relaying the Pope’s message that young people’s right to be free of fear of the future is connected to limiting negative news and increasing positive news).

275. *Id.*

276. See *id.* (“The right not to be overwhelmed by populist phrases or by the disturbing and profitable spread of fake news.”).

277. *Id.*

278. See President Franklin D. Roosevelt, President of the United States, Four Freedoms Address to Congress (Jan. 6, 1941) (transcript available in the Franklin D. Roosevelt Presidential Library and Museum) (envisioning a world founded upon four freedoms, including freedom from fear).

279. See Melissa Newman, The Impact of Positive Human Interest Stories on Raising Hope Through Social Media in Kentucky’s Promise Zone Counties (2019) (EdD. dissertation, Eastern Kentucky University) (on file with Eastern Kentucky University Library system) (examining data of negative speech social media and its effect on hope); see also Betty Miller Bowler, *That Ribbon of Social Neglect: Appalachia and the Media in 1964*, 12 APPALACHIAN J. 239, 244 (1985) (analyzing how five decades of news media with negative stereotypical views of those who live in the Appalachian’s mountains affect them).

280. See *Gitlow v. New York*, 268 U.S. 652, 671 (1925) (using the bad tendency test to ban leaflets for their potential social harm).

B. The Right to Have Certain Opportunities

Although hope is necessary for almost any conscious action and for an overall well-being, it plays a major role in some areas. First, authorities and society must provide hope in those places where people are at risk of falling into despair and committing suicide.²⁸¹ The way of fostering hope varies, depending on the needs. In metro stations, the “suicide hotline” sometimes could work, in prisons securing the “faint hope clause” helps prisoners to experience hope,²⁸² and in hospitals doctors could emphasize on the possibilities of being cured, offer psychological or spiritual assistance, give meaning to the patient’s sufferings,²⁸³ and help them with painkillers and certain drugs.²⁸⁴ Depression often has important somatic factors that can be healed with medication.²⁸⁵ Providing this medication is also part of the right to hope.

Next, the hope of reaching the basic things required to survive must be secured as well.²⁸⁶ Several human rights treaties require the government to create opportunities for everyone to acquire food, clothes, and a place to live,²⁸⁷ opportunities for employment

281. See *Commonwealth v. Brinkley*, 362 S.W.2d 494, 498 (Ky. Ct. App. 1962) (emphasizing the importance of hopeful places).

282. See also *R. v. Bissonnette*, [2022] S.C.R. 23, ¶ 141 (Can.) (finding unconstitutional a law which allowed excessively long sentences without a chance of parole).

283. See *Romans* 5:3–5 (King James) (“[W]e glory in tribulations also: knowing that tribulation worketh patience; And patience, experience; and experience, hope: And hope maketh not ashamed; because the love of God is shed abroad in our hearts by the Holy Ghost which is given unto us.”).

284. See *Exploring a Right to Try for Terminally Ill Patients*, *supra* note 14 (advocating for terminally ill patients hoping for the possibility of being cured by new and potential life-saving treatments).

285. See Hans-Peter Kapfhammer, *Somatic Symptoms in Depression*, 8 *DIALOGUES CLINICAL NEUROSCIENCE* 227, 228, 233–35 (2022) (recognizing the physical symptoms of depression and their pharmaceutical treatment options).

286. See G.A. Res. 217 (III) A, *supra* note 22, at art. 25.1 (“[E]veryone has the right to a standard of living adequate for the health and well-being of himself and his family . . .”).

287. See *id.* (“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services . . .”); see also G.A. Res. 2200A (XXI), *supra* note 201, at art. 11 (“The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for

in the formal labor market or promotion in the place of work,²⁸⁸ and possibilities of equal access to education,²⁸⁹ social benefits,²⁹⁰ and medical care.²⁹¹ The whole economy also relies on the hopes harbored in the market. These *public hopes* can be measured,²⁹² promoted or destroyed, and always have vast consequences in society.²⁹³ The state has the duty of promoting them, creating an environment with plenty of possibilities for human flourishing, and trying to avoid what threatens it.²⁹⁴

Therefore, individuals should have the right to have these opportunities.²⁹⁵ As Pope Francis observes, the right to hope

himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.”).

288. See G.A. Res. 2200 (XXI) A, *supra* note 201, at art. 7 (“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work.”).

289. See *id.* at arts. 10, 13, 14 (recognizing the fundamental nature and need for protection of the family unit as well as right to primary education).

290. See *id.* at arts. 9, 10 (endorsing the right to social security and family assistance).

291. See *id.* at art. 12.2(d) (including the obligation of creating “conditions which would assure to all medical service and medical attention in the event of sickness”).

292. See Charles R. Snyder et al., *Development and Validation of the State Hope Scale*, 70 J. PERSONALITY & SOC. PSYCHOL. 321, 325 (1996) (developing the State Hope Scale which measures public hope); see also Gallagher et al., *supra* note 59, at 193–96 (explaining various measures for hope at a population level); Sage Rose & Nicole Sieben, *Hope Measurement*, in THE OXFORD HANDBOOK OF HOPE (Matthew W. Gallagher & Shane J. Lopez, eds. 2018) (developing multiple measures across different applications and domains, such as academic hope, math hope, writing hope, work hope, children’s hope, employment hope, and state hope).

293. See John Rawls, *The Law of Peoples*, in ON HUMAN RIGHTS: THE OXFORD AMNESTY LECTURES 1993 36, 50–51 (Stephen Shute & Susan Hurley, eds. 1993) (emphasizing the role of the peoples’ belief in major societal systems, such as the judicial system, as a foundation for the system).

294. See R. Shep Melnick, *Federalism and the New Rights*, 14 YALE L. & POL’Y REV. 325, 327–30 (1996) (summarizing legislation and court decisions that recognized new civil rights); Elizabeth Pascal, *Welfare Rights in State Constitutions*, 39 RUTGERS L. J. 863, 863–76 (2008) (identifying social and welfare rights in state constitutions).

295. See Tribunal Constitucional, July 8, 2005, 1417-2005-AA-TC § 2.3 (Peru) (“[I]t is possible to distinguish the rights of immediate enforceability or self-applicability, from those called social benefits [prestacionales], with deferred mandatory application, progressive or programmatic”) (author’s

includes the right to “be artisans of hope,”²⁹⁶ to carve out one’s own future, “the right to start anew”²⁹⁷ and to hope for a better future that “starts from one’s own activity and initiative, then from one’s work.”²⁹⁸ Francis adds that the state must also recognize the immigrants’ right to seek opportunities for themselves and their families while traveling to new countries.²⁹⁹

C. *The Right to the Possibilities of our Means*

One basic principle of tort law affirms that those who suffer loss or harm by an unjust action must be compensated.³⁰⁰ The compensation usually considers what was lost in the past (e.g., a crashed car or wasted harvest) and what was reasonably expected in the future (e.g., salaries, prizes, positions).³⁰¹ There is an evident right to retain one’s own means that allow hope.

Chenell v. Westbrook College recognized the right to maintain the legs, health, and skills of an outstanding dancer, which would have allowed her to succeed.³⁰² The loss assessment did not look only at the actual cost of the means (limbs, health, skills) but also

translation); *citing in support*, Tribunal Constitucional, July 10, 2002, 0011-2002-AI, § 9 (Peru).

296. See Hannah Brockhaus, *Pope Tells People From All Walks of Life to Give Witness to the Gospel*, CATH. NEWS AGENCY (Oct. 1, 2017) (“Sometimes fear prevails. But today we are experiencing a crisis which is also a great opportunity, a challenge to the intelligence and freedom of each, a challenge to be embraced, to be artisans of hope”) [perma.cc/C288-PXP5P].

297. Pope Francis, *supra* note 267.

298. Pope Francis, Address of His Holiness Pope Francis to Penitentiary Police and to Staff of the Penitentiary and Justice Administration for Minors and the Community (Sept. 14, 2019) (transcript available at perma.cc/52SE-X6FP).

299. See Pope Francis, Fratelli Tutti of the Holy Father Francis on Fraternity and Social Friendship, § 37 (Oct. 3, 2020) (endorsing migrants’ goals of seeking “a better future” and creating “the conditions for achieving it”) (transcript available at perma.cc/U4TH-7XQP).

300. See RESTATEMENT (SECOND) OF TORTS § 90 cmt. a (AM. L. INST. 1965) (asserting that the goal of compensatory damages is to restore the injured party to their original condition).

301. See *id.* at § 910 (stating that in addition to tangible losses, future earnings and opportunities should also be considered when assessing damages arising from tortious acts); see also *id.* at § 913 (considering what was lost to past actions as well as loss of future potential when assessing monetary damages).

302. 324 A.2d 735, 737 (Me. 1974).

evaluated the expectations of the victims with these means.³⁰³ On the contrary, the loss of a deteriorated eye that did not hold significant prospects for success did not warrant compensation in *Cook v. Colby College*.³⁰⁴ Serious aspirations demand a minimum of viable means. *The greater the means, the greater the hope, the greater the right to hope.*

A correct assessment of the victim's expectations must take into account the objective and subjective dimensions of hope. First, we must focus our attention on the object of hope, on that *good and possible future not yet granted*. Particularly, it must be assessed what was expected, how specific the expectation was, the real possibilities offered by the lost means, and the certainty of the possible outcomes.

Second, we must consider the subjective dimension of hope, *the attitude of the victim before reality and its possibilities*. Mere reality does not create hope. For the existence of hope, our perception of reality and its possibilities must be accompanied by the desire, aspiration, intention, expectation of the object of hope, by the belief of its possibility, or, better, by the "agency"³⁰⁵ required to reach it. The dancer who worked hard to succeed in her career shows more "agency" than the lady that was just waiting for someone in the world to discover the cure for her defective eye.³⁰⁶ The dancer would have a more substantial aspirational hope and the blind woman only a wishful hope.³⁰⁷ A serious attitude to reach one's specific prefixed goal means a serious hope, a more

303. See *Chenell*, 324 A.2d at 737 (recognizing the significance of the victim's expectations in assessing damages).

304. See *Cook*, 154 A.2d at 170–73 (Me. 1959) (denying compensation for a practically blind eye).

305. See Snyder, *supra* note 66, at 570 ("The typical dictionary definition of hope emphasizes the perception 'that something desired may happen.' Recent scholarly writings on the topic of hope have amplified this definition principally by emphasizing the importance of goals.").

306. Compare *Cook*, 154 A.2d at 175 (denying the claimant's right to compensation), with *Chenell*, 324 A.2d at 738 (affirming her compensation and emphasizing dancer's career).

307. See Snyder, *supra* note 66 at 510–71 (acknowledging varying levels of agency and pathways in individuals' hope); McGeer, *supra* note 43 (distinguishing willful/wishful hope, that has low levels of agency and "remain overreliant on external powers . . .", and responsive hope, "that bears all the hallmarks of hoping well", at 110-11).

consolidated right to hope, and the possibility of a better compensation. As the financier of the American Revolution said in 1783, “we can have no right to hope, much less to expect the aid of others, while we show so much unwillingness to help ourselves.”³⁰⁸

D. The Right to Some Consolidated Chances

Some rights need time and continuous efforts to be consolidated. For instance, consider a public competition to appoint one judge where fifty lawyers participate in the first stage, three succeed in going to the second stage, and only one obtains the best score in the final stage. If the judiciary unreasonably closed the competition in the first stage, probably nothing would happen. Participants normally begin with low expectations. On the contrary, closing the competition in the second stage will require serious reasons because the three finalists will have high expectations of being selected. And to close the competition in the last stage the judiciary will need to justify the existence of a compelling and unavoidable interest; otherwise, they cannot deceive *the right* of the winner of being appointed.

This progressive consolidation of the expectations has been formally accepted in some countries like Colombia, where the Constitutional Court differentiates *acquired rights*, *legitimate expectations*, and *mere expectations*.³⁰⁹ Assessing the constitutionality of a new law that changed the requirements of the pension system, the Court distinguished between the positions of workers who have already acquired the right to a pension, others who have been working for many years and have a legitimate expectation of receiving a pension one day, and those who do not meet the requirements to access the pensions.³¹⁰ According to the

308. Robert Morris, *Letter to the President of the Congress, March 17, 1783*, in THE DIPLOMATIC CORRESPONDENCE OF THE AMERICAN REVOLUTION, VOL. XII 342 (Jared Sparks ed., 1830).

309. See Corte Constitucional [C.C.] [Constitutional Court], Sept. 24, 2002, Sentencia C-789/02 (Colom.), at IV.3 (distinguishing between mere expectations when workers do not meet the requirements to access pensions, legitimate expectations when they meet them but need time to consolidate the right, and acquired rights when they can receive them).

310. *Id.*, at IV.3.

Court, the legislator is not entitled to frustrate the legitimate expectation of those who worked for a long period with the hope of receiving the pension and,³¹¹ therefore, prohibited the application of the new law to those who had completed fifteen years or more of service.³¹² This doctrine has been ratified several times in later cases.³¹³ The rationale is always the same: while rights are something legally recognized and consolidated, expectations are not; but legitimate expectations cannot be frustrated by the legislator or the authority, and mere expectations are at their disposal.³¹⁴ Furthermore, the Court has considered that these are not rigid categories. It has been observed that “the closer a person is to having access to the effective enjoyment of a right, the greater the legitimacy of their expectation in this regard,”³¹⁵ Therefore, the greater the protection will be.

We must recall here the doctrine of the loss of a chance (or right to opportunities) that, without mentioning the “right to hope,” clearly deals with the people’s expectations.³¹⁶ It was developed more than a century ago in Europe.³¹⁷ In *Chaplin v. Hicks* (1911), a British court of appeal required compensation for the frustrated possibility of winning a beauty contest on one pre-

311. *Id.*, at IV.3.1, note 7 (defining mere expectations as “those hopes or probabilities that an individual has of acquiring a right in the future that, because it has not been consolidated, can be regulated by the legislator.”) (author’s translation).

312. *Id.*, at the resolution.

313. *E.g.*, C.C., Mar. 13, 2013, Sentencia SU130/13 (Colom.), at III.7 (confirming the existence of an intermediate category between acquired rights and mere expectations, called “legitimate expectations”); C.C., Nov. 11, 2014, Sentencia T-803/14 (Colom.), at II.3 (citing the aforementioned Sentencia C-789/02); Apr. 30, 2015, Sentencia T-237/15 (Colom.), at II.4 (explaining in detail these categories).

314. C.C., Apr. 30, 2015, Sentencia T-237/15 (Colom.), at II.4.

315. *See* C.C., Mar. 13, 2013, Sentencia SU130/13 (Colom.), at III.7.1.5; and the same at C.C., Nov. 11, 2014, Sentencia T-803/14 (Colom.), at II.3 (author’s translation).

316. *See* Michelle L. Truckor, *The Loss of Chance Doctrine: Legal Recovery for Patients on the Edge of Survival*, 24 U. DAYTON L. REV. 349, 350 (1999) (“It is in light of the public’s high expectations that the loss of chance doctrine has developed to compensate individuals who have a less than fifty percent chance of survival or recovery and are further injured by a physician’s negligence.”).

317. *See* *Chaplin v. Hicks*, [1911] 2 K.B. 786, 786–91 (C.A.) (establishing an individual’s right to be compensated for the loss of a chance of economic gain).

selected applicant who never received her interview date, required by the rules to continue to the final phase of the contest.³¹⁸ One hundred pounds was the award for the loss of the chance.³¹⁹ This doctrine was later spread out in Argentina, Italy, Belgium, Australia, some states of the United States of America,³²⁰ and some international courts.³²¹ The cases that apply the loss of a chance doctrine are similar to those that mention the right to hope seen in this Article; perhaps, they emphasize more the existence of a “real chance of winning the contract.”³²² Therefore, the doctrine seems to be a specification of the right to hope.

Following the loss of a chance doctrine roughly, we can hypothesize that the most consolidated hopes that clearly deserve robust protection of the law should require at least: a) that the frustrated person had seriously expected to achieve something in the future—this implies the analysis of the subjective dimension of hope, which includes the analysis of goals, pathways and agency; b) that this aspiration was legitimate, valuable, very probable,

318. *Id.* at 786.

Where by contract a man has a right to belong to a limited class of competitors for a prize, a breach of that contract by reason of which he is prevented from continuing a member of the class and is thereby deprived of all chance of obtaining the prize is a breach in respect of which he may be entitled to recover substantial, and not merely nominal, damages.

319. *Id.* at 788.

320. *See* *Kansas City, Mex. & Oriental Ry. Co. v. Bell*, 197 S.W. 322, 323 (Tex. Civ. App. 1917) (recognizing the plaintiff had the right of the opportunity to win the prize disputed in a cattle festival frustrated by the delay in the transport of the animals); *see also* DAN B. DOBBS, *THE LAW OF TORTS* 1391 (2000) (stating that 24 states of the U.S. have adopted some version of the doctrine, 17 have rejected it, 4 have deferred ruling on the doctrine, and 5 have yet to address the matter); *see generally* Michael Mims, *Properly Limiting the Lost Chance Doctrine in Medical Malpractice Cases: A Practitioners’ Rejoinder*, 81 LA. L. REV. 863 (2021) (applying the loss of chance doctrine to a medical malpractice case); John Y. Gotanda, *Damages in Lieu of Performance Because of Breach of Contract* 15–18, 33–34, 48–51 (Villanova Univ. Sch. L. Working Paper Series, 2006) (exploring the approach to damages in various countries and law systems).

321. *E.g.*, Inter-American Human Rights Court, *Castillo Páez Vs. Perú*, Sentencia, Nov. 27, 1998, Serie C N°. 40 (considering that the “chance cierta” was not sufficiently proven); *Bulacio Vs. Argentina. Fondo*, Sentencia, Sept. 18, 2003, Serie C No. 100 (admitting that it is reasonable to presume that the victim did not want to work as a caddie with a modest salary for life, and assessing his lost “chances” or opportunities).

322. Council Directive 92/13/EEC, art. 2, § 7, 1992 (EC).

determinable, and has been frustrated—this implies the analysis of the objective dimension of hope; c) that the frustration was caused by a free action of someone else; and d) that this action has been illegitimate or, at least, very unreasonable. Given the above, the injured victim must be entitled to claim compensation for the frustration of the hope. However, a detailed analysis of the requirements for the compensation and its assessment still deserves new studies that could come in the future.

VI. Final Assessment of the Right to Hope

Only now, after analyzing the justification and scope of the right to hope, we are in a position that allows us to evaluate if this right deserves to be singled out and considered an autonomous right. For that purpose, we will try to understand why this right had a late recognition, then we will argue in favor of its relative autonomy, to catalyze later the gist of this right.

Although since ancient time the law has protected some expectations,³²³ the formal recognition of “the right to hope” has had a complex evolution. As many rights, this one began with some short passing mentions (*obiter dicta*) that appeared sporadically in very different cases since 1840.³²⁴ Occasionally, this right has played a more significant role, as in *Chenell v. Westbrook College* (Me. 1974),³²⁵ where the court assessed the unjust loss of the legs of an outstanding dancer, pointing out that she lost the right to hope to have success in her career. Occasionally, things that previously fell under the right to hope, like the “right to hope and to conclude that the litigation was finally at an end,”³²⁶ courts have

323. See Bailey H. Kuklin, *The Possibility of Legally Protecting Reasonable Expectations*, 32 VAL. UNIV. L. REV. 19, 19–20 (1998) (describing expectations as being the “heart of many legal doctrines” including “contract, property and tort claims”).

324. See Juan C. Riofrio, *Dignity and the Right to Hope*, IVR 2022 (“The right to hope has been mentioned in various obiter dicta of the U.K. and American case-law of the last century, and in the last decade it has achieved formal recognition as an autonomous right of those who suffer life imprisonment.”) [perma.cc/P6WG-DV8Q].

325. 324 A.2d 735 (Me. 1974).

326. *Schremp v. Marvel*, 405 A.2d 119, 121 (Del. 1979).

begun to call “legitimate expectations.”³²⁷ At the same time, during these years, courts have recognized the right to harbor certain expectations under other doctrines, like the doctrine of loss of a chance or the so-called “programmatically rights.”³²⁸ Finally, since *Graham v. Florida*, we have experienced a worldwide explosion of cases that recognize the inmates’ right to hope.³²⁹

As said, these cases deal with very different matters.³³⁰ However, all of them assess the expectations of good things that eventually could happen (hopes) and their legal consequences. This assessment always considers two things: what the expectations represent to the people, how much they believe in them, want or work to achieve them (the subjective dimension of hope), and the level of justification, probability, and determination of what was expected (the objective dimension of hope). More serious hope will receive more robust legal protection than weak or wishful hopes. Thus, there is at least one good reason to singularize the study of this right: a better understanding of the essence and dimension of hope will allow courts to analyze deeper the right to hope, legitimate expectations, loss of chances, programmatically rights, and other doctrines covered by this right. Analyzing these things from an upper point of view allows us to fill the gaps usually produced by the inductive case approach. But there are more reasons.

As seen several times in this Article, hope is an existential aspect of human life that has constant manifestations in private and public life. Nobody can live without hope, even if one wishes to be free of hope.³³¹ Understanding features so profoundly rooted in the human being requires centuries. For instance, the philosophical notions of “person” and its implications were only

327. See Groves, *supra* note 109, at 1–3 (recognizing the evolution of common law with respect to legitimate expectations).

328. See Pascal, *supra* note 294, at 881 (describing programmatically rights in terms of constitutional obligations of the government).

329. 560 U.S. 48, 74 (2010); see also van Zyl Smit, *supra* note 117 (discussing the recent history of the right to hope in England).

330. See, e.g., Chenell v. Westbrook Coll., 324 A.2d 735, 736 (Me. 1974) (explaining a professional dancer’s injury to her leg); *Schremp*, 405 A.2d at 119 (focusing on an automobile accident).

331. See ALBERT CAMUS, *Absurd Creation*, in THE MYTH OF SISYPHUS AND OTHER ESSAYS, at 69, 83 (Justin O’Brien, trans., 1st ed., 1955) (contemplating hope in the context of absurdity, where one tries to move away from hope in pursuit of freedom but still tends to find it).

clear in the late Middle Ages,³³² and scientific psychology along with human evolution studies only appeared in the nineteenth century.³³³ The legal reflection of hope has taken a while to surface as well. It began focusing on minor manifestations of hope (such as the parties' expectations in the judicial process) to deal later with transcendental things (such as the existential hope of the inmates).³³⁴ This progressive understanding of the right required a specific study of the right to hope as a whole, and not just of some of its particular manifestations. This Article was devoted to that purpose.³³⁵

When I present this topic to my colleagues³³⁶ there is always someone who objects: Is this an autonomous right or just a part of other rights? Is it not the inmates' right to hope a specification of the *due process*, and the right to expect the arrival of the police at the crime scene part of the authorities' duties? We already have admitted that the right to hope usually is *connatural* to other rights, and we can now add that it lacks absolute autonomy. Indeed, no fundamental right is absolutely independent. For instance, the right to health seems to be a specification of the right to life, and the whole *due process* is created to defend other

332. See Thomas D. Williams & Jan Olof Bengtsson, *Personalism*, STAN. ENCYC. PHIL. (2022) (commenting on the centrality of the person as the primary locus of investigation for philosophical, theological, and humanistic studies) [perma.cc/B239-9EEE].

333. See Alfred H. Fuchs & Rand B. Evans, *Psychology as a Science*, in 1 HANDBOOK OF PSYCHOLOGY (2012) (discussing the emergence of psychology as an experimental discipline).

334. See *Attwood v. Taylor* [1840], 133 Eng. Rep. 340, 303 (Scot.) (discussing the parties' expectations in the judicial process); see also *Graham v. Florida*, 560 U.S. 48, 48 (2010) (discussing the existential hope of inmates).

335. Once again, it does not mean that all and every single particular manifestation of hope must be protected, as not all manifestations of freedom must be. We just say, with the European Court, that to deny people the experience of hope (or the experience of freedom) would be to deny a fundamental aspect of their humanity. See *Vinter v. U.K.*, App. No. 66069/09, at 54 (July 9, 2013) (Power-Forde, J., concurring) ("Those who commit the most abhorrent and egregious of acts and who inflict untold suffering upon others, nevertheless retain their fundamental humanity and carry within themselves the capacity to change.").

336. See Riofrio, *supra* note 324 (working group for the discussion of the right to hope); *The Right to Hope*, presented at Columbus School of Law, The Catholic University of America, Washington D.C. (Dec. 16, 2022).

rights.³³⁷ The interdependence of human rights is a well-established doctrine nowadays.³³⁸

Hence, the answer to the objection of my colleagues must be articulated. In those hopes based on the *specific duties* of others, the right to hope for the fulfillment of these duties normally appears as a part of the main right to ask for their fulfillment. Landowners expect to use their land peacefully and have the right to ask others for its respect as well.³³⁹ After a car accident, people can expect the arrival of the police because that is part of the duties of the police.³⁴⁰ On the contrary, hopes often show certain autonomy when they are based on *general duties, general rights*, on the world's fate, and on personal desires.³⁴¹ The right to hope of winning the case is not part of the *due process*, and the right to hope of reaching heaven is not part of religious freedom. Thus, the right to hope is relatively autonomous.

Finally, to catalyze the gist of this right we must refer to its content. Opportunities are not outcomes. Possible success is not success. Chances are chances, not results. Hopes are hopes, not achieved goals, not fulfilled desires, not accomplished dreams. The right to hope only protects the expectation of an *uncertain* good outcome. If something is absolutely guaranteed by another right, that cannot be expected but demanded.³⁴² There will be no right to hope, but to property, due process, religious freedom, or any other right.

337. See U.S. Const. amend. XIV, § 1 (“[N]or shall any state deprive any person of life, liberty, or property, without due process of law . . .”).

338. See JACK DONNELLY, UNIVERSAL HUMAN RIGHTS IN THEORY AND PRACTICE 23 (2013) (defending a richly interdisciplinary account of human rights as universal rights).

339. See Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, 213 U.N.T.S. 222, art. 1 (Sept. 3, 1953) (“Every natural or legal person is entitled to the peaceful enjoyment of his possessions.”).

340. See Victor E. Kappeler & Rolando V. del Carmen, *Police Conduct at Accident Scenes: Avoiding Liability for Negligent Service*, 56 POLICE CHIEF 25, 25 (1989) (discussing police conduct at accident scenes).

341. See Trotter, *supra* note 1, at 10 (discussing hope in the context of personal development and realization).

342. See CECELIA BURGMAN, ET AL., OUR RIGHTS, OUR INFORMATION: EMPOWERING PEOPLE TO DEMAND RIGHTS THROUGH KNOWLEDGE (Maja Daruwala & Venkatesh Nayak, eds., Human Rights Initiative, 2007), (discussing the importance of information and knowing one's rights).

The gist of the right to hope is its content. Regarding the subjective dimension of hope, the content includes the right to believe in a better future, to avoid a hopeless atmosphere of fear, to have plans (for example, to combat climate change and to keep the judicial system operating no matter how uncertain their outcomes could be), among other things. And regarding the objective dimension of hope, this content includes the right to have certain opportunities for human flourishing, to demand a minimum of protection for the possibilities of our means, career and projects, and a strong protection of the chances of reaching good things when they are well consolidated. No other right embraces all these things. In conclusion, the right to hope probably deserves to be singled out.