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OPTIMISM OF THE INTELLECT, PESSIMISM OF THE WILL?

A GRAMSCIAN ANALYSIS OF TWO NEW YORK POLICE REFORM CAMPAIGNS

by

CHRISTIAN COVINGTON

A master's thesis submitted to the Graduate Faculty in Political Science in partial fulfillment of  
the requirements for the degree of Master of Arts, The City University of New York

2021

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Optimism of the Intellect, Pessimism of the Will?

A Gramscian Analysis of Two New York Police Reform Campaigns

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**THE CITY UNIVERSITY OF NEW YORK**

## ABSTRACT

Optimism of the Intellect, Pessimism of the Will?

A Gramscian Analysis of Two New York Police Reform Campaigns

by

Christian Covington

Advisor: Benedetto Fontana

This paper attempts to analyze two recent New York police reform campaigns - one to overturn the state's system of criminal bail release, the other to make police officer discipline transparent to the public - using theories given by Antonio Gramsci. The paper will apply the concepts of hegemony, hegemonic discourse, the intertwining of the state and civil society, the attainment of political agency amongst the subaltern, and the role ideology plays in all of these concepts, to assess the success of the reform campaigns. The paper will argue that many of these concepts are further developments of political theories first expounded by Machiavelli, in order to support the notion that Gramscian theory is not strictly Marxist, but a distinctly humanist approach to politics.

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## I. Introduction

Earlier this year, the Vera Institute of Justice, a criminal justice think tank located in New York City, quietly issued a report on the effect of changes made by the New York State Legislature in 2019 to the state's system of criminal bail release. "Bail" refers to the legal rules establishing and regulating the conditions by which a person, after being arrested, is allowed to post a sum of money, either in cash or some form of security ("cash bail"), so as to be released from jail, pending either the completion of the criminal trial, or the final removal of the charges against the person.<sup>1</sup>

The legislature, and others working to enact these changes into law, gave several arguments in promoting this "bail reform," but the initial ones were that: bail was a form of economic discrimination, in that those who could afford bail were allowed to be released, while those who could not languished in jail, although both persons may have been charged with the same criminal offense;<sup>2</sup> bail was a form of racial discrimination, because Blacks and Latinos were overly represented in the group of persons who could not afford bail;<sup>3</sup> and bail reversed the principle of the presumption of innocence before trial, in that persons unable to post cash

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<sup>1</sup> New York Consolidated Laws Service (LexisNexis) N.Y. Criminal Procedure Law Articles 500 – 540 Procedures for Securing Attendance at Criminal Actions and Proceedings of Defendants and Witnesses Under Control of Court – Recognizance, Bail and Commitment (1971)

<sup>2</sup> Emma Whitford, "Momentum Builds For Ending Cash Bail System That Punishes The Poor," *Gothamist*, August 10, 2017 <https://gothamist.com/news/momentum-builds-for-ending-cash-bail-system-that-punishes-the-poor>; Errol Louis, "A bold move against bad bail," *Daily News (New York)*, October 9, 2018; John Raphling and DeAnna Hoskins, "The right kind of bail reform," *Daily News (New York)*, March 4, 2019 <https://www.nydailynews.com/opinion/ny-oped-the-right-kind-of-bail-reform-20190301-story.html>

<sup>3</sup> Nick Pinto, "The Unraveling of Hard-Won Criminal Justice Reforms in New York," *The Intercept*, February 23, 2020 <https://theintercept.com/2020/02/23/criminal-justice-bail-reform-backlash-new-york/>

bail endured lengthy jail stays before trial, and in fact, were more likely than persons who could afford bail to plead guilty to the criminal charges, in some instances, just to get out of jail.<sup>4</sup>

Consequently, the legislature, in the 2019 session, voted to make it impossible to require that a person have to post cash bail in order to be released from jail after being arrested for a criminal offense, excluding arrests for violent criminal offenses (e.g., assault) and some other offenses.<sup>5</sup> Although the bail reform campaign had sought a complete ban on the use of cash bail, a compromise was made to exclude violent offenses from the bill in order to secure passage of the legislation.<sup>6</sup> Nevertheless, a study published by John Jay College of Criminal Justice noted that the new law would apply to 91% of the persons arrested in New York.<sup>7</sup>

Thus, it was perhaps discouraging to bail reform proponents when the Vera Institute report issued this past February noted that: the racial disparity between Black and whites as to arrestees being held in jail had actually increased since the bail law took effect on January 1,

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<sup>4</sup> Justine Olderman, Lisa Schreibersdorf, Tina Luongo, Stan German and Matt Knecht, "Real Criminal Justice Reform Requires Standing Up to Fear-Mongering," *Gotham Gazette*, January 1, 2020 <https://www.gothamgazette.com/opinion/9025-real-criminal-justice-reform-stand-up-fear-mongering>; Michael Blake and Elizabeth Gaynes, "The Social Value of Bail Reform," *Gotham Gazette*, January 17, 2020 <https://www.gothamgazette.com/opinion/9058-the-social-value-of-bail-reform-more-to-do-criminal-justice>

<sup>5</sup> Michael Rempel and Krystal Rodriguez, Bail Reform in New York: Legislative Provisions and Implications for New York City, Center for Court Innovation (April 2019) [https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail\\_Reform\\_NY\\_full\\_0.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/Bail_Reform_NY_full_0.pdf)

<sup>6</sup> Jeff Coltinis, "Cash bail still in judges' tool belts after major reforms," *City & State*, April 1, 2019 <https://www.cityandstateny.com/articles/policy/policy/new-york-bail-reform-changes.html>

<sup>7</sup> Richard Khavkine, "Hate Crimes and Other Occurrences Trigger Pushback on Bail Reforms," *Chief-Leader*, January 3, 2020. The percentage stated applied to persons whose criminal case extended beyond the initial court appearance, the criminal arraignment; that is, it applied to persons for whom if bail were required, would have to be incarcerated in jail, if they could not post bail.

2020; people held in jail were staying longer than before; and the total number of persons held in jail prior to trial had hardly declined in New York State since the passage of bail reform.<sup>8</sup>

In June of 2020, the New York State Legislature voted to repeal Section 50-a of the state's Civil Rights Law, the section that prohibited police departments from releasing details about a police officer's disciplinary record to the public.<sup>9</sup> Nevertheless, when the New York Police Department (NYPD) finally released the information which it deemed as complying with the state's mandate, the release was met with something less than universal acclaim: "[this] is a slap in the face to every New Yorker that took to the streets and the polls demanding an end to the secrecy shrouding NYPD abuse," noted one commentator;<sup>10</sup> "this isn't transparency, it's a PR tool for the NYPD," noted another.<sup>11</sup>

These criticisms stemmed from the NYPD's narrow interpretation of the legislature's repeal and of a Federal court's decision confirming the repeal of Section 50-a. Whereas the court's decision allowed the NYPD to release all disciplinary decisions regarding an officer, the department chose to release only those records that resulted in a finding of an admission of guilt.<sup>12</sup> As a para-military organization, however, discipline in the NYPD can be imposed by a superior officer without a finding of guilt.<sup>13</sup> Additionally, there are many discipline hearings that

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<sup>8</sup> Kay Dervishi, "Bail reform reduced jail populations, but racial disparities worsened," *City & State*, February 18, 2021 <https://www.cityandstateny.com/articles/policy/criminal-justice/bail-reform-reduced-jail-populations-racial-disparities-worsened>; Vera Institute of Justice, "Empire State of Incarceration," February 18, 2021 <https://www.vera.org/empire-state-of-incarceration-2021> (accessed April 6, 2021)

<sup>9</sup> Denis Slattery, "Shining a new light on NYPD," *Daily News (New York)* June 10, 2020

<sup>10</sup> Ashley Southall, "NYPD Releases Secret Misconduct Records After Repeal of Shield Law," *New York Times*, March 8, 2021 <https://www.nytimes.com/2021/03/08/nyregion/nypd-discipline-records.html>

<sup>11</sup> Jake Offenhartz, "New NYPD Database Offers 'Narrow' Glimpse at Police Discipline Records," *Gothamist*, March 9, 2021 <https://gothamist.com/news/new-nypd-database-offers-narrow-glimpse-police-disciplinary-records>

<sup>12</sup> Southall, "NYPD Releases"; *Uniformed Fire Officers Ass'n v. De Blasio*, 2021 U.S. App. LEXIS 4266 (accessed February 17, 2021 10:50 AM)

<sup>13</sup> See, e.g., N.Y.P.D. Patrol Guide Section 206-02 "Schedule 'A' and Schedule 'B' Command Discipline" (which empowers a superior to discipline officers without resorting to formal charges); N.Y.P.D. Patrol Guide Section 206-

result in an officer accepting punishment without a finding of guilt (with the exact number of such cases, of course, being unknown).<sup>14</sup> Thus, the department's decision to disclose only those cases that resulted in a finding of admission of guilt served to exclude the vast majority of its discipline cases. Moreover, the department's data release also excluded: all pending discipline cases; all discipline cases finalized before 2014; all discipline cases in which an officer was not punished; and all discipline cases in which the officer accepted a lesser degree of punishment.<sup>15</sup> It was clear that the department's attempt at discipline transparency still left many matters in the dark.

Both the legislature's repeal of Section 50-a and its enactment of the bail reform were the culmination of years-long campaigns ("reform campaigns") conducted by coalitions of non-governmental organizations seeking to make changes to New York's criminal justice system. And while it would be charitable to say that these reform campaigns were partially successful, in my opinion, such a statement would not be honest or accurate. One campaign sought to eliminate the use of cash bail; it did not. The other campaign sought to make all of police officer disciplinary records transparent to the public; it did not. This paper is an attempt at an explanation as to why these campaigns were not successful.

Before I embark on my explanation, however, I need to clarify the parameters of my discussion. I have chosen to term my paper as an analysis of police reform campaigns although cash bail is not exclusively a matter for the police, involving court officials, district attorneys and

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07 "Cause for Suspension or Modified Assignment" (which permits suspension of an officer when a superior officer considers such action necessary)

<sup>14</sup> See, e.g., Graham Rayman, "NYPD detective docked vacation days in informant fiasco," *Daily News (New York)*, February 11, 2021 <https://www.nydailynews.com/new-york/nyc-crime/ny-detective-disciplined-coerced-informant-staten-island-20210212-cohjlgdzejerdixj6bkipgisny-story.html>

<sup>15</sup> Southall, "NYPD Releases"

defense attorneys. Nevertheless, the primary arguments made against bail reform were made from a police perspective, revolving around issues of increased crime, the release of arrested persons making police officers' jobs more difficult and bail reform in general signifying a decreased lack of respect for law enforcement.<sup>16</sup> Although district attorneys also argued against bail reform,<sup>17</sup> the issue in the general public's mind remained one of crime and policing.<sup>18</sup>

Additionally, in analyzing the reform campaign for the repeal of Section 50-a, I have restricted my discussion to the debate surrounding New York City and the NYPD. While Section 50-a was a state measure that applied to all of New York State's police departments, I have chosen to focus on the debate that targeted the NYPD for three reasons: the NYPD has the largest police force in the state, by far, with the total number of officers for New York City being more than all of the police officers in the rest of the state;<sup>19</sup> the reform campaigns directed most of their efforts to New York City and Section 50-a repeal was very much perceived as a

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<sup>16</sup> Editorial, "Justice and Safety for All," *Daily News (New York)*, March 28, 2019; Craig McCarthy, "NYPD Big Rips Bail-Reform 'Free'-for-All," *New York Post*, August 12, 2019; Rebecca Rosenberg, Carl Campanile and Tina Moore, "NY, Get Ready for the Bad Ol' 'Daze'," *New York Post*, January 1, 2020 <https://nypost.com/2019/12/31/why-new-york-criminals-are-celebrating-the-new-year/>

<sup>17</sup> Eric Gonzalez, Darcel Clark, Cyrus Vance, Anthony Scarpino, Madeline Singas and Timothy Sini, "Reforms Fraught with Serious Risk," *Daily News (New York)*, March 27, 2019 <https://www.nydailynews.com/opinion/ny-oped-reforms-fraught-with-serious-risk-20190327-nmezjrqnacnatlgnopev4wuoc2q-story.html>; John Ryan, "Bail Out of This Botched Reform," *Daily News (New York)*, June 17, 2019

<sup>18</sup> Ashley Southall and Jesse McKinley, "Spike in Crime Inflames Debate Over Bail Law in New York," *New York Times*, February 4, 2020 <https://www.nytimes.com/2020/02/04/nyregion/crime-stats-nyc-bail-reform.html>; Associated Press, "Siena Poll: Declining Support for New York's Bail Changes," January 21, 2020 <https://apnews.com/article/b7b920b62e3660ef0a602aefa427ef64>

<sup>19</sup> Brian A. Reaves, *Census of State and Local Law Enforcement Agencies 2008, July 2011* <https://www.bjs.gov/content/pub/pdf/csllea08.pdf> (New York City 36,023; remainder of New York State 30,449)

local issue;<sup>20</sup> and the NYPD was the party in the repeal debate that was most successful in steering the Section 50-a legislation to its favor.<sup>21</sup>

The NYPD's success was a political one, and I intend to show how the political contest was engaged in between the reform campaign and its opponents, what constituted the field of contest, how the contest was fought and what factors contributed to victory and defeat. Many reasons can be given for the campaigns lack of success, but the primary reason, in my opinion, is they lacked an accurate conception of themselves and of the mass of people for whom they claimed to be speaking, and of how both related to political power, with this misconception creating an inaccurate assessment of their opponents and of how power is constituted.

I have adopted a Gramscian analytic, rooted in Machiavellian political theory, to engage with the subject matter. Gramsci's thought is an appropriate basis for analyzing these campaigns because his thinking is based in historicism, that is, in an assessment of human activity becoming conscious of itself, and of the manner in which the organized will of humans' structures knowledge. Specifically, I am asserting five reasons why the campaigns were not successful, all stemming from their initial misconception. First, they never understood their task as obtaining power for the mass of citizens who lacked it in regard to the police. Second, this lack of understanding led to a failure to develop the mass of people who could develop this

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<sup>20</sup> Kenneth Lovett, "Fighting NYPD Shield: Kin of 16 Slain by Cops Want Open-Records Law," *Daily News (New York)*, December 24, 2018 <https://www.nydailynews.com/news/politics/ny-pol-50a-police-discipline-diallo-bell-garner-carr-20181223-story.html>; Richard Khavkine, "At CCRB Meeting, Calls for Repeal of Law Shielding Cops' Records," *Chief-Leader*, November 15, 2019 [https://thechiefleader.com/news/news\\_of\\_the\\_week/at-ccrb-meeting-calls-for-repeal-of-law-shielding-cops-records/article\\_dc31790e-07bd-11ea-aa6b-87bcf2d45755.html](https://thechiefleader.com/news/news_of_the_week/at-ccrb-meeting-calls-for-repeal-of-law-shielding-cops-records/article_dc31790e-07bd-11ea-aa6b-87bcf2d45755.html); Richard Khavkine, "Williams Among Those Out for Repeal of Law Shielding Cop Records," *Chief-Leader*, March 25, 2019 [https://thechiefleader.com/news/news\\_of\\_the\\_week/williams-among-those-out-for-repeal-of-law-shielding-cop-records/article\\_fcd59886-4cb8-11e9-8944-f759ab64c640.html](https://thechiefleader.com/news/news_of_the_week/williams-among-those-out-for-repeal-of-law-shielding-cop-records/article_fcd59886-4cb8-11e9-8944-f759ab64c640.html)

<sup>21</sup> New York State Senate Public Hearing: Policing (S3695), repeals provisions relating to personnel records of police officers, firefighters, and correctional officers <https://www.nysenate.gov/calendar/public-hearings/october-24-2019/public-hearing-policing-s3695-repeals-provisions-relating> (accessed April 21, 2021 6:29 PM)

new relationship to the police. Third, this failure was mainly due to the leaders of the campaigns not engaging in a dialectical relationship with the people for whom they claimed to be speaking. This lack of engagement led to the fourth reason, that the reform campaigns never created an adequate ideological basis for their arguments. Fifth, the campaigns inaccurately assessed the state as being the legislature, without accommodating the role of police departments, district attorneys in dominating civil society discourse and thus, dominating the discourse around their two campaigns. Finally, I conclude that all these failures, instead of advancing the cause of police reform, only served to hinder it even more.

## II. Two Police Reform Campaigns

In the fall of 2010, The Atlantic Philanthropies and the Open Society Foundations convened a number of non-governmental organizations engaged in promoting fair and just policing in New York City. Subsequent to this convening, a planning committee of nine organizations convened three additional meetings in the summer of 2011 to eventually form Communities United for Police Reform (“CPR”).<sup>22</sup> Over the next several years, CPR engaged in several police reform campaigns, mainly directed at urging the New York City Council to adopt legislation enhancing the accountability of officers of the NYPD.<sup>23</sup> CPR currently is made up of 31 core members who participate actively in the work of the coalition.<sup>24</sup>

In the fall of 2011, the New York Civil Liberties Union (“NYCLU”) filed a lawsuit to compel the NYPD to release redacted records of final opinions issued since 2001 of police officer disciplinary cases investigated by the New York City Civilian Complaint Review Board.<sup>25</sup> A lawsuit was deemed necessary to compel production of these records because under Section

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<sup>22</sup> Tides Foundation/The Advocacy Fund, Funds for Fair and Just Policing: Request for Letters of Inquiry December 2011

<sup>23</sup> “Community Safety Act” campaign (creating an Inspector General’s office for the NYPD, amongst other measures, took effect January 2014) <https://www.changethenypd.org/community-safety-act> (accessed April 22, 2021 2:15 PM); “Right to Know Act” campaign (requiring NYPD officers to identify themselves, amongst other measures, took effect October 2018) <https://www.changethenypd.org/RightToKnowAct> (accessed April 22, 2021 2:12 PM)

<sup>24</sup> Communities United for Police Reform, “Members” <https://www.changethenypd.org/campaign/intro-members> (accessed April 22, 2021 2:21 PM)

<sup>25</sup> Tom Robbins, “How a Coalition of New York Activists Revealed Police-Department Secrets,” *The New Yorker*, July 17, 2020 <https://www.newyorker.com/news/our-local-correspondents/how-a-coalition-of-new-york-activists-revealed-police-department-secrets>; NYCLU is also a member of CPR. The New York City Civilian Complaint Board investigates and adjudicates a subsection of discipline complaints made against police officers which involve officer interactions with members of the public. <https://www1.nyc.gov/site/mckinley/about/about.page> (accessed April 22, 2021 2:43 PM)

50-a of New York State's Civil Rights Law, discipline decisions were considered part of a police officer's personnel record, and Section 50-a required that this record be kept confidential.<sup>26</sup>

The NYCLU lawsuit took several years to finally adjudicate, but while it was still wending its way through the court system, in late July 2014, NYPD officer Daniel Pantaleo, in an attempt to arrest Eric Garner, placed his arm around Garner's neck in order to subdue him. Garner eventually collapsed and died, with the entire interaction being captured on video.<sup>27</sup> When on December 2 of that year, a grand jury declined to indict officer Pantaleo for any criminal wrongdoing,<sup>28</sup> protests broke out, lasting several weeks, with protesters seeking to disrupt traffic along New York's bridges, tunnels, roadways and train terminals.<sup>29</sup>

The relevance of Garner's death to the issue of Section 50-a and police discipline was not immediate; however, almost two years after Garner's death, in April 2016, published accounts noted that officer Pantaleo had been investigated for a disciplinary infraction more than two years before Garner's death, with the final decision coming three years later, and with the fact of this decision just then being released to the public.<sup>30</sup> For years, the NYPD had

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<sup>26</sup> Richard Khavkine, "NYPD Wins in Court on Cop Discipline Records," *Chief-Leader*, December 17, 2018 [https://thechiefleader.com/news/news\\_of\\_the\\_week/nypd-wins-in-court-on-cop-discipline-records/article\\_92851562-ffd1-11e8-ba69-1f3a0e02ee43.html](https://thechiefleader.com/news/news_of_the_week/nypd-wins-in-court-on-cop-discipline-records/article_92851562-ffd1-11e8-ba69-1f3a0e02ee43.html); New York State Assembly Bill No. A02513 ([https://nyassembly.gov/leg/?default\\_fld=&leg\\_video=&bn=A02513&term=2019](https://nyassembly.gov/leg/?default_fld=&leg_video=&bn=A02513&term=2019) &Summary=Y&Actions=Y)

<sup>27</sup> Editorial, "A death to investigate," *Daily News (New York)*, July 19, 2014

<sup>28</sup> J. David Goodman and Al Baker, "Wave of Protests After Grand Jury Doesn't Indict Officer in Eric Garner Chokehold Case," *New York Times*, December 3, 2014 <https://www.nytimes.com/2014/12/04/nyregion/grand-jury-said-to-bring-no-charges-in-staten-island-chokehold-death-of-eric-garner.html>

<sup>29</sup> Jason Molinet, "Eric Garner grand jury decision sparks protests which shut down West Side Highway, Brooklyn Bridge and Lincoln Tunnel," *Daily News (New York)*, December 3, 2014 <https://www.nydailynews.com/new-york/protests-grand-jury-fails-indict-nypd-article-1.2032546>; J. David Goodman, "Amid Assaults on Officers, New York Police Rethink Their Response to Protests," *New York Times*, December 14, 2014 <https://www.nytimes.com/2014/12/15/nyregion/police-arrest-man-on-assault-charge-during-protest-on-brooklyn-bridge.html>

<sup>30</sup> Ryan Sit, "Cop Suspected in Eric Garner's Death Disciplined by NYPD," *Daily News (New York)*, April 4, 2016

released limited information regarding disciplinary decisions to the media.<sup>31</sup> But the dilatory release of the limited discipline information regarding officer Pantaleo seemed to suggest a departmental attempt to hide news about an unpopular subject. This attempt, along with the anger over Garner's death, and the fact that the discipline case over Garner's death had not yet occurred,<sup>32</sup> all became of one-piece, conflating into a general unhappiness with the state of NYPD discipline and its lack of transparency.

This general unhappiness was compounded when, in response to a lawsuit filed to obtain additional information regarding officer Pantaleo's discipline record, the NYPD stopped releasing even the limited amount of discipline information it had customarily released since the passage of Section 50-a into law in the 1970's.<sup>33</sup> Soon, judges, lawyers groups and editorial boards were joining the criminal justice activists and attorneys in clamoring for greater transparency as to NYPD discipline decisions.<sup>34</sup> When, however, in December 2018, the appellate court denied the NYCLU's lawsuit seeking even redacted NYPD discipline records, it seemed as if no change was imminent.<sup>35</sup>

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<sup>31</sup> Rocco Parascandola and Graham Rayman, "NYPD won't share actions against disciplined cops," *Daily News (New York)*, August 24, 2016

<sup>32</sup> In fact, the discipline case would not be heard until 2019. Ashley Southall, "'I Can't Breathe': 5 Years After Eric Garner's Death, an Officer Faces Trial," *New York Times*, May 12, 2019 <https://www.nytimes.com/2019/05/12/nyregion/eric-garner-death-daniel-pantaleo-chokehold.html>; Ashley Southall, Ali Watkins and William K. Rashbaum, "Daniel Pantaleo, N.Y.P.D. Officer in Eric Garner's Death, Should Be Fired, Judge Says," *New York Times*, August 2, 2019 <https://www.nytimes.com/2019/08/02/nyregion/eric-garner-daniel-pantaleo.html>

<sup>33</sup> Rick Rojas, "New York Police Dept., Citing Law, Stops Sharing Personnel Data," *New York Times*, August 24, 2016 <https://www.nytimes.com/2016/08/26/nyregion/new-york-police-dept-citing-law-stops-sharing-personnel-data.html?ref=todayspaper>

<sup>34</sup> Ashley Southall, "4 Years After Eric Garner's Death, Secrecy Law on Police Discipline Remains Unchanged," *New York Times*, June 3, 2018 <https://www.nytimes.com/2018/06/03/nyregion/police-discipline-records-garner.html>; Editorial, "NYPD in view," *Daily News (New York)*, December 17, 2018; Mark Toor, "PBA Criticizes Call for Repeal of Secrecy Law," *Chief-Leader*, May 7, 2018 <https://nycpba.org/news-items/chief/2018/pba-criticizes-call-for-repeal-of-secrecy-law/>

<sup>35</sup> Graham Rayman, "Can't air cops' records: court," *Daily News (New York)*, December 12, 2018

Nevertheless, the steady drumbeat of criticism prompted both Mayor Bill DeBlasio and then-Commissioner James O’Neal to respond in some fashion.<sup>36</sup> In June 2018, O’Neal appointed a panel to assess the NYPD’s system of discipline, including its lack of transparency.<sup>37</sup> In early February 2019, O’Neal responded to the panel’s report by basically stating the department’s position on discipline transparency would revert to the *status quo ante*: “We need to put out names, charges, documents and outcomes,” he declared.<sup>38</sup>

O’Neal’s declaration came less than two weeks after a bill had been filed in the New York State Assembly completely repealing Section 50-a,<sup>39</sup> and six months after CPR had made its first appeal for the repeal of Section 50-a.<sup>40</sup> CPR had previously worked on the “Community Safety Act” and the “Right to Know Act;” it would term its work on the repeal of Section 50-a, the “Safer NY Act.” Coincidentally, the day preceding the filing of the Section 50-a bill, a bill to eliminate cash bail was filed in the New York State Senate.<sup>41</sup>

This was not the first bill to have been filed to eliminate cash bill, with bills having been filed the previous two sessions. Both bills were accompanied by declarations from New York

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<sup>36</sup> Jillian Jorgensen, “No record of de Blasio’s cop disciplinary talks: Gov. Cuomo aide,” *Daily News (New York)*, March 17, 2018; Editorial, “The light blue wall of silence: The NYPD gets semi-transparent,” *Daily News (New York)*, March 30, 2018 <https://www.nydailynews.com/opinion/light-blue-wall-silence-nypd-semi-transparent-article-1.3904360>

<sup>37</sup> Rocco Parascandola, “3 ex-fed bigs on panel to review NYPD discipline,” *Daily News (New York)*, June 22, 2018

<sup>38</sup> Ali Watkins and Ali Watson, “After Critical Report, Police Commissioner Pushes for More Sunlight on Disciplinary Files,” *New York Times*, February 2, 2019

<sup>39</sup> New York State Assembly Bill No. A02513

<sup>40</sup> Communities United for Police Reform, “Press Release,” <https://www.changethenypd.org/releases/state-legislators-advocates-call-repeal-new-york%E2%80%99s-police-secrecy-law-among-worst-nation> (accessed April 22, 2021 5:11 PM)

<sup>41</sup> New York State Senate Bill No. S2101A (<https://www.nysenate.gov/legislation/bills/2019/s2101>)

Governor Andrew Cuomo that criminal justice reform was needed, such declarations perhaps being significant only for their lack of success.<sup>42</sup>

Nevertheless, there was an air of expectation about the latest filing: the most recent state Senate elections had returned a Democratic majority for only the third time in the last 50 years,<sup>43</sup> and along with the Democratic Governor Cuomo and a Democratic Assembly (which had long had a Democratic majority), it was expected that progressive legislation, including criminal justice reform, could be enacted into law with the help of this “Blue Wave.”<sup>44</sup>

Adding to this air of expectation was the appearance of a criminal justice reform group that had made the elimination of bail its primary mission. New Yorkers United for Justice (“NYUJ”) was a well-funded (supported by several billionaires)<sup>45</sup> coalition of thirteen national and New York City-based organizations that proposed a new approach to bail reform: “If you talk about [elimination of cash bail] like it’s a social-justice issue, [people won’t understand],” noted one member of the coalition. “But if you talk about it... like this is going to save money. ... I think that they’ll start to sort of understand where you’re coming from.”<sup>46</sup> NYUJ was not a member driven organization; rather it was formed with the specific intent of providing a

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<sup>42</sup> Erin Durkin, “Reform this now! Gov pushes overhaul of the justice system,” *Daily News (New York)*, January 16, 2017; Shayna Jacobs and Reuven Blau, “Bail goes bye: Cy,” *Daily News (New York)*, January 10, 2018

<sup>43</sup> Rebecca C. Lewis, “The Blue Wave that Swamped the State Senate Republicans,” *City & State*, November 7, 2018 <https://www.cityandstateny.com/articles/politics/campaigns-elections/democrats-won-majority-in-new-york-state-senate.html>

<sup>44</sup> Kenneth Lovett, “Do your Dem job,” *Daily News (New York)*, November 14, 2018

<sup>45</sup> Lorenzo Jones and Charles Sayegh, “Grassroots Movements are Needed to End Mass Incarceration,” *City Limits*, December 13, 2019 <https://citylimits.org/2019/12/13/opinion-grassroots-movements-are-needed-to-end-mass-incarceration/>

<sup>46</sup> Matthew Chayes, “Crime Law Pitch: 'Save Money,' not 'Social Justice',” *Newsday*, March 2, 2019 <https://www.newsday.com/long-island/nassau/criminal-justice-reform-ny-conservatives-1.27987754>

platform to unite the political left and right by lobbying legislators and conducting media buys to educate the public and elected officials on the value of bail reform.<sup>47</sup>

Although other criminal justice advocates and lawyers' groups advocated for bail reform,<sup>48</sup> NYUJ dominated the arguments for the elimination of cash bail. To the stance that bail reform was an issue of racial, economic and procedural justice, NYUJ added the argument that the requirement for cash bail was a waste of money. For instance, they argued:

- Most persons required to post bail stay in jail for only two days,<sup>49</sup> but even a two day stay is likely to cost a person their job, access to public housing, student loans, or childcare, etc.<sup>50</sup>
- The cost of jailing a person before trial is almost \$1,000 per day,<sup>51</sup> while only 4% of persons not jailed before trial fail to appear in court before their trial

These economic arguments tied into the other arguments for bail reform, for instance that:

- Requiring cash bail was a criminalization of poverty, because wealthier persons could raise bail for similar offenses while an indigent person could not<sup>52</sup>

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<sup>47</sup> Jimmy Vielkind, "Advocacy Groups, New York Lawmakers Prep for Evidence, Bail Changes," *Wall Street Journal*, December 13, 2019; Chayes, "Crime Law"; Jesse McKinley, "Bail Reform Backlash Has Democrats at War," *New York Times*, February 14, 2020 <https://www.nytimes.com/2020/02/14/nyregion/new-york-bail-reform.html>

<sup>48</sup> See, e.g., Bronx Defenders, "Bail Reform Initiative," <https://www.bronxdefenders.org/programs/bail-reform-initiative/> (accessed April 23, 2019 10:34 AM)

<sup>49</sup> New York City Mayor's Office of Criminal Justice, "Jail: Who is in on Bail?", May 2019, [https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/05/Bail\\_2019\\_May\\_draft-23.pdf](https://criminaljustice.cityofnewyork.us/wp-content/uploads/2019/05/Bail_2019_May_draft-23.pdf) (accessed January 8, 2021)

<sup>50</sup> Blake and Gaynes, "Social Value"

<sup>51</sup> Richard Khavkine, "Stringer: Inmate Costs Going Up Even as Population Declines," *Chief-Leader*, January 28, 2019; Richard Khavkine, "Cost of Housing Inmates Rose 10% Over 2018," *Chief-Leader*, December 13, 2019 [https://thechiefleader.com/news/news\\_of\\_the\\_week/cost-of-housing-inmates-rose-10-over-2018/article\\_f81396b0-1dc1-11ea-bf86-33c1906b3e6f.html](https://thechiefleader.com/news/news_of_the_week/cost-of-housing-inmates-rose-10-over-2018/article_f81396b0-1dc1-11ea-bf86-33c1906b3e6f.html)

<sup>52</sup> Whitford, "Momentum"; Louis, "A Bold Move"; Raphling and Hoskins, "The Right Kind"

- Requiring cash bail is racially discriminatory, as the requirement mainly effected Black and Latino persons who have been arrested<sup>53</sup>
- Requiring cash bail reversed the presumption of a person’s innocence before trial and operated as a form of pre-trial punishment<sup>54</sup>
- And this form of pre-trial punishment led to innocent people being jailed for years because they were unable to post a cash bond<sup>55</sup> or to people pleading guilty to criminal charges as the only means to get out of jail<sup>56</sup>

These arguments were countered by those of New York state’s police departments, police unions and district attorneys.<sup>57</sup> Their arguments centered wholly upon the fear of crime and the use of bail as a deterrence to criminal activity. This counter-argument did not engage, with the economic issue of the cost of cash bail to government or to society, except to argue that cash bail was not a penalty for being poor, but rather was a penalty for criminal activity.<sup>58</sup> Some of the arguments given by police and district attorneys were that:

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<sup>53</sup> Raphling and Hoskins, “The Right Kind”; Pinto, “The Unraveling”

<sup>54</sup> Louis, “A Bold Move”; Jonathan Lippman, “Commit to Making Bail Reform Work,” *Daily News (New York)*, January 15, 2020 <https://www.nydailynews.com/opinion/ny-oped-make-bail-reform-work-20200115-ql463pmuhjdvhoebykbakzzksu-story.html>; Olderman, et al, “Real Criminal Justice Reform”; Blake and Gaynes, “Social Value”

<sup>55</sup> Ben Feuerherd, “Family of Kalief Browder Reaches \$3.3M Settlement with NYC,” *New York Post*, January 24, 2019 <https://nypost.com/2019/01/24/family-of-kalief-browder-reaches-3-3m-settlement-with-nyc/>; Whitford, “Momentum”

<sup>56</sup> Olderman, et al, “Real Criminal Justice Reform”

<sup>57</sup> Denis Slattery and Graham Rayman, “Cops, DAs Slam N.Y. Bail Reform,” *Daily News (New York)*, November 21, 2019

<sup>58</sup> Editorial, “It’s Not About Poverty,” *New York Post*, December 12, 2019

- Not jailing defendants before trial would be dangerous to the public<sup>59</sup> and that persons released before trial would commit other crimes while awaiting trial,<sup>60</sup> with officials providing examples of heinous crimes committed, that they linked to bail reform, regardless of the inaccuracy of this linkage<sup>61</sup>
- More crime would be committed without the threat of being jailed for an offense, i.e., unless bail were used to jail a person before trial<sup>62</sup> and that to argue otherwise was to discount the superior knowledge police officials and district attorneys had of the criminal justice system<sup>63</sup>

Thus, proponents and opponents of bail reform engaged in arguments that mostly did not engage the other side's argument. Both sides did, however, use similar strategies to win their argument: lobbying legislators, press conferences and utilizing both paid and unpaid media (editorials and op-eds). Although proponents of bail reform were able to place op-eds

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<sup>59</sup> Gonzalez, et al, "Reforms Fraught"; Editorial, "Justice and Safety"; Editorial, "Bailing on Reform," *Daily News (New York)*, April 4, 2019 <https://www.nydailynews.com/opinion/ny-edit-criminal-justice-20190404-pdes3ga7qfbrzhjq7msqcwnma-story.html>

<sup>60</sup> Tina Moore, "Shea What? Pols Hit Commish for New-Law Blame," *New York Post*, February 7, 2020; Lindsay Beyerstein, "Did Bail Reform Really Cause a Crime Wave?," *City and State*, February 17, 2020 <https://www.cityandstateny.com/articles/opinion/commentary/did-bail-reform-really-cause-a-crime-wave.html>; Tina Moore and Jorge Fitz-Gibbon, "NYPD Stats: Bail Law is a 'Crime'," *New York Post*, March 6, 2020 <https://nypost.com/2020/03/05/bail-reform-a-significant-reason-for-crime-spike-nypd-says/>; Larry Celona, Tina Moore and Jorge Fitz-Gibbon, "Grim Start To 2020 Robbery, Burglary on Rise: NYPD Data," *New York Post*, March 3, 2020

<sup>61</sup> Editorial, "A New Shock to the System," *Chief-Leader*, December 13, 2019; Editorial, "When Middle Schoolers Kill," *New York Post*, December 17, 2019; Shant Shahrigian, "Blaz: Change the Laws in Wake of Hate Crimes," *Daily News (New York)*, January 3, 2020; Rebecca Rosenberg, "NY, Get Ready"; Craig McCarthy, Carl Campanile and Aaron Feis, "NYPD's own stats Debunk Claims of Bail Reform Leading to Spike in Gun Violence," *New York Post*, July 8, 2020 <https://nypost.com/2020/07/08/nypds-own-stats-debunk-claims-about-bail-reform-link-to-shootings/>

<sup>62</sup> Craig McCarthy, "NYPD Big Rips Bail-Reform 'Free'-for-All," *New York Post*, August 12, 2019; Khavkine, "Hate Crimes"; Richard Khavkine, "LBA's Turco: 'Inept' Politicians Sowed Chaos on City Streets," *Chief-Leader*, June 5, 2020 [https://thechiefleader.com/news/news\\_of\\_the\\_week/lbas-turco-inept-politicians-sowed-chaos-on-city-streets/article\\_19de6fe0-a5df-11ea-a9ca-1fbc83e700c0.html](https://thechiefleader.com/news/news_of_the_week/lbas-turco-inept-politicians-sowed-chaos-on-city-streets/article_19de6fe0-a5df-11ea-a9ca-1fbc83e700c0.html)

<sup>63</sup> Ryan, "Bail Out"; Marie Ndiaye (Letter to the Editor), "Queens DA Op-ed Used Scare Tactics," *Daily News (New York)*, June 18, 2019; McCarthy, "NYPD Big"; Graham Rayman, "Our Job Now Tougher," *Daily News (New York)*, September 29, 2019

consistently in New York's print media, the editorial boards were almost uniformly opposed to eliminating cash bail.<sup>64</sup>

Consequently, even though bail reform was eventually enacted into law in April 2019, it was not the full elimination that the reform campaigns sought, but a compromise version which excluded from the restriction on imposing cash bail any criminal offense involving violence, as well as some other non-violent offenses.<sup>65</sup> And what was perhaps worse than the compromise, police officials, unions, district attorneys and editorial boards continued to rail against the recently enacted bail law, so much so, that the legislature began to consider "reform to the reform" even before the new law took effect on January 1, 2020.<sup>66</sup>

Thus, while reform campaign advocates for the repeal of Section 50-a argued that the bail legislation provided momentum for their own cause,<sup>67</sup> a state legislator quietly mentioned that repeal would be impossible in the current anti-police reform political climate.<sup>68</sup> This lack of initiative was confirmed in October 2019 by the state Senator who controlled the passage of any repeal of Section 50-a, who flatly declared that repeal would not happen in the next legislative session (2020) and might not happen for several years.<sup>69</sup>

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<sup>64</sup> See, e.g., *New York Post* Editorial: "Middle Schoolers"; "Fix This Now," January 1, 2020; "Think Before You Bail," September 1, 2018; "No Time for No Bail," March 21, 2020 <https://nypost.com/2020/03/20/this-is-no-time-for-new-yorks-no-bail-law-to-be-in-effect/>; *Daily News (New York)*: "Reforming Bail Reform," December 21, 2019 <https://www.nydailynews.com/new-york/nyc-crime/ny-edit-bail-reform-20191221-75vpz2p64reljhbaym6tunrhdq-story.html>; "A Not-So-Secret Scourge," November 24, 2019 <https://www.nydailynews.com/opinion/ny-edit-domestic-violence-20191124-5nrtxg5v3fd2jgrn6zk6vkempu-story.html>; "Bailing on a Failed Law," February 14, 2020

<sup>65</sup> Coltinis, "Cash Bail"; Pinto, "The Unraveling"

<sup>66</sup> Editorial, "Reforming bail reform"; Ryan, "Bail Out"

<sup>67</sup> Denis Slattery, "More justice now: Coalition for state reforms expands," *Daily News (New York)*, June 11, 2019

<sup>68</sup> Richard Khavkine, "Expect No Changes To New York State Law Shielding Cops' Disciplinary Records," *Chief-Leader*, June 14, 2019 [https://thechiefleader.com/news/news\\_of\\_the\\_week/expect-no-changes-to-new-york-state-law-shielding-cops-disciplinary-records/article\\_112810d4-8e04-11e9-89ed-1f7402f8587a.html](https://thechiefleader.com/news/news_of_the_week/expect-no-changes-to-new-york-state-law-shielding-cops-disciplinary-records/article_112810d4-8e04-11e9-89ed-1f7402f8587a.html)

<sup>69</sup> Jeff Coltinis, "A guide to 50-a, the most contentious state law on the books," *City & State*, October 19, 2019 <https://www.cityandstateny.com/articles/policy/criminal-justice/reformers-look-to-repeal-or-reform-50a.html>

The Senator's statement came days before an NYPD official testified before the Senator's committee, urging not a repeal of Section 50-a, but a "reform" along the lines outlined earlier in the year by Commissioner O'Neal – making public some police officer disciplinary information (name of officer, charges accused of, penalty assessed) only in regard to serious instances of misconduct and only after a final disciplinary outcome had been reached.<sup>70</sup>

As the legislative session opened in January, published reports noted that a New York City program, created to ensure persons released before trial would appear for their scheduled court appearance, was months away from being ready. Therefore, the 2020 state legislative session began with a lack of initiative in terms of repeal of Section 50-a and the bail law and with an attempt to roll back the reform achieved in the previous session.

NYUJ tried to restore the momentum for reform with a \$2 million media buy for a public education campaign.<sup>71</sup> But the attempted roll back became manifest when, in late February, Governor Cuomo announced he would not approve a state budget unless new restrictions were added to the bail law.<sup>72</sup> When the "reform to the reform" bill did pass the legislature (adding more non-violent offenses to the list of those requiring bail),<sup>73</sup> it was generally conceded that

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<sup>70</sup> New York State Senate Public Hearing: Policing (S3695)

<sup>71</sup> McKinley, "Bail Reform Backlash"; New Yorkers United for Justice, "Resources" <https://nyuj.org/resources/new-yorkers-united-for-justice-launches-a-seven-figure-public-education-campaign-to-dispel-misinformation-and-promote-values-benefits-of-criminal-justice-reform/> (accessed April 23, 2021 2:20 PM)

<sup>72</sup> Denis Slattery, "Gov: bail fix, or else," *Daily News (New York)*, February 29, 2020

<sup>73</sup> Jeff Coltinis, "How New York Changed its Bail Reform Law," *City & State*, April 4, 2020 <https://www.cityandstateny.com/articles/policy/criminal-justice/how-new-york-changed-its-bail-law.html>

all hope for any major criminal justice reform in 2020 was lost,<sup>74</sup> despite the fact that a bill seeking to repeal Section 50-a had been filed in the state Senate.<sup>75</sup>

All of this changed when George Floyd was choked to death by a Minneapolis police officer on May 25.<sup>76</sup> Protests of the death began in New York City the following day,<sup>77</sup> and four days later Governor Cuomo announced his newfound support for repealing Section 50-a.<sup>78</sup> After looting started in the city and a curfew was imposed,<sup>79</sup> the Governor reiterated his support: “We are also outraged [about the death of George Floyd] and we are going to do something about it, and if 50-a is all we can do as a state, we’re going to do 50-a.”<sup>80</sup>

Thus, it was that what had taken almost ten years of activity, what had seemed hopeless only a few months before, came to be: the repeal of Section 50-a. A new version of the repeal bill was filed on June 6,<sup>81</sup> and within a week the bill had passed both houses<sup>82</sup> and been signed by the Governor,<sup>83</sup> completely smashing expectations as to what was and what was not possible in the state legislature.

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<sup>74</sup> Editorial, “Overhaul law that protects bad cops,” *Albany Times Union*, February 18, 2020 <https://www.timesunion.com/opinion/article/Editorial-Overhaul-law-that-protects-bad-cops-15066202.php>

<sup>75</sup> New York State Senate Bill No. S3695 (<https://www.nysenate.gov/legislation/bills/2019/s3695>)

<sup>76</sup> Jackie Salo and Jorge Fitz-Gibbon, “He Wasn’t Resisting the Cops Minn. Biz Cam’s Bust-Slay Vid Reveals . . .” *New York Post*, May 28, 2020

<sup>77</sup> Jackie Salo and Jorge Fitz-Gibbon, “‘I Can’t Breathe’ Minn. PD Firings in Viral Slay,” *New York Post*, May 27, 2020

<sup>78</sup> Melissa Klein, “Gov. Cuomo Supports Reforming Measure that Shields Police Disciplinary Records,” *New York Post*, May 30, 2020 <https://nypost.com/2020/05/30/gov-cuomo-supports-reforming-measure-shielding-police-disciplinary-records/>

<sup>79</sup> Denis Slattery, Rocco Parascandola, Noah Goldberg, Graham Rayman and Chris Sommerfeldt, “Chaos in Apple: Looters Ransack Midtown Stores Before Start of 11 p.m.-5 a.m. Curfew,” *Daily News (New York)*, June 2, 2020

<sup>80</sup> Richard Khavkine, “Effort to Repeal Law Shielding Officers’ Personnel Records Gains Momentum,” *Chief-Leader*, June 5, 2020 [https://thechiefleader.com/news/news\\_of\\_the\\_week/effort-to-repeal-law-shielding-officers-personnel-records-gains-momentum/article\\_54d05f2a-a75e-11ea-b197-8f305e483b3c.html](https://thechiefleader.com/news/news_of_the_week/effort-to-repeal-law-shielding-officers-personnel-records-gains-momentum/article_54d05f2a-a75e-11ea-b197-8f305e483b3c.html)

<sup>81</sup> New York State Senate Bill No. S8496 (<https://www.nysenate.gov/legislation/bills/2019/s8496>)

<sup>82</sup> Denis Slattery, “Shining”

<sup>83</sup> Bernadette Hogan and Nolan Hicks, “Gov OKs Police Reforms,” *New York Post*, June 13, 2020

Nevertheless, the sudden rush to victory had caught the reform campaign for repeal of Section 50-a on the hop; they had not engaged in the legislative detail of the repeal bill and in fact, in the heady days after passage of the bill, proceeded on a victory lap.<sup>84</sup> But the language of the bill was not so clear-cut; while Section 50-a was indeed repealed, the bill had installed a new system by which disciplinary records were to be revealed to the public and the intent of this new system was neither obvious nor clear.

Almost immediately after the bill's passage, New York City's police unions filed suit to stop the release of any discipline information, and a state court barred the release of any information that had not been the subject of a final disciplinary hearing.<sup>85</sup> Soon thereafter, the NYPD announced it would not release any police officer discipline information to the public, pending a final decision on the repeal of Section 50-a by a Federal appeals court.<sup>86</sup> This dilemma could have been foreseen by the manner in which the debate on the repeal of Section 50-a was conducted. When the reform campaign argued for transparency, the NYPD consented to this argument, but wanted to set the terms of what transparency meant.

Once again, as with the bail reform campaign, the different sides of the debate mostly talked past each other. The reform campaign argued that:

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<sup>84</sup> Annie McDonough, "Police Reform Activists and Experts Respond to 50-a Repeal," *City & State*, June 12, 2020 <https://www.cityandstateny.com/articles/policy/criminal-justice/police-reform-activists-and-experts-react-50-repeal.html>

<sup>85</sup> Graham Rayman, "Cop 'data dump'," *Daily News (New York)* July 16, 2020

<sup>86</sup> Greg B. Smith, "City Hall Was Ready to Release Records on NYPD Cops Cited for Misconduct — Before Its Lawyers Said No," *The City*, August 4, 2020 <https://www.thecity.nyc/2020/8/4/21355082/city-hall-readying-to-release-nypd-records>

- Transparent discipline was needed to ensure a fair discipline system<sup>87</sup> and would increase the public's confidence in the NYPD<sup>88</sup> and increase trust in individual officers<sup>89</sup>
- The public had a right to know how government officials performed their tasks, especially with regard to police officers,<sup>90</sup> and especially for persons who had been subject to officer misconduct but were unable to discover whether the officer had been disciplined<sup>91</sup>

The NYPD and its unions, on the other hand, argued that discipline transparency would lead to harm against individual officers<sup>92</sup> and would destroy the public's confidence in the police.<sup>93</sup> The NYPD agreed with the reform campaign that transparency could lead to an

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<sup>87</sup> Editorial, "NYPD in View"; Lovett, "Fighting NYPD Shield"; Trevor Boyer, "Activists: Open Up Records," *Daily News (New York)*, March 22, 2019

<sup>88</sup> Rocco Parascandola, Graham Rayman and Thomas Tracy, "Shine a Light on Cops," *Daily News (New York)*, February 2, 2019; Khavkine, "Williams"; Hogan and McCarthy, "NYPD, CCRB"; Slattery, "Shining"

<sup>89</sup> Khavkine, "Williams"; Boyer, "Activists"

<sup>90</sup> Christopher Robbins, Zach Gottehrer-Cohen and Jake Dobkin, "Analyzing 323,911 Newly-Released Records of NYPD Misconduct," *Gothamist*, August 27, 2020 <https://gothamist.com/news/analyzing-323911-newly-released-records-nypd-misconduct>

<sup>91</sup> Coltinis, "Guide to 50-a"; Khavkine, "Williams"; Khavkine, "Effort to Repeal"

<sup>92</sup> Rocco Parascandola, Graham Rayman and Thomas Tracy, "Shine a Light on Cops," *Daily News (New York)*, February 2, 2019; James O'Neill, "Let NYC See Police Records, Now," *Daily News (New York)*, February 8, 2019 <https://www.nydailynews.com/opinion/ny-oped-let-nyc-see-police-records-now-20190207-story.html>; Richard Khavkine, "PBA Rips City Council Bill to Reopen Police Disciplinary Records," *Chief-Leader*, February 11, 2019 [https://thechiefleader.com/news/news\\_of\\_the\\_week/pba-rips-city-council-bill-to-reopen-police-disciplinary-records/article\\_47b34e82-2e43-11e9-90a2-3b85cbc5d068.html](https://thechiefleader.com/news/news_of_the_week/pba-rips-city-council-bill-to-reopen-police-disciplinary-records/article_47b34e82-2e43-11e9-90a2-3b85cbc5d068.html); Erin Durkin, "De Blasio Does Not Support Full Repeal of Police Secrecy Law," *Politico*, October 17, 2019 <https://www.politico.com/states/new-york/albany/story/2019/10/17/de-blasio-does-not-support-full-repeal-of-police-secrecy-law-1225652>; Khavkine, "Effort to Repeal"

<sup>93</sup> Coltinis, "Guide to 50-a"; Richard Khavkine, "Expect No Changes"; Khavkine, "Effort to Repeal"

increase in trust in individual officers,<sup>94</sup> but only if this transparency was on its own terms: discipline should be made transparent to the public only in cases of serious misconduct.<sup>95</sup>

Both the reform campaigns proponents and opponents relied on the same tactics to achieve their results: lobbying state legislators, holding press conferences and utilizing paid and unpaid media. CPR, as a member-driven organization, also organized rallies of their coalition members, usually at the steps of the legislature. The city's print media was overwhelmingly in favor of repealing Section 50-a, but was willing to concede that the terms of the replacement needed to be worked out by the NYPD,<sup>96</sup> which was exactly what the department did.

The language of the bill repealing Section 50-a tracked exactly what the NYPD testified to in the October 2019 state Senate hearing. The new law allowed police discipline transparency only in cases of serious instances of misconduct and only after a final disciplinary outcome had been reached.<sup>97</sup> And while the reform campaigns cried foul,<sup>98</sup> that "repeal meant repeal," it was clear that the new law was not the blanket removal of all restrictions on releasing officer discipline information that they had desired.

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<sup>94</sup> Rick Rojas and J. David Goodman, "Mayor Calls for Change in Law That Blocks Release of Police Disciplinary Actions," *The New York Times*, October 15, 2016 <https://www.nytimes.com/2016/10/15/nyregion/de-blasio-calls-for-change-in-law-that-blocks-release-of-police-disciplinary-actions.html>; Jennifer Fermino, Chris Sommerfeldt and Rocco Parascandola, "Blaz: Let's Air Raps vs. Cops," *Daily News (New York)*, October 15, 2016

<sup>95</sup> Denis Slattery, "NYPD: OK to Air a Bit More Info," *Daily News (New York)*, October 25, 2019; Khavkine, "Effort to Repeal"

<sup>96</sup> Editorial, "Overhaul law"; Editorial, "Fix All the Laws Now Failing NY," *New York Post*, June 4, 2020; Editorial, "NYPD transparency now: Open up the personnel records," *Daily News (New York)*, March 6, 2018 <https://www.nydailynews.com/opinion/nypd-transparency-open-personnel-records-article-1.3857481>; Editorial, "Police Abuse Kept from the Public," *New York Times*, June 13, 2019 <https://www.nytimes.com/2019/06/12/opinion/police-brutality-discipline-eric-garner.html>

<sup>97</sup> New York State Senate Bill No. S8496

<sup>98</sup> Communities United for Police Reform, "Court Rules Communities United for Police Reform May Intervene in NYPD Misconduct Database Case" <https://www.changethenypd.org/releases/court-rules-communities-united-police-reform-may-intervene-nypd-misconduct-database-case> (accessed April 23, 2021 4:16 PM)

Thus, when the Federal appeals court rendered its decision on the Section 50-a repeal bill this February, it confirmed that the bill applied only to serious misconduct and that the bill *allowed* the NYPD to release information not subject to a final disciplinary outcome (that is, the NYPD was permitted to release results of discipline investigations or records of discipline that had been handed down outside of an NYPD internal hearing).<sup>99</sup> Consequently, the NYPD, consistent with its intention all along, chose not to take advantage of the latitude granted by the court, and released only that discipline information that had been subject to a final determination.<sup>100</sup>

Such a conclusion to the repeal of Section 50-a campaign should have been anticipated. As with the bail reform campaign, reform proponents failed to engage in political tactics suitable to achieve their strategic goals. I maintain these failures on a tactical level were due to the inadequate political epistemology of the reform campaigns. It now becomes incumbent for me to explain what I think an adequate epistemology looks like and why I think it would have made a difference to the success of these campaigns.

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<sup>99</sup> *Uniformed Fire Officers Ass'n v. De Blasio*, 2021 U.S. App. LEXIS 4266 (accessed February 17, 2021 10:50 AM)

<sup>100</sup> Southall, "NYPD Releases"

### III. Gramsci's Machiavellian Roots

To understand the roots of Gramsci's political involvement one needs to know that his involvement starts from an attempt to resolve Italy's "Southern Question."<sup>101</sup> He was most concerned of how to address the political marginalization and economic and cultural backwardness of the Southern half of Italy, and in particular, the peasantry of Southern Italy.<sup>102</sup> Gramsci noted that the process of *risorgimento*, or the creation of the modern Italian national state, had not involved incorporating the Southern peasantry into the political process.<sup>103</sup> The *risorgimento* had in fact created not a state with a coherent national philosophy, but rather had merely extended the rule of the Piedmontese monarchy over the entire territory, thus maintaining the distinctly different regional political ethos of Italy.

One element of this ethos was a dominant belief that the backwardness of Southern Italy stemmed from the innate characteristics of Southern Italians, in their lack of initiative and disinterest in participating in a modern economy.<sup>104</sup> Gramsci rejected this notion, asserting that the Southern Question was one that was historically determined by specific economic and political causes.<sup>105</sup> Gramsci's response to the material condition of the Southern peasantry was a political one, that Italy needed to formulate a new national political ethos, one that included the southern peasantry.

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<sup>101</sup> Walter Adamson, *Hegemony and Revolution: A Study of Antonio Gramsci's Political and Cultural Theory* (Brattleboro, Vermont: Echo Point Books & Media, 2014), 30

<sup>102</sup> Antonio Gramsci, *The Southern Question*, trans. Pasquale Verdicchio (New York: Bordighera Press, 2015), 16-17

<sup>103</sup> David Forgacs, ed., *The Gramsci Reader: Selected Writings 1916 – 1933*, (New York: New York University Press, 1999), 207

<sup>104</sup> Gramsci, *The Southern Question*, 20

<sup>105</sup> Gramsci, *The Southern Question*, 19

As a socialist, Gramsci acknowledged the urban proletariat as the leading class for bringing about this new society, but insisted that this change could not happen without the proletariat establishing a class alliance with the Southern peasantry.<sup>106</sup> This alliance, in turn, could not happen unless the proletariat understood the class demands of the peasantry.<sup>107</sup> The Southern peasants, therefore, needed to be able to clearly articulate what were their demands. The peasants, however, were disaggregated and fragmented; they lacked a distinct set of economic or political demands<sup>108</sup>

Gramsci asserted that this failure to establish distinct class based demands stemmed from the manner in which the peasantry understood their interests. Gramsci felt their understanding had been formed by the intellectual class of Southern Italy, a class which was beholden to the landowner class and which therefore transmitted a cultural and political outlook to the peasantry that favored the interests of the landowner.<sup>109</sup> This inability of the peasantry to articulate their own interests diminished the possibility of their forming a class alliance with the proletariat.

This epistemological approach to a political problem encompassed all of Gramsci's political concerns regarding the Italian state: recognizing an historically determined political actor; ascertaining the factors contributing to the actor's failure to assert themselves politically;

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<sup>106</sup> Gramsci, *The Southern Question*, 20

<sup>107</sup> Gramsci, *The Southern Question*, 20

<sup>108</sup> Gramsci, *The Southern Question*, 35-39

<sup>109</sup> Gramsci, *The Southern Question*, 35-39

the actor developing the mindset that allowed him to clarify what were his class interests; the actor using these class interests to establish cross-class alliances; and subsequently, using these cross-class alliances to create a new Italian national political ethos.

It was this approach, and these questions, that Gramsci sought to resolve in the immediate post-war period in Italy. In this period, Gramsci was responding specifically to three events: the failure of the Turinese worker strikes and the dissolution of the workers' councils that were supposed to initiate a proletariat revolution; the rise of fascism in Italy; and the change in Communist political doctrine that began to recognize that a proletarian revolution in Western Europe would not happen along the same lines as that in Russia.<sup>110</sup>

Gramsci pursued a philosophical, historical and cultural response to this political problem. The socialist movement had been unable to overthrow bourgeois society while working within that society and utilizing its institutions.<sup>111</sup> This was due to what Gramsci perceived as the movement being generally defensive in confronting capitalism, while offering declamatory and utopian appeals for mass action; the aftermath of defeat spurred him to reassess the bases for political action along the lines mentioned above.<sup>112</sup>

The questions Gramsci raised about the political process, and the solutions at which he arrived, owed much to his study of the thought of Machiavelli. Machiavelli's thought was rooted in a time of societal upheaval, similar to Gramsci's: different types of rule (republican versus dynastic), economic bases (feudal landed interests versus urban elites) and political

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<sup>110</sup> Walter L. Adamson, "Towards the Prison Notebooks: The Evolution of Gramsci's Thinking on Political Organization 1918-1926," *Polity* 12, no. 1 (Autumn, 1979): 54

<sup>111</sup> John Merrington, "Theory and Practice in Gramsci's Marxism," *The Socialist Register* 5 (1968): 149

<sup>112</sup> Merrington, "Theory and Practice," 149

structures (oligarchic versus popular) were all unsettled and in flux.<sup>113</sup> Machiavelli sought to devise a more stable basis for a ruler's political legitimacy, one that didn't rely on the hereditary principle, and could survive when there was no basis for dynastic continuity.<sup>114</sup> In the end, his search, as with Gramsci's, led Machiavelli to develop a philosophical, historical and cultural response to a political problem.

In developing this response, Machiavelli introduced two novel elements to the understanding of political power: the role of the "mass," or the people, in securing legitimacy and the creation of a science of political statecraft, unmoored from any larger ethical or moral order.<sup>115</sup> Machiavelli was the first thinker to note that the relationship between a ruler, who desires a more stable political order, and the "mass" has a dual nature, as both subject and object. The people serve as the subjects who support a ruler's political legitimacy while at the same time serving as the object of the ruler's efforts to create this new, more stable political order.

Machiavelli recognized the dual nature of state power, that the force embodied in state power also had to incorporate the consent of the people in order to be truly effective. In such a dynamic, it was incumbent upon a ruler to create the subjects who would be responsive to the new order - a ruler needed to develop the understanding of the people so they would create the legitimacy needed to secure the new political order.

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<sup>113</sup> Benedetto Fontana, *Hegemony and Power: On the Relation Between Gramsci and Machiavelli*, (Minneapolis: University of Minnesota Press, 1993), 47

<sup>114</sup> Sheldon S. Wolin, "Machiavelli: Politics and the Economy of Violence," in *Politics and Vision: Continuity and Innovation in Western Political Thought*, (Princeton: Princeton University Press, 2004), 180

<sup>115</sup> Fontana, *Hegemony*, 13; Wolin, "Machiavelli," 180

This idea supports Gramsci's criticism of Italian political practice being based on a political elite that did not seek the approval of the mass of the people and did not rely on them for support. Gramsci felt, as Machiavelli did in his time, that the weakness of the Italian (or Florentine, for Machiavelli) state was due to this lack of popular support. Such weakness, he felt, was complicit in the state's succumbing to fascism after World War I.<sup>116</sup>

This was why Gramsci raised the specter of the Italian philosopher Benedetto Croce, who theorized that political knowledge had to distinguish between the ruler and the ruled. Gramsci viewed Croce as an "anti-Machiavellian" because Croce felt that political power had to be preserved within an elite in order to coerce and contain the nature of the mass of people, as opposed to relying on the mass of the people.<sup>117</sup>

Nevertheless, Gramsci felt that Croce, in his attempt to exclude the masses from power, by trying to deny them a role in politics and history, revealed that the power of the masses could no longer be denied.<sup>118</sup> Similarly, Gramsci viewed Croce's call for an intellectual elite separate from the values and thought of the established power structure, an important development in how the political education of the masses could take place.<sup>119</sup> This intellectual elite, according to Gramsci, could provide Italy with, not just new rulers, but a new type of political education for a new type of rule

But basing political rule on the mass of people raised two questions: how is this popular support generated and what does this support consist of? Machiavelli's basing political

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<sup>116</sup> Fontana, *Hegemony*, 42

<sup>117</sup> Fontana, *Hegemony*, 62

<sup>118</sup> Fontana, *Hegemony*, 15

<sup>119</sup> Fontana, *Hegemony*, 25

legitimacy on the support of the people introduced the mass of the people into history – the people were no longer objects of historical action, but had a role to play. This recognition of the people as historical actors required a ruler to uncover and make plain their reality, to show people the relevant facts of their existence, so they could understand their role as actors.<sup>120</sup>

Once it was established what the facts of reality were, it was also possible to see how reality should be structured; by establishing a distinction between “what is,” or current reality, and “what ought to be,” an envisioned future, the ruler provides for the content of popular support.<sup>121</sup> It is this transformative content that creates the basis for popular support.

Additionally, this insertion of people into history alters their consciousness – history is not just something received, but is something created. Between the “what is” and “what ought to be,” or between the problem and the solution, lies a man who is an historical product, creating a solution which transcends the facts from which the problem arose.<sup>122</sup> Thus, the people become part of the solution, not as followers of a leader, but as creators of a new reality. For Machiavelli, in order to create a new history, one had to locate oneself in relation to that history – one had to assimilate it, make it one’s own, in order to overcome it and create a new political order.<sup>123</sup>

Gramsci noted that such a process “historicizes thought,” that this historicization reveals how certain conceptions of the world have created the world, and allows one to understand how these conceptions established the basis for concrete action in the world.<sup>124</sup> Such a process

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<sup>120</sup> Fontana, *Hegemony*, 76

<sup>121</sup> Fontana, *Hegemony*, 79

<sup>122</sup> A. B. Davidson, “Gramsci and Reading Machiavelli,” *Science & Society*, 37 no. 1 (Spring, 1973), 62

<sup>123</sup> Davidson, “Gramsci,” 66; Fontana, *Hegemony*, 83

<sup>124</sup> Fontana, *Hegemony*, 108

was important for two reasons: first, it shows “that reality does not exist on its own, in and for itself, but rather in a historical relationship with the men who modify it.” Second, this intellectual understanding of history has a political effect – this new conception of the world, generated by the new understanding of history, has meaning only when entered into reality; that is, the activity stemming from this new conception of the world, the placing of this new conception into material reality, is political activity.<sup>125</sup>

Machiavelli’s idea that reality was something that man creates is crucial in understanding how he came to develop his second aspect of political power, that of political statecraft unmoored from any permanent ethical order. For Machiavelli, if man creates reality, political action takes place in a world without a permanent basis for action, without the “underlying norm of reality to which men could adjust or from which they could draw firm rules of conduct.”<sup>126</sup>

Without this underlying norm of reality, the political actor always performs in a world in a state of flux, in which the only constant was movement and change.<sup>127</sup> Just as important, a political actor needs to be able to distinguish between reality, illusion and effective reality, that is, between what is real, what is false, and what is the reality the actor wishes to create in order to reach the ends he desires.<sup>128</sup>

Such an ability implies a certain form of knowledge that cannot be embodied in firm rules of conduct. Rather, Machiavelli sought to provide a set of precepts that could only be

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<sup>125</sup> Fontana, *Hegemony*,” 110

<sup>126</sup> Wolin, “Machiavelli,” 190

<sup>127</sup> Wolin, “Machiavelli,” 192

<sup>128</sup> Wolin, “Machiavelli,” 191

assessed in relation to the specific circumstances the political actor encountered. Not simply a case of determining a problem and solution, Machiavelli offers a new political theory, one in which the problem and solution exist in a dynamic relationship with the actor who is creating the solution and the subject who is receiving it. The problem, solution, actor and subject are all interacting with each other to determine the adequacy of the response to the political issue<sup>129</sup>

Machiavelli deemed this ability to develop an adequate response to a political issue as a skill, which he called *virtu*. *Virtu* necessitated the ability to assess the objective conditions of the political issue to be decided,<sup>130</sup> while presupposing a recognition that the issue has to be dealt with in the political realm; that is, *virtu* requires that an actor perceive himself as an historical actor, one that has an ability to effect change<sup>131</sup>

This ability to effect change, combined with the realization that an actor *can* effect change, Machiavelli terms *fortuna*, which, for Machiavelli, most appropriately exists in support of the creation of the new form of political legitimacy that relies on the mass of people. Thus, *virtu* is not simply a skill to be developed for political purposes, but has a content that seeks to guide *fortuna* so as to legitimate popular political control. Therefore, *virtu*, as defined by Machiavelli, carries with it the dual nature mirroring the relationship between the ruler and the “mass” – actions carried out according to *virtu* seek to create a new political and ethical order in which the “mass” begins to embody the new order which *virtu* encapsulates.<sup>132</sup> Similarly, actions carried out according to *virtu* promote recognition amongst the “mass” of its

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<sup>129</sup> Davidson, “Gramsci,” 63

<sup>130</sup> Davidson, “Gramsci,” 78

<sup>131</sup> Fontana, *Hegemony*, 115

<sup>132</sup> Fontana, *Hegemony*, 59

ability to effect change; the nature of *fortuna* has changed from events that simply happen, to events that are shaped by the people acting for themselves<sup>133</sup>

Thus, it becomes clear that what Machiavelli envisioned in a new political order is not simply an order in which a ruler develops willing subjects, but one in which the people are led to create the new political space in which a ruler operates. Consequently, the ruler is transformed into a representative of the people, and as such, legitimizes his rule with the people.<sup>134</sup> Such a transformation, however, is only possible through the prior establishment of a structure of discourse that allows the people to respond to and converse with the ruler who is seeking to create this new order.<sup>135</sup>

Machiavelli's political theory served to ground Gramsci's search for answers as to how to develop a new political ethos based on the mass, how to create historical and political agency, how to develop a relationship between the ruler and the mass, what was the political knowledge needed for this relationship, and the role of ideology to bring all these pieces together. All of these matters Gramsci sought to apply to the specific situation of a modern Western nation, such as post-World War I Italy.

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<sup>133</sup> Davidson, "Gramsci," 73, 78

<sup>134</sup> Fontana, *Hegemony*, 129

<sup>135</sup> Fontana, *Hegemony*, 123

#### IV. Gramsci's Political Theory

One can see how Machiavelli's political project established the starting point for Gramsci's search for solutions to the problems he perceived in reformulating the Italian political project. Through Machiavelli, Gramsci approached questions of historical and political agency; the creation of a new political ethos and how to develop the changed consciousness that completed this new ethos; the content of this new consciousness; the role of tactics and strategies in setting up this new ethos; the relations between a leader and the subjects of this new polity; and how to apply all of these aspects of the Machiavellian political epistemology to the specific circumstances of 1920's Italy.

And what I find fascinating in Gramsci's approach is that it was rooted in his belief that the mass of people, the peasantry and the proletariat, that is, the subaltern, had to be part of developing an answer to these questions, not as subjects led to a solution, but as creators of any solution. This belief he incorporated into his political theory and his political practice; by assessing the faults of previous aspects of proletarian participation in Italian politics, Gramsci eventually redefined what was the essential political problem, that of the nature of power in Western societies.<sup>136</sup>

Gramsci sought to restore the revolutionary initiative to the masses through the development of a conscious political agency based on a unified and coherent ideology. The immediate question for him was what would be the form of this agency? Gramsci was critical of

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<sup>136</sup>Merrington, "Theory and Practice," 5

the failure of the socialists to engage the mass of workers on an intellectual level.<sup>137</sup> Such criticism reflected the epistemological underpinnings of Gramsci's philosophy, his concern with how a political knowledge could be formed that would develop the inherent agency of the workers.<sup>138</sup>

Gramsci's critical effort was first directed towards the restoration of the dialectic in political practice and the interplay between the objective economic and historical conditions in Italy and the specific subjective cultural, political and ideological conditions that the proletariat faced.<sup>139</sup> The result of this effort was a bifurcation in Gramsci's political project: an internally democratic mass party as the organic expression of the proletariat, along with a program of political education of the workers.<sup>140</sup>

Adamson points out that the impact of the Russian Revolution was decisive for Gramsci in settling on this bifurcated apparatus; although the Turinese workers councils had been defeated in their attempt for power in 1920, Gramsci still insisted the Russian workers' councils had demonstrated that an essentially economic institution could serve as the foundation for a reconstruction of the political process.<sup>141</sup> Gramsci had noted how the Russian example had grasped the preparation, seizure of power and establishment of a new order as a single unified revolutionary process.<sup>142</sup> To make such a process possible, Gramsci understood there needed to be a proletarian education in which "criticism might become culture;"<sup>143</sup> it was the workers

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<sup>137</sup> Adamson, *Hegemony*, 65

<sup>138</sup> Adamson, *Hegemony*, 105

<sup>139</sup> Merrington, "Theory and Practice," 5

<sup>140</sup> Adamson, "Towards," 44

<sup>141</sup> Adamson, "Towards," 45, 52

<sup>142</sup> Adamson, "Towards," 46

<sup>143</sup> Adamson, "Towards," 45

changed consciousness, and the ability to critically assess their historical situation, brought about by the workers' councils, that would ensure that the unified revolutionary process could take place.

This focus on the dialectical nature of education raised another critical difference between Gramsci and previous proletarian education. He was critical of the ellipsis in Marxist political theory between the objective economic conditions for revolution and the subjective understanding the worker had of his historical and material situation; theory could not explain how the proletariat gained the personality necessary to bring about revolution.<sup>144</sup>

Gramsci insisted that Marxist theory needed to be grounded in the reality the worker had to deal with, that the theoretician needed to translate his theory into the elements of historical life. By not adopting this dialectical approach, Marxist theory promoted a passive political approach, which led to a failure of the proletariat to gain political agency.<sup>145</sup> "Thus, the general picture of human life which emerges in Gramsci's reappropriation of Marx is that of concrete individuals actively transforming the natural world in a collective process of social labor guided by shared practical and scientific interests."<sup>146</sup> Such a reappropriation allowed for a clear-eyed approach as to the complexities facing workers in a modern Western society such as Italy.

Gramsci envisioned a lengthy program that would develop consciousness, one that was more suited to the intricate civil societies and superior state strength possessed by advanced

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<sup>144</sup> Adamson, *Hegemony*, 111

<sup>145</sup> Merrington, "Theory and Practice," 149

<sup>146</sup> Adamson, *Hegemony*, 134

Western nations.<sup>147</sup> In understanding the lack of success of the proletariat in Italy, Gramsci came to understand that the bourgeoisie had developed superior elements of popular support and that the political struggle was more complex than the reductionist tendencies espoused by Marxist theoreticians.<sup>148</sup> Political struggle was not a simple confrontation between antagonistic classes but the divining of a route amongst a complex relation of forces.<sup>149</sup>

Thus, what Gramsci originally proposed as a simple political alliance between different sectors of the subaltern, between peasants and proletariat, expanded to encompass a complete fusion of economic, political, intellectual and moral objectives which, through the intermediary of ideology, would establish united economic and political objectives for the allied group.<sup>150</sup>

This recognition of the role ideology played in developing consciousness, not just of the proletariat, but also of the bourgeoisie, led Gramsci to enlarge the notion of what constitutes the state. First, he posited the state as the site of coercion and domination, in which the violence necessary to maintain social order and stability are institutionalized through the states' administrative, juridical and military apparatus. Second, he saw the state as the totality of the social, economic, political and cultural relations that form the ideological structure supporting the political and social order, a structure that he termed civil society.<sup>151</sup>

This second notion of the state is a more positive vision than the first, and it was an important insight that Gramsci recognized civil society as not just where ideology was

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<sup>147</sup> Adamson, *Hegemony*, 225

<sup>148</sup> Chantal Mouffe, "Hegemony and Ideology in Gramsci," in *Gramsci and Marxist Theory*, ed. Chantal Mouffe, (London: Routledge & Kegan Paul, Ltd: 1979), 180

<sup>149</sup> Mouffe, "Hegemony," 180

<sup>150</sup> Mouffe, "Hegemony," 181

<sup>151</sup> Benedetto Fontana, "Political Space and Hegemonic Power in Gramsci." *Journal of Power*, 3 no. 3, Dec. 2010, pp. 341–63. *DOI.org (Crossref)*, doi:10.1080/17540291.2010.524793

produced, but as a site in which consent and direction were formulated.<sup>152</sup> Ideas are developed in civil society in order to establish the terrain on which alternative ideas operate and on which movements opposed to the dominant political order can organize.<sup>153</sup> “This image of a ‘regulated society’ ... suggests both the absence of coercion [while simultaneously promoting] an active and productive public life.”<sup>154</sup> The regulated society places limits on acceptable political discourse, while making these limits appear as a natural aspect of such discourse.

Gramsci noted that the distinction between these two notions of the state were methodological, meaning that although the two were analytically distinct, they were intertwined in practice; any attempt to strategically realign the state would have to account for the fact that both notions support one another.<sup>155</sup> Fontana offers a topographical description of Gramsci’s analysis of the state and civil society as a series of trench works, “together forming ‘permanent fortifications’ which act as buttresses or supports for the state.”<sup>156</sup> Thus, Gramsci’s enlargement of the state works on two levels: first, the social base of the state is enlarged though its complex of relations in civil society and second, the functions of the state are enlarged now that the functions of civil society are incorporated within the apparatus of the state.<sup>157</sup>

Consequently, Gramsci’s enlarged notion of the state is not simply a site of power, nor simply a site in which ideology is generated, but one in which ideology is generated to serve power, in which the dual mechanism of state/civil society is utilized to create a worldview in the

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<sup>152</sup> Forgacs, *The Gramsci Reader*, 224

<sup>153</sup> Forgacs, *The Gramsci Reader*, 224

<sup>154</sup> Adamson, *Hegemony*, 222

<sup>155</sup> Forgacs, *The Gramsci Reader*, 224

<sup>156</sup> Fontana, “Political Space,” 347

<sup>157</sup> Mouffe, “Hegemony,” 182

service of the interests of power. And Adamson considers it one of Gramsci's great insights that through his theory and practice, Gramsci was able to identify the process by which individuals come to constitute, and possibly, reconstitute this worldview.<sup>158</sup> Most importantly, echoing Machiavelli, Gramsci recognized that adjusting a worldview relied on the political astuteness and cultural awareness of the individuals engaged in this task.<sup>159</sup>

Such a recognition resolved in what one author has termed an "inversion of the relation between civil society and political society:"<sup>160</sup> the state can only be upended once civil society is altered to encompass the changed worldview that would establish the basis for the new state. Gramsci innovated on Marxist doctrine by asserting that the civil society was not the initial moment, providing the chaotic state of nature with its warring contradictions that the state needed to dominate, but rather, civil society provided the organization and regulation that served as the basis for the state. Civil society embraced the whole commercial, industrial and intellectual life of a given stage which led it to transcend the state.<sup>161</sup>

If the state could be transformed, indeed, had to be transformed, through a transformation of civil society, this transformation relied on the ideological practice of intellectuals. For Gramsci, an intellectual was anyone "whose function in society was primarily that of organizing, administering, directing, educating or leading others."<sup>162</sup> This broad definition allowed for the intellectual class to include those who created the worldview of the

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<sup>158</sup> Adamson, *Hegemony*, 149

<sup>159</sup> Adamson, *Hegemony*, 149

<sup>160</sup> Norberto Bobbio, "Gramsci and the Conception of Civil Society," in *Gramsci and Marxist Theory*, ed. Chantal Mouffe, (London: Routledge & Kegan Paul, Ltd., 1979), 24

<sup>161</sup> Bobbio, "Gramsci," 24

<sup>162</sup> Forgacs, *The Gramsci Reader*, 300

dominant class, as well as those who simply passed on a worldview, or translated received ideas to different audiences, in different contexts.

Gramsci noted the importance of the material and institutional nature of ideological practice, how a distinct worldview was transmitted through schools, churches, the media, even architecture.<sup>163</sup> This ensemble of institutions, when combined with the state, with its own multiplicity of political jurisdictions (state, federal, county, local and executive, legislative and judicial) “establishes a dynamic relation between state and society, sometimes competitive, sometimes collaborative, but each responding to the other, but neither able to dominate the other.”<sup>164</sup>

The result of this dynamic process is that this worldview is articulated at various levels of the given social formation and, rather than creating confusion or division, serves to permeate all aspects of civil and political life. Thus, we arrive at Gramsci’s most trenchant contribution to the political theory of power, the idea of hegemony, in which one class is able to articulate its interests so that all classes feel their interests are represented by the dominant ideology: hegemony is the moment of junction between the determinate objective conditions and the actual domination of a leading group, with this junction coming about in civil society.<sup>165</sup>

Gramsci defined two methods of gaining hegemony, with the first being when a social group articulates its own interests so as to neutralize other social groups, and the second being when a social group articulates its interests so as to promote the full development of all the

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<sup>163</sup> Mouffe, “Hegemony,” 187

<sup>164</sup> Fontana, “Political Space,” 348

<sup>165</sup> Bobbio, “Gramsci,” 41

sectors of society.<sup>166</sup> Gramsci, in his study of Italian political practice, realized the bourgeoisie had used the first method, by managing to create a group of allies to accord with the pursuit of its own interests.<sup>167</sup>

This first method, in turn, depended on a double process: the self-awareness of the bourgeoisie as an autonomous group and the simultaneous creation of a basis of consensus. The bourgeoisie used this consensus to create an “historical bloc,” one which could be educated to adopt the requirements of the bourgeoisie in order to reach the goals the bourgeoisie desired.<sup>168</sup>

What was unique about Gramsci’s articulation of hegemony and “historical bloc” was that he saw that the bourgeoisie gained a dominant position, “not by means of monopolization of the means of production [or] the means of violence or administration, but primarily through a more subtle process of winning the consent of all other subaltern classes to its ideology.” Gramsci saw that the “regulated society” applied not just to the manner in which ideas were generated, but also to their content.

The manner in which Gramsci understood how hegemony was achieved is critical, because he ascertained that the logic which created the hegemonic position also applied to the creation of an alternative hegemony. An historical bloc based on a hegemonic ideology could be disrupted by an alternative ideology, one which disarticulated the dominant ideology and rearticulated an ideology that promoted the interests of the subaltern or the proletariat.<sup>169</sup>

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<sup>166</sup> Mouffe, “Hegemony,” 183

<sup>167</sup> Mouffe, “Hegemony,” 196

<sup>168</sup> Adamson, *Hegemony*, 166

<sup>169</sup> Mouffe, “Hegemony,” 183

Gramsci's grasp of how hegemony was created was instrumental in allowing him to break away from the concept of ideology as "false consciousness" among the proletariat. Rather than suffering under a blind assumption of bourgeoisie interests,<sup>170</sup> Gramsci understood how the bourgeoisie was able to universalize its direction of society to incorporate the proletariat. "This [was] not due to 'bad faith'... [on the part of the proletariat] but to the uncritical 'borrowing of conceptions' which [bound a class] to another social group."<sup>171</sup>

Gramsci saw how the consciousness of subordinate groups was mediated by the dominant group, thus rendering Marxist theory ineffective.<sup>172</sup> This consciousness revealed itself through the material nature of ideology, that is, that the ideology adopted by the proletariat worked to create the conditions which contributed to their further subordination.<sup>173</sup> He also saw how this universalization of consciousness created a conformism that applied to everyone: "one is either mass-man or collective man."<sup>174</sup>

Nevertheless, he also saw that the reality of proletarian existence could break through this conformism. Consonant with his desire to bring reality to theory, he knew that the "common sense" of the bourgeoisie could be defeated by educating the proletariat about the "good sense" of their everyday existence.<sup>175</sup> Such a process relied, paradoxically, on the manner in which the "common sense" of a hegemonic worldview became universalized.

As noted earlier, civil society exists at various levels and these levels comprise a plurality of political spaces in which a hegemonic project operates. Although hegemony is a function of

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<sup>170</sup> Mouffe, "Hegemony," 199

<sup>171</sup> Merrington, "Theory and Practice," 160

<sup>172</sup> Merrington, "Theory and Practice," 160

<sup>173</sup> Mouffe, "Hegemony," 183

<sup>174</sup> Mouffe, "Hegemony," 186

<sup>175</sup> Mouffe, "Hegemony," 186

an “intellectual bloc,” this bloc is comprised of diverse groups, who apply different arguments in different historical, economic and cultural spaces. No one group is able to obtain supremacy over another, thus creating the open space in which politics operates.<sup>176</sup>

It is within this multiplicity of spaces that an alternative hegemony is able to take root. The starting point for any alternative political project is in its assessment of the relations of forces the project must overcome to achieve its goal. This assessment looks at the material and social conditions the subaltern faces, as historically constructed. Such an assessment allows an individual to understand his role as an historical subject and, as Machiavelli pointed out, once this recognition has been achieved, an individual begins to understand his role as an historical agent, able to create an alternative to the current political situation. “It is only when the objective conditions have been recognised [*sic*] that the active subject becomes free and is able to transform reality.”<sup>177</sup>

Such an assessment of the relations of forces, Gramsci noted, should distinguish between the “incurable contradictions” within society, that allow for a movement to challenge the entire hegemonic system, and the “incidental movements of conjecture” which are limited to adjustments within the power structure.<sup>178</sup> But even with this distinction, it is important to acknowledge how Gramsci makes the link between ideological awareness, recognition of one’s role as an historically constituted subject, and the development of political agency. For once he had laid out how political power is constituted, and how it could be challenged, Gramsci could then spell out how ideological awareness could be created to bring forth this challenge.

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<sup>176</sup> Fontana, “Political Space,” 346

<sup>177</sup> Merrington, “Theory and Practice,” 160; Bobbio, “Gramsci,” 34

<sup>178</sup> Merrington, “Theory and Practice,” 153

Gramsci made it clear (quoting Marx) that “it is in the sphere of ideology that men become conscious of [political] conflict and fight it out.”<sup>179</sup> For Gramsci, bourgeois domination was an ideological and cultural fact, and it was only through the creation of a new intellectual order, by undoing the universalization of bourgeois thought amongst the subaltern, could this fact be overcome.<sup>180</sup>

For Gramsci, hegemony was a higher synthesis of ideology which encompassed the linkages of awareness, historicity, and political agency detailed above, established as an ideological unity. This higher synthesis formed the “collective will” that became the protagonist for political action, with the ideological unity serving as the “cement” of this will.<sup>181</sup> Such a synthesis is analogous to Machiavelli’s new political order, in that the collective will depended on a new form of intellectual and political leadership, with the exercise of this leadership relying on the simultaneous development of the collective will - the subject/object dichotomy repeated.<sup>182</sup>

Looking at leadership in this manner led Gramsci to redefine the role of the intellectual, in fact, to redefine it in such a way as to be similar to Machiavelli’s notion of a “new prince.” Gramsci was insistent there was no independent class of intellectuals, that an intellectual was anyone who organized, administered, directed, educated or led others.<sup>183</sup> The problem, as he

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<sup>179</sup> Merrington, “Theory and Practice,” 154

<sup>180</sup> Leonardo Salamini, “Gramsci and Marxist Sociology of Knowledge: An Analysis of Hegemony–Ideology–Knowledge.” *The Sociological Quarterly*, 15, no. 3, June 1974: 370. DOI.org (Crossref), doi:10.1111/j.1533-8525.1974.tb00900.x

<sup>181</sup> Mouffe, “Hegemony,” 184

<sup>182</sup> Mouffe, “Hegemony,” 184

<sup>183</sup> Forgacs, *The Gramsci Reader*, 300

saw it, was in creating intellectuals who could critique the current political system and not simply parrot existing hegemonic discourse.

Related to this problem was one in which this new intellectual order, having the ability to critique the political order, did so in a manner understandable to the proletariat, while also rendering it acceptable to potential allies.<sup>184</sup> Similar to the “new prince,” the new intellectual had to engage in a discourse with the proletariat, while at the same time developing and advancing this discourse, to both gain power and create the new political order that would embody the new critique.

The creation of this new intellectual order was the first stage in the hegemonic project Gramsci articulated, with the following three stages being: “hegemony as a political project; the realization of this hegemonic project in the concrete institutions and organizational forms of a 'hegemonic apparatus'; and fourth, ultimately and decisively, the social and political hegemony of the workers' movement.”<sup>185</sup> And for hegemony to succeed as a political project, it was necessary to do more than create an alternative worldview; one needed to break down the principles of the common worldview of the dominant group.

This common worldview does not exist in a simplistic fashion, but is instead comprised of a complex ensemble of elements “whose contents can never be determined in advance since it depends on a whole series of historical and national factors and also on the relations of forces existing at a particular moment.”<sup>186</sup> This ensemble of elements Gramsci assembled under the

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<sup>184</sup> Forgacs, *The Gramsci Reader*, 300; Merrington, “Theory and Practice,” 164

<sup>185</sup> Peter D. Thomas, “Hegemony, Passive Revolution and the Modern Prince,” *Thesis Eleven* 117 no. 1 (2013): 24

<sup>186</sup> Mouffe, “Hegemony,” 193

term of “common sense,” and it is “common sense,” that Adamson notes, which “represents the place from which any genuine [proletarian] education must depart.”<sup>187</sup>

“Common sense,” as with other ideologies, has its roots in “true” elements of societal and cultural practice, but its relation to the truth is subordinate to its function “as the cultural cement smoothing relations between state and civil society.”<sup>188</sup> Intrinsic to the definition of “common sense” is its contrast with “good sense,” that is, to thought that satisfies the real needs and interests of the masses of ordinary people who hold it.<sup>189</sup> Nevertheless, because “common sense” is comprised of many elements, it is an ideology which maintains a stratified character, and is thus able to incorporate any philosophical challenges to it as new sedimentations within a shifting corpus, rather than be exposed and overcome by these challenges – “the complexity of common sense is matched only by its seeming intractability.”<sup>190</sup>

This battle of “good sense” against “common sense” highlights the asymmetric power struggle between the subaltern and the dominant society. Fontana applies a geographical analogy to this struggle, with the “North” representing coherence and hegemonic supremacy over the “South,” which represents fragmentation and incoherence. Whereas the “common sense” of the North is easily accessible, the divisions within the worldview of the South allow for it to be easily dominated.<sup>191</sup> Thus, it becomes incumbent for the subaltern to subjectively realize the objective conditions which serve as the basis of power of the “North.” The attack on “common sense” grows out of the recognition and articulation of those elements of the

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<sup>187</sup> Adamson, *Hegemony*, 149

<sup>188</sup> Adamson, *Hegemony*, 151

<sup>189</sup> Adamson, *Hegemony*, 149

<sup>190</sup> Adamson, *Hegemony*, 150

<sup>191</sup> Fontana, “Political Space,” 351

dominant ideology that cannot stand the scrutiny of “good sense” and which serve as the basis for a unified ideology of the subaltern.<sup>192</sup>

Again, one can see how the subject/object dichotomy, initially posited by Machiavelli, plays out in the subaltern establishing a new political order. This new political order depends on the subaltern forming a “collective will,” which relies on the development of “good sense” to combat “common sense,” which turns on a subjective recognition of the factors occluded by “common sense.” This recognition develops the subaltern’s understanding of his historical condition, which serves to create the political agency needed to create a “collective will.” Not a circular development, Gramsci’s formulation should be seen as one of overlapping elements, each reinforcing another, with a worked-out ideology, that is constantly being modified and adjusted, serving as its core. The new political order requires the former subaltern to grow ideologically, and then to respond to this new growth, not in a linear fashion, but in a dialectical one.

Such a viewpoint reveals again why Gramsci was critical of Italian Marxist doctrine after the rise of fascism. The appeal of “direct action” to the masses, assumed the existence of revolutionary agency in society without any political organization. Alternatively, the divide between the Socialist party, the intellectuals and the masses, pointed out a failure of political leadership to establish the revolutionary hegemony needed to overtake the dominant bloc.<sup>193</sup> Both criticisms, from two different standpoints, reflected the same problem: “who, or what

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<sup>192</sup> Salamini, “Gramsci,” 356

<sup>193</sup> Merrington, “Theory and Practice,” 157

entity, is the agent that, through its practice and active engagement in the world... resolves the contradiction between thought and action, ethics and politics, 'culture' and people."<sup>194</sup>

Gramsci's concept of hegemony involved the creation and development of an actor who, working within the existing sociopolitical order, possesses the ability to transcend that order, and does transcend it, by embodying the new order, and making it concrete in the world.<sup>195</sup> And for Gramsci, the only way in which this new actor could develop was for Marxism to engage with what people actually thought, to bring practice to theory, to bring critical awareness to "common sense."<sup>196</sup> Gramsci insisted that elements of "good sense" were already present within people's "common sense," that this "good sense" could leverage the consciousness of people who were already aware of the truth of their existence.<sup>197</sup>

The problem, as Gramsci saw it, was to develop the institutions that would allow the worker to develop this autonomous awareness of his existence, to develop his agency. He sought to address the question of how does one create a culture of critical awareness, not just within individuals, or within a cadre of intellectuals, but within the mass of people?<sup>198</sup> Such a movement, he realized, could only be accomplished if the intellectual leadership of the subaltern served a directing function before the actual revolutionary moment. This group "must already become 'directing' before the conquest of power (this is itself one of the principal conditions of the conquest of power)," exercising de facto leadership in order to reach a

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<sup>194</sup> Fontana, *Hegemony*, 152

<sup>195</sup> Fontana, *Hegemony*, 5

<sup>196</sup> Forgacs, *The Gramsci Reader*, 323

<sup>197</sup> Forgacs, *The Gramsci Reader*, 323

<sup>198</sup> Forgacs, *The Gramsci Reader*, 328

hegemonic position. This leadership would conduct itself in a dialectical fashion, leading the subaltern, but also being directed by it.<sup>199</sup>

Such a process Gramsci articulated, in a fundamentally new theory of revolution, as the “war of position.”<sup>200</sup> This concept envisioned an extended campaign for ideological hegemonic influence,<sup>201</sup> with (extending the military analogy) “a series of moral and intellectual battles whose goal is the construction of a given social and political reality.”<sup>202</sup> In the revolutionary struggle, the “war of position” is the decisive moment.<sup>203</sup>

But as one author has pointed, the “war of position,” while being decisive, can be divided into two stages, with the intellectual battle being only the first stage, a “passive revolution.”<sup>204</sup> It would be still be necessary to take this “long prepared force... into the field when it is judged that a situation is favourable [*sic*].”<sup>205</sup> The mass of people needed to be developed and rendered “homogenous, compact and self-aware,” and then placed into action when a subjective analysis of the relations of force deemed it propitious.<sup>206</sup>

This move into collective organized action allowed the subaltern to identify and confront specific targets. Through such action, the various parts of his world become concrete and he would come to an understanding of his own position in relation to the rest of the world, that is, he would gain a specific class consciousness, based on ideological unity.<sup>207</sup>

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<sup>199</sup> Merrington, “Theory and Practice,” 159

<sup>200</sup> Adamson, *Hegemony*, 225

<sup>201</sup> Adamson, *Hegemony*, 225

<sup>202</sup> Fontana, “Political Space,” 350

<sup>203</sup> Adamson, *Hegemony*, 226

<sup>204</sup> Thomas, “Hegemony,” 25

<sup>205</sup> Forgacs, *The Gramsci Reader*, 209

<sup>206</sup> Forgacs, *The Gramsci Reader*, 209

<sup>207</sup> Adamson, *Hegemony*, 152

Gramsci described this moment of understanding as a moment of catharsis “which alleviates primordially understood doubts, fears, and contradictions” of the subaltern.<sup>208</sup> Such a moment is important in Gramsci’s revolutionary theory, because in it he definitively moves away from the Marxist notion of theory being actualized in the world through a deterministic process, and instead puts forward a theory that relies on conscious action, in which theory and practice are actualized in a determined historical context.<sup>209</sup>

Thus, Gramsci’s theory can be seen as a reconceptualization of Marxism in that the realization by the subaltern of his historical economic condition is only a phase that needs to evolve and be elaborated on in a “philosophy of praxis” that actualizes this realization.<sup>210</sup> His theory broadens the understanding of Marx by subordinating the relations of production to man; history “becomes a process of structuralization of human knowledge based on the organized will of man.”<sup>211</sup>

His theory can also be seen as echoing Machiavelli’s insertion of the mass into history, that once man is placed between the problem and the solution, he will create a solution that transcends the facts from which the problem arose. This solution manifests itself as a moral and philosophical act that develops an “ought to be” rooted in a material and concrete “is.”<sup>212</sup> And this solution can only be reached through a dialectical exchange between the leaders of a political movement and those who participate in it.<sup>213</sup>

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<sup>208</sup> Adamson, *Hegemony*, 152

<sup>209</sup> Merrington, “Theory and Practice,” 163

<sup>210</sup> Salamini, “Gramsci,” 370

<sup>211</sup> Salamini, “Gramsci,” 373

<sup>212</sup> Fontana, *Hegemony*, 24

<sup>213</sup> Thomas, “Hegemony,” . 27

Gramsci's belief in a dialectical exchange was not simply a tactic to facilitate revolutionary change; rather, he felt it imperative that the intellectual and moral direction of a revolutionary movement should come from an active exchange of elements between the intellectual leadership and the members of the movement. This was the only way to create a unified ideological system that would break down hegemonic thought while also articulating the interests of the subaltern;<sup>214</sup> this was the only way for a revolutionary movement to unearth the source of the problems it set out to discover.<sup>215</sup>

Such a process would evolve dialectically, by breaking down the basic elements of the current system, and then rearticulating the changed elements into a new system that would express the new situation.<sup>216</sup> Gramsci criticized Italian socialists by not adopting such a procedural model, by conceiving of politics "as something nourished on air, which develops in itself and by itself."<sup>217</sup> For Gramsci, any socialist party had to be based on an organic relationship with the class it represented, through "spontaneity and conscious direction."<sup>218</sup>

Consequently, for Gramsci, the political thought of the party, or any intellectual leadership, is the thought of the popular masses; it is a knowledge that acquires its character by addressing itself to the masses and, concurrently, the masses acquire their moral and intellectual understanding as they become the embodiment of this knowledge.<sup>219</sup> Once again, we see Machiavelli's influence on Gramsci, with the party becoming the "new prince" and the

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<sup>214</sup> Mouffe, "Hegemony," 193

<sup>215</sup> Forgacs, *The Gramsci Reader*, 331

<sup>216</sup> Forgacs, *The Gramsci Reader*, 192

<sup>217</sup> Merrington, "Theory and Practice," 167

<sup>218</sup> Merrington, "Theory and Practice," 167

<sup>219</sup> Fontana, *Hegemony*, 25, 140

masses becoming part of a new political ethos which they helped to create, with this ethos based on their needs.

This new ethos would still need conscious direction in order to become actual; the subaltern has a generalized propensity toward spontaneous, reactive and unpredictable actions.<sup>220</sup> There is still needed a wedding of knowledge to power that would analyze the subjective conditions for revolutionary action. Gramsci offered that socio-political circumstances do not themselves produce political change, they only set the conditions in which such change becomes possible. Some of those conditions were:

“the relations of force obtaining at the political level, the degree of political organization and combativity of the opposing forces, the strength of the political alliances which they manage to bind together and their level of political consciousness, [and] preparation of the struggle on the ideological terrain.”<sup>221</sup>

Fontana extends his geographical analogy of the relations of force, adding to the imbalances present in the North/South dyad, an East/West dichotomy, with the East representing political society as the state of coercion, and the West representing civil society as the state of consent, with each existing in a constant and reciprocal tension with one another, with both acquiring meaning only in relation to each other.<sup>222</sup> Thus, the creation of any hegemonic project is not static but a continuous process of creation, unevenly developed and expressed.<sup>223</sup>

Such an insight is important because it points out that even in a “complete revolution - one that brings to power a coherent class formation united behind a single economic, political,

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<sup>220</sup> Fontana, “Political Space,” 351

<sup>221</sup> Forgacs, *The Gramsci Reader*, 190

<sup>222</sup> Fontana, “Political Space,” 352

<sup>223</sup> Adamson, *Hegemony*, 152

and cultural conception of the world,”<sup>224</sup> there is still an ongoing process of change, exchange and reformulation. What is most important in the revolutionary process envisioned by Gramsci is that the mass of people have become the hegemonic force that exercises leadership. What is key is that the masses have reached “the self-consciousness of being in an active and purposive engagement with society and with history, an engagement that is both the product of such consciousness and the ground that gives rise to it.”<sup>225</sup> The mass of people have come to constitute the new political ethos.

In summary, Gramsci’s thinking provides sufficient context in which to understand the political dimensions of the reform campaigns. His theory outlines the nature of power, how the state is a site of both coercion and consent, and how it consists of both the formal state and civil society. He provides an understanding of how the state is transformed through civil society, of how intellectuals develop a worldview through civil society that then forms a hegemonic bloc by which one class is able to dominate all others.

Gramsci notes how this hegemony is formed by consent, how the subaltern adopts the dominant worldview, not through false consciousness, but through conformism with other sectors of society, through the adoption of “common sense.” He then points out how this hegemony can be challenged, by developing political agency in the subaltern, by restoring the dialectic between what society ought to be for the subaltern and what it is. This dialectic is rooted in the reality of the subaltern’s existence, and in recognizing this reality, the subaltern begins to understand the nature of power and of his historical situation. This realization forms

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<sup>224</sup> Adamson, *Hegemony*, 171

<sup>225</sup> Fontana, *Hegemony*, 25, 140

the political agency necessary to create the “what is” from the “what ought to be;” this realization helps the subaltern to develop a criticism of culture to engage with the world.

Gramsci also spelled out the process by which this ideological awareness takes place. It is necessary for an intellectual leadership to promote a dialectical discourse with the subaltern, a discourse in which the leadership is learning as much as they are teaching about objective conditions. This discourse is able to break down the “common sense” of the dominant class and replace it with the “good sense” of those elements that improve the subaltern’s existence. This discourse eventually forms an alternative hegemony, an ideological bloc, that engages in a “war of position.” This “war of position” is the necessary step to facilitate the seizure of power; it is the conquering of the dominant hegemony of civil society, without which the ultimate ascent to power is not possible.

The intellectual leadership directs this new hegemony toward specific targets to be overthrown, with this movement into a phase of action creating a “cathartic” moment for the subaltern, in which he realizes the extent of his power and claims a full sense of political agency. This moment of catharsis is then expanded upon, under conscious direction of the leadership, into a continuous process of creating a new society, but this direction is no longer driven by an intellectual elite, but is the people expressing themselves politically.

Given this broad understanding of the way in power is constituted, alternatives to hegemony are created, and the role of ideology in both, it remains to be seen how the specifics of the reform campaigns fit within this understanding.

## V. Optimism of the Intellect, Pessimism of the Will

As I stated earlier, I regard both of the police reform campaigns as failures and thus, it becomes necessary to explain why they failed. Many reasons can be given for the campaigns lack of success, but the primary reason, in my opinion, is they lacked an accurate conception of themselves and of the mass of people for whom they claimed to be speaking, and of how both related to political power, with this misconception creating an inaccurate assessment of their opponents and of how power is constituted.

There could potentially be any number of approaches to assessing why these failures mattered in not achieving the campaigns' goals, but I have adopted a Gramscian analytic, rooted in Machiavellian political theory, to engage with the subject matter. Gramsci's discussions of how power is constructed, how political agency is created, and the role of ideology in both, provides not only the proper context to understand the campaigns' tactics and strategies, I feel, but allows one to understand why their failure to address each of these aspects of political theory resulted in failed campaigns.

Ultimately, Gramsci's thought is an appropriate basis for analyzing these campaigns because his thinking is based in historicism, that is, in an assessment of human activity becoming conscious of itself, and of the manner in which the organized will of humans structures knowledge. This historicism is not necessarily a Marxist approach, but:

“a critique of all ideologies, which relates ideas, beliefs, and values to their respective social frameworks; a theory... which seeks to alter or transform existing social structures by focusing on their limitations and revealing new

possibilities; [and] an ideological tool allowing men to actualize such new possibilities through the organization and politicization of subaltern classes.”<sup>226</sup>

Gramsci’s historicism requires an objective understanding of the historical conditions creating your current circumstance and the belief that you can change them; neither campaign sought to develop either this understanding or such belief. Thus, both campaigns were handicapped from the start in developing the proper approach to reach their goals.

Specifically, I am asserting five reasons why the campaigns were not successful, all stemming from their initial misconception. First, they never understood their task as obtaining power for the mass of citizens who lacked it in regard to the police. Second, this lack of understanding led to a failure to develop the mass of people who could develop this new relationship to the police, who could embody a different political ethos, and put it into practice in the concrete reality of bail reform and police discipline. Third, this failure was mainly due to the leaders of the campaigns not engaging in a dialectical relationship with the people for whom they claimed to be speaking, to incorporate the reality of people’s situation into the theory of the campaigns’ talking points and strategy. This lack of engagement led to the fourth reason, that the reform campaigns never created an adequate ideological basis for their arguments, were never able to make use of the mass of people’s “good sense” to combat the hegemony of “common sense.” Fifth, the campaigns inaccurately assessed the state as being the legislature, without accommodating the role of police departments, district attorneys in dominating civil society discourse and the discourse around their two campaigns. Finally, I

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<sup>226</sup> Salamini, “Gramsci,” 372

conclude that all of these failures, instead of advancing the cause of police reform, only served to hinder it.

First, both campaigns viewed their goal as making the system of policing fairer – bail reform by not jailing arrested persons before trial, repeal of Section 50-a by informing victims of police misconduct of any officer discipline – but neither goal was understood as altering a fundamental relationship between citizens and the police.

In fact, bail reform sought to alter the status of arrested persons as criminals from whom society needed to be protected, to citizens who maintained all of their rights and privileges until a final determination of their criminal case. Such an alteration interpolated a certain social contract between the role of the police as executors of the power of arrest and their role as determinate assessors of right and wrong behavior. The repeal of Section 50-a, on the other hand, sought to alter police discipline from something that solely concerned the police department to a matter that was of public concern. Taken to its logical conclusion, repeal of Section 50-a sought to enact the fundamental principle that the police are ultimately accountable to the people they are sworn to serve, with such an enactment upturning the current ethos and culture of policing.

Viewing the reform campaigns goals in this, more honest and accurate, manner, makes it clear that the people for whom the campaigns claimed to speak were not simple reformers, but people who lacked power and who were seeking to gain greater power and control over their lives. Because the campaigns did not have this clear-eyed view of the goals of their campaigns, they never advanced to the proper political understanding of what was necessary to

reach their goals; they never sought “to alter or transform [the] existing social structures by focusing on their limitations and revealing new possibilities.”

Because the campaigns never viewed their mission as obtaining power for the mass of people, this led to a second failure, as identified by Gramscian theory. Both campaigns did not participate in a process of creating citizens who could develop and utilize this power, who would embody this altered relationship with the police; the campaigns never engaged in the subject/object dichotomy that Machiavelli identified as being necessary to create a new political ethos. Such a process necessitated first making people aware of the conditions of their historical situation, that is, of how the system of bail curtailed their rights as citizens and how the system of discipline transparency impeded any police accountability to citizens. The second step would have been to develop the “what ought to be” out of the current “what is,” to utilize the knowledge of the current historical situation to create an alternative that would satisfy people’s needs and that would meet this new understanding of their relation to the police. Finally, this awareness of “what ought to be” would work to create the citizens who could embody this new relationship, who are empowered by the movement from the ideal “what ought to be” to the change in the concrete reality of their daily relationship with the police.

For instance, the bail reform campaign should have required that the program, created to ensure that persons released before trial would appear for their scheduled appearance, was in place by the effective date of the bail reform legislation, January 1, 2020.<sup>227</sup> Such a requirement could have helped the persons released under bail reform who needed assistance.

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<sup>227</sup> Reuven Blau, Christine Chung, “Key Bail Reform Support Program Is Still Months Away,” *The City*, January 7, 2020 <https://www.thecity.nyc/2020/1/7/21210611/key-bail-reform-support-program-is-still-months-away>

More importantly, however, the data on persons released under bail reform could have been used to convince, not the opponents of bail reform, but the persons released under bail reform, of their worth as citizens. The data could have been used as real-time indicia of the merits of the bail reform arguments: numbers of appearances kept, jobs not lost, families kept intact, all could have been used to create a sense of community of persons released, citizens disproving bail reform's opponents, rather than remaining a collection of disaggregated individuals.

Such a strategic development, however, would have supposed a dialectical relationship between the organizations comprising the campaigns and the people for whom they claimed to be speaking, a relationship that did not exist, thus providing a third reason for failure. The leaders of the reform campaigns acted as an intellectual elite, deciding on the tactics, goals and strategies for the campaigns. Gramsci envisioned an intellectual elite, and Machiavelli a "new prince," as one which would develop a discourse with the people that would form the new political ethos, make sure this ethos reflected the reality of the mass of the people, while developing the political capabilities of the people who would embody this new ethos. This elite, in turn, would be transformed by this dialectical relationship, so that it would be the people's representatives, in as much as it reflected the ethos of the mass of people created by this dialectical relationship.

For example, after the passage of the initial bail reform legislation, the reform campaign had nine months to develop a relationship with the persons who would benefit from the reform, as well as with citizens in general. Such a dialectical relationship not only could have created a mass of people who understood and embraced reform, but also could have informed the leaders of the campaigns of the real issues involved in reform. Instead, after allowing the

opponents of bail reform to gain the initiative after bail reform was passed, it engaged in a \$2 million media campaign to counteract the disinformation of their opponents, a campaign that turned out to be wholly unsuccessful.

In addition, a discussion with victims of police misconduct would have revealed that, because the NYPD has complete control over its disciplinary system, it is able to characterize egregious crimes as “minor rules violations,” which, under the repeal legislation, does not have to be disclosed. As an example, published reports noted that a detective, who was accused of sexually assaulting a confidential informant and extorting sexual favors from her, was punished only with the loss of 40 vacation days, raising the question of why such a small penalty was appropriate for such heinous accusations? The answer was because the detective was charged only with the “minor rules violations” of “violating confidential informant procedures [and] failing to document investigative actions.”<sup>228</sup> Thus, neither the alleged victim nor the public is permitted to be informed of the detective’s penalty under the repeal Section 50-a bill passed by the legislature (although the outcome was eventually leaked to the press). The reform campaign could have avoided such an outcome if it had truly understood and been engaged with the reality of persons who have suffered from police misconduct.

Instead, both campaigns made use of individual instances of terrible miscarriages of justice to make their points, rather than engaging with individuals as people who mattered. For example, the repeal Section 50-a campaign relied on the secrecy surrounding the Eric Garner discipline case to make its case. Meanwhile, the bail reform campaign relied on the example of Kalief Browder, who, because he could not afford \$3,000 bail, spent three years in jail (with a

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<sup>228</sup> Rayman, “NYPD detective”

year and a half of that time spent in solitary confinement), with the criminal charges eventually being dismissed without a trial.<sup>229</sup> Both examples were deployed as props, to make a point, instead as two of the many individuals with whom the campaign needed to engage.

Both campaigns failed to leverage the consciousness of the mass of people to develop their “good sense” in contrast to the “common sense” that bail reform and section 50-a repeal would lead to more crime and less respect for the police. This reflected the campaigns’ fourth failure, according to Gramsci, a failure to develop an ideological basis for their campaigns. For instance, the bail reform campaign failed to develop the “good sense” of people’s awareness that almost all persons arrested for a crime do not commit another crime after being released without bail,<sup>230</sup> to contrast with the “common sense” fear of crime.

The campaign did not appreciate the intractability of “common sense” and never accounted for the manner in which popular beliefs concerning crime have material force, and how these beliefs could turn against them. The campaign refused to acknowledge Gramsci’s point of how ideology is formed and adopted through a universalization of consciousness, even though poll results showed that as the arguments around bail reform persisted, the idea became less and less attractive in the public’s mind.<sup>231</sup>

The campaigns needed to create a higher synthesis of ideology, based on the recognition of “good sense” to combat the hegemony of “common sense.” Thus, for example,

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<sup>229</sup> Feuerherd, “Family” Browder eventually committed suicide after release, which his family blamed on his lengthy confinement. His family sued New York City and settled the lawsuit for \$3.3 million.

<sup>230</sup> Editorial, “Fresh Facts on Crime,” *Daily News (New York)*, February 5, 2021 <https://www.nydailynews.com/opinion/ny-edit-rearrest-report-nypd-policing-bail-reform-crime-20210205-x6x7plsrjajthbm2s7cuvyvyty-story.html> The percentage of persons who commit other offenses while released before trial is reported to be between 2 and 3%.

<sup>231</sup> Associated Press, “Siena Poll”

the bail reform campaign should have translated the reality of people's experiences with the bail system into a broader understanding of people's role within the criminal justice system and how it impinges on their lives. Similarly, the repeal Section 50-a campaign should have expanded on the realization that police are accountable to the citizenry to a broader awareness of the role the police and policing play in shaping our lives. It is this ideological basis that provides the "cathartic" moment, in which success in the specific campaign for bail reform or discipline transparency, combined with an ideological understanding of the historical situation, creates the "collective will" by which the subaltern, those without power, begins to understand its true capabilities for revolutionary change.

It is this ideological understanding that begins the process of a "war of position," by which an ideological "historical bloc" is formed. The reform campaigns mistakenly took the "Blue Wave" election of 2018 and the George Floyd protests as proof of an ideological sea change needed to secure their reforms, without noticing that both moments were ideologically contentless. Both reform campaigns never bothered to develop the core of supporters who embodied a specific political ethos, that could have used this ethos to apply *virtu* to control *fortuna*, to shape events following the 2018 election and the Floyd protests, respectively.

All of these shortcomings, perhaps, pale in regard to the campaigns' final failure, that of not accommodating the manner in which state and civil society are intertwined. The campaigns viewed the state as extending only so far as the legislature. They sought to influence the legislature only, failing to recognize the manner in which police departments, police unions and district attorneys wield power, and how all of these actors were able to dominate the discourse in civil society of both campaigns and how this discourse might affect the legislature. "We might

be seeing the limitations of a legislative approach, especially when it's coming up against this coordination between police, police unions, prosecutors, and conservative politics,"<sup>232</sup> noted one member of the reform campaign, in something of a post-mortem to the campaign after the "reform to the bail reform" had passed the legislature.

The repeal of Section 50-a campaign, for example, did not account for the way in which the dominant discourse of civil society is able to incorporate new philosophical challenges "as new sedimentations within a shifting corpus." The characterization of disciplinary transparency as an issue of public trust allowed the NYPD to create the perception it was responding to the need for transparency, while keeping discipline completely in the dark.

Similarly, the bail reform campaign didn't address the manner in which force and consent are intertwined in the creation of hegemonic discourse. The campaign opponents, in the form of police departments and district attorneys, argued that only they truly knew how the criminal justice system worked.<sup>233</sup> Thus, the opponents of bail reform could lay claim to a superior knowledge as to the debate's subject matter because of their existent authority to decide such matters in reality, not as a debating point. That is to say, they had the force of the state behind their discourse. The bail reform campaign again was unwilling to engage with the degree of force inherent in their opponents' arguments, focusing all of their energy on the legislative strategy.

Some would argue that, despite the failures that I have enumerated, the cause of police reform, nevertheless, has advanced; I would disagree, for three reasons. First, three times in

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<sup>232</sup> Pinto, "The Unraveling"

<sup>233</sup> Rayman, "Our Job"

the last eight years, the CPR coalition, for example, has conducted reform campaigns that they claim have advanced the cause police accountability. And yet, after each campaign, as with the repeal Section 50-a campaign, the coalition has asserted the NYPD has thwarted its attempts to make the department more accountable.

Just last month, for instance, it was revealed how the NYPD's Inspector General, an office created as a result of a CPR campaign, had been rendered ineffective because of lack of cooperation from the NYPD.<sup>234</sup> Such an outcome is to be expected, I would say, because this particular "reform" did nothing to alter the power dynamic between the police and everyone else. Yes, it's true, that police have the authority to enforce the law and to control order, but it is only the authority that we give to them, and we always maintain the power to establish the parameters of that authority. None of the reforms posited by CPR addressed this underlying issue, and until this issue is confronted, we will continue to engage in shadow-plays with the NYPD, in which they pretend to sublimate themselves to our authority in the foreground, with the truth of the situation being expressed in the background.

Second, no real change has come about in the objective conditions in which any police reform could possibly occur. Last August, after the George Floyd protests, a Gallup poll showed, for the first time, that less than half of all Americans had confidence in the police, with white Americans polling at 56% and black Americans at 19%.<sup>235</sup> This past March, however, the confidence level of whites in the police had risen by 12 percentage points; amongst blacks it

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<sup>234</sup> Topher Sanders, "Inspecting the NYPD "Puzzle Palace," *ProPublica*, April 15, 2021  
<https://www.propublica.org/article/inspecting-the-nypd-puzzle-palace>

<sup>235</sup> Aimee Ortiz, "Confidence in Police Is at Record Low, Gallup Survey Finds," *New York Times*, August 12, 2020  
<https://www.nytimes.com/2020/08/12/us/gallup-poll-police.html>

had arisen by 14 points.<sup>236</sup> More pertinently, perhaps, a national sample of white Americans showed that, rather than acknowledge or deal with racism in a systemic or social manner, most preferred to deal with racism in limited and private ways, such as listening to people of color.<sup>237</sup> All of which is to say that I don't feel as if the events of the last year revealed the "incurable contradictions" within society, but rather that they represented the "incidental movements of conjecture" which are limited to reforms that don't disturb the power structure.

Finally, there is no reason to think the organizations involved in the reform campaigns have learned any lessons or reassessed its tactics: CPR has conducted three campaigns, NYUJ two (counting bail reform and the "reform to the reform" as two) and they have conducted each one in the same manner: establishing talking points, media strategies, lobbying legislators, using individuals as props for their pre-determined strategies, that fail to take into account the facts on the ground, the dynamic relation between the problem, the solution, the actor and the subject.

In my opinion, such obtuseness is due to the *raison d'être* of the non-governmental organizations that dominate New York's police reform efforts. CPR was formed with the intention of: "substantially decreasing bias-based encounters with the police; increasing the ability of the most affected communities to hold the police accountable and prevent abusive policing; and building the political will among the public and policymakers to advance a more just and humane policing paradigm in New York City."<sup>238</sup> NYUJ was started with the intent "to

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<sup>236</sup> Charles M. Blow, "The Allies' Betrayal of George Floyd," *New York Times*, March 8, 2021 <https://www.nytimes.com/2021/03/07/opinion/george-floyd-protests.html>

<sup>237</sup> Audra Burch and Amy Harmon, "A Year of Protest and Reform. What Now for Racial Justice?" *New York Times*, April 21, 2021 <https://www.nytimes.com/2021/04/20/us/george-floyd-protests-police-reform.html>

<sup>238</sup> Tides Foundation, *Funds for Fair and Just Policing*

advance reforms to fix New York City's broken criminal justice system that unfairly targets lower income communities and communities of color."<sup>239</sup>

All of these goals sound admirable, if open-ended. They establish the basis for the campaigns' operations: rallies, press releases, media campaigns, lobbying, legislation are all activities that can be quantified, measured, documented, accounted for, when seeking funds. None of the goals depend on proof they are transforming actual people's lives, the ones' undergoing the "unfair targeting" and the "inhumane policing." These reform campaigns generate results that can be held up as achievements, but that don't make a difference in the reality in which police officers interact with citizens.

What is needed is a long-range process that builds on concrete successes that change the manner in which the police operate, rooted in the principle that they are accountable to us, the people whom they are sworn to serve. For instance, the repeal Section 50-a campaign never should have been allowed to go forward without first gaining a detailed understanding of how the NYPD's system of discipline functioned. The ultimate goal of the campaign should not have been to make police discipline transparent: that should have been the short-range goal, with the long-range being to make officers accountable to the people, to alter the power dynamic between the people and the NYPD.

This short-range goal could only be understood in the context of the final goal, thus, avoiding the circumstance in which the NYPD was allowed to assert what transparency looked like. The achievement of transparency would then lead to the next step: once the complete scope of discipline became clear to the public, we could begin to shape the discipline system in

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<sup>239</sup> New Yorkers United for Justice <https://nyuj.org/> (accessed 7 May 2021)

a manner that reflected the needs of the people, as opposed to the administrative and bureaucratic whims of the NYPD. Consequently, we would no longer have the situation in which an officer who failed to coordinate his precinct's response to an officer shooting<sup>240</sup> is disciplined with the same amount of punishment as an officer who sexually assaulted an underage prostitute.<sup>241</sup>

Thus, we could begin the process by which the citizenry begins to assert its authority over the NYPD; we would reach that "cathartic" moment in which ideology is implanted in a concrete reality, thus creating the "collective will" by which the people begin to understand their ability to control history, instead of always being subject to it. Unfortunately, we are stuck with a process that privileges pre-determined tactics, strategies and goals and that doesn't recognize the role people can play, must play, in transforming their lives. It is a process that reverses Gramsci's dictum of "pessimism of the intellect, optimism of the will," to "optimism of the intellect, pessimism of the will."

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<sup>240</sup> Rocco Parascandola and Thomas Tracy, "AWOL Cop Slap," *Daily News (New York)*, October 14, 2017 <https://www.pressreader.com/usa/new-york-daily-news/20171014/281719794810417>

<sup>241</sup> Al Baker and Benjamin Mueller, "City Police Officer Paid 15-Year-Old for Sex and Taped It, Prosecutors Say," *New York Times*, October 10, 2017 <https://www.nytimes.com/2017/10/10/nyregion/raul-olmeda-police-sex-charges.html>

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