

SOLIDARITY'S WEDGE: HOW AMERICA'S FEDERALIZED LABOR LAW DIVIDES  
AND DIMINISHES ORGANIZED LABOR IN THE UNITED STATES

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# SOLIDARITY'S WEDGE: HOW AMERICA'S FEDERALIZED LABOR LAW DIVIDES AND DIMINISHES ORGANIZED LABOR IN THE UNITED STATES

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Organized labor is one of the largest voluntary organizations in the United States, representing over 14 million members in a sophisticated network of local, state and national unions interconnected through labor councils, state organizations, and national federations that mount significant electoral and lobbying campaigns. Despite these apparent strengths, organized labor has suffered numerous setbacks including the continued failure to pass national labor law reform and the retrenchment of public sector collective bargaining rights in Wisconsin, which suggest they are less politically effective than we would expect given their membership and resources. Why does organized labor punch below its weight in American politics?

This project emphasizes the important role of institutions—namely divided labor law and federalism—in shaping the composition, size, strength and effectiveness of organized labor in the American politics. Exclusion of public sector employees from the foundation of private sector labor law, the Wagner Act, or their own comparable national level law, firmly situated private sector law at the national level while relegating public sector employees' efforts to gain collective bargaining rights to the state and local level. The national vs. state and local level as sites of demand making are not equivalent. Unable to ride on the coattails of private sector union growth at the national level, public sector employees' had to fight for legal recognition in every state and locality. Public sector employees' efforts progressed slowly, were limited to union friendly states, and the collective bargaining rights they did obtain were highly unequal and vulnerable to retrenchment.

As a consequence of divided labor law, public and private sector unions peaked at different times, preventing a large public/private union movement. Further, divided labor law has contributed to public sector union members' continued legal vulnerability, the current geographic concentration of labor, and lasting divisions within organized labor that affect union members and leaders' political behavior today. Divided labor law thus fundamentally altered the development of organized labor over the last half-century in the United States, shedding light on the labor movement's weak political punch despite the strength and depth of its membership and resources. This work illustrates the powerful role institutions can have in shaping the fortunes of a seemingly "private" organization and, further, sheds light on the current battles over public sector collective bargaining rights in states like Wisconsin.

## **BIOGRAPHICAL SKETCH**

Alexis N. Walker holds a B.A. from Willamette University, an M.A. and, forthcoming, a Ph.D. from Cornell University. Her research interests include American politics, public policy, American political development, political participation and organized labor. Walker's current research seeks to understand why public sector union density in the United States rose at the very time private sector union density began declining and further why organized labor's political activities today are relatively ineffectual given the labor movement's unique position in American politics. More broadly, she is interested in issues of inequality in political voice and is passionate about studying topics of modern-day relevance that can guide policymakers in strengthening our democracy.

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I received assistance from a variety of organizations that helped fund and facilitate this research. The Annenberg Public Policy Center granted me access to restricted union variables on the National Annenberg Election Survey that made Chapter Four possible. The Cornell Restricted Access Data Center provided a home for the restricted data, enabling me to conduct my analysis. I accessed important archival material in the Catherwood Library Kheel Center at Cornell; the Archives of the Wisconsin State Historical Society in Madison, Wisconsin; and the Georgetown University Archives. My field research trips to Washington State, Wisconsin and Washington, D.C. were all generously funded by the Horowitz Foundation for Social Policy.

One of the most powerful experiences of this research was interviewing local, state and national union leaders. I am so grateful to the labor leaders who generously offered their time; scoured their memories to answer my long list of questions; and opened their doors and welcomed me into their union headquarters and meetings. Their experiences and insights were crucial to this project.

As I prepare to move out of Ithaca, I am sad to leave behind a department that has come to feel like home. The Government Department staff, especially our beloved Tina Slater, worked tirelessly to ensure the bureaucratic side of this project ran as smoothly as possible. At all stages of this dissertation, I received feedback from faculty and graduate students throughout the department who helped me progress in my thinking and writing. In particular, my fellow grads

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pursuing research that has modern day policy relevance. She has provided support in countless ways, but I am most thankful for the numerous times she stopped me from getting caught up in trying to fit within conventional political science, and instead reminded me to stay true to myself. The combination of historical research, modern day consequences, and policy implications within this project are thanks to Suzanne's guidance.

My family and friends have been a tremendous source of strength and love throughout my life. I feel like this project is a testament to their belief in me. I wish more than I can possibly express that my Mom, Elizabeth Walker, were here to see me reach this milestone. I dedicate this project to her. So many others have stepped in to be there for me that I cannot list them all. Thank you to my "second-moms" Charmain, Vicky, Sue and Pam. My Dad helped move me to Ithaca in an epic road trip and shopping spree that began six years of us growing closer. Dad, thank you for everything you have done to help me complete this degree and become the second Dr. in the family. My Brother means so much to me and I hate that graduating means moving further away from him. Julian, sharing this journey with you just a few hours away has been such a blessing.

Finally, six years ago, I moved to Ithaca by myself a year after having lost my mother. I will drive away from Ithaca this month with someone in the seat next to me and a wedding just two months away. Being in the same graduate program certainly creates unique difficulties in a relationship, but it also means that the most important person in your life completely understands what you are going through. Casey, I have to save some of this stuff for my vows, but you are my best friend and greatest support. I am so grateful that you have come into my life and brought such joy to my days. I share this project with you, thank you.

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## CHAPTER ONE

### Introduction

For more than three weeks from February to March of 2011, protestors peacefully occupied the Wisconsin state capital building, sleeping on the hard marble floors for days on end to oppose the bill. Fourteen state senators camped across the border in Illinois to prevent a quorum that would allow a vote. Mass rallies were held in downtown Madison and across Wisconsin excoriating the legislation. School districts were shut down as masses of teachers called in sick and students walked out of class to attend the protests. Their efforts represented one of the largest, most sustained protests since the Vietnam War.

On March 9, after nearly a month of protests, Republicans hastily called together a Senate-Assembly conference committee, giving the sole Democrat present, Assembly Minority Leader Peter Barca, only a few minutes to review the 138 page bill. The bill was then stripped of its fiscal provisions in a procedural maneuver enabling the Senate to avoid the usual quorum that would require the absent fourteen Senators to be present in order to pass the bill. Having bypassed the quorum, the Senate approved the bill with no Democrats present late that afternoon. The next morning, Republican lawmakers in the Assembly passed the legislation over the protests and screams of “shame!” from Democrats (Spicuzza and Barbour 2011).

Assembly Minority Leader Peter Barca described the maneuvers used to pass the bill as “trampling on democracy.” His fellow Democratic Assemblyman, Bob Jauch, described the methods as “an act of legislative thuggery.” Senate Minority Leader Mark Miller, across the border in Illinois watching the proceedings online with his fellow Democrats, said, “We saw the complete stripping of long-held rights before our eyes...It was stunning” (Spicuzza and Barbour 2011). On March 12, an estimated 100,000 to 125,000 protestors surrounded the capital to

protest passage of the bill, now formally known as Act 10 after receiving Governor Walker's signature (Stein and Marley 2013). What piece of legislation could lead to such a prolonged legislative conflict, galvanizing the public and attracting media attention from around the world? One of the most remarkable protest efforts in recent memory was in opposition to, of all things, the stripping of collective bargaining rights for a minority of Wisconsin workers, public sector employees.

Newly elected Republican Governor Scott Walker, emboldened by his Party's majority in both the Senate and Assembly, on February 11, 2011, proposed a budget repair bill purportedly to address the state's budget woes. Opponents countered that the real purpose of the bill was, according to state Senator Jon Erpenbach, "to bust up the unions" (Spicuzza and Barbour 2011). Whether in the name of solving the state's budget woes or busting unions, Walker's budget repair bill dealt a crippling blow to public sector workers' collective bargaining rights and public sector unions. The legislation limited what services unions could provide their members by only allowing employees to bargain on wage increases at or below inflation while prohibiting negotiating on issues like working conditions and pensions, as well as requiring the firing of any state employee participating in a strike or other disruptive tactic like a sick-out. The law further threatened the viability of unions by requiring annual union certification elections of a majority of all workers, not just those voting in the election, and prohibiting automatic payroll deductions of union dues (Freeman and Han 2012a, 391). Certification elections and collecting union dues require significant time and resources for unions that detract from other union activities like contract negotiation and political influence.

Act 10 undeniably threatens public sector union viability. After passage, public sector unions had to convince their membership each year that they were worth the effort of voting in

the certification election and, in turn, the union had to decide every year whether the effort of certification elections was worth the limited bargaining role now granted to them by the law. Many unions, faced with limited options and resources, chose not to pursue recertification. Public sector union density in Wisconsin dropped from 50.3 percent in 2011 to 35.8 percent in 2013. This represents a loss of nearly 50,000 members in just two years—in a state with only approximately 350,000 union members total in 2011 (Hirsch and MacPherson 2013).

Protesters in Madison recognized the threat posed to public sector unions in Wisconsin with the enactment of Act 10. The protests in Wisconsin were so animated because the assault on public sector unions was identified as a death knell for organized labor in the eyes of pro-union supporters, embodying a larger threat to the last bastion of union power in the United States, the public sector. For pro-union supporters, protecting public sector workers' collective bargaining rights was viewed as "labor's last stand" (McAlevy 2011).

Such apocalyptic assessments by pro-union supporters of organized labor's future are surprising given the labor movement's unique position in American politics. Organized labor is one of, if not the, largest voluntary organizations in the United States, representing over 14 million members in a sophisticated network of local, state and national unions interconnected through labor councils, state organizations, and national federations that mount significant electoral and lobbying campaigns (Hirsch and Macpherson 2013). Despite the appearance of significant organizational power and resources, however, Wisconsin was a resounding defeat for the labor movement. How is it that Governor Walker and the Wisconsin legislature successfully passed Act 10 in a matter of weeks in spite of the full weight of the labor movement arrayed against it and protests not seen since in the state since the Vietnam War? At the national level, labor has suffered other significant setbacks, most notably the inability to pass labor law reform

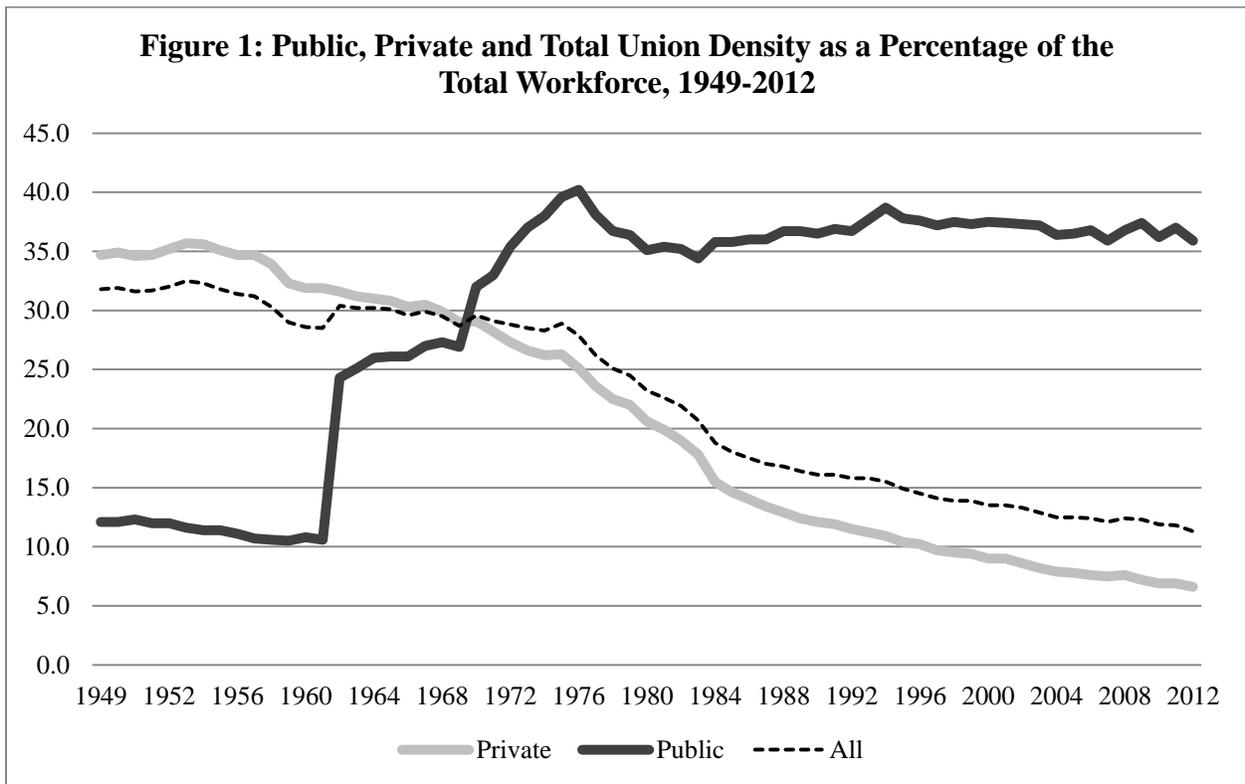
despite repeated attempts. The retrenchment of public sector collective bargaining rights in Wisconsin and the failure to pass national labor law reform are not isolated events, but rather speak to a longer story of labor's political weakness despite its significant membership and resource strength. While other work has grappled with these and other examples of organized labor's perplexing political ineffectiveness, this project explores this puzzle in a new way by tracing the historical development of private *and* public sector unions. The central question motivating this research is: why does organized labor punch well below its weight in American politics?

To answer why organized labor's effectiveness does not appear to match its aggregate membership and resource strength, it is important to understand the labor movement's development over the last half century and the central role of institutions in shaping this development. Political effectiveness is driven not only by the aggregate level of membership and resources, but also by less recognized factors like organizational cohesion and the timing and sequencing of development. Public policies and the institutional arrangements that structure them play an under-recognized role in promoting and/or diminishing a groups' effectiveness in politics and have shaped organized labor in the most fundamental ways—its membership composition, cohesion, and political environment—contributing to a labor movement with the seeming resources to be a powerful force in American politics that is instead reeling from stunning defeats like Wisconsin.

### ***Labor's Dual Trajectories***

In the aggregate, organized labor remains one of the largest mass membership organization in the United States, however, over the last half-century union membership has undergone a remarkable, yet little understood or studied transformation. Public sector union

members, less than five percent of labor’s membership in the 1950s, outnumbered private sector union members for the first time in American history in 2010 (Jamieson 2013 and Greenhouse 2010). As Figure 1<sup>1</sup> illustrates, private sector union density—the percentage of the private sector workforce who belongs to a union—reached its peak in the mid-1950s and has been steadily declining since that time. In contrast, public sector union density rose dramatically in the 1960s and 1970s and then plateaued at a relatively high rate of over 35%.



Source: Jamieson 2013

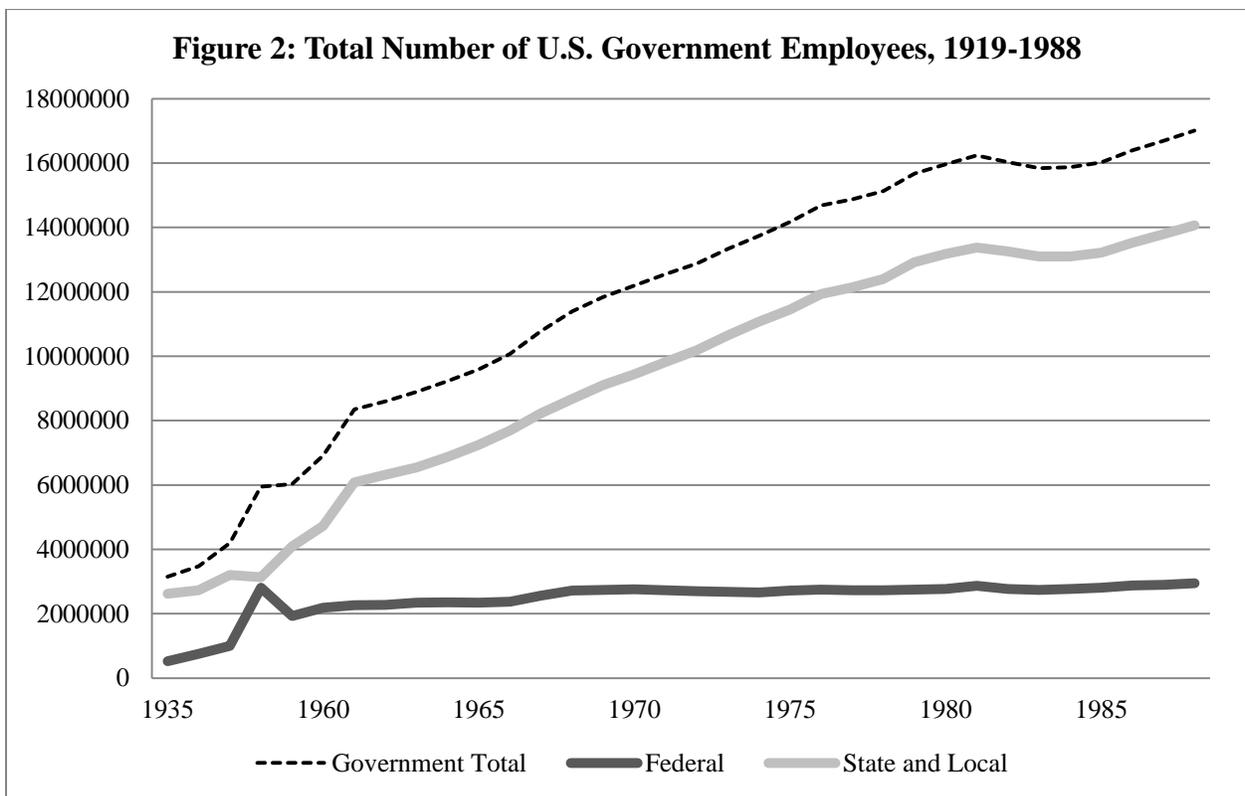
<sup>1</sup> There unfortunately is no uniform dataset that measures public and private sector union density over time. All of the available data has issues of comparison over time as the definition of what constituted a union and how membership was measured changed. In addition, public sector unions were not always distinguished from private sector unions and some public sector unions, like the National Education Association, were not considered a union but a membership association for some time. Taken together, these discrepancies mean we should be cautious in putting too much weight into any specific density level for a given year. Further, we need to recognize that, while the trends illustrated in Figure 1 appear to bear out across a variety of different datasets measuring union density, we cannot be totally confident in the comparability of the measurements across time. For a description of these measurement difficulties see Hirsch and MacPherson 2014.

To understand why organized labor is less powerful than might be expected, it is necessary to explore these dual trajectories. Why did public sector union density rise dramatically in the 1960s and 1970s and then plateau at the very time private sector union density began declining precipitously? Public sector employment had been increasingly steadily for decades, creating a larger pool of potential union members, but the sharp uptick in unionization did not begin until the 1960s—well after private sector union growth began—suggesting that the expanded public sector workforce faced unique obstacles to organizing not present in the private sector. Likewise, the sharp growth and then relative stability of public sector union density suggests private sector union decline is not simply the result of public backlash to unionization. Cultural antipathy to unions cannot account for why public sector unions grew at the very time private sector unions faltered. Thus, this project will look beyond straightforward economic and cultural accounts for labor's dual trajectories in order to understand the opposing paths private and public sector union density rates have followed.

The path of public and private sector unions in the United States is distinct from other advanced industrial countries. No other nation is marked by steady private sector union decline and the uniquely timed and brief rise of public sector union density in the 1960s and 1970s. A variety of forces—economic, political and social—shape and constrain labor unions in most advanced industrial countries but, to understand the distinct features of labor's dual trajectories in the United States requires an institutional explanation attuned to the divided nature of American labor law. The United States is unique because there is no central law governing private *and* public sector labor relations. Instead, the cornerstone of private sector labor law, the Wagner Act passed in 1935, explicitly excluded public sector employees. Absent a national law,

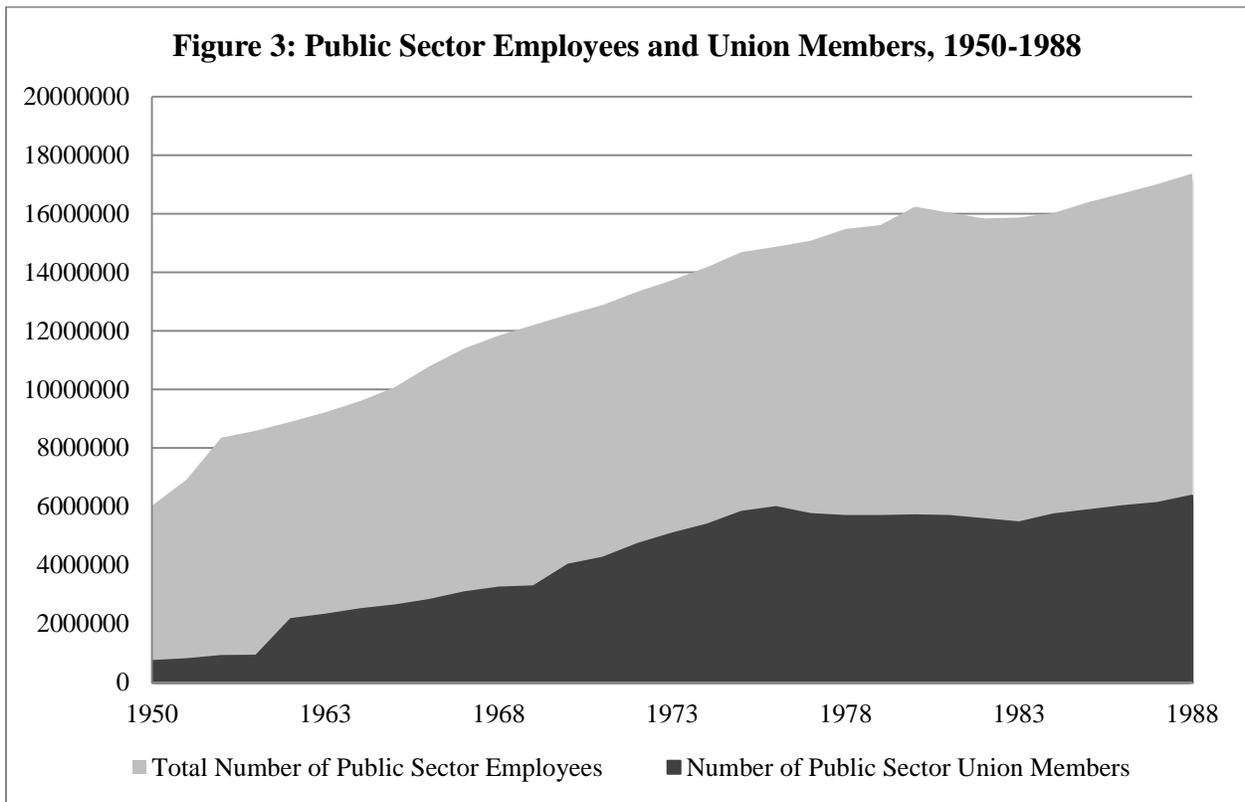
public sector employees were forced to pursue recognition of their collective bargaining rights in every state and locality.

Divided labor law fundamentally altered the development of organized labor over the last half-century in the United States. The national vs. state and local level as sites of demand making are not equivalent. Unable to ride on the coattails of private sector union growth at the national level thanks to the Wagner Act, public sector employees' had to fight for legal recognition in every state and locality, which progressed slowly. Divided labor law consequently "artificially repressed" public sector union expansion as the absence of a national law for public sector employees dampened union organizing at the very time public sector employment began to grow (Slater 2004, 199). Figure 2 illustrates the dramatic growth in public sector employment, which started several decades before public sector employees began to see any legislative breakthroughs for their collective bargaining rights.



Source: Bureau of Labor Statistics 1980, 1989

Indeed, as Figure 3 demonstrates, it was only during the explosion of public sector collective bargaining rights legislation in the 1960s and 1970s and the subsequent rise in public sector union membership that public sector union density has really kept pace with total public sector employment growth. Prior to the 1960s, public sector union density remained low while public sector employment rose. After the 1980s, public sector union density did not keep up with total public sector employment. Thus, the period from the 1960s to the end of the 1970s was a unique period when public sector union density grew enough to keep pace with gains in total public sector employment.



Source: Bureau of Labor Statistics 1980, 1989 and Jamieson 2013

Having to pursue their collective bargaining rights in the states and localities not only delayed public sector union expansion, but meant the fruits of public employees' struggle could not compare to their private sector counterparts. In contrast to the firm, standardized private

sector collective bargaining rights situated at the national level—with over seventy-five years of case law reinforcing placement at the federal level—public sector collective bargaining rights remained an open question with passage of the Wagner Act in 1935. States and localities have had the freedom to answer this question in a variety of ways and face little pressure to adhere to national standards and equal treatment within their individual jurisdictions. Instead, federalism welcomes and encourages variation and experimentation in the United States. Targeting their demand-making at the state and local level meant public sector employees had some success after being shut out at the national level, but the rights they have obtained were limited to a set number of union-friendly states—reinforcing the geographic concentration of labor—and have been erratic and subject to revision. Public sector collective bargaining rights have proven inherently more unequal and vulnerable to retrenchment as a consequence of the federalized nature of United States labor law.

Having identified divided labor law and federalism as crucial institutions for understanding labor's development, this project then turns to exploring how these institutional features contribute to labor's diminished effectiveness in American politics. In other words, what are the consequences of these separate development paths, and the resulting public sector union ascendancy, for organized labor's political activities? Labor's dual trajectories are not simply a historical curiosity. The brief rise of public sector union density in the 1960s and 1970s and then plateauing, at the very time private sector union density began its decline, has very real consequences for organized labor's behavior and effectiveness in American politics today. The incongruous timing of public and private sector union growth meant that the two sectors were, and continued to be until very recently, out of alignment, with potentially important ramifications for the organizational cohesiveness and effectiveness of the labor movement.

Further, these dual trajectories have resulted in a labor movement that now hovers on the cusp of majority public sector with the largest and most influential unions today belonging in the public sector. Public sector unions and their members differ in important ways from their private sector counterparts, with potentially important consequences for labor's policy agenda and political strategies and behavior.

Divided labor law continues to shape labor's political activities today. First, by artificially repressing public sector unionization, public sector unions grew in size and influence late compared to the rest of the labor movement. Thus, public sector unions did not mature alongside their private sector counterparts and never fostered a shared identity and organizational cohesion in the post-war years. Instead, public sector unions had to fight their way into an already entrenched union movement that no longer identified with the militant tactics public sector unions were engaged in to achieve legal recognition. Further, instead of growing together during a time of economic prosperity in the post-war years, public sector unions gained prominence during the period of the 1970s when cultural, economic and political crises magnified their differences, exacerbating conflict. The labor movement by the latter half of the 1970s was ill equipped to deal with the economic upheavals facing the industrial unions and conservative attacks on big government that would occur in the 1980s. Divided labor law helped foster a disconnected labor movement that, despite its size and resources, has been ineffectual in countering the numerous pressures on labor's member organizing efforts and their political influence.

Divided labor law enabled explosive public sector union growth at the very time the private sector was being frustrated at the national level. Private sector union density has been steadily declining since the 1960s, whereas public sector union density has remained relatively

steady at over thirty-five percent. As a result, public sector unions and their members are becoming an increasingly large part of the union movement. This membership shift represents a remarkable transformation in organized labor's rank-and-file. Comparing public and private sector union members political attitudes and behavior reveals important differences. Public sector union members participate in politics at even higher rates than their private sector counterparts and hold distinct policy opinions on issues including free trade, taxes, the environment and gay marriage. Thus, the compositional shift has important consequences for labor's political influence and policy agenda.

With the compositional shift of labor's membership, there has also been an accompanying leadership shift. As public sector union leaders have moved to the forefront of the labor movement, they have placed a renewed focus on political activity, social justice issues, and state and local level politics. Thus, labor's political activities today are shaped by the growing dominance of the public sector rank-and-file and leadership within organized labor. Taken together, these consequences of federalism and divided labor law help explain why labor's political effectiveness is weaker than its aggregate numbers suggest it should or could be.

### ***Organized Labor and American Political Development***

#### ***a. Institutions***

Beyond a study of organized labor, this project finds its home in scholarship that explores American political development (APD). For APD scholars, the "central theoretical precept is this: because a polity in all its different parts is constructed historically, over time, the nature and prospects of any single part will be best understood within the long course of political formation" (Orren and Skowronek 2004, 1). Put briefly, American political development research studies politics through the lens of history. As a consequence, this project explores several temporal

processes that are crucial for understanding organized labor in American politics. The emphasis on history also makes APD scholars acutely aware of institutions as sources of continuity and change that organize, shape and influence people and politics. As Orren and Skowronek (2004) explain, “institutions participate actively in politics: they shape interests and motives, configure social and economic relationships, promote as well as inhibit political change” (78). This project is explicitly concerned with the decisive role institutions can play in shaping politics, in this case one of the central organizations within the political system—organized labor.

Two institutions are at the center of explaining why labor punches below its political weight. First, differences between public and private sector unions—especially how they were perceived by the public in the 1930s—were emblazoned into law in the 1930s. The division in labor law between public and private sector unions has taken on a life of its own, becoming far greater than the actual differences between these two sectors. The policy of divided labor law institutionalizes the separation between public and private sector unions, amplifying differences and sewing discord within the labor movement.

Second, because divided labor law situated private sector labor law at the national level while relegating public sector labor law to the state and local level, organized labor is separated across two levels of federalism. Federalism is a coupling of institutions with each serving as a separate venue for actors to pursue their demands (Pierson 2004, 163). Crucially for this research, “since each venue is structured differently, each presents different constraints, risks, and opportunities for political actors” (163). Thus, divided labor law is highly consequential because it results in the institution of federalism actively shaping organized labor. Private sector collective bargaining rights situated in the national institutional environment and public sector collective bargaining rights set in the state and local institutional venues creates separate political

environments. These two venues have different prospects for success, incentives for where to focus political resources, and, ultimately, lead to separate outcomes for the strength and resilience of each sector's collective bargaining rights. In this project, the institutions of divided labor law and federalism are active participants in politics, crucially shaping the development and political effectiveness of organized labor.

### ***b. Temporal Processes***

This project draws on a variety of methods to explore the relative weakness of organized labor including interviews with labor leaders conducted in the lead-up to and aftermath of the 2012 presidential election, statistical analysis of survey data, secondary source analysis, and archival research combined with broader historical inquiry—all of which are detailed further in the subsequent chapters. However, the central method for this project is historical, utilizing an American political development approach, meaning the foundational premise of this work is that we cannot understand organized labor today without studying its development over time. As Paul Pierson describes it, our task is to “*systematically* situate particular moments (including the present) in a temporal sequence of events and processes stretching over extended periods” (2004, 2). This project directs us to several important temporal processes that shape the development of organized labor.

First, and most fundamentally, this project emphasizes the importance of timing and sequencing. In other words, it is crucial to “know not just *what*, but *when*” (Pierson 2004, 54). Thus, we must understand not just that private sector and public sector employees obtained collective bargaining rights, but also when they obtained them in relation to each other. Public sector employees' only started to gain such rights three decades later than their private sector counterparts. This delay is causally important because it shapes when public sector unions form

and try to join the labor movement. The environment of the 1960s and 1970s, when public sector unions emerge, is a very different period than the 1930s and 1940s when private sector unions grew because, instead of a booming economy and the managed labor relations of World War II, public sector unions emerged during a period of economic crises, a mounting conservative backlash, and an already established labor movement. Thus, *when* collective bargaining rights were obtained has important consequences for labor's development.

Second, a historical approach to studying organized labor reveals how things may have been different, focusing our attention on the critical moments in time that lead to one outcome over another and bringing to light the counterfactuals in labor history (Orren and Skowronek 2006, 6). The division between public and private sector unions in the United States and the comparative weakness of the American labor movement are not foregone conclusions, but rather the result of specific historical moments and the politics put in place by these critical junctures in time. Focus on passage of the Wagner Act illustrates the separate institutional environments created for private and public sector unions. As Pierson notes, "In some cases, specific relationships are institutionalized through specific positive feedback...In still another group of cases, what is crucial is the failure of consolidation in this initial period, and the resulting persistent instability" (2004, 70). Private sector labor law was consolidated at the national level with passage of the Wagner Act in 1935 and this consolidation has been reinforced through over seventy-five years of National Labor Relations Board rulings. In contrast, public sector labor law was not consolidated during this time, and has remained institutionally unstable since as public sector employees have pursued collective bargaining rights in every state and locality, but without the floor of protection that makes the national level more enduring.

These critical moments, by helping to reveal what could have been—a stronger, more resilient and diverse labor movement—adds another chapter to the perennial debate first put forward by Werner Sombart when he asked in 1906 “why is there no socialism in the United States?” (1976). The delayed growth, incongruous timing of public sector union power, and the public sector’s continued unequal and vulnerable collective bargaining rights all add a new dimension to understanding why the labor movement in the United States has appeared relatively weak compared to other countries. This project should push us to be more attentive to the role of the state and public policies in understanding the American labor movement’s comparative weakness.

Third, this project identifies historical patterns that can speak to a larger universe of cases. By identifying critical moments, we also learn what key decision points and institutions matter for labor’s development. Thus, at the same time that this project reveals what is unique about the American labor movement, it also emphasizes comparison with other nations, particularly whether a country has centralized or decentralized labor law as a key source of difference. The United States’ divided labor law is distinctive for the splitting of public and private sector labor law, but it is not exceptional, meaning not comparable to other countries. Rather, it falls along one extreme of a continuum, meaning that we can gather valuable information from other countries to illustrate how things could have been different in the United States had a cohesive labor law been enacted in 1935. These “meaningful points of change” also help identify what key points in time have led organized labor to where it is today, helping to reveal what possibilities might exist in the future for dramatic change or revision (Orren and Skowronek 2006, 7).

The final temporal process examined in this project is policy feedback and E.E. Schattschneider's famous contention that "new policies create a new politics" (1935, 288). Organizations are frequently seen originating outside politics with their only connection to politics being their involvement in lobbying to affect political outcomes. However, policy feedback research has emphasized that policies can affect organizations; policies can provide resources and incentives that shape the formation, mobilization or demobilization of groups (Skocpol 1992, Pierson 1993). This project goes even further to explore how public policies affect the internal dynamics and external success of organizations; policies can shape the internal organization and cohesion; size; strength; and effectiveness of an organization. Public policies have fundamentally altered organized labor's development in the United States.

### ***Policy Feedback and Federalism***

The exclusions of public sector employees from the protections of the Wagner Act federalized American labor law, firmly placing private sector labor law at the national level, while relegating the question of public sector collective bargaining rights to the state and local level. Over time, this federalized division has become more entrenched as path dependent features, like the increasing case law generated by the NLRB for private sector unions, reinforce this division. Thus, public policy, in this case divided labor law, created an artificial and enduring division between public and private sector labor that has had lasting consequences. Divided labor law not only affected when public and private sector employees gained collective bargaining rights, but also where they obtained these rights. Lacking the national level protected collective bargaining rights private sector employees possess, public sector employees have targeted the state and local level for collective bargaining rights. These separate sites of demand-making are not equivalent. The collective bargaining rights public sector employees have gained

have proven more unequal and susceptible to retrenchment, illustrating an important feature of American federalism. Federalism not only promotes unequal treatment at the state and local level, but further, due to the absence of a floor of protection and the encouragement of experimentation, leads to more vulnerable rights and privileges at the state and local level versus the national level.

While this project is explicitly about organized labor, the conclusions in this project have broader implications. First, this project directs us to be attentive to the ways policies shape organizational development, internal dynamics, and success. Corporations, non-profits, PACs and interest groups are organizations that, through policies like the tax code and regulations, may experience feedback effects similar to organized labor. Further, the role federalism plays in making public sector collective bargaining rights more vulnerable and unequal can be applied to other rights administered at the state and local level that lack a federal floor of protection. Gay marriage, right-to-work laws, consumer protection, and election laws (e.g. voter ID laws and primary election rules) are a few examples where this feature of federalism may apply. The broader implications of this project to other organizations and processes, however, should not overshadow the singular importance of organized labor in American politics.

### ***Economic Inequality: Labor's Continued Relevance and Importance***

Tracing organized labor's development over the last half-century can seem distant and removed from modern day politics. But understanding how the legal structures in the United States have shaped the size, composition, organizational cohesion, and, ultimately, success of organized labor is of crucial importance because labor is not simply one among many interest groups in the United States. Despite declining union density, there are over fourteen million union members in the United States (Hirsch and Macpherson 2013). Union density may have

been cut more than in half since the peak in 1953, but the number of union members has declined by less than 3.5 million from the 1953 level (Jamieson 2013). Today's fourteen million members and their labor unions represent a highly active, organizationally sophisticated group working on behalf of their members, but also the larger cause of working America. Few other organizations can claim the membership size, political influence, grassroots mobilization and ideological commitment of organized labor. Thus, organized labor is a unique force of singular importance on the American left in U.S. politics.

Labor's unique position in American politics is quantifiable. American labor unions continue to act mutually as a fundamental financial and organizational arm of the Democratic Party. They are consistently among the top contributors to federal elections and independent expenditures through PACs and this money is overwhelmingly directed to Democratic candidates (Francia 2010, 294). This leads Dorian Warren (2010) to conclude that "[m]easured by both members and money, the labor movement is the most powerful and resourceful political constituency on the political left in American politics" (848). Labor's power lies largely in their get out the vote (GOTV) efforts during elections. During the 2008 presidential election, the AFL-CIO's GOTV efforts "included knocking on 10 million doors, distributing 27 million flyers at worksites, sending 57 million political mailers, and making 70 million phone calls to encourage union voters to go to the polls." Likewise, Change to Win "dedicated 1,500 organizers to their member-to-member voter canvass, made 20 million phone calls, sent 10 million pieces of direct mail, and enlisted the help of 50,000 volunteers on Election Day" (Orr and Francia 2012). Unions continue to field an impressive ground game in American elections.

Labor's influence in American politics is most evident in their grassroots mobilization of their membership, which results in union members comprising a disproportionate share of the

voting population. Peter Francia (2012) estimates that “union households accounted for more than one of every five voters in the 2004, 2006, and 2008 elections” (4). Broken down by region, “three of every ten voters in the Northeast came from union households in both the 2004 and 2008 elections” (4). In the Midwest, the percentage of the electorate ranged between one quarter and over 30 percent in the 2004, 2006, and 2008 elections. In the west, union households were more than 20 percent of the electorate in 2004 and 2008.<sup>2</sup>

While organized labor continues to play an important role in American politics, it has undergone a dramatic transformation over the last half-century. The growth of public sector unions represents a significant change in the membership and leadership of organized labor, yet it remains little understood. Why do public sector unions now make up half of the rank-and-file and fill many of the leadership roles within organized labor? What does it mean to have a union movement increasingly populated by the public sector? Perhaps most significantly, why was Wisconsin able to eliminate public sector collective bargaining rights in 2011 despite labor’s apparent organizational strength? Given that organized labor is a unique force in American politics and public sector unions are the new majority, the most recent attacks on public sector unions in states like Wisconsin, Indiana and Ohio pose a significant threat to the continued relevance of organized labor and a puzzling development that requires explanation.

The vulnerability of public sector unions is of concern because of the growth in economic inequality and insecurity in the United States. The US “now possesses a small class of very rich Americans who are much richer than other Americans, than the affluent of other nations and than American elites in historical perspective” while at the very same time the majority of Americans are working more hours but experiencing greater income volatility and lack the same economic

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<sup>2</sup> Similar union turnout results were found by Roland Zullo (2004) using private surveys conducted by the AFL-CIO.

security of the mid-20<sup>th</sup> Century (Hacker, Mettler and Soss 2007, 7). These economic trends are neither natural nor inevitable, and organized labor's declining density has "abetted rising inequality" (Hacker and Pierson 2010, 57). Unions boost wages and benefits, and more significantly "had a much broader and less appreciated effect on the distribution of American economic rewards" by offering "an organizational counterweights to the power of those at the top" (57). Thus, with the decline of private sector unions "Middle- and working-class Americans lost a powerful, vigorous champion on pocketbook issues" (143). Organized labor has served as a key force in American politics helping elect candidates and lobby on behalf of policies to help working Americans, while simultaneously mobilizing and engaging a broad swath of voters. But labor's important role in American politics is under threat by declining union density. Public sector unions are the last bulwark of union power, one of the final counterweights to try to redress rising economic inequality and insecurity in the United States.

Thus, understanding why public sector unions are vulnerable to retrenchment of their collective bargaining rights and, more broadly, why labor is less politically effective than its overall resources suggest that it should be are questions of crucial importance. For this reason, this project is focused on studying private *and* public sector unions over the last half-century—we cannot understand organized labor today without tracing both sectors' historical development over time. The most recent attacks on public sector unions, the organizational divides between public and private sector unions, and the dominance of public sector unions all have their roots in policy decisions made over seventy-five years ago.

### ***Overview of the Project***

The remainder of this project will explore the roots and consequences of divided labor law for organized labor's development in order to explain the labor movement's current political

weakness. Chapter Two focuses on the origins and historical consequences of divided labor law, particularly how the federalized nature of American labor law delayed public sector union expansion preventing a large public/private sector union movement, reinforcing the geographic concentration of labor and leaving public sector collective bargaining rights more vulnerable to retrenchment and unequal than the private sector.

Chapter Three focuses on the 1970s and the implications of divided labor law delaying public sector union expansion. Because public sector employees only began to gain collective bargaining rights in the 1960s, public sector unions grew after private sector labor's heyday in the post-war era. These incongruent development paths fostered conflict rather than cooperation, prevented a coordinated response to the challenges of the 1970s, contributed to the failure to pass labor law reform, and hindered the cooperation of organized labor with the New Left social movements.

Chapters Four and Five turn to the ways divided labor law weakens organized labor's political activities today; divided labor law—in conjunction with macro-economic forces—by fostering the growth of public sector unions and decline of private sector unions, has altered the composition and balance of power within organized labor with important consequences for labor's political activities. Chapter Four explores the consequences of a majority of union members belonging in the public sector by looking at whether public sector union members have different political behaviors and policy preferences than their private sector counterparts. Chapter Five focuses on the disrupted balance of power within organized labor as public sector union leaders have eclipsed the private sector, leading public sector unions to guide the labor movement in new policy directions and strategies than in the past.

The final chapter draws together the threads of the other chapters through the lens of a salient case, the attacks on public sector collective bargaining rights in Wisconsin in 2011. Taken together, this project emphasizes that the development paths of organized labor over the last half-century are neither natural nor inevitable. Public policy has shaped the size, composition, behavior and effectiveness of organized labor. Most importantly, divided labor law has fostered differences between private and public sector unions and, in the face of the labor movement's membership and resource strengths, weakened organized labor as a force in American politics.

## CHAPTER TWO

### **Labor's Enduring Divide: The Distinct Paths of Public and Private Sector Unions in the United States**

#### **I. Introduction**

The attack on public sector collective bargaining rights and the subsequent protests in Wisconsin in 2011 broadcast to the nation the new face of the labor movement. Public sector union members outnumber private sector union members for the first time in American history. This shift is at odds with coverage of the union movement by academics, who have consistently focused their study and attention on private sector unions.<sup>3</sup> The overwhelming conclusion in their accounts is one of union decline: the labor movement reached its zenith in 1953 and union density levels have fallen steadily since that time. This narrative of union decline is misleading because it obscures the experience of public sector unions, instead portraying private sector unions as synonymous with organized labor as a whole.

When we examine private and public sector union density together, the simple story of union decline becomes far more complicated. Returning to Figure 1 on page 5, we see the striking divergence of private and public sector union density as a percentage of the total private and public sector workforce in the United States over the last forty years. The two crossed paths in 1970 with private sector density continuing on a downward trajectory and public sector density increasing rapidly until plateauing at over 35% by the end of the 1970s.

Focusing only on the decline of private sector union density misses the more fundamental puzzle of the American labor movement: just as the private sector began declining, public sector union density surged. Why have private and public sector unions followed such distinct paths in American history? In particular, why did public sector unionization rise so dramatically and then

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<sup>3</sup> See Shaffer 2002 and McCartin 2006 on the exclusion of the public sector from labor history.

plateau at the same time as a precipitous decline in private sector unionization was occurring? Previous research has by and large focused on the private sector and relied on economic explanations, like deindustrialization, and cultural explanations, like America's unique individualistic ethos, to explain private sector union decline. However, these accounts come up short in explaining both the decline in private sector union density and surge in public sector density. To explain this puzzle, I provide an account sensitive to institutions and argue that the brief rise and then plateauing of public sector union density and precipitous decline in private sector union density is the legacy of a critical juncture wherein a distinct institutional arrangement was locked into place at a specific moment in time. In particular, the decision by the drafters of the Wagner Act to exclude public sector employees in 1934-1935—at a time when public sector unions lacked public support and momentum for their own national level law—created separate legal and institutional jurisdictions that private and public sector labor laws operate within, which have had lasting consequences for organized labor's development.

Comparing the development trajectories of private and public sector labor together reveals the powerful consequences that public policies and institutional arrangements—in this case federalism—can have on the strength and development of seemingly private organizations. While federalism creates more opportunities for innovation, absent a national floor of protection, state and local level provisions are inevitably more unequal and vulnerable to retrenchment than policy set at the national level, as the most recent attacks in 2011 on public sector collective bargaining rights demonstrated. Private sector union density would undoubtedly have declined over the last half century due to large-scale transformations in employment in the United States, but this decline would likely have been less steep and would not have been accompanied by the brief rise and then plateauing of public sector unionism were it not for this institutional split.

The exclusion of public sector employees from the centerpiece of private sector American labor law, the Wagner Act, left the question of public sector collective bargaining rights unanswered at the federal level, leaving the matter up to the states and localities to decide. Public sector collective bargaining rights were slow to develop as public sector employees struggled to overcome fears of public sector unionism and gain enough legislative momentum. When demand for public sector collective bargaining rights reached a critical mass in the 1960s, political demand-making was relegated to the state and local level with important ramifications for the quality and durability of public sector collective bargaining rights. The rights public sector employees obtained varied tremendously across states and localities. Further, in the absence of a national legal provision, public sector collective bargaining rights continue to be contested because they lack the national level floor of protection that private sector employees possess thanks to the foundation of the Wagner Act and decades of federal case law.

Ultimately, we cannot fully understand the fate of organized labor without studying the path of both private *and* public sector unions. The timing, sequencing and institutional arrangements of American labor law have patterned labor relations over the last half century, resulting in missed opportunities and divided fortunes for organized labor as a whole. Thus, the remainder of this chapter will explore how the divide between public and private sector labor law led to different development trajectories for private and public sector unions in the United States.

## **II. Traditional Explanations for Union Decline**

Explanations for the decline in private sector union density in the United States have largely fallen into two camps. First, economic arguments point to major changes in the economy, especially the emergence of new technologies, the rise of global competition and

consequent decline in union strongholds like manufacturing and growth of the service sector, part-time work and other employment arrangements that have typically not been areas of union strength as the source of union decline. Second, cultural arguments point to a distinct American ethos that evokes less sympathy toward unions, eroding union support and diminishing union organizing success. By expanding the analysis to include public sector unions, economic and cultural explanations fall short in explaining both the decline in private sector union density and the brief rise and then plateauing of public sector union density.

For proponents of economic explanations for union decline, a widespread assumption is that the unionization trends in the United States reflect changes happening to the overall workforce: broad economic changes—like deindustrialization—combined with wide-ranging societal changes—like the rise of a highly educated, upper class—diminished all mass membership organizations and particularly hindered the growth of unionization (for example, Farber and Western 2002; Sloane and Witney 2007, 3). Over the last half century, jobs in traditional union strongholds like manufacturing declined, whereas public sector employment grew from 6,000,000 workers in 1946 to just under 30,000,000 in 2010 (U.S. Census Bureau 2012; Hirsch and Macpherson 2013). Private sector unions face an uphill battle to even maintain current membership levels given the annual loss of jobs in union dominant industries and turnover as older workers retire, whereas public sector unions have the benefit of a growing workforce to target for unionization. However, several features of the changing composition of labor suggest that a macro-economic explanation alone is inadequate.

First, the issue is not simply that employment is being restructured—after all the total number of jobs and hence opportunities for labor to organize have increased—but that private sector unions cannot keep up with the pressures these macro-economic changes have imposed.

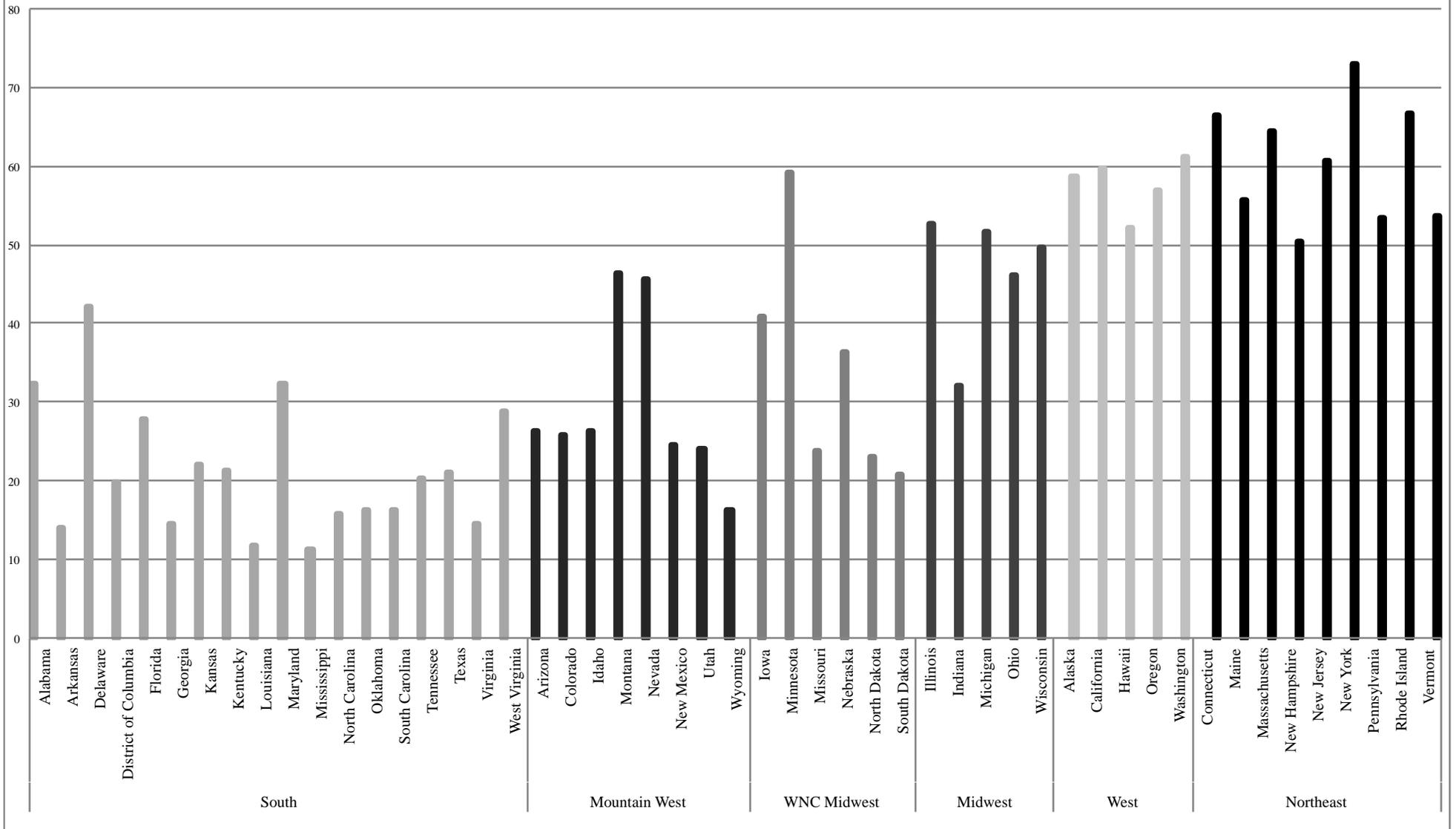
Labor unions would have to organize an estimated 300,000 new members each year just to keep private sector union density stable in the face of a restructured labor market, an expanding labor force, layoffs, and other factors (Bronfenbrenner et al. 1998, 3). It is imperative that labor organize new members because of the pressures of macro-economic forces, but labor's failure to achieve this 300,000 mark cannot be explained by these larger economic forces alone.<sup>4</sup>

Second, if this were simply a macro-economic process, then we would expect public sector unionization increases to be relatively uniform across sub-jurisdictions. Instead, as illustrated in Figure 4, states vary significantly in the percent of the public sector workforce that is unionized (Freeman 1988). In 2010, Mississippi had the lowest density, with only 11.2 percent of the state's public sector workforce belonging to a union, whereas New York had the highest density with nearly three fourths of the state's public sector workforce unionized. Texas had over 1,640,000 public sector workers, but fewer than 276,000 were union members. In contrast, New York had just over 1,500,000 public sector workers and over 1,000,000 were union members. Thus in 2010, nearly 50% more of New York's public sector workforce belonged to a union compared to Texas (Hirsch and Macpherson 2013). High public sector union density is further concentrated in parts of the Midwest, West, and Northeast. The growth of public sector unionism has been uneven across states and regions suggesting that we need

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<sup>4</sup> Increasing managerial backlash may account for labor's inability to organize but a rising union/non-union wage gap alone cannot explain rising employer resistance. Even if the costs of unionization have gone up, the size and scale of managerial backlash in the United States is still distinctive suggesting its origins are not the macro-processes that are affecting all OECD countries. As Stephen Herzenberg (2002) explains, "[w]hile many other countries consider that the decision to join a union is for workers to make without interference from employers, US employers have extensive rights to persuade workers not to join unions" and behave accordingly (106). The costs of opposing unionization are shaped not just by economic factors; managerial backlash is only as effective as the legal regime that allows it to thrive. Another development thought to affect private sector union density is increasingly sophisticated managerial techniques that co-opt workers' demand for unionization. While such techniques are no doubt influencing unionization rates, they are inadequate for explaining such dramatic decline, the increasingly hostile organized campaigns, and the density variation across jurisdictions.

**Figure 4: Public Sector Union Density by State and Region, 2010**



Source: Barry T. Hirsch and David A. Macpherson 2013

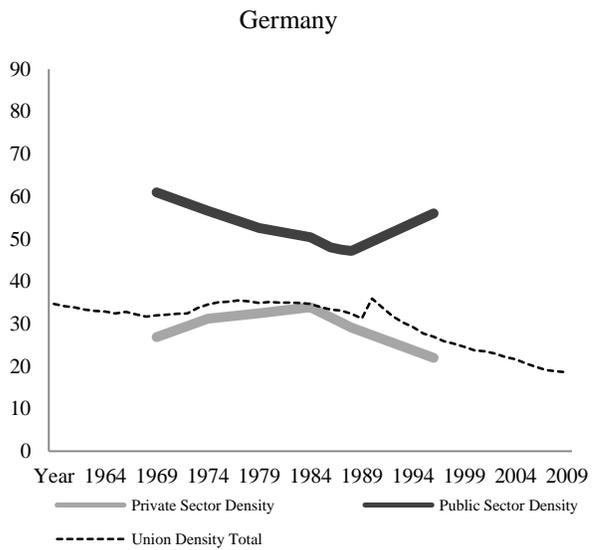
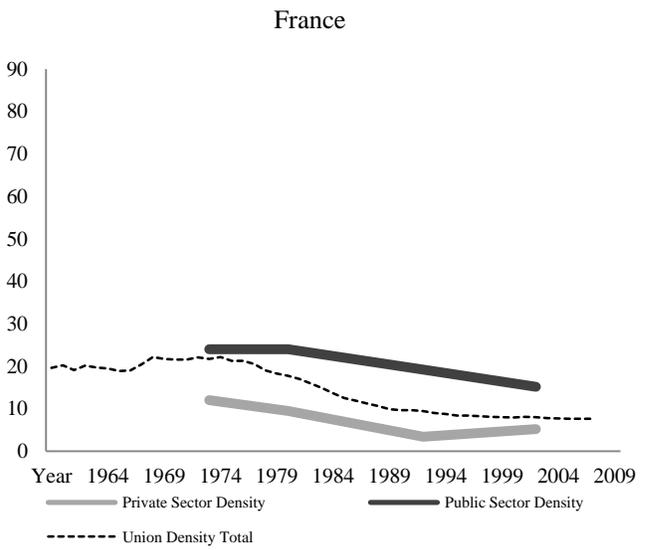
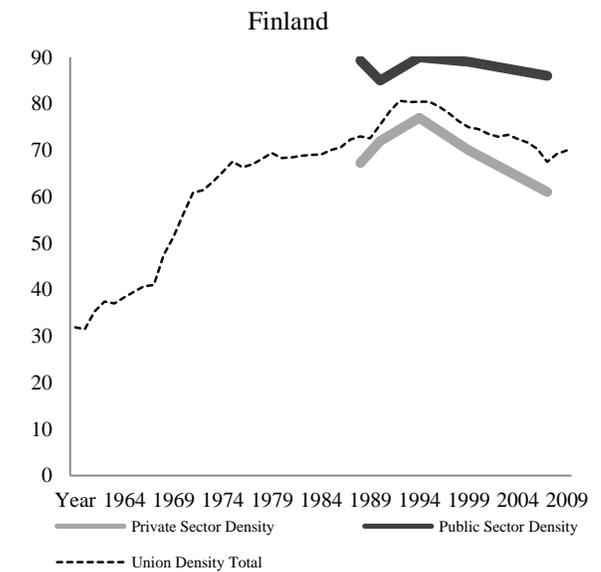
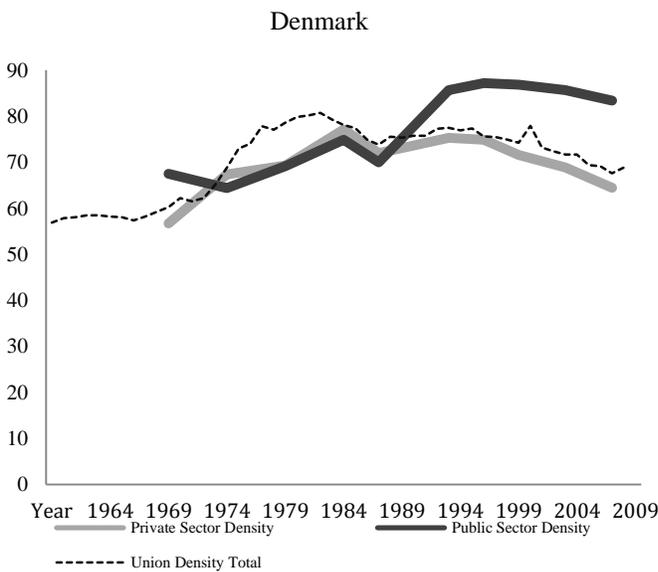
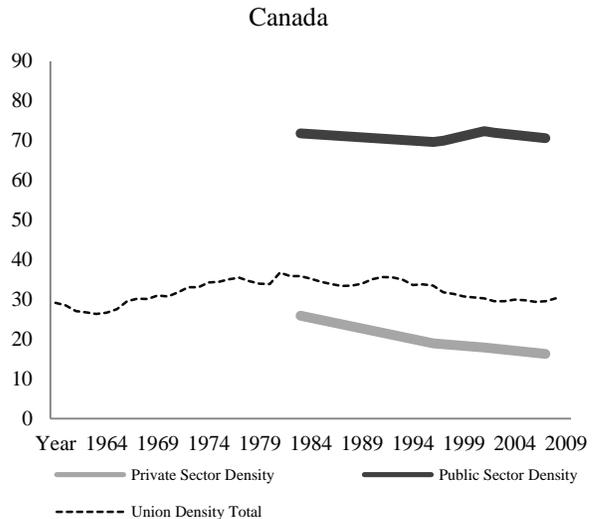
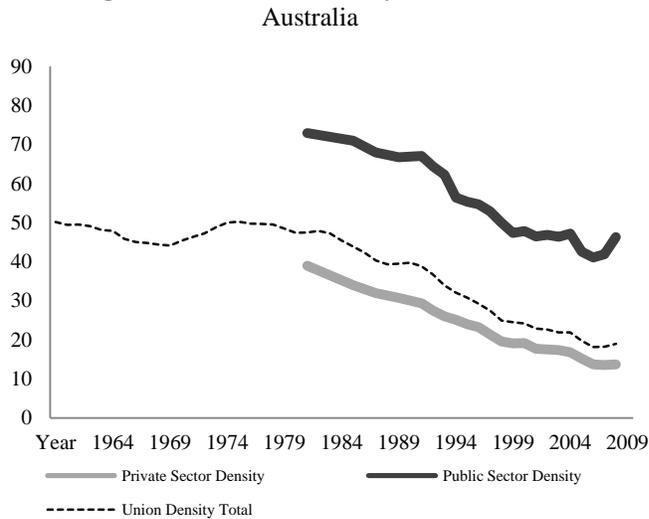
to look beyond a purely economic account.<sup>5</sup>

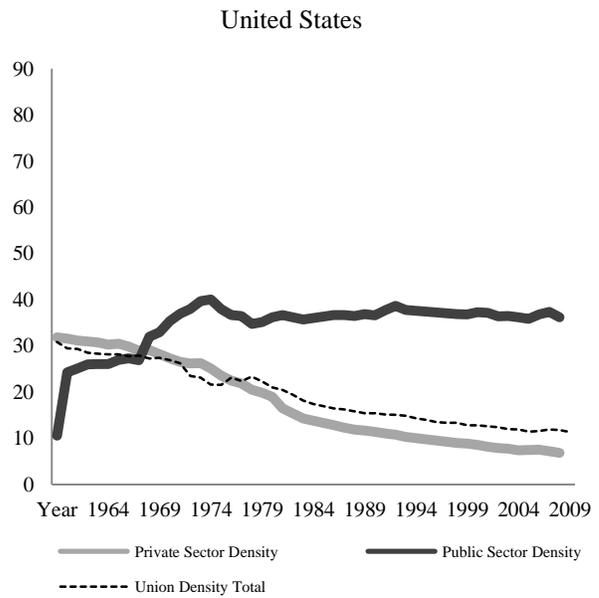
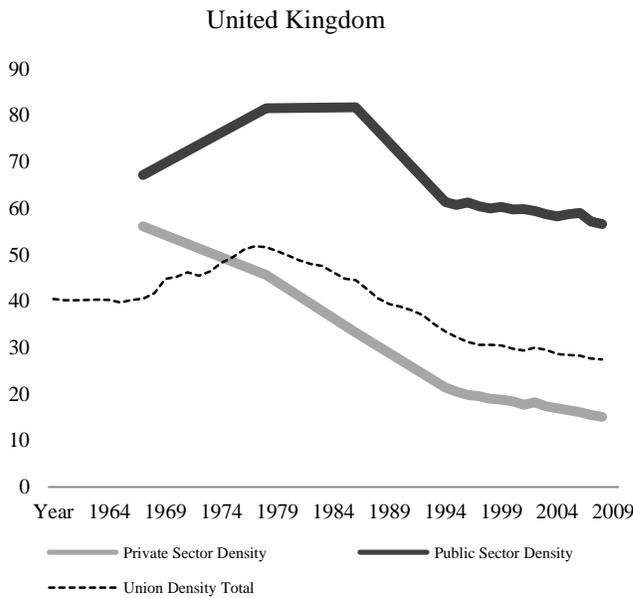
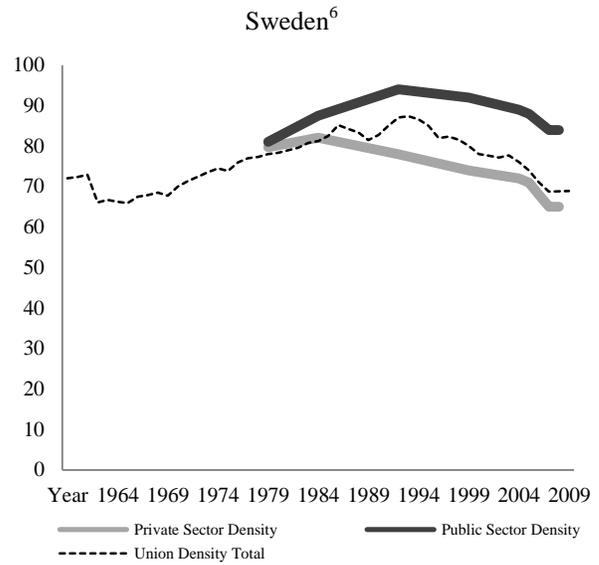
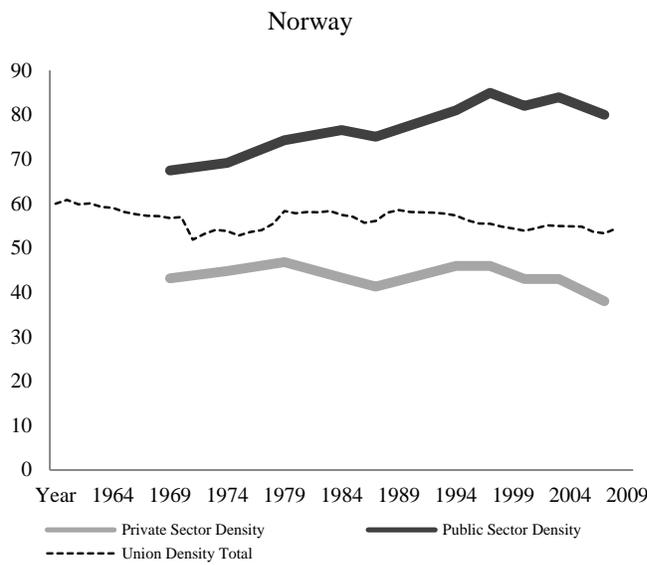
Finally, attributing union density trends in the United States simply to large economic changes is problematic because unionization levels have varied across nations. Figure 5 provides a graphic depiction of the change in private, public and total union density in several advanced industrial countries since 1960. While the data is incomplete for many countries, these comparisons provide some crucial information. Most importantly, these nations were all experiencing some degree of deindustrialization and globalization but private sector union density did not decline everywhere, suggesting that the economic argument alone is incomplete for explaining union density patterns. While Figure 5 does not rule out cultural arguments, it is not the U.S. that appears distinctive, but rather the Nordic countries because of their increasing private sector union densities over the period. Figure 5 further suggests that private sector union density decline and public sector union density stability are common, if not universal, patterns over this time period. However, recognizing that the comparison is somewhat limited by the missing data, the United States does stand apart for the dramatic rise of public sector union density over a relatively brief period of time and then a plateauing of density levels since then. Any explanation of the trajectories of private and public sector union density in the United States thus needs to account for this unique pattern.

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<sup>5</sup> This also calls into question the claim that rising temporary employment can explain these patterns. If easier-to-unionize longer-term employment is primarily in the public sector, then we would expect public sector union density to be robust wherever public sector employment is robust, which is not the case.

**Figure 5: Union Density Across Ten Advanced Industrial Countries, 1960-2010**





Source: Visser 2012

Canada has been a useful point of comparison to the United States for understanding these density trends because the two countries are similar on several important characteristics including overlapping industries with the same unions active on both sides of the border. Canada also has had an even steeper decline in manufacturing jobs and shift to service sector work than the United States, thus we would expect Canada to have even greater decline in union density if

<sup>6</sup> Please note the higher Y-axis scale for Sweden.

deindustrialization was the sole source of union decline (Bruce 1994). In fact, Canada has maintained a union density nearly double that of the U.S., and several scholars have utilized a most-similar case comparison of the United States and Canada to refute explanations that rely on macro-economic forces alone.<sup>7</sup> These studies push us to look beyond macro-economic forces for understanding American union density trends over the last half century. Ultimately, for the economic argument to hold, we would need to see private sector decline and public sector growth across the U.S. states and regions, as well as across advanced industrial countries. Furthermore, similarly situated countries, like the U.S. and Canada, should display similar developments. Neither of these conditions is met, which suggests we need to look beyond purely macro-economic explanations.

A second explanation for private sector union density patterns is cultural. Cultural arguments point to a distinct American ethos that evokes less sympathy toward unions, eroding union support and diminishing union organizing success. The cultural argument's most active and vocal proponent is Seymour Martin Lipset and his co-authors (1987; 1995; 1996; Lipset and Marks 2000; Lipset and Meltz 2004). Utilizing the same most-similar systems comparison with Canada, he argues that, "higher union density in Canada, compared with the United States, is rooted in Canada's statist, social democratic traditions, which are in turn attributable to its Tory and decidedly European conservative lineage. The United States has an individualistic, laissez-faire tradition that is generally not supportive of more collectivist approaches" (Lipset and Meltz 2004, 173). This unique American culture has hindered the creation of a labor party and limited the passage of legislation that could support union growth.

For Lipset, the brief period of private sector union growth following the passage of the

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<sup>7</sup> For example, see Bruce 1994; Card and Freeman 1994; Chaison and Rose 1994; Godard 2003; Murphy 1988; Riddell 1993; Rose and Chaison 1985.

Wagner Act in 1935, rather than union decline, is puzzling because this pro-union period runs counter to American political culture. He reasons that, “only in extraordinary circumstances, such as war or prolonged economic downturns, has the United States moved closer to the statist model” (174). The decline of private sector unionism since the unique moment of the Great Depression and World War II, for Lipset, reflects union density regressing to be more in line with the American cultural mean. However, the timing and durability of public sector union density challenges Lipset’s cultural account. Returning to Figure 1 on page 5, public sector union density rose beginning in the early 1960s, a period without the “extraordinary circumstances of a war or prolonged economic downturn to explain the sudden growth of public sector unions. Further, public sector union density plateaued at the end of the 1970s and has remained relatively stable at over 35% since that time, rather than declining to be more in line with America’s cultural antipathy to such communitarian endeavors.

Lipset paints a picture of American attitudes toward unions using the single, broad brushstroke of overarching political culture to explain outcomes. If we step closer, the painting becomes a multitude of more complex brushstrokes because American support for unionization has fluctuated dramatically over time, often differentiates between public and private sector unions, and rarely acts alone in shaping outcomes. Eric Schickler and Devin Caughey’s (2011) analysis of 1940’s public opinion surveys documents the more complicated contours of American opinion toward unions as the public supported unions in general but also strongly opposed heightened union militancy. As will be discussed later, public opinion regarding the legality and appropriateness of public sector collective bargaining became far more positive over the span of a few decades and without the dramatic upheaval of war or depression to explain the change. Culture undoubtedly shapes outcomes, but these examples suggest that Americans’

feelings toward public sector unions is a more complicated process contingent on time, place, and existing institutions than Lipset suggests.

Using American political culture as an explanatory variable is also problematic because of the developments in other countries over the last half-century. Lipset characterizes the United States as exceptional and Canada as more closely resembling European nations that are more amenable to unionization. However, as Figure 5 illustrates, in several ways the United States is not distinct. Other countries exhibit low total union density, especially the United Kingdom. Moreover, if we ignore the Nordic countries, there is an overall trend of private sector union decline, even in nations with more robust union-friendly cultures.

In the following analysis, both economic and cultural forces are at play but are not sufficient on their own to explain the path of public sector union development. For the economic explanation, the growth of public sector employment certainly laid the groundwork for a large, public sector union movement to demand legal recognition in the 1960s and 1970s, but other factors shaped where and in what form this demand-making took place. For the cultural explanation, as I discuss later, there was a strong cultural bias against public sector unionism that set the public sector union movement back decades. Thus culture is certainly influencing attitudes, but it lacks the analytical specificity to explain much that is unique about public sector labor in the United States including: the brief rise and then plateauing of public sector union density; state and regional variation; and the volatility of public sector collective bargaining rights. Instead, culture should be seen as mediated through institutions: culture can help create or close windows of opportunity, but attitudes and values are ultimately channeled through institutional arrangements, which in turn take on a life of their own. The design of institutions as well as the timing and sequencing of institutional development have consequences independent

of their cultural origins. Thus, only by understanding the interaction of culture and institutions can we make sense of American political development.

### **III. An Institutional Explanation for Labor's Dual Trajectories**

Over the last half-century, private sector union density in the U.S. would undoubtedly have declined because of larger economic forces and public sector union density could only go up given its diminutive starting point. However, this does not explain why public sector union density skyrocketed briefly in the 1970s and then plateaued; geographical concentrations of both private and public sector union density; and private sector decline not just in maintaining members but also their inability to recruit new members. Instead, we need an approach that is sensitive to political institutions to explain how broader economic trends occurring in many advanced industrial countries have played out differently in the United States, particularly the unique trajectories of public and private sector union density.

Drawing on Kathleen Thelen and Wolfgang Streeck's (2005) definition, institutions are defined here as: "socially sanctioned, that is, collectively enforced expectations" of behavior and typically "involve *mutually related rights and obligations* for actors, distinguishing between appropriate and inappropriate, 'right' and 'wrong,' 'possible' and 'impossible' actions and thereby organizing behavior into predictable and reliable patterns" (9). Thus we can think of political institutions—both formal institutions like Congress and more informal institutions like law—as active participants in politics that structure and constrain the behavior of individuals and groups, shaping a multitude of activities including where actors target their political activities, what policy alternative are considered, and the potential for change.

When comparing the United States to similarly advanced industrialized nations,<sup>8</sup> American labor law is distinct in two relevant respects. First, while these countries all have national legislation dealing with private sector labor relations, none has left their original laws largely untouched since its inception. For example, substantial amendments to private sector labor law occurred in Canada in 1995, Finland in 2001, France in 1971 and 1982, Germany in 1972, 1976 and 2004, and the United Kingdom in 1999 (Casale and Tenkorang 2008). In contrast, the foundation of American private sector labor relations, the Wagner Act (1935) and Taft-Hartley Act (1947), has remained largely intact since their passage. The second important way the United States differs from other nations is with respect to the rights of public sector workers. In other industrialized nations, with very few exceptions, public sector workers possess the right to collectively bargain and “a single, national collective bargaining law prevails for all public workers” (Kearney 2001, 45; Casale and Tenkorang 2008; Public Services International 1985). As Chris Brewster et al. note, “[i]n most industrialized countries, public sector employment is synonymous with unionized employment; union membership...has been just as much a feature of public service as employment security” (136). In contrast, there is no national level law governing public sector workers in the United States and various courts have held that public sector employees have no constitutional right to bargain collectively (Kearney 2001, 47).

These unique features of American labor law have had important consequences for the development of organized labor in the United States. In particular, the exclusion of public sector employees from the Wagner Act created a durable divide between public and private sector labor law. Private sector labor law was placed firmly at the national level with a growing body of case law to reinforce this position. In contrast, public sector collective bargaining was an open

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<sup>8</sup> Canada, Australia, the UK, Germany, France, Sweden, Norway, Finland, the Netherlands, Spain, and Japan.

question. Public sector unions lacked the public acceptance and momentum to pursue national level protection before the window of opportunity for such legislation closed; thus the question of public sector collective bargaining rights was left up to the states and localities. Barring public sector employees from the cornerstone of private sector labor law delayed public sector union expansion as cultural fears and limited public sector organizing prevented immediate legislation at the state and local level. Further divided labor law relegated public sector employees' subsequent political efforts to gain legal recognition to the state and local level—sites of demand-making where the fruits of their struggle would never compare to their private sector counterparts.

The role of federalism in constraining and shaping the development of organized labor in the United States both affirms and challenges existing research on federalism. There is a tendency within federalism research to assume that federal arrangements that empower states and localities are either positive, enabling innovation at the local level (Skocpol 1992, Freeman and Rogers 2007) or negative, enabling bastions of prejudice to be formalized into law (Mettler 1998). As the following analysis will demonstrate, both assessments of federalism are accurate when looking at organized labor and David Brian Robertson's conclusion that "[f]ederalism's results are inconsistent; federalism has been used by and against Republicans as well as Democrats, liberals as well as conservatives, and innovators as well as those who resist change" is fitting (2012, 9). However, previous research has underemphasized a central feature of American federalism that is clearly illustrated by the distinct paths of public and private sector labor in the U.S.: federalism's results are inconsistent not just because states and localities have been laboratories for both liberal and conservative causes, but also because laws made at the state level lack the protections and egalitarianism of those set at the national level.

Rights and privileges granted at the state and local level are not only unequal but also inherently more tenuous compared to national level rights because: (a) at any time, a state or locality has abundant examples of policy alternatives in action, (b) groups engaged in political conflicts that have become intractable at the national level can find more success capturing politics at lower levels of government, (c) national level rights become reinforcing as case law over time creates path dependent pressures to maintain existing law, (d) federalism as a governing structure welcomes even encourages variation and innovation at the local level, and (e) most fundamentally, states and localities lack the expectations of national standards and equality—in other words, a floor of protection—that have been central to rights protections at the national level. Thus, a floor of protection may not be ideal but is a crucial foundation for union growth. Thus, dividing public and private sector labor law not only set labor on two different paths but also made them inherently unequal: public sector labor law has had more room for innovation but the rights and standards established have been more vulnerable to outright retrenchment of collective bargaining rights.

These institutional arrangements—and the timing and sequencing with which they came to be—are not only the result of politics; they have themselves also shaped subsequent outcomes including the trajectories of private and public sector union density in the United States. Federalism is not the single, causal factor affecting the development of organized labor, but the federalized nature of American labor law has channeled and constrained union behavior, particularly which sites public and private sector unions focus their collective bargaining rights demand-making. Thus, when public opinion turned in favor of public sector unionism in the 1960s, lacking a national level law, public sector unions targeted the state and local level for

recognition of their collective bargaining rights.<sup>9</sup> The gains they were able to achieve at the state and local level were mixed, unequal and tenuous in comparison to the Wagner Act's unswerving commitment to all private sector workers. In order to understand the development of organized labor, a seemingly private organization, over the last half-century, we must be attentive to the institutions that have patterned labor relations. Labor's enduring divide began with an ostensibly minor decision within one clause of the Wagner Act that has had far-reaching ramifications.

#### **IV. Passage of the Wagner Act: A Critical Exclusion**

The National Labor Relations Act (NLRA), also known as the Wagner Act, was a cornerstone of New Deal legislation and the foundation for modern day private sector labor law. Passed in 1935, the Wagner Act provided federal protections to private sector workers' efforts to unionize, outlined anti-union practices employers could no longer utilize, and put in place the National Labor Relations Board to oversee union representation elections, hear employee complaints, and interpret the Act in subsequent cases.

The NLRA is known as the Wagner Act because of the pivotal role Senator Robert F. Wagner played in the Act's passage. Senator Wagner was inspired to draft the Act because of his experience serving as head of the National Labor Board from 1933 to 1934 which was one of mounting frustration as existing statutes lacked the specificity and enforcement tools to protect the right to unionize in the face of employer resistance. During his tenure on the National Labor

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<sup>9</sup> The decision to target the state and local level for collective bargaining rights cannot be explained simply with the reasoning that this is the site of employment where the actual collective bargaining would take place. Private sector employees are organized by worksite—a highly localized form of organization—yet they pursued national level collective bargaining rights. Just as private sector employees sought collective bargaining rights across worksites and industries, public sector employees span the local, state and national level, suggesting their decision to target the state and local level for demand-making is beyond the exigencies of workplace location; workplace bargaining as well as political lobbying are separate enterprises from formal legal recognition.

Board, Senator Wagner instructed his legislative aide, Leon Keyserling, and his staff to draft a new law that would specifically outline illegal employer practices and make collective bargaining a reality for American workers. The resulting Wagner Act stands out for its bold commitment to employee rights, particularly the opening proclamation that “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection” (NLRA 1935, sec. 7). By affirming employees’ right to self-organize and collectively bargain, the Act affirms a positive right of employees to join unions, placing the federal government firmly in the middle of industrial relations (Gross 2003, 1).

The bold and unswerving commitment to workers’ rights did not apply equally to all workers in the Act. In an acknowledgement of the tenuousness of the New Deal coalition, particularly the Southern Democratic wing, the definition of employees in the Act excluded agricultural laborers and domestic servants (Bernstein 1950, 91; Labor Department 1934). In addition, employers in the Act were defined as “any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof...” thereby excluding public sector workers (NLRA 1935, Sec. 2). The exclusion of agricultural and domestic workers was a de facto barring of many African-Americans, women, and southern laborers from the Act’s protections, generating some controversy during the Act’s passage.<sup>10</sup>

In contrast, there was virtually no discussion of the exclusion of public sector workers from the Act. Our knowledge of the drafting of the Wagner Act is limited by what documents

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<sup>10</sup> It was the central disagreement expressed in the minority viewpoint included in the report of the bill from the House Committee on Labor to the floor and an amendment seeking to strike the exclusion was hotly debated on the House Floor (US NLRB 1949, 2910, 3200).

have survived—a variety of personal and public documents on the drafting, debate and passage of the Act<sup>11</sup>—which do not clarify explicitly why the drafters chose to exclude public sector employees. In early drafts of the bill, public sector employees were not specifically mentioned. Their exclusion did not come until Wagner’s aide Leon Keyserling’s fifth draft, sometime between January and June of 1934 (Keyserling 1934; Casebeer 1989). Keyserling’s drafts include many notes and asides, but unfortunately the exclusion of public sector employees is typed with no notes on the topic to elucidate Keyserling’s intentions.

Keyserling likely felt little need to discuss or explain the exclusion of public sector workers because those most affected, public sector employees, were not in a position to lobby on behalf of their own inclusion. In many of the leading public sector union publications, the Wagner Act was not mentioned before or after passage and *The American Federationist*, the AFL’s official magazine, includes much discussion on the Wagner Act but never addresses the exclusion.<sup>12</sup> Even more intriguingly, within the papers of the Wisconsin State Employee Association (WSEA), the founding local of the American Federation of State, County and Municipal Employees (AFSCME), the discussion of the Wagner Act is limited to wholehearted support. Arnold S. Zander, the Secretary of the WSEA and later the first president of AFSCME, wrote letters to Wisconsin’s two Senators as well as the Representative for Dane County (which

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<sup>11</sup> These documents include: [1] a full legislative history of the act compiled by the NLRB (NLRB 1949); [2] the personal papers of Senator Robert F. Wagner and Leon Keyserling (the relevant papers of Leon Keyserling and Senator Wagner are held in the Special Collections of the Georgetown University library); [3] Kenneth M. Casebeer’s analyses on the drafting of the Wagner Act, particularly Leon Keyserling’s involvement (1987, 1989, 1990); [4] Leon Keyserling’s writings about the drafting process (1945, 1975); [5] oral history interviews, conducted in the late 1960s to the mid 1970s, with the major drafters of the Wagner Act, namely Milton Handler, Lloyd Garrison, Philip Levy, Howard Smith, and Lee Pressman (NLRB Oral History Project 1968-1975); and [6] the publications of some of the existing public sector unions of the time as well as the papers of The Wisconsin State Employees Association (WSEA), which became the founding local of AFSCME in 1935 (the relevant papers of the WSEA and AFSCME are held in the state archives of the Wisconsin State Historical Society).

<sup>12</sup> Public employee publications consulted were the Wisconsin State Employee (1932-1936), the Federal Employee (1934-1935) and the Post Office Clerk (1934-1935).

encompasses Madison, WI), urging them to vote in favor of the Wagner Act without mention of the exclusion of public employees (Zander 1934a, 1934b, 1934c).

The silence of one of the most prominent public sector unions of the time on the exclusion of public sector workers may seem surprising but, for the WSEA, pursuing collective bargaining rights would have been extreme overreaching given the climate toward public sector unionism at the time.<sup>13</sup> As will be discussed in the next section, during this period, policymakers, driven by the inherent differences between the private and public sector, as well as negative memories of earlier public sector strikes, viewed public sector unionism as a threat to democratic sovereignty that should not be allowed. In a 1934 letter to the Secretary of the Minnesota State Employees Association, Zander explained that “it is our hope that we will get some measure of recognition, at least from the next legislature...I doubt that we will make a direct request for recognition, but will present several bills, the passage of which would get our name in the statutes and give us some measure of recognition, although it might be indirect” (Zander 1934d). Zander’s wish that the Wisconsin legislature would offer an indirect acknowledgement of the name and existence of the WSEA is a vivid illustration of the difficulties public employee unions faced for even basic recognition, much less full inclusion in the Wagner Act, in the 1930s.

Public sector unions were silent on their exclusion and for the most part others were as well. The exclusion of public sector employees was only mentioned twice in the documents examined. First, on June 5, 1934, the ACLU wrote a letter to Senator Wagner, which outlined their opposition to the Act because, tellingly, they recognized many of the shortcomings of the bill and feared it “will inevitably serve as a weapon in the hands of employers to crush organized

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<sup>13</sup> The Wisconsin legislature was pursuing their own labor disputes bill at the same time as the Wagner Act and the Wisconsin bill also excluded public sector workers (Padway 1935).

labor” (ACLU 1934, 1). Among the ACLU’s fifteen pages of disagreements with the bill, they briefly note that: “We see no reason why the United States should be exempted from the employers governed by the Act and, therefore, urge the amendment of section 3 (2) by deleting the United States from the exemption” (11). The letter has handwritten asides by Leon Keyserling that include his reactions, check marks next to proposed amendments and other portions of the letter that are crossed out. Next to the ACLU’s suggestion on public sector employees, Keyserling put two lines through the section and an “x” next to it. We cannot know Keyserling’s thinking on the matter but his notations suggest he either did not agree with the ACLU’s suggestion or felt it could not or should not be included in the Wagner bill.

Public sector employees were mentioned a second time during the House Committee on Labor debate of the bill on March 19, 1935. Francis Biddle, chairman of the interim labor board, testified on behalf of the bill. Representative Ramspeck (D-GA) framed a theoretical question for Mr. Biddle in reference to mail carriers. Representative Dunn (D-MS) asked for clarification on whether mail carriers would be covered under the bill. This exchange followed:

Mr. BIDDLE. That is true; I was taking it as a theoretical question. They [mail carriers] would of course have no relief here. I suppose Mr. Connery [Chairman] in drawing the bill thought it wise to exclude Government employees as that is suggesting a debatable question and he did not want to overload the bill.

The CHAIRMAN. We thought that Mr. Ramspeck’s [sic] committee will have to take care of that eventually.

Mr. RAMSPECK. I was not objecting to that feature of the bill. I think the States and Government should be excluded.

The CHAIRMAN. And I felt it would be a very good example to the Government and very unselfish (NLRB 1949, 2653).

Mr. Biddle suggests that public sector employees were excluded from the Wagner Act because there was a lack of consensus over their standing and including them in the bill would have overloaded the bill, likely meaning that public sector inclusion may have created undue controversy that could have prevented passage through Congress. The Chairman, Rep. Connery

(D-MA) who was the House sponsor of the bill, responds by pointing out that he expects public sector employee collective bargaining to be handled by Rep. Ramspeck's committee, which is the Committee on Civil Service. Rep. Ramspeck went on to say that he agreed with the exclusion of public sector employees to the Wagner Act and the Chairman adds that he thinks the Wagner Act will be a nice example for public sector workers to follow.

This brief aside in a legislative history over 3,000 pages long cannot tell us conclusively why public sector employees were explicitly denied protection by the Wagner Act. However, taken together, the scant documentary evidence suggests three implications. First, Senator Wagner, Leon Keyserling and other drafters of the bill were at the very least aware and consciously choosing to exclude public sector employees. Second, this exclusion was not discussed extensively and received little attention from those following the bill, particularly in comparison to other key exclusions like agricultural workers. Finally, public sector employees were likely excluded from the Wagner Act because there was no consensus on their inclusion: it likely would have generated controversy, and public sector labor law was seen as belonging in a separate discussion on civil service because the nature of public sector employment did not entitle public sector workers to the same rights as their private sector counterparts.<sup>14</sup> During the Wagner Act's drafting and passage, its supporters could not be sure whether the Supreme Court would even uphold the law. The Court's "switch in time that saved nine" would lead to the Court to ultimately affirm the constitutionality of the Wagner Act, but this was not a forgone conclusion in 1935. This uncertainty may have contributed to the decision to exclude public sector workers rather than increase the risk that the Supreme Court might overturn the law.

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<sup>14</sup> This was the conclusion reached by labor attorney Joseph Rosenfarb in his 1940 in depth study of the Act that included a glowing preface by Senator Wagner himself. Rosenfarb concluded that "the exception of the political entities of our federal system from the operation of the act is in accordance with the prevailing tradition that labor unionism among government employees is hedged in by limitations on union activities, such as strikes and picketing, not applicable to labor engaged in private industry" (58).

Ultimately, the exclusion was incorporated into the Wagner Act and signed into law. While the possibility of public sector employees being deliberately included in the Act was difficult given the fears of public sector unionism at the time, legislators need only look to the United Kingdom as an example of a country that already provided collective bargaining rights to public sector employees, albeit with important distinctions from private sector employees' rights (Sires 1953). There was also the possibility that public sector workers would have inadvertently been included. Public sector unionism was still a relatively minor phenomenon at the time, especially when compared to the private sector union movement, whose very public sit-down strikes at General Motors just a year before were still fresh on everyone's mind. Keyserling's first four drafts of the Act did not contain the exclusion and the issue of public sector unionism did not animate debate over the bill. Thus, the exclusion was placed in the Act, but it appears this was done without full recognition of the significance of this exclusion. A little discussed or debated decision at the time has since had far sweeping consequences for public sector unions and labor as a whole.

The passage of the Wagner Act in 1935 marks a critical juncture for the split between public and private sector labor law for two reasons. As Paul Pierson (2000) notes, timing and sequencing matters and when key moments pass, certain opportunities also can be lost, constraining future possibilities. For instance, Jacob Hacker (1998) shows how the United States' passage of national health coverage for the poor and elderly, rather than the majority of working Americans, just as health care costs were beginning to skyrocket led to a series of developments that made the possibility of universal healthcare in this United States increasingly remote. The Wagner Act was equally pivotal: public sector workers were explicitly excluded from the Wagner Act and it would not be until the 1970s that they would have enough

momentum on their own to pursue a national level law—after the window of opportunity to pass such legislation had closed.

The delayed recognition of public sector unions constrained public sector union growth at the very same time private sector union membership skyrocketed, and it forced public sector unions to focus their demand-making for legal recognition at the state and local level.

Paradoxically, however, leaving public sector labor law to the states and separating it from private sector labor law has allowed public sector unions to flourish when the absence of labor law reform at the national level has proven so disastrous for private sector unions. Thus, the story of public sector labor law is both one of missed opportunities and modern (imperfect) innovation that has had striking consequences for labor in the United States. The next sections will explore in greater detail the decades following the passage of the Wagner Act and the two distinct paths of public and private sector unions.

## **V. Before Taft-Hartley: Private Sector Labor’s Heyday, Public Sector Labor’s Mounting Frustration**

The pro-union legal and institutional environment created by the Wagner Act, which put an end to active state repression of labor, and massive war mobilization during World War II led to skyrocketing private sector union membership, reaching levels previously unheard of in American history. Private sector union membership grew from just under 7% of the American workforce in 1935 to 14% by 1939, a doubling of union density in just four years. Union density reached 23% by the early 1940s (Bernstein 1954, 304).<sup>15</sup> The promises laid out in the Wagner Act were coming to fruition as labor became a powerful force both in size and political impact

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<sup>15</sup> These density levels are higher if the sample is restricted to non-agricultural private sector employees. According to Troy (1965), private sector union membership grew from just under 13.3% of the American workforce in 1935 to 20.7% by 1939. Union density reached nearly 30% by 1945.

through its alignment with the Democratic and the New Deal coalition (Farhang and Katznelson 2005, 3).

While private sector unions were riding high on the beneficial effects of the Wagner Act, public sector unions were struggling to gain legal recognition as the collective voice of employees in their workplaces. Judges routinely denied public sector workers any collective protections (Slater 2000a, 990). Public sector union successes for legal recognition were virtually non-existent during this period because, across the United States, there was a shared understanding that public sector unionism should not be permitted.

Several features of public sector employment fed the idea that public sector unionism was inherently different and dangerous. First, the public sector is primarily involved in service provision of non-tradable goods rather than industrial production. Thus, when public sector unions strike, rather than halting the production of tradable goods, they instead may halt vitally important services like police and fire protection, public education, and mass transit. Second, public sector employers, unlike their private sector counterparts, are often elected officials. Thus, public sector unions can influence their employers through collective bargaining *and* political action. Finally, the nature of public sector labor relations is different in a multitude of ways including that profit and marketplace demands do not solely govern labor relations and the employer and employee are not the only actors in the bargaining relationship, voters and interest groups are just two of the additional players (Kearney 2001, 82-83). As a result of these differences, some fear that the balance between union and employer may be disrupted with public sector unions exerting undue influence, thereby subverting the democratic process.

For judges and legislators during the 1930s and 1940s, public sector workers were seen as wholly separate from private sector workers due to their employer—the state, local or federal

government. In an open letter to the president of the National Federation of Federal Employees and the president of the CIO, President Roosevelt outlined the dominant position of the time:

All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service... The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations (Federal Union Policy Told 1937).

By the very nature and purposes of government, President Roosevelt likely meant the differences listed above, which led him and other policymakers to conclude that public sector unionism was fundamentally different from private sector unionism and threatened the democratic, accountable relationship, between an elected official and the voting public. An article in the *Wall Street Journal* succinctly stated the dominant fear of the time in the article's title: "Governed by Our Servants" (1928). Judges and policymakers' greatest worry was that public sector unions would tie the hands of policymakers and wrest power from elected officials to an outside group threatening state sovereignty (Slater 2000a, 996). The courts and policymakers coupled their fear of devolving democratic power to a private entity with fears that public sector unions would be identical to their private sector counterparts including engaging in militant strike activity. This fear and subsequent backlash emerged in reaction to early public sector organizing efforts.

The first public sector employee actions can be traced back as early as the 1820s when workers in federal shipyards fought for a 10-hour work day.<sup>16</sup> Postal workers formed organizations beginning in the 1860s and the first teacher, firefighter and police organizations emerged in the late 1800s (Kearney 2001). These early organizations were met with outright hostility. At the federal level, President Theodore Roosevelt responded to postal worker political activism by issuing a gag rule forbidding federal employees from lobbying for legislation on

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<sup>16</sup> President Andrew Jackson would grant the Washington, D.C. naval shipyard workers a 10-hour day in 1836 after a strike and mass demonstration (Kearney 2001, 12).

their behalf (13). The Lloyd-LaFollette Act of 1912 overturned Roosevelt's gag rule and created employment protections for federal employees, but hostility and union busting efforts against federal workers continued. Such antagonism limited the expansion of public sector unionism.

At the state and local level, public sector workers' union actions were met with equal hostility exemplified by the 1919 Boston police officer strike, which made national headlines. During the 1800s, police and firefighter associations formed to provide pensions and insurance programs for their members, but they quickly expanded to more closely resemble unions (14). In 1918-1919, there was a particularly high number of police and firefighter strikes as part of the broader 1919 post-war strike wave. In September of 1919, the majority of Boston's police force went on strike for several days in what was seen by critics as a Bolshevik takeover (Slater 2004). The police commissioner refused the police officers' demands, did not recognize them as a union, and the strikers' were ultimately replaced. During the strike, there were several nights of mild lawlessness in the city that were heavily reported on by the media. Critics of the strike came to see it as an embodiment of what public sector unionism would become—unbridled chaos and a Bolshevik threat to America. Facing public condemnation and hostile government officials, the disastrous 1919 strike hobbled the public sector union movement for years to come.

Judges in particular continued to reference the Boston strike well into the 1930s and 1940s. Private sector union strike activity was growing and judges were fearful of enabling militant strikes among public sector workers by granting them collective bargaining rights. They rejected the possibility that public sector unions could be defined on different terms than their private sector counterparts (Slater 2004, 82-88). The near universal dominance of this shared understanding of public sector unionism among judges and policymakers meant municipal agreements between unions and elected officials were a rarity as courts and legislatures sided

unanimously against public sector unions. In 1941 and 1946, the National Institute of Municipal Law Officers (NIMLO), a group that sought to promote cooperation among municipalities on legal matters, surveyed state Attorneys General, available court decisions, and 365 city attorneys. Citing the threat to state sovereignty, they found unanimity that collective bargaining agreements between public employees and municipalities were illegal (NIMLO 1946).

The findings of the NIMLO are not surprising; through the 1950s, the courts, state legislatures and municipalities overwhelmingly decided against public sector unionization. Public sector workers could be fired without legal recourse for joining a union. Yellow dog contracts—which require a person to not join a union as a condition of employment—were outlawed for private sector unions in 1932, but they were still permissible in the public sector well into the 1950s (Slater 2000b, 500). Laws recognizing unions as the collective bargaining unit of public employees would not be passed until the 1960s. Public sector unions were not strong enough on their own to push for such legislation, particularly given the public’s and policymakers’ fear of public sector unionism. Because the national and state legislatures refused to recognize public sector unions and the courts routinely sided against them, public sector unions only made headway by (a) organizing public sector workers without the guarantee of legal protections or collective bargaining, and (b) finding individual towns, departments, or officials who were willing to acknowledge the union in negotiations. As a result, public sector union membership grew slowly through the 1950s, with few dividends for workers. Without legal recognition, public sector unions possessed limited bargaining tools.

## **VI. 1947 through the 1960s: A Step Forward for Public Sector Unions, a Step Back for Private Sector Unions**

During World War II and the years that followed, in the face of private sector laborers' tremendous gains, anti-union forces did not fade away. Instead, employers increasingly believed that the Wagner Act put unions not on equal footing with management, but rather on higher ground (Lichtenstein 2002, 105). Anti-union efforts were assisted by Southern Democrats who had formed a critical part of the New Deal coalition, but increasingly turned away from the New Dealers in the face of threats to sustaining the racialized labor system in the South (Farhang and Katznelson 2005). Management resistance and Southern Democratic defection created an opening for legislation that would scale back the positive rights commitment to unionize and collectively bargain enshrined in the Wagner Act. The Taft-Hartley Act passed in 1947, over President Truman's veto, and weakened private sector unionism in America by strengthening the power of management.

Taft-Hartley drove some of the most active, radical labor leaders from the movement by requiring members to sign legal affidavits asserting they were not Communists. It further outlawed many of labor's most potent tools including wildcat and solidarity strikes. Moreover, it eliminated foremen and supervisors from labor-law coverage, a crucial exclusion in the years to come as such positions expanded within the labor market. The Act further limited unions by enshrining employer free speech rights, which were later interpreted as protecting employer anti-union free speech during organizing campaigns enabling more virulent anti-union efforts by employers hindering union organizing. Lastly, states that were hostile to unions gained a new tool with section 14(b), which banned the closed shop and allowed states to enact "Right-to-Work" laws whereby employees in unionized workplaces are not compelled to join the union, enabling them to free-ride on the efforts of unions.

The provisions in Taft-Hartley changed the course of private sector industrial relations in the United States. Whereas the Wagner Act affirmed the right of employees to unionize, the Taft-Hartley Act strengthened the power of employers and states to oppose unionization efforts. Momentum has largely been on the side of Taft-Hartley supporters ever since. Most notably, there have been no revisions to private sector labor law on the scale of the Wagner and Taft-Hartley Act since 1947. Serious attempts at labor law reform during the Johnson, Carter, Clinton, and Obama presidencies all met with failure. Circumstances unique to each reform effort certainly contributed to their failure, however, one central feature of American politics has proven a consistent barrier: the institutional features of the U.S. Senate. The Senate is marked by (a) malapportionment whereby states with high population density receive equal representation to rural, low population states and (b) supermajoritarianism whereby, barring the 60 votes to reach cloture, individual Senators have the ability to stall and/or block legislation. These institutional features are detrimental to organized labor because union strength is geographically concentrated making a pro-union supermajority unlikely and instead granting the anti-union coalition the power to obstruct labor law reform (Dark 1999; Warren 2011).

The obstructionist powers in the Senate have been used to great effect since Taft-Hartley to stymie reform. A telling example is the 1965 attempt by labor, Democrats and President Johnson to overturn section 14(b) of the Taft-Hartley Act. Placing labor reform near the end of the legislative session's agenda certainly played a role in the failure of the reform effort,<sup>17</sup> but the crushing blow was obstructionist Senators use of the filibuster. As the legislative session drew to a close, labor supporters were unable to muster the votes to invoke cloture and end the filibuster. Given the Democratic super-majority in the Senate, it was twenty-one Democratic Senators who

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<sup>17</sup> See Dark 1999 and Johnston 2012.

proved the decisive votes by joining with twenty-six Republicans to vote against cloture on October 11, 1965 (Foley 1965). These Democrats were a unique subsection of the Senate: of the twenty-one, seventeen were from states that already had Right-to-Work laws on the books. This is striking because only seventeen states had Right-to-Work laws at the time (NRTLDF 2012). Only four Democrats from Right-to-Work states *voted for* cloture. Thus, of the twenty-two Democratic Senators from Right-to-Work states in 1965, seventeen of them voted against cloture, ensuring that repeal of Section 14(b) would not pass.<sup>18</sup>

It is not surprising that Democrats from Right-to-Work states would oppose the repeal of the law allowing their state's to pass such provisions. However, what this example illustrates is how, once the existing legal framework of Taft-Hartley was put into place, labor opponents utilized to great effect obstructionism in the Senate to maintain the status quo. Anti-union Senate Democrats could be effective in opposing unions simply by blocking future reforms. Obstructing labor reform efforts has been effective because it prevented the existing legal and institutional framework of labor law from adapting to modern day labor relations resulting in policy drift in the area of labor law (Hacker and Pierson 2010). As Streek and Thelen (2005) note, “[i]nstitutions do not survive by standing still,” but rather “require active maintenance; to remain what they are they need to be reset and refocused...in response to changes in the political and economic environment in which they are embedded” (24). By failing to update private sector labor law, the current institutional framework atrophied and now lacks the capacity to

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<sup>18</sup> There were 22 Democratic Senators from Right-to-Work states in the 89<sup>th</sup> Congress. The 17 who voted against cloture (and their state and the year their state passed a Right-to-Work statute) were: Sparkman and Hill (AL, 1953); Hayden (AZ, 1946); Fullbright (abstentia vote recorded) and McClellan (AR, 1947); Holland and Smathers (FL, 1944); Russell and Talmadge (GA, 1947); Stennis and Eastland (MS, 1960); Ervin and Jordan (NC, 1947); Russell (South Carolina, 1954); McGovern (SD, 1946); Byrd and Robertson (VA, 1947). The four Democrats from Right-to-Work states to vote for cloture were Burdick (North Dakota, 1948); Bass (TN, 1947); McGee (WY, 1963) and Moss (UT, 1955). Gore Sr. (TN, 1947) did not vote. Sources: “Roll Vote No. 287” 1965; NRTLDF 2012.

properly coordinate and regulate modern day labor relations. The erosion of national private sector labor law is not simply the result of the passage of time, but rather the product of deliberate “nondecisions” and obstructionism by federal policymakers (Streeck and Thelen, 2005, 25, Hacker and Pierson 2010).

The consequence of this purposeful obstruction is what Estlund (2002) describes as the “ossification of American labor law” by which she means that “[t]he core of American labor law has been essentially sealed off—to a remarkably complete extent and for a remarkably long time—both from democratic revision and renewal and from local experimentation and innovation” (1530). The term ossification is apt because it implies that labor law is becoming increasingly rigid and out of date over time. The congressional impasse is “the linchpin of the process of ossification” which has prevented the repeal of Taft-Hartley and created an out of date legal framework for dealing with labor relations that has hampered labor’s organizing efforts (1527). By orchestrating policy drift in this area, obstructionists have helped create an antiquated labor law that is just as harmful to labor’s efforts to maintain membership levels as the Taft-Hartley Act’s original provisions.

The legislative impasse over private sector labor law was accompanied by significant development of private sector labor law in the judicial branch. As Karl E. Klare (1978) has demonstrated, the judicial branch, rather than a means for labor to bypass legislative gridlock, has “deradicalized” the Wagner Act with court decisions upholding aspects of the Act in line with liberal capitalism and denying more revolutionary interpretations. For instance, subsequent interpretations of the strike provisions within the Wagner Act resulted in the strike being “rendered negotiable, predictable, less effective, and less likely” (McCammon 1990, 224). Further, the evolving NLRA legal doctrine set forth by the courts and the NLRB has “deferred to

employer property rights rather than employee self-organization rights or union interests” at the expense of union organizing (Block, Wolkinson and Kuhn 1989, 238). These “deradicalizing” private sector labor judicial developments have made the importance of new legal doctrines, generated in Congress, all the more pressing but no more likely to pass.

Thus, the only area where we have seen movement on private sector labor law—passage of Right-to-Work provisions and judicial decisions—has diminished the federal commitment outlined in the Wagner Act to promote the right to collectively bargain in the private sector. Having the locus of decision-making at the national level meant private sector unions nationwide benefitted from pro-labor policymaking during the New Deal, but it has also meant that private sector unions are beholden to the multiple veto points at the national level and limited in their alternative strategies if the federal government does not reform existing labor law.

While private sector labor law reached an impasse after Taft-Hartley, major changes were happening to create a “window of opportunity” for public sector laws to pass at the state and local level (Kingdon 1984). Public sector employees drove the change by pressing for recognition of their grievances and defiantly organizing and joining unions regardless of legal provisions, forcing policymakers to address the issue. During and after World War II, public sector employment increased as the New Deal expanded the size and scope of the local, state and federal government. The number of state employees rose from 804,000 in 1946 to 1,592,000 in 1960. Likewise, the number of local government employees rose from 2.8 million in 1946 to 4.8 million by 1960 (Bernstein 1991, 208). Government employment rose from just under eleven-percent of the total workforce in 1930 to well over fifteen-percent by 1960 (U.S. Census Bureau 2003). Wages and salaries in these expanding fields still lagged behind the private sector,

creating tensions among the growing public sector workforce, and feeding a demand among federal, state and local workers for representation (208).

As a result, public employees were increasingly forming and joining unions in spite of the lack of legal recognition and protection. As Irving Bernstein (1991) notes, exclusion from the Wagner Act “did not forbid public workers to engage in collective bargaining, but prevented them from doing so within the carefully crafted NLRB system” (205). Public employees seeking to redress grievances formed employee organizations, but these unions lacked many of the key hallmarks of private sector unions including NLRB certification elections, arbitration processes and the guarantee of employer recognition. These organizing efforts were more successful at the municipal level. For example, under Mayors Joseph F. Clark, Jr. and Richardson Dilworth, Philadelphia developed collective bargaining procedures and negotiated agreements for police, firemen and city employees during the latter half of the 1950s (Bernstein 1991, 209). This was done despite the lack of state law empowering Philadelphia’s Mayors to take such steps.

Founded in 1932, AFSCME, the American Federation of State, County and Municipal Employees, was at the forefront of driving such change. AFSCME grew from 9,737 members in 1936 to 286,283 members by 1966 (Donoian 1967). AFSCME and other public sector unions like the American Federation of Government Employees, which represented federal workers, as well as teachers, firefighter, and police unions, actively sought to change the legal climate for public sector bargaining through political activity. They represented an increasingly organized workforce with unaddressed grievances and no legal framework to cope with their demands.

Public sector unions were also emboldened by the Civil Rights Movement. African-Americans often found greater success and acceptance in public sector employment, and they gained recognition and leadership positions within public sector unions and helped push for

union progressivism on Civil Rights Movement and heightened politicization overall (Moody 1988, 182). AFSCME consistently was on the progressive wing of the labor movement and was particularly active in the Civil Rights movement, but the AFT and other public sector unions' activities overlapped with the movement as well (Levy 1990; McCartin 2006; Moody 1988). The social foment of the time over Civil Rights occurred in tandem with and helped fuel public sector unions' efforts to gain legal recognition.<sup>19</sup>

In an era of growing social unrest, public sector unions began to obtain both formal and informal recognition. They engaged in heightened levels of demand-making including strikes, despite the legal prohibitions against them; public employees' growing militancy forced the issue of public sector unionism onto the legislative agenda. Public sector union leaders and members faced jail time and financial punishments for striking but, in some instances, succeeded in gaining union recognition and agreements to their demands. It is difficult to measure the climate of public opinion at the time but, looking back at newspaper coverage, academic discourse and legal opinion from the period suggests a growing acceptance that public sector workers had the same need for representation as private sector workers. Rising tolerance was undoubtedly helped by the fact that private sector union density reached its peak in 1953 with over a third of the workforce unionized, making labor unions a normal part of American life.

Robust private sector unionism served as a powerful example for public sector employees to emulate and the labor movement also offered support to the emerging public sector unions. Since the 1940s, the CIO was a vocal proponent of pro public sector labor laws and, after the merger with the AFL in 1955, the AFL-CIO increasingly moved from a vocal supporter to an

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<sup>19</sup> Public sector union ties with the Civil Rights Movement, the women's movement, and the anti-war movement grew even stronger into the 1970s. The election of Jerry Wurf as president of AFSCME in particular pushed the union to become a strident activist for these sister movements. Not coincidentally, public sector union strike activity grew in tandem with the rise of social protest more broadly.

involved ally in the effort for new legislation (Slater 2004, 131, 162). However, it would be misleading to attribute public sector success to the AFL-CIO. The AFL-CIO did not form a public sector unit until the 1970s, and relations between the more progressive (and rapidly growing) AFSCME and the AFL-CIO were strained at times—after all, public sector union power would require the current AFL-CIO leadership to relinquish some of their influence within the movement. In the end, powerful and active public sector unions and employees demanded acknowledgement from their employers and the labor movement. It was their activism that drove the change in laws and within organized labor.

Public sector unions' demands were ultimately translated into law by the election of Democratic mayors, legislatures, and chief executives whose elections almost always preceded passage of public sector collective bargaining laws. Democratic politicians owed much of their success to the politically mobilized and active private and public sector unions (Greenstone 1969). In New York City, Mayor Wagner promoted public sector unionism because it provided him with loyal supporters independent of the city's political machine (Shefter 1992, 73-75). In Wisconsin, Governor Gaylord Nelson had served as a field representative for the municipal employees union and remained friends with the union's leaders prior to signing the state's public sector collective bargaining law as governor (Slater 2004, 180). In the decade leading up to passage of the law, Democrats received 20-30% of their political funds from unions (180). For Democrats and public sector unions, Joseph A. McCartin's conclusion is apt that "each side in that relationship knew well how much it needed the other" (1996, 79). Public sector labor laws served as the fruits of the marriage between labor and the Democratic Party (79). Newly elected Democrats attributed their success to labor's political prowess, and Democrats were self-interested in promoting increased public sector unionization.

Public sector unions' efforts and the assistance of Democratic politicians created a window of opportunity for passage of state laws acknowledging the legal standing of public sector unions. As Slater (2004) notes, "the legal regime had become brittle, as popular opinion and actual practices increasingly tolerated unions of government workers" (158). Quantitative analysis of the emergence of public sector labor laws has identified several key factors that made some states more likely to pass pro public sector labor legislation than others. Berkeley Miller and William Canak (1988), for example, found that "the presence of strong statewide labor movements and earlier private sector union successes, the long-term incumbency of especially northern Democrats, and high levels of interparty competition" all were correlated with state laws favorable to public sector collective bargaining (181). Interparty competition, Democratic Party electoral success, and an already strong and established labor movement were evident in events that marked the turning point for public sector labor law.

Three events were particularly important during this period to help break open the "brittle" legal regime. First, in December 1961, in a highly publicized episode, the United Federation of Teachers (UFT) went on strike in New York City. Through negotiations, the UFT was recognized by the city as the collective bargaining representative of all city teachers. New York City municipal workers agitated for decades to little avail until Robert F. Wagner, Jr. was elected mayor in 1953. Wagner's support for labor could be traced back to his father, the architect of the Wagner Act. Upon entering office, Mayor Wagner created a department of labor and set the new department to the task of creating a labor policy for city employees.

Wagner issued Executive Order 49 in 1958 in essence creating "a little Wagner Act for the city" that, through expansions over the next decade, would come to cover all of the city's employees (Bernstein 1991, 210-211). While the 1958 order was a milestone, the Act initially

did not cover many of the city's workers including teachers. The United Federation of Teachers formed in 1960 to organize and address teacher grievances in a more confrontational fashion than previous New York City teacher professional associations. On November 7, 1960, the UFT organized a strike involving over one fifth of the city's teachers. The strike only lasted a day, but afterward the school board was amenable to holding a vote among the city's teachers to choose which union would represent the teachers in future negotiations (Buder 1962). On December 16, 1961, the United Federation of Teachers won the right to represent the City's 43,000 teachers (Katz 1961). Teachers, school boards, and unions across the country closely followed the events. The Los Angeles Times called it "one of the most significant events in the teaching profession" and a New York Times editorial declared that the success of UFT in New York City had "a significance that extends far beyond New York. It will set patterns for school systems everywhere and for the still ill defined systems of collective bargaining in government" (Turpin 1962; "A Union for Teachers" 1961).<sup>20</sup> The developments in New York City inspired increased teacher activism and organizing to demand similar treatment in cities across the country.

The second key event was President Kennedy's signing on January 17, 1962 of Executive Order 10988, which recognized and protected the right of federal employees to join unions. The election of Kennedy, a Democrat from a Northern union friendly state, created an opportune time for new policies dealing with federal workers. One of the crucial developments pressuring Kennedy to act was that federal employees were already organizing. By 1961, fully one third of federal employees, 762,000 workers, were members of employee organizations but the executive branch had no definitive policy for addressing these groups' demands (Bernstein 1991, 206). Recognizing the need to deal with federal employee organizations, nineteen different federal

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<sup>20</sup> The agreement between the city and UFT was noted by newspapers across the country including major markets like Los Angeles and Chicago (Turpin 1962; "Teacher Union" 1961).

employee collective bargaining bills were introduced in Congress in early 1961. One of these nineteen bills was likely to pass but whether the form of the legislation was to the Executive Branch's liking was unclear.

If President Kennedy hoped to influence the outcome, he could not wait for Congress to act. Instead, the president created an informal study group to explore the issue and, after they recommended an executive order to sidestep the chaos of nineteen different pieces of legislation, formed a task force to draft the order (212-213). The task force's recommendation of a comprehensive policy permitting many of the rights outlined in the Wagner Act but with key limitations, including barring the right to strike and upholding the primacy of Civil Service, was incorporated into Executive Order 10988 (214). While limited in the rights granted federal employees, the Order was a milestone for public sector unionization and led to a rise in union organization with over a million federal employees belonging to a union only five years later (216). For the public sector labor movement more broadly, Kennedy's recognition of federal workers' right to unionize finally displaced the fear of public sector unionism and legitimized public sector workers' demands for legal recognition. However, the majority of public sector employees worked (and still do) for the state and local rather than the federal government making Kennedy's executive order largely symbolic: absent a national law, collective bargaining rights would still have to be won at each state or locality for the majority of public sector workers.

Finally, on January 31, 1962, this newfound legitimacy was made real when Wisconsin became the first state to pass comprehensive collective bargaining rights for municipal public sector workers.<sup>21</sup> The law was the culmination of a decade of work by the founding AFSCME

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<sup>21</sup> The law was extended to state workers in 1967.

local, the Wisconsin State Employees Association (WSEA). The WSEA had been politically active on behalf of its members since its founding in 1932. AFSCME's continuing demand for legal recognition in Wisconsin finally gained sway in the 1950s due to evolving public support for public sector unionization. Moreover, in the 1950s there was intense party competition in Wisconsin between the Democrats and Republicans with labor forming a core support for Democratic politicians in the state (Slater 1994, 168). Democrats were keenly aware of the role labor played in their success and this spurred their support of labor law reform. Legislation was close to passing several times in the 1950s. The ultimate breakthrough came from the continued efforts of AFSCME and the election of the first Democratic Governor in decades, Gaylord Nelson, and a Democratic state assembly (179). Wisconsin marked the first in a large upsurge of state legislatures enacting public sector labor legislation over the next several decades.

The recognition of the UFT in New York City, Kennedy's issuing of Executive Order 10988, and the passage of collective bargaining rights in Wisconsin all occurred within the span of two months. They highlighted that existing labor law—or the lack thereof—was out of step with the nation's new understanding of public sector unionism. The change in attitude was captured by the National Institute of Municipal Law Officers. In the 1940s, the NIMLO had found overwhelming opposition to granting collective bargaining rights to public sector unions. Now, in 1968, the NIMLO held a labor relations seminar devoted to the subject of public employment unionism. Instead of summarizing the wealth of legal and public opinion opposed to public sector unionism as they had in the 1940s, the NIMLO in 1968 displayed a dramatic turnaround by discussing public sector collective bargaining rights as a foregone conclusion for municipalities. The seminar met just days after Martin Luther King Jr. was assassinated while assisting striking public sanitation workers in Memphis. In the shadow of this violent act and the

subsequent rioting, participants believed “a revolutionary change in the employee relations picture of cities” had occurred (25). As a result, municipalities must accept this “new endeavor” and plan, prepare, and adapt to this new environment by passing new labor legislation (27). The participants in the NIMLO seminar were not exaggerating; the 1960s was a period of dramatic change for public sector union density and legislation.

While pressure for change in public sector collective bargaining rights had reached a boiling point, this pressure manifested itself in specific ways: the majority of activity took place at the state and local level by disparate union locals in separate movements for union recognition. The exception, of course, was federal employees who simultaneously lobbied at the federal level for changes to the civil service laws. Public sector unions lacked the size and influence to pursue legislation at the national level and, because the Wagner Act left public sector unionism an open question, the states and localities became the locus of answering the question of public sector collective bargaining. The dispersed movements for public sector legislation reflect the federalized nature of American labor law. Excluded from the Wagner Act, and lacking their own national level law, public sector unions had to fight the battle in every state and locality.

Over the next two decades, dozens of states followed the example of Wisconsin by extending collective bargaining rights for public sector workers. Quantifying just how much legislative change occurred during this period is difficult because laws varied both in the degree to which they were universal or targeted specific workers, like teachers, and in the generosity of their collective bargaining rights. Richard B. Freeman and Robert G. Valletta (1988) compiled a dataset attempting to measure the degree of pro-bargaining or anti-bargaining laws for public sector workers in the fifty United States. Using their most stringent measure of pro-bargaining, only five states qualified as pro-bargaining in 1969. By 1984, twenty-one states qualified as pro-

bargaining (406). Looking at change over time, forty of the fifty states moved in a pro-bargaining direction from 1969 to 1984 (416). Henry S. Farber (2005) used the same dataset to assess the development of laws allowing collective bargaining for public sector workers in four categories of workers. Overall, “the total increased from one state in 1955 to over 40 states for firefighters and teachers and to over 30 states for police and state workers by 1979” (15-16). The degree of reform is visually striking as well.

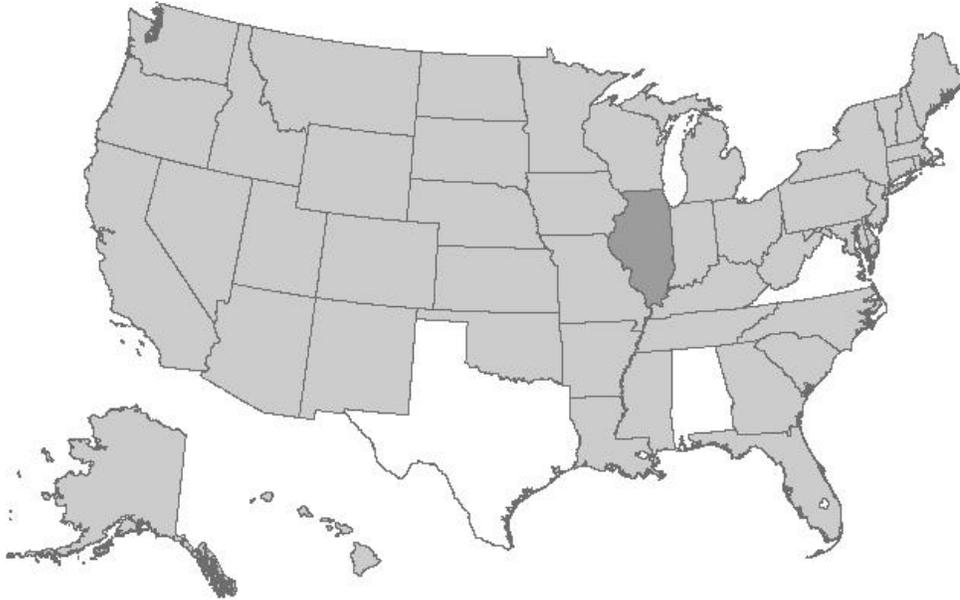
Figure 6 provides a visual illustration of how much change occurred during this period in the area of state employee labor law. In 1955, every state either prohibited or had no statute allowing state employee collective bargaining, save Illinois.<sup>22</sup> By 1980, only nine states still had no provision regarding state employee collective bargaining. Thirty-four states now granted state employees some degree of collective bargaining rights: six authorized but did not require the employer to bargain collectively with employees, one allowed employees the right to present proposals, four gave employees the right to meet and confer with their employers, eighteen had laws with an implied duty of employers to collective bargaining, and, most generously, five states explicitly required employers to collectively bargain with employees (Valletta and Freeman 2012). No longer was an entrenched opposition to public sector collective bargaining dominating the legal landscape.

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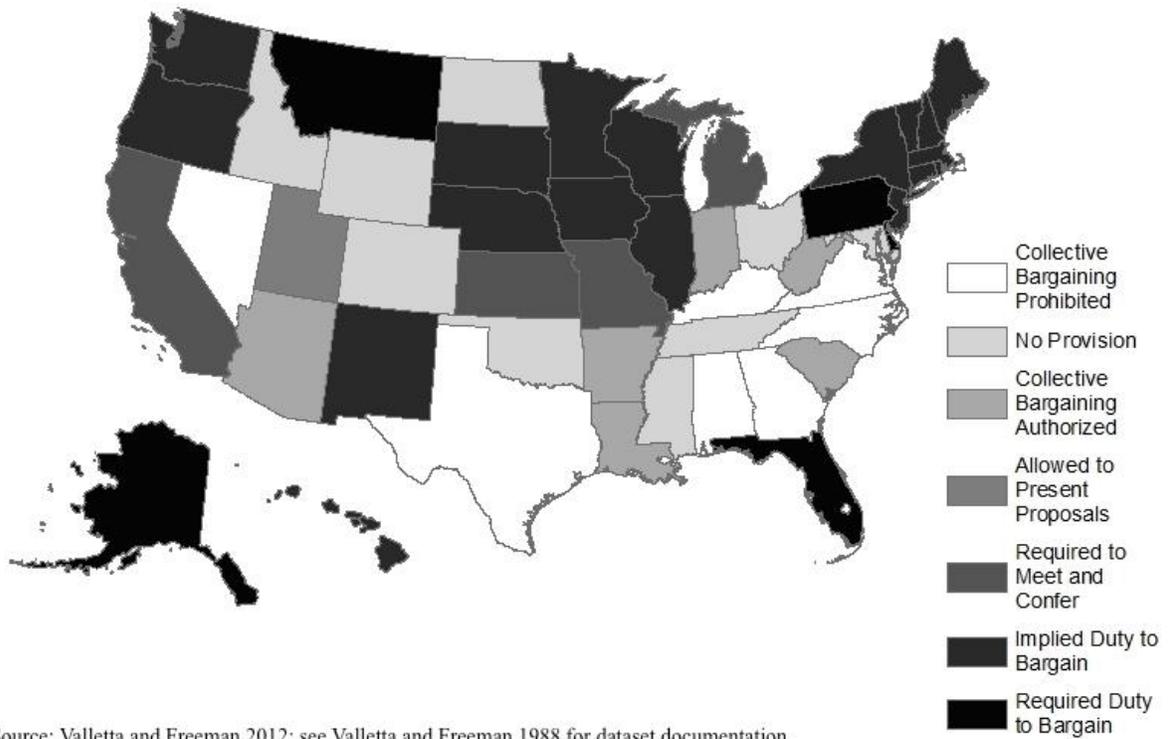
<sup>22</sup> It is unclear why Valletta and Freeman identify Illinois as unique in 1955. Their dataset measures public sector collective bargaining law across the states over time. They look beyond legislation to also include case law and attorney general decisions that created state policy when legislation did not exist. They do not explain why Illinois was coded as the first state to authorize collective bargaining, but it is likely that this coding was a result of case law or an attorney general decision. Wisconsin’s public sector collective bargaining legislation in 1961 is widely regarded as the first state to recognize public sector collective bargaining rights through legislation.

**Figure 6: The Proliferation of Public Sector Collective Bargaining Laws**

1955 State Employee Collective Bargaining Laws



1980 State Employee Collective Bargaining Laws



Source: Valletta and Freeman 2012; see Valletta and Freeman 1988 for dataset documentation

Pro-bargaining public sector legislation has been associated with rising union membership (Freeman and Ichniowski 1988) and this was certainly the case during this time period. Public sector union density rose from 10.8 percent in 1960 to over 35 percent in the 1980s (Jamieson 2013). However, pro-bargaining public sector legislation is not enough to explain the rise of public sector unionization. With the Wagner Act, the private sector also had the foundation for robust organizing. However, as will be discussed below, the Taft-Hartley Act and labor law ossification led to rising employer resistance that has hindered private sector organizing. Public sector union density has grown not only because of new legislation but also because employer resistance is much less prevalent. Without employer hostility, public sector unions have had greater success in organizing new workers.

Two major factors lead public sector employers to be less likely to resist unionization and commit unfair labor practices than private sector employers. First, public sector employers receive less pressure to resist and more pressure to behave civilly during organizing campaigns. Public sector employers are not beholden to shareholders' financial performance expectations and largely lack a profit motive that might encourage them to oppose unionization. Instead, they face pressures from their constituents to behave civilly and not break labor laws during union representation campaigns. As Kate Bronfenbrenner and Tom Juravitch (1994) note, "[m]any public officials are elected and regardless of their individual attitudes are constrained from engaging in activities that the public might perceive negatively" (21). Moreover, public officials likely face greater punishments for breaking labor laws (like removal from office) compared to the limited punishments at the NLRB's disposal: "put crudely, management opposition to unions can gain profits in the private sector; in the public sector, it can cost votes" (Freeman 1988, 85). In general, employers in the public sector have more to lose by opposing unionization.

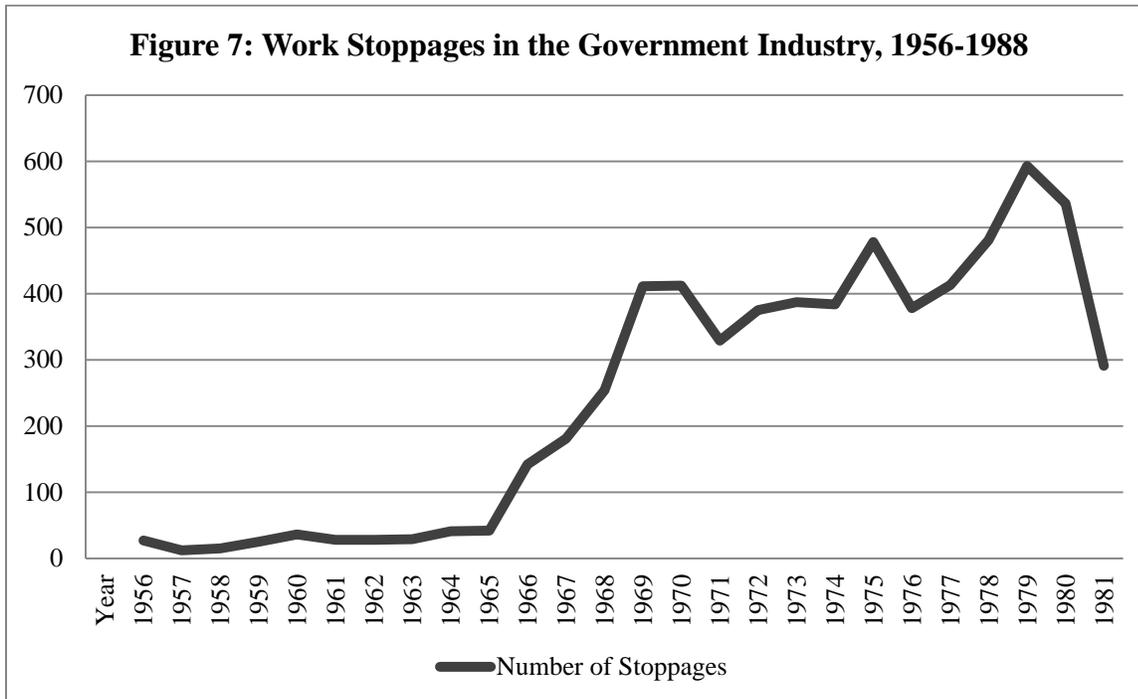
Second, public sector employers lack the tools of union resistance deployed by private sector employers. Private sector workers seeking to unionize who are fired by their employer for their efforts can appeal to the NLRB, but remedies often come too little and too late. Public sector workers do not operate under employment-at-will rules that allow discharges for any reason. Instead, most public sector workers are protected under civil service laws and can only be fired with “just cause” and further enjoy due process rights if they are fired. Thus, “[i]f a union organizer is fired in the midst of a campaign, the burden is on the employer to establish that this was not a retaliatory dismissal and that there was a *good* reason (not just any reason) apart from the organizing campaign to fire the employee” (Fischl 2001, 49). Unlike the private sector, employers face the hurdle of justifying their firing of an employee seeking to organize and due process rights prevent the immediate firings without review. Thus, one of the most potent tools for private sector employers seeking to hamper unionization efforts is more difficult and less common in public sector organizing campaigns. Bronfenbrenner and Juravitch (1994) find that “[w]orkers in the private sector were almost six times more likely to be fired and not reinstated before a union election than they were in the public sector” (18). Unlike in the private sector, public sector employees need not risk their jobs and livelihoods just for seeking to form a union.

These factors combine to discourage hostile employer opposition in the public sector. Without the virulent opposition private sector workers face, public sector workers have found greater success in union representation elections. Looking at all certification elections during 1991 to 1992, Bronfenbrenner and Juravitch (1994) found that unions win 85% of certification elections in the public sector versus just 48% in the private sector. Remarkably, “[i]n almost one quarter of all campaigns in the public sector, the employer did not campaign at all against the

union” (1). Employer resistance is not unheard of in the public sector but it does not dominate the landscape. Instead, “[p]rivate sector employers are six times more likely to commit unfair labor practices such as discharges for union activity, and more than twice as likely to use other tactics such as captive-audience meetings, employer leaflets and mailings, supervisor one-on-ones, and illegal wage increases” (1). The passage of pro-bargaining legislation in many states combined with more amicable labor relations in the public sector to promote union organizing efforts since the 1960s (Farber 2005; Freeman and Ichniowski 1988). Once the political and legal barriers to public sector unionization were overcome, the more amicable employer relations in the public sector enabled public sector union density to expand.

The public sector union militarism of the late 1960s and 1970s is a vivid illustration of what a growing public sector movement buoyed by new state, local and federal laws had become. For instance, Martin Luther King, Jr. was in Memphis on the fateful day in 1968 not to support a Civil Rights demonstration but rather to show solidarity with striking AFSCME municipal sanitation workers. While strikes were technically illegal for the vast majority of public sector workers, this did not stop teachers, policemen, fire fighters, and other public workers from taking such action in increasing numbers. In 1958, there were 15 public sector strikes involving 1,730 workers. By 1980, there were 536 strikes involving 223,600 workers (PSRC 1982). Figure 7 illustrates the dramatic rise in work stoppages by government workers as measured by the Department of Labor. Prior to the 1965, there were less than 50 such stoppages each year. After 1965, work stoppages rose into the triple digits, peaking at 593 stoppages involving over 254,100 public sector employees in 1979. This number is quite remarkable considering many of these stoppages were illegal due to a lack of collective bargaining rights or legislation that granted limited rights that did not include striking. Such activity is indicative of

the rising prominence of organized public sector workers and their implementation of disruptive techniques to accomplish their goals. At the time, public sector unions appeared to be a permanent fixture with growing influence in local, state and federal politics.<sup>23</sup>



Source: Bureau of Labor Statistics 1968, 1977, 1980, 1983

## VII. 1980s to Today: Private Sector Unions Decline and Public Sector Unionization Peaks

The existing legal and institutional framework governing private sector labor relations created major stumbling blocks for unions to maintain or expand their membership during the past half-century. Much research has been done elsewhere on this subject and so will only be briefly touched on here. Two main aspects of the labor policy regime limited labor’s ability to maintain union density levels. First, existing private sector labor law hinders labor’s ability to organize growing sectors of the workforce because the Wagner and Taft-Hartley Acts were designed during a period when the mass-production, industrial workplace dominated American

<sup>23</sup> A work stoppage is defined as a strike or lockout.

employment. Existing labor law is organized around worksite, preventing organizing across firms and networks that are becoming increasingly integrated and running counter to the growing “contingent workforce” including managerial, supervisory, part-time, independent contracting, temporary and even at-home work who do not fit this traditional workplace model (Cobble 1994, 286; Carre et al. 1994, 317; Wial 1994, 310).<sup>24</sup> By preventing labor law reform in Congress, obstructionists have ensured that the growing service, white-collar, and nontraditional workers will remain largely untapped for increasing labor’s membership levels.

Second, the current labor policy regime creates incentives for increasingly virulent anti-union efforts by employers. Employer resistance to union organizing has been present throughout American history but has grown in its intensity, organization, and effectiveness since the late 1970s. The NLRB was originally conceived as a non-partisan body, but appointments have become increasingly politicized over time (Flynn 2000; Tope and Jacobs 2009). In the late 1970s and early 1980s, new appointments to the NLRB by Nixon and Reagan and the defeat once again of a labor reform bill in 1978 indicated the growing weakness of unions and “marked the beginning of a far more open resistance to unionization and collective bargaining” (Gross 1994, 51; Hyatt 1977). Employer unfair labor practices that violated existing statutes increased from 9,067 in 1960 to 24,075 in 1990 (CFWMR 1994a). More recently, unfair labor practice charges have ranged from 22,000 to 30,000 over the last decade (NLRB 2012). In addition, Kleiner (2001) estimates that illegal firings have risen from one out of every 700 union members in the 1950s, to one out of every twenty-five union members in 1995 (523). Bronfenbrenner (1994), looking at a random sample of union certification elections in the late 1980s, found that

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<sup>24</sup> The Taft-Hartley Act’s exclusion of supervisors also left out professional workers whose jobs, like finance and engineering, placed them in the amorphous category of supervisor. The number of “supervisors” has doubled in the fifty years after WWII, but has largely been off limits to unions and instead used by employers to oppose union organizing (Lichtenstein 2002, 120). Supervisors who refuse to take part in an employer’s anti-union efforts may be fired with no legal recourse (CFWMR1994b, 23).

more than 75% of employers deployed active anti-union tactics (80). Beginning in the late 1970s, employers increasingly felt emboldened to resist unionization efforts and management consultants helped fuel that void by advising employers on how firms could eliminate the demand for unionization and, barring that, prevent and/or defeat union organizing drives (Hyatt 1977; Martin 1979; Lublin 1981).<sup>25</sup> Ultimately, the rise of the union avoidance industry is notable because it demonstrates the growth of employer resistance during this time period and, most importantly, how management consultants have helped employers understand and exploit weaknesses in the labor law to hamper union organizing campaigns.

Three aspects of the ossified labor law have in particular given employers the tools and incentives to challenge union organizing campaigns. First, legal interpretation of existing labor law prioritized the individual right of employer free speech over the collective right of employees and union speech (Klein and Wanger 1985). The law has “failed to back up workers’ associational rights” by denying unions access to the workplace in their efforts to unionize (Estlund 2002, 1591). Whereas employers can express their anti-union position by holding captive-audience meetings, distributing leaflets and letters, and meeting individually with employees, unions face significant barriers to contacting employees including exclusion from the worksite altogether including non-working areas like parking lots and cafeterias (CFWMR 1994b, 23). Employers often capitalized on this monopoly of speech in the worksite by including “distortion, misinformation, threats, and intimidation” (Bronfenbrenner 1994, 82). Such lopsided labor practices are effective because employers face few deterrents to using them.

The second aspect of the out of date labor law that employers have capitalized on is lengthening organizing campaigns and prolonging first contract negotiations. The way union

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<sup>25</sup> Despite declining union density, management consultants have thrived (Logan 2002; 2006).<sup>25</sup> Aside from an under-enforced requirement that union avoidance consultants and employers file reports, the NLRB lacks the tools to punish consultants for unfair labor practices (BNA 1985, 16).

organizing elections are mandated in law creates opportunities for delay. Before an NLRB election can be held, the employer and union can raise legal issues, like the inclusion or exclusion of particular employees within the bargaining unit, which results in an automatic hearing and significant delay, usually up to seven weeks before workers can secure a vote (CFWMR 1994a, 18). Such delays buy time for union-resistance and can prolong the process interminably (Hurd and Uehlein 1994, 65). As it stands, even if a majority of employees elect to join a union in the representation election, employers can still prove recalcitrant in first contraction negotiations with one third or more of certified units failing to reach a first contract, (CFWMR 1994b, 21). Reforms that would speed up union certification campaigns, like permitting a majority of employee signing cards to be sufficient for union recognition (known as card check agreements), have failed to pass Congress.

The final major feature of the ossified labor law is the NLRB's "toothless" tools for constraining employer resistance, resulting in the benefits to employers of having a union free workplace far outweighing the existing punishments (Rogers 1990, 121). A common form of employer resistance is firing union activists because, under an employment-at-will rule, the employer can easily claim that the employee was fired for another reason (Hurd and Uehlein 1994, 62). The employee is entitled to dispute this claim and, if the NLRB rules in their favor, they will be reinstated with back pay, but the process to obtain reinstatement takes an average of two to three years (Kleiner 1994, 139-140; Fischl 2011). At very little cost, employers can thus remove union advocates during the organizing period when their presence is critical. The NLRB currently lacks the power to even issue an injunction keeping the employee working while they investigate. Morris Kleiner (2001) compared the average cost of violating six workplace labor policies in the 1980s and found that NLRB punishments were at the low end of the spectrum.

On average, Kleiner found that \$2,733 plus legal expenses was awarded as back-pay when the NLRB ruled an employee was fired unfairly (533). In contrast, punishment that included punitive damages were significantly larger: the Employment-at-Will/wrongful discharge statute averaged penalties of \$180,000 and the average payment for violations of the EEOC provision of the Civil Rights Act was \$8.5 million (532-533). Such disparities make it clear why employers have shown less respect for unfair labor practices regarding union organizing than other workplace protections.

The rise of employer resistance to union organizing has hampered labor's ability to maintain or increase union membership and density. Bronfenbrenner (1994) examined a random sample of representation elections and found that unfair labor practices had a statistically significant impact on the election outcome and were associated with ten to twenty percent lower win rates. Seventy-one percent of employers utilized a management consultant and this was associated with a ten percent decrease in the union win rate (80). The negative effect on union organizing of employer resistance has been noted by several scholars including Clawson and Clawson (1999), Freeman (1988), Friedman et al. (1994), and Kleiner (2001). Others, using a most similar systems comparison between the U.S. and Canada, have found that robust union density in Canada, can be attributed to Canadian labor laws that better regulate and deter employer resistance than the United States.<sup>26</sup>

As policymakers who pushed for inaction likely predicted, failure to update Taft-Hartley hindered labor's ability to adapt to the modern workplace while providing employers with incentives to fight union organizing at every stage. The only area of private sector labor law that has evolved over this time is the provision left up to the states: right-to-work statutes banning

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<sup>26</sup> For an overview of this comparativist literature, see Bruce 1994. Other studies include: Chaison and Rose 1994; Godard 2003; Murphy 1988; Riddell 1993; Rose and Chaison 1985.

union shops. States have been given leeway in their anti-union efforts, rather than permitted to pass stronger labor protections than the federal framework provides (Freeman 2006). Certainly decisions made by labor leaders and broad economic forces have contributed to declining union density in the private sector over the last half-century. Indeed, private sector union decline has been amplified by the population growth in the Sunbelt, a region hostile to union organizing. However, the institutional framework of U.S. labor law created an environment that is increasingly difficult for private sector union organizing. On this point, Dorian Warren's (2011) assessment is apt: "[t]he fate of the American labor movement is political, not economic, and labor policy is decisive in shaping its trajectory" (7). Obstructionism ensured that existing labor law has become increasingly out of date, hampering labor's efforts to organize new members and encouraging employers to resist more forcefully, even in the face of a union movement on the ropes.

For the public sector, the early 1970s seemed like a time of great potential. Buoyed by rising public sector union density and the explosion of laws recognizing public sector workers collective bargaining rights, Jerry Wurf, the president of AFSCME, aimed to pass a national Wagner Act for public sector workers (McCartin 2008, 129). A series of proposals sought to either set up a legal framework akin to the Wagner Act or simply extend the Wagner Act to cover public sector workers (130, 132). Joseph A. McCartin (2008) argues that such a proposal may have passed were it not for the summer of 1975. Public sector union militancy was already high when municipal and state fiscal crises rocked the country. States responded to severe budget crises by slashing spending, which hit public employees especially hard. Public employees were loath to accept such measures and strike activity rose 24 percent in 1975 (137). Massive strikes in New York, Seattle, and other cities became front page news and angry mayors

(Republicans *and* Democrats) lashed out at public sector unions seen as frustrating their efforts at fiscal austerity.

The strikes damaged Democratic support for federal public sector labor law, fueled the public's perception that public sector unions had become too powerful, and provided an effective rallying point for the conservative backlash that would follow. During this time, AFSCME hired a marketing firm to help combat the negative imagery of public sector employees and unions. The marketing firm's recommendations illustrated the changed environment: AFSCME should "moderate its confrontational rhetoric," "curtail its broader political agenda," and "drop its demand for a national collective bargaining law" (Hower 2013, 393). The possibility for new legislation was truly dead in 1976 when the Supreme Court decided in *National League of Cities v. Usery* that extension of the Fair Labor Standards Act to state and local workers violated states' rights (146). If the Supreme Court found the more benign extension of minimum wage and overtime laws to state and local employees unconstitutional, then it was assumed that a national public sector labor law would surely be defeated on a legal challenge. The dramatic turnaround of the Supreme Court in the late 1930s to uphold Roosevelt's New Deal legislation is well known. The Wagner Act benefitted from the Court's reversal when they upheld the Act in the 1937 decision *National Labor Relations Board v. Jones & Laughlin Steel Corporation*. By 1976, when public sector unions finally had the numbers and organizational capacity to push for a national labor law of their own, the Court's position had changed.

The 1976 decision in *National League of Cities* halted public sector labor's dream of their own Wagner Act, marked a turn by policymakers against public sector unions, and forced public sector unions to continue their efforts for collective bargaining rights at the state and local level. The year 1976 was a moment of possibility when the institutional legacy of the Wagner Act

pushing the question of public sector unionism down to the state and local level could have been changed, establishing a new critical juncture in the form of a national level law governing public sector labor relations. Instead, *National League of Cities* entrenched the existing legal divide: the situating of public sector labor law at the state and local level, which had been reinforced by the weakened capacity of public sector unions and cultural antipathy toward public sector unionism, now received greater legal force.<sup>27</sup> The brief period of public sector union growth was over, replaced by a movement holding steady but not rising.

### **VIII. The Consequences of Labor' Enduring Divide**

Absent a national public sector labor law, public sector unionism was ultimately limited because state and local level innovations proved to be imperfect approximations of the Wagner Act. Federalism cannot explain every aspect of labor's development over the last half century, but it is vital for understanding the brief rise and then plateauing of public sector union density at the same time that private sector union density was declining. Moreover, the institutional split of public and private sector labor law has had important consequences for organized labor today.

The lack of an overarching federal law has contributed to the dramatic variation and regional concentration of state level public sector union density.<sup>28</sup> Figure 8 illustrates the extent

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<sup>27</sup> The Supreme Court reversed much of the decision in *National League* with the 5-4 ruling in *Garcia v. San Antonio Metropolitan Transit Authority* (1985), but future decisions have also reasserted some limits of federal regulation on matters not related to interstate commerce. Regardless, by the time of the ruling in 1985, the conservative backlash and the decline of union influence suggest that "by then the damage had been done" (McCartin 2008, 146). A window of opportunity for a national Wagner Act for public sector employees had closed, at least for the time being.

<sup>28</sup> The standard deviation of public sector union density is nearly six times as large as the standard deviation of private sector union density vividly illustrating that, whereas private sector union density tends to cluster around one (low) level, public sector union density is marked by states with very high and very low densities. Standard deviations were calculated using union density data from Hirsch and Macpherson (2013). Public sector union density tends to be higher than private sector union density

to which public sector union density is geographically concentrated. As discussed earlier, states with a strong existing union movement and Democratic governors and legislatures were more likely to pass pro public sector collective bargaining laws; the existing union movement and Democratic states were already regionally concentrated in the 1960s and 1970s. As a result, the regional nature of labor has continued unabated with the rise of public sector unionism. States where more than 40 percent of the public sector workforce is unionized are limited to parts of the West, Midwest and Northeast. Nearly all of the South, Mountain-West, and Central-Midwest have less than 30% of their public sector workforce unionized (Hirsch and Macpherson 2013). Labor's geographical concentration, both public *and* private, is remarkable: “[f]ully one-half of all union members lived in only six states by 2000” (McCartin 2008, 123). Thus, while labor represents close to 14 million Americans, its electoral clout is limited by its geographical concentration. Continued geographical concentration is particularly problematic for organized labor because it suggests that the possibility of a filibuster proof supermajority in the Senate to support federal labor law reform is increasingly remote.

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across the board because, even in states lacking any public sector collective bargaining statutes, federal workers as well as some municipal workers possess collective bargaining rights.



density over ten percent in these states is certainly due in part to federal employees, but also because public sector unions have successfully gained limited recognition from some school boards and municipalities despite the legal prohibitions (Freeman and Han 2012b). Today's public sector union density levels in anti-union states represent what public sector unions have been able to achieve despite the lack of collective bargaining rights, which suggests great possibilities for growth if they were given a legal foundation to support their efforts. Instead, public sector unions have had to pursue collective bargaining rights on a state-by-state basis and have been prevented from making significant inroads in anti-union states reinforcing the geographic concentration of labor.

Public sector unions found success and expanded their membership at the same time private sector unions were being frustrated at the national level, but the victories made at the state and local level were not equivalent to the Wagner Act. The multiple points of access at the state and local level provide opportunities for reformers but decentralization inevitably results in laws that lack the kind of national standards needed to promote equality (Mettler 1998, 13). Legislative reforms were hard won and highly variable. In states strongly opposed to unionization, there were just as many veto points for public sector unions to navigate as private sector unions have faced at the national level. The result for public sector labor law is what AFSCME has declared "a patchwork quilt of conflicting, confusing and often inadequate legislation" (Resolution No. 20 2005). This patchwork quilt includes an estimated "110 separate state statutes governing public sector labor relations, augmented by numerous local ordinances, executive orders, and other legal authority" (Slater 2004, 196). A third of states either explicitly outlaw collective bargaining for public sector employees or have no statute addressing the issue

(Freeman and Han 2012b, 17). Other states vary tremendously in their level of pro-bargaining and which groups of public sector employees are included or excluded.

Provisions frequently apply differently for teachers, state employees, police and other public sector workers. One of the areas of greatest variation is whether the state or locality permits public sector employees to strike, but states differ on even the most basic tenets of collective bargaining including which groups of public sector workers are permitted to unionize and over what issues they may bargain. One consequence of this variation is that an estimated thirty-three percent of local and state employees, equaling six million workers, did not have collective bargaining rights in 2002 (U.S.G.A.O. 2002, 14; U.S. Census Bureau 2003).<sup>29</sup>

Federalism is synonymous not only with variation, but also, as Aaron Wildavsky identified nearly thirty years ago, “federalism means inequality” (1984). Suzanne Mettler (1998) notes that “when social and labor policies have been left in the hands of states and localities, standards have been lowered or neglected in more areas than not” (13). Public sector bargaining law is certainly no exception. Leaving public sector labor law to the states not only lowered standards and created unequal treatment but also left labor law more vulnerable to the vagaries of the states.

Whereas the Wagner Act created a fundamental right of private sector workers to unionize, the rights of public sector employees has proven more vulnerable. There is no firm commitment at the national level that public sector “[e]mployees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through

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<sup>29</sup> The report defines collective bargaining rights as “union recognition—permitting individuals to join together and form unions and the requirement that employers recognize employee organizations—and ‘good faith bargaining’—bargaining with intent to reach an agreement” (24). Percentage was calculated using the G.A.O. calculation of the number of state and local employees lacking collective bargaining rights, divided by the total number of state and local employees listed in the U.S. Census table.

representatives of their own choosing” (NLRA 1935, sec. 7) Instead, federalism as a governing structure welcomes experimentation and innovation at the state and local level.

Experimentation in public sector labor law might sound appealing because it would allow union friendly states to pass very generous legislation, but this comes with serious costs. As discussed, national level laws create a floor of protection that is not present with state and local level provisions. Rights protection at the national level also may institute a ceiling, restricting the bounds of the rights provision. Labor scholars have rightly pointed out that the Wagner and Taft-Hartley Acts, by creating a ceiling, have limited some of the more radical tools in private sector unions’ repertoire like boycotts and wildcat strikes (Tomlins 1985). However, unlike a floor, a rights ceiling is not an inevitable feature of national level rights. Moreover, with decentralized rights, very generous laws in some states are insufficient to make up for the states with no rights provisions. The content of public sector collective bargaining rights certainly has important ramifications for contract negotiations and other aspects of labor union success, but the fundamental right to organize must take precedence over the generosity of that right; one must have their foot in the door before negotiations can even begin. After all, once one has their foot in the door with the right to collectively bargain, higher levels of union density foster greater economic and political influence which public and private sector unions can leverage to lobby for more generous collective bargaining rights.

At a base level, high and geographically diverse union density is the most crucial factor for organized labor’s political success. A high-density labor movement translates to economic and political leverage and, if labor is geographically diverse, this leverage may approach a filibuster proof level. While union friendly states with generous laws have provided a safe-haven for union strength, they are not sufficient to create a large, geographically diverse union

movement. The extension of collective bargaining rights has been crucial to the growth of union density, both private and public. Until a floor of protection exists for all public sector employees, we are unlikely to see dramatic growth in union density akin to the 1930s for the private sector and the 1960s and 1970s for the public sector. Thus, the experimentation within federalism is not a benefit to the labor movement despite the generous public sector provisions in some states, because these union friendly states do not make up for the states where public sector employees lack any collective bargaining rights.

The recent conservative turn in state legislatures across the country illustrates the precarious nature of public sector labor law and an important lesson about federalism: “for every liberal state policy ‘laboratory,’ there are at least as many—or more—conservative policy laboratories” (Robertson 2014). Lou Cannon (2011) notes that, “as of mid-June [2011], 49 bills had been enacted in 23 states and Puerto Rico that included some form of restriction on collective bargaining in the 2011 session” (14). Using data from the National Conference of State Legislatures’ Collective Bargaining and Labor Union Database, Freeman and Han (2012a) estimate that, from 2011-2012, there were “733 bills in 42 states relating to public employee unions, 140 bills relating to union dues/agency fees, 55 bills on political activities and contributions, 171 bills for public safety employees, and additional bills in other categories making a total of 1707 bills in 50 states...The majority of these bills...were designed to weaken unions and their collective bargaining rights” (393). While the scope of the attacks in 2011-2012 is large, the nature of the attacks is not unique.

Even before the most recent wave of attacks, changes in public sector bargaining laws have been frequent and often regressive (Wasserman 2006). 2011 may have been the most public retrenchment but not the first. For instance, in 2005 Indiana Governor Mitch Daniels

rescinded the executive order permitting collective bargaining with state employees and Missouri Governor Matt Blunt also rescinded an executive order recognize state employee collective bargaining. In 2011, the Indiana legislature passed a law barring any governor in the future from re-granting collective bargaining rights to state employees (Freeman and Han 2012a, 390). The attacks in Wisconsin, Ohio, Indiana and elsewhere demonstrate the mixed blessing of federalism: excluding public sector workers from the Wagner Act allowed them to succeed at the state and local level while private sector unions struggled to reform federal law, but innovation can go both ways and public sector collective bargaining rights have been retrenched as well.

The one aspect of private sector labor law left up to the states, section 14(b) of the Taft-Hartley Act, which enables states to pass right-to-work laws banning union shops, further illustrates the heightened legal vulnerability at the state and local level. Taft-Hartley left the question of union shops up to the states and, as a result, states have answered and continued to answer this question in a variety of ways. Michigan has been at the center of private sector union power since the great auto plants were unionized in the 1930s and was home to some of the most potent displays of union strength (including the 1934 General Motors sit-down strikes) in American History. In 2011 Michigan passed right-to-work legislation, vividly illustrating the legal vulnerability that occurs when federal legislation defers a question to lower jurisdictions without establishing a floor of basic protection. Without this floor, public sector union collective bargaining rights, and private sector union shop provisions, have remained vulnerable to retrenchment.

## **IX. Conclusion**

It is only through understanding the unique division within American labor law between the private and public sectors that we can understand the dual trajectories of public and private sector union density in the United States. Public sector union density did not rise wherever employment increased, but instead was limited to union-friendly areas where public sector employees succeeded in pressuring for collective bargaining rights. While the passage of such legislative was dependent on shifting attitudes to public sector unionization, the location where public sector employees pursued their collective bargaining rights—the state and local level—was shaped by the critical exclusion of public sector employees from the Wagner Act and the failure of lawmakers to create a national level law for them. Thus, through an analysis that is sensitive to institutions, the central role of federalized labor law in shaping the development of organized labor becomes clear.

Through the New Deal era, most national policymakers held that public sector employees did not have the right to unionize because they feared that public sector unions would disrupt the link between voters and officeholders. In the 1960s, the powerful private sector union movement and their strong ties to the Democratic Party; the increasing number of public sector workers; their efforts to gain legal recognition; and the growing influence of claims that public sector unionization did not threaten state sovereignty created a window of opportunity for passage of new policies. Just a few years earlier, policymakers at all levels of government were convinced that public sector employees should not be allowed to unionize; now majority opinion had shifted to the opposite pole. Most importantly, whereas obstruction in Congress and the presidency presented obstacles to private sector labor law reform after Taft-Hartley in 1947, the public sector was not constrained in the same way at the state and local level. As a consequence

of their exclusion from the Wagner Act and lacking the power in the 1930s and 1940s to pass their own national law, however, public sector unions were forced to pursue their recognition at the state and local level. Public sector labor law was thus decided by each state individually, enabling the explosion of laws among labor-friendly states in the 1960s and 1970s, at the very time private sector unions were struggling to get any reforms through Congress and their density levels began declining.

When taken together, the story of private and public sector unions is thus double-edged. On the one hand, public sector unions were excluded from federal statutes creating a floor of protection for private sector employees and this hindered their growth at the very time, spurred by the Wagner Act, that private sector unions were flourishing. On the other hand, because public sector labor law was relegated to the states and localities, public sector unions were successful in pushing for new laws that promoted their growth, even as private sector unions withered under employer resistance and an obstructionist Senate. However, this moment of expansion was cut short by the conservative backlash of the late 1970s, before public sector unions had successfully passed a national public sector Wagner Act of their own. Public sector union density has grown little since that time.

In the long run, federalism has not done organized labor any favors. Federalism enabled public sector innovation at the state and local level but this innovation is also a vulnerability because federalism, as a governing concept, allows and even encourages innovation at the state and local level. Absent a floor of protection and pressure for uniform treatment across jurisdictions, public sector collective bargaining rights have been unequal and under continual experimentation, including retrenchment, at the state and local level. Further, separation of public sector labor law from private sector labor law prevented a large public/private union

movement in the aftermath of the Wagner Act that could have pressed for more generous New Deal policies. The period from 1935 to 1970 was a brief moment of explosive private sector unionization (Salvatore 2012). Public sector unionization came at the tail end of this period, too late to have a significant effect on New Deal politics, assist in the opposition to Taft-Hartley in 1947, or help exert pressure for national labor law overhaul before the 1970s economic crises and rise of a new and powerful conservative movement opposed to a strong labor movement.

Public sector unions may have had more success than private sector unions in hostile states if given the chance through a national level law protecting their collective bargaining rights, because of the constraints on public sector employer resistance. Private sector unions have struggled to organize new members as a result of the outdated legal framework that fails to contain employers' union avoidance strategies; hostile employer resistance—and the legal framework that permits it—is a significant barrier to union organizing at the federal level. This barrier would likely not be so debilitating for public sector unions because employer resistance is less severe in the public sector. As discussed earlier in this chapter, public sector employers face pressures that discourage such vehement resistance and lack many of the tools, like employment-at-will, that private sector employers use to resist union organizing. The more amicable organizing environment in the public sector would likely enable public sector unions, if given national collective bargaining rights, to make inroads into anti-union states. Instead, public sector unions are limited in their growth by the passage of statutes in anti-union states and renewed attacks in previously safe states; their geographic concentration and vulnerability are a result of the piecemeal nature of public sector labor law and the inherently more tenuous nature of state and local laws in a federal system. Thus, while the public sector union density spike in

the 1960s-1970s slowed the decline of total union density, this trend is unlikely to continue as public sector unions have reached the limits of state level innovation.

What about the private sector? Would they benefit from private sector labor law devolving to the state and local level in order to end the national stalemate as Richard Freeman (2006) and other have suggested? In the short run, private sector union density might increase as employees' collective bargaining rights would be strengthened in union friendly states.

Ultimately, however, this would leave private sector employees just as vulnerable as their public sector counterparts to retrenchment of their fundamental collective bargaining rights. This is illustrated by the one aspect of private sector labor law left up to the states, section 14(b) of Taft-Hartley, which has been marked by variability at the state level, including passage of right-to-work legislation in Michigan in 2011. Ultimately, the consequences of public sector unions pursuing collective bargaining at the state and local level, without a federal floor of protection, suggests that a national law protecting both public and private sector collective bargaining rights would offer the most protection and hopes for expansion for American labor unions.

Looking toward the future, the volatility surrounding public sector collective bargaining rights will persist as long as states and localities remain sites where the basic tenets of public sector unionism can be contested. Without major partisan shifts in the American states, public sector unions are unlikely to dramatically increase their density. In those states where public sector unions have had success, their enduring high density has made them glaring targets as private sector union density continues to drop. Absent something drastic that enables an overhaul of private sector labor law or a federal guarantee for public sector collective bargaining rights, the American labor movement faces an uphill battle to retain existing membership levels and political relevance. Organized labor faces an uncertain future in part because of the

constraints placed on it by public policies, which have molded and patterned the labor movement's development. Divided labor law shaped the development trajectory of public sector unions—including their more unequal and vulnerable collective bargaining rights—as well as contributed to today's declining, geographically concentrated labor movement. Ultimately, as the next three chapters will explore further, divided labor law has weakened organized labor as a force in American politics with potentially important ramifications for the representation of the working class in our democracy.

## CHAPTER THREE

### The Clashing of Labor's Incongruent Paths in the 1970s

#### I. Introduction

*It is always somewhat perplexing and sometimes shocking to hear, from respected unionists, a lack of concern for the struggle of brothers and sisters outside their own backyards. Such failure to bear faith and allegiance to real solidarity is what lies at the heart of labor's inability to coalesce into the force that some of our greatest leaders have envisioned. We must come to the realization that we are all coworkers, brothers and sisters in the struggle with owners.*

—Donald L. Foley, *APWU, National Business Agent* (Foley 2005)

Donald L. Foley's frustration stemmed from a contract dispute between his own union, the American Postal Workers Union (APWU), and union staffers who were represented by the Office and Professional Employees International Union (OPEIU). At the time, Foley was calling on his fellow postal union members to care about workers "outside their own backyards" because members of the APWU were unsympathetic to the OPEIU workers' demands, which exceeded the benefits the postal workers had been able to gain in their own contract negotiations. It may come as a surprise to some readers that union contract disputes occur between unions and their own employees, but the above example is not unique. Whereas solidarity is the clarion call of the union movement, it is not always practiced in reality. Foley attributes the absence of solidarity to a lack of understanding and empathy of his fellow union members but, in reality, the divisions within organized labor can have much deeper, longstanding roots.

The most salient divisions at the turn of the 20<sup>th</sup> century in the American labor movement were numerous and often debilitating. Racial, ethnic and gendered divisions of labor led many unions to organize around exclusionary principles. When John L. Lewis left the AFL and formed the CIO in 1935, it was the culmination of decades of disagreement within the labor movement over whether to organize as the AFL had up until that point by craft, targeting the

highest skilled workers, or by industry as Lewis suggested, welcoming everyone from the least skilled to the most skilled in an industry into one big, inclusive union. Looking back, David M. Kennedy's (1999) observation is apt that "the house of labor was deeply divided" (298). While the merger between the AFL and CIO in 1955 signified that the conflict between craft and industrial unionism had largely been resolved, divisions within the house of labor remained.

One such division is unions organized in the private versus the public sector. There are major differences between public and private sector unions including: (a) public sector union members, on average, tend to be higher income and higher educated with a larger portion of women and minorities; (b) the public sector deals in non-tradable goods thus their work actions often threaten vital services rather than halting production; and (c) their employer is the local, state or federal government and thus they can and do exert pressure through political activity. While friction undoubtedly would have resulted between these unions as a result of their differences, it is not inevitable that public and private sector unions are in conflict; organized labor is inherently diverse along a variety of characteristics and these divisions are not necessarily debilitating.

Yet when public sector unions finally gained organizing might in the 1970s, the relationship between public and private sector unions was, at its best, disconnected organizationally, and, at its worst, in direct conflict. This raises the question: why do some divisions and not others become salient within an organization at certain moments in time? In particular, why were public and private sector unions so organizationally divided in the 1970s? It is easy to attribute organizational conflict to a failure of leadership, but such divisions can have deeper, longstanding origins. This chapter explores the division between public and private sector unions in that decade to illustrate how institutional forces outside the labor movement—in

this case the incongruent timing and sequencing of union development created by divided labor law—can create salient divisions within an organization.

Chapter Two introduced us to the importance of divided labor law for organized labor's development, emphasizing the importance of place: public sector employees targeting their demand-making at the state and local level, rather than the national, meant their rights have proven inherently more vulnerable and unequal. That chapter stresses the importance of *where* collective bargaining rights originated. In turn, this chapter focuses on the significance of *when* collective bargaining rights were obtained. When we look at public and private sector unions temporally, returning to Figure 1 on page 5, it is clear that the timing of public and private sector union development are not aligned. Another way divided labor law has shaped labor's development is by affecting when public and private sector unions obtained collective bargaining rights and thus when each sectors' union movement became established.

The causal importance of timing and sequencing is central to understanding the organizational relationship between public and private sector unions (Pierson 2004, 54); the absence of public sector collective bargaining rights before the 1960s delayed public sector union expansion, or rather “the law artificially repressed the size of these unions,” putting public and private sector union development out of synch (Slater 2004, 199). As a result, public sector unions began to grow and became important players in the labor movement in the 1970s—a period when private sector unions and their power structure was already established and—following thirty years of prosperity—economic, cultural and political pressures were emerging to place new demands on labor. Public sector unions, rather than growing alongside their private sector counterparts, had to fight their way into the union movement during a decade of crises that fomented the public/private divide. Thus, timing—public sector union growth happening late

and during a period of cultural, economic and political crises—and sequencing—public sector growth occurring well after private sector union growth—amplified conflict within the labor movement.

Broadly, this chapter illustrates how incongruent development paths can create salient divisions within an organization—internal weaknesses that diminish labor’s political effectiveness. Speaking directly about organized labor, this chapter also sheds light on some of labor’s “failures” over the last several decades including why the 1970s marked the end of the New Deal agenda; the failure of labor law reform in the late 1970s; and why private sector unions did not embrace the dynamic, growing, explicitly political, and social movement oriented public sector union movement in the 1970s. Recognizing the important ways divided labor law has patterned the behavior and development of public and private sector unions vividly illustrates why the decade of the 1970s was a missed opportunity for the emergence of a revitalized, more equal, diverse labor movement working in concert with an array of social movements to further the cause of working Americans.

## **II. Looking Beyond Blaming Labor’s Leadership**

There is a strong pressure within labor to maintain solidarity because this is the source of much of labor’s economic and political power. Individuals organize when they share a collective interest that they cannot adequately advance on their own (Olson 1968). A similar logic can apply to organizing across unions: we should see cooperation when labor unions share a collective interest that cannot be advanced independently. Indeed, we see organized labor cooperate when individual unions are organizationally intertwined, they share goals and tactics, and incentives exist—like the potential for a legislative or strike victory—to encourage them to

work together. Many factors can intervene, however, to make the collective interests unions share less prominent and their differences more visible, making it harder for individual unions to recognize and pursue inter-union cohesion.

A central assumption in this chapter and project more broadly is that a unified, organizationally cohesive labor movement is crucial to the labor movement's political effectiveness. Practically, this translates into a unified AFL-CIO because it is the best positioned organization today to represent the entire labor movement. Efforts to create alternative labor federations, most recently the Change to Win federation formed in 2005, have been at best marginally successful. Today, Change to Win is a separate federation mostly in name only as both labor federations have recognized the need to work together if they hope to be politically effective. For all its weaknesses, the AFL-CIO is the central organization of the labor movement with an organizational structure spanning the country, a diverse membership of unions, and the history and name recognition to lead the labor movement. Despite these resources, however, the AFL-CIO has not been as politically influential as we might expect—the union defections to Change to Win were the result of legitimate frustration with the AFL-CIO. Thus, given that practically speaking the AFL-CIO is the most promising organization for the union movement, why has it faltered in its efforts to unify and lead the labor movement? Part of the answer lays in the different development trajectories of public and private sector unions.

This chapter draws on interviews with labor leaders,<sup>30</sup> historical documents, and secondary source accounts to explore the relationship between public and private sector unions in the 1970s. There is a tendency among labor historians to see the public and private sector union movements as wholly separate entities in the 1970s, describing the public sector unions as

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<sup>30</sup> This chapter and the next two utilize information gained from field research and interviews conducted in the leadup to and aftermath of the 2012 presidential election. For further details on these interviews, please see Appendix A.

“exceptions,” without asking why the two sectors were so different and distinct in the first place (Lichtenstein 2002, 181). This chapter begins with the premise that a labor movement divided by sector is neither natural nor inevitable, and instead seeks to understand why the public and private sector union movements were such distinct entities in the 1970s.

Labor historians also tend to blame the intractable leadership of the AFL-CIO for failing to support and join the New Left social movements in the 1960s and 1970s—perhaps labor’s last, best chance to stave off their plummeting membership losses and power. A typical account, in asking why labor “missed the boat” of the civil rights, student, feminist, environmental, gay and other social movements, explains that:

To a large extent, it was the conservatism bred by business unionism in which many labor leaders presided over increasingly narrow member-oriented organizations that had lost a broader vision and passion for social justice. This combined with ideologically intense cold war anticommunism made many labor leaders (led by George Meany and the AFL-CIO) suspicious and at times quite hostile to new political stirrings on the left, whether it was civil rights, antiwar protests, or the women’s movement...Most labor leaders...gave their primary loyalty to the status quo (Turner and Hurd 2001, 14-15).

Thus, Turner and Hurd conclude that revitalization was “blocked by defensive, threatened leaders” who were able to “cordon off their organization from the radical currents of change ” (Turner and Hurd 2001, 17). While labor leaders certainly made poor decisions in this period by eschewing these other movements, it is important to recognize that labor leaders and their decisions occur within a broader context. Institutions and outside political forces can make certain decisions and behaviors, like whether to accept or turn away from potential allies, more or less likely.

Timing and sequencing affected many of the factors that shaped union leaders’ decisions about the New Left movements. Private sector and public sector unions’ distinct organizational identities were in part products of when they each developed: private sector unions became

entrenched powers when the Cold War mindset was dominant, whereas public sector unions rose to power and adopted the tactics of their contemporaries including the Civil Rights Movement. Further, the labor movements' decision about how to treat the up-and-coming public sector unions was shaped the era: rather than the prosperous 1950s when the debate was over how to share the wealth, the 1970s were marked by economic crises and discussion of tightened budgets and austerity measures. Thus, divided labor law and the delayed development of organized labor helped foster a context that discourages cooperation between public and private sector unions.

As a result, when trying to understand the failure of organize labor to join forces with the New Left social movements, we cannot simply look to the decisions of the leaders of the AFL-CIO and its affiliate unions. Turner and Hurd (2001) note that at the very time that organized labor was eschewing the new social movements, “the main exception to the predominant pattern of the 1960s and 1970s lay in the public sector” (17). Many public sector unions were part and parcel of the New Left social movements and, rather than seeing public sector unions as the main exception, this chapter instead asks why they were not the vanguard of change for the labor movement, ushering organized labor into New Left politics. The answer lies not simply with the decisions of a few leaders, but rather with the delayed growth of public sector unions, which amplified the conflicts between public and private sector unions, ultimately making private sector unions less likely to embrace their public sector brethren and the New Left social movements.

As detailed in Chapter Two, the exclusion of public sector employees from the Wagner Act and the absence of their own public sector collective bargaining law/s delayed public sector union growth at the very time that private sector union density skyrocketed in the 1930s and 1940s. It wasn't until the 1960s that public sector employees were able to generate the needed

pressure for pro-public sector collective bargaining laws to pass resulting in a period of explosive public sector union growth in the 1960s and 1970s. Public sector union density more than tripled over the span of these twenty years. In contrast, private sector union density declined by more than a third over this same period (Visser 2012).

In the 1970s, rather than cooperation, inter-union relations were conflictual with the differences between public and private sector unions in stark relief. This was not simply the result of the nature of these two different types of unions, but rather was amplified by divided labor law in the United States and what Joseph Slater has termed labor's "unsynchronized development" (2004, 202). In particular, divided labor law delayed the growth of public sector unionism. As a result, public sector unions grew and gained power, not in tandem with private sector unions after the Wagner Act, but instead in the 1960s and 1970s when private sector unions had already reached their height of power and this sewed discord within the movement. Even more troubling for labor solidarity, the decade of the 1970s was a period of cultural, economic, and political crisis, which amplified conflict between these two domains.

Labor's unsynchronized development is a vivid illustration of the consequential role of timing and sequencing. The analysis in this chapter echoes Jacob Hacker's (1998) study of health insurance in Britain, Canada and the United States. He finds that "the timing and sequence of policy developments shaped what was possible" (96). In Hacker's case, critical timing elements, like whether national health insurance is enacted before large portions of people have private health insurance and whether national health insurance comes before or after the dramatic rise in health care costs, shaped whether these countries successfully adopted national health care. Hacker is concerned with how the sequence of developments makes the possibility of a specific policy, national health care, more or less feasible, but the logic can apply more

broadly to organizational development. In particular, Hacker is identifying how the ordering of events can make certain paths more or less likely, which can be exported to analyzing the likelihood of organized labor working more or less cooperatively.

Cohesion within the labor movement is shaped by when public and private sector unions developed, at separate times or in tandem, and the external conditions during this development, either a period of economic growth/contraction and political support/backlash. Inter-union cooperation is promoted when sectors develop in tandem, fostering organizational identities and connections as they grow together. Conflict is created when one sector develops late, having to fight their way into an entrenched movement. Further, cooperation is promoted when the external environment creates a sense of abundant resources and optimism, whereas economic contraction or political backlash can amplify conflict by pitting unions against each other. Thus, the strongest, most unified labor movement is likely when the timing and sequencing align public and private sector unions: both sectors gain their collective bargaining rights together and grow in tandem during a period of economic growth and political support. When these variables do not align, conflict within the labor movement is much more likely. Moreover, when these variables are out of alignment, the potential for a strong, unified labor movement with both sectors peaking in power and influence together is also lost. As a consequence, labor punches below its weight because it missed the crucial moment when the punch it threw would have been the strongest possible.

Comparing public and private sector union development temporally illustrates vividly how labor's two sectors fortunes were out of alignment—growth and decline happened simultaneously. Moreover, this growth and decline occurred under the specter of cultural, economic and political upheaval. Taken together, the incongruent development of public and

private sector unions in the face of a decade of turmoil heightened the public/private conflict in the 1970s and weakened organized labor's effectiveness in American politics.

### **III. Incongruent Timing and the Cultural, Economic and Political Cleavages of the 1970s**

For organized labor, the years 1970 and 1971 were an auspicious start to the decade. It was described by the media as “the Year of the Strike,” “the Year of Confrontation,” and a “Plague of Strikes” (Labor: A Year of Confrontation 1970; Labor: A Plague of Strikes 1971). Longshoremen, teamsters, mine workers, autoworkers, teachers, postal workers, and countless others participated in a massive strike wave at the outset of the decade: “In 1970 alone there were over 2.4 million workers engaged in large-scale work stoppages, thirty-four massive stoppages of ten thousand workers or more, and a raft of wildcats, slowdowns, and aggressive stands in contract negotiations” (Cowie 2010, 2). A variety of factors led to the strike wave including: the happenstance of numerous contracts expiring in a short period of time, the spirit of protest carried over from the Civil Rights and New Left movements, a young and energized union membership frustrated with the less confrontational approach of union leaders, and invigorated public sector employees just beginning to see dividends from their struggles for recognition. It was a heady time for organized labor as private sector unions wielded significant power and influence (not yet able to see that economic conditions generating their strike activity would only worsen, crippling union bargaining power), and public sector unions were experiencing tremendous organizing and legislative success.

Rather than presaging a decade of coordinated public and private sector union militancy, 1970 and 1971 can be seen as a brief moment when the public sector labor's ascendance overlapped with a still relevant and powerful private sector labor movement. Through the rest of

the decade, the fortunes of the public and private sector unions would not overlap in the same way again. By the middle of the decade, the change was stark; as one article noted at the time, “The twin symbols of organized labor” were “the unemployed Detroit autoworker and the striking San Francisco cop. Joblessness in the private sector and militance in the public employee sector have dominated the labor news for the past 12 months” (Broder 1975b). And by the second half of the decade, conditions led reporters to declare that “solidarity, a once – sacrosanct word” was, for labor leaders, “difficult to use any more” (Pryor and Steiger 1977). Thus, the “year of the strike” was just that, one year, rather than the beginning of a sustained, vibrant, growing, private *and* public sector labor movement. After this brief moment of overlap in 1970 and 1971, public and private sector union development became increasingly incongruent. The timing and sequencing of public and private sector union growth increased the saliency of their differences because public sector unions were outsiders to an already established labor movement trying to force their way into an entrenched, complacent leadership and cultural, economic and political crises pitted public sector union members against private sector union members.

### ***A. Distinct Identities Amidst Cultural Upheaval***

Private and public sector unions developed different organizational identities that often contributed to a lack of understanding and empathy between them. Private sector craft and industrial unions matured from the 1930s-1950s when there was one dominant union model—the private sector. They came of age during the post-World War II labor/business compromise that, while still marked by strikes, included a greater acceptance of private sector union members’ collective bargaining rights on behalf of business. In contrast, public sector unions matured in the 1960s and 1970s when the dominant union model—the private sector—was well established

but could not apply to them because they still had to establish their fundamental right to collectively bargaining. Further, they came of age during a period of new political tactics embodied by the non-violent protests, sit-ins and other actions of the Civil Rights Movement. Public and private sector unions were shaped by the different time periods they developed within, helping foster distinct organizational identities with important consequences for cooperation between the two sectors.

Private sector unions understandably viewed labor conflict through the lens of the private sector model that had been the dominant for several decades. But this dominant model was ill suited to apprehending public sector labor relations. Thus, while private sector unions generally supported pro- public sector collective bargaining laws, in practice they often resisted sharing power and failed to sympathize with public sector union issues. Interviews with labor leaders referenced hostility among private sector unions against their public sector brethren. Jerry Wurf noted in 1981 that “One things that has always irritated me is that large pieces of the private sector, not just conservative folks in the building trades, would not accept the fact that public workers should have the rights of trade unions” (as quoted in Serrin 1981). Many public sector unionists worked in white-collar jobs, were higher educated, and higher income. One former state AFL-CIO president explained that, “many leaders thought public employees were not real union members because they were not blue collar” (Interview #20). In addition, in interviews, some leaders referenced that private sector union members did not understand the different environment of public sector collective bargaining.

Due to limitations on their collective bargaining rights like strike bans, public sector unions would often turn to other unions for help when they had problems with their employer. As one former AFSCME leader explained:

The public sector would bring collective bargaining issues to the [state AFL-CIO] convention and the private sector would wonder why are you bringing it to us, take it to the shop floor. Well, the public sector doesn't have a shop floor. There was frustration getting the private sector to understand that the public sector is working in a different environment. They didn't want to be bothered with public sector pension issues. The private sector doesn't understand why the public sector can't just hand out flyers and agitate at work (Interview #23).

Given the economic crises private sector unions began encountering in the 1970s, public sector pension issues could seem rather trivial at times to private sector union members. As one nurse's union leader recalled, "there was some feeling that public employees had it awfully easy because they had no plant closings, layoffs, etc. Thus, we often had less sympathy in a labor dispute from the private sector unions" (Interview #23). An AFSCME leader further remarked in our interview: "I used to think it was a very lonely fight when we called to raise taxes" (Interview #38). The private sector union model of blue-collar workers exercising their collective bargaining rights to negotiate with their employers did not fit with the often white-collar public sector employees who were still fighting for collective bargaining rights. Public and private sector unions' different organizational challenges—one to gain any legal recognition, the other to negotiate, at times quite forcefully, for the best contract within an established system—promoted a lack of cohesion. Operating in different legal environments, one expanding collective bargaining rights and one ossifying, the private sector unions at times failed to understand the needs of the public sector unions joining their movement.

Public sector unions displayed their own lack of empathy and understanding toward private sector unions because of their distinct organizational identities. In many interviews, leaders recalled public sector workers' snobbish attitude toward blue-collar union members, preferring to think of themselves as professional associations rather than unions. The private sector union members may have incorrectly seen the public sector jobs as cushy, but in one

respect they could be relatively milder, union organizing and bargaining where they faced less hostile employer resistance. One leader emphasized that public sector employees—who were fortunate enough to have gained collective bargaining rights—sometimes forgot “what the private sector was going through” because, when contract negotiations broke down, “public employees could just go to arbitration whereas private sector employers would just bypass the union” (Interview #23).<sup>31</sup> Increasingly hostile employer resistance was largely a private sector phenomenon. While public sector unions were successfully organizing new workplaces and negotiating new contracts, the private sector was struggling to find cooperation with their employers. At times, this fight was not fully appreciated within the public sector.

The clashes of organizational identity between the public and private sector, however, were amplified in the 1970s by the cultural upheaval of the decade. The period of the 1970s was a clash of cultures as mainstream Americans’ older, more established values conflicted with the radical and diverse viewpoints—and their calls for recognition—of African-Americans, intellectuals, gays and lesbians, feminists and others involved in the New Social Movements. Public and private sector unions’ organizational identities tracked onto opposing sides of the cultural clashes: private sector union identity was firmly entrenched in the Cold War liberal consensus of the 1950s, whereas public sector unions largely arrived onto the scene in the 1960s when connections with the Civil Rights Movement and later antiwar movement helped forge a very different identity.

Organized labor was staunchly entrenched in the old mindset, which was vividly depicted by the Hard Hat Riot in New York City on May 8, 1970. Several hundred anti-war protestors had gathered on Wall Street protesting the Kent State shooting. Two hundred Building and

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<sup>31</sup> Arbitration is a common practice in public sector labor disputes that allows for a third party to resolve disputes, like contract negotiations, between union members and the employer. Sometimes arbitration is binding with employees and the employer having to accept the third party’s resolution.

Construction Trades Council members soon arrived to oppose the protestors. The confrontation quickly turned violent as the construction workers “proceeded to storm the steps of City Hall, chasing student protestors through the streets of the financial district, and bloodying around seventy people in the process” (Cowie 2010, 135). Demonstrations continued throughout the month of May, culminating in a Building and Construction Trades Council of Greater New York sponsored rally of one hundred thousand in support of the war (135). The conflict was seen in the media as a clash of cultures as the hardhats worn by the construction workers in the riot became “a powerful metaphor for the deepening conflicts that had developed during the 1960s over politics, gender roles, and cultural values” (Freeman 1993, 736). The “hardhats”—staunch Cold Warriors in favor of the war in Vietnam and the cultural status quo that ensured their unions and union jobs were not integrated were a strong presence in the leadership and rank-and-file of much of organized labor in the 1970s, except the public sector.

Indeed, the sharp cultural divide between the New York construction workers and anti-war protesters encapsulates much of the difference in organizational identity between public and private sector unions at the time. On one side, “most labor leaders...stood in an increasingly stolid, unresponsive center, not on the dynamic frontier where they had once defined, and stretched, the limits of conventional politics” (Lichtenstein 2002, 187). These leaders were the same ones who “had battled the Communists in the 1940s and accommodated themselves to the constraints of the Cold War and the narrow compass of the Taft-Hartley labor relations regime” and thus they “remained entirely out of tune with the multiple insurgencies that began to animate left-liberal politics in the 1960s” (187). On the other side, public sector unions and their leaders, particularly teachers and government employees, delayed in their growth until the 1960s and 1970s, were an integral part of the New Left, demanding equal rights, respect and compensation

on par with white, male private sector employees who had seen such dramatic improvements in their working conditions and compensation in the post-war era.<sup>32</sup> To be sure, this distinction masks important variation within the private and public sector unions at the time, but it is no coincidence that the anti-war vanguard in the labor movement found strong support among teacher and government employee unions.

Whereas the private sector was an entrenched part of the political order, favoring backroom lobbying, public sector unions were taking to the streets to gain legal recognition. Public sector unions utilized tactics drawn from the Civil Rights Movement including protests, marches, and defiance of laws including strike bans. Moreover, because public sector unions represented a diverse membership that included many women and minorities, they frequently collaborated on social justice issues that the other social movements of the time were championing (Zeiger and Gall 2002, 210). Thus, at the very time the public sector was fighting to gain entry into the leadership circles of organized labor, their differences from the private sector in organizational identity were amplified by the larger national conflicts over politics and values brought about by the New Left, making cooperation that much more difficult.

How cultural upheaval amplified public/private sector conflict is embodied in the power struggles between the existing leaders of the union movement and the up and coming public sector unions in the decade. While the AFL and CIO initially offered support to public sector union efforts in the 1930s and 1940s, the relationship became strained as public sector unions expanded, becoming some of the most liberal and militant union voices, and demanding recognition and influence within the labor movement. Labor leadership in the 1970s was largely a stalwart group of aging, industrial unionists led by George Meany. Meany became president of

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<sup>32</sup> Police and firefighter unions also grew during this time but did not display the same activist zeal and connection to the New Left as many other public sector unions.

the AFL in 1952 and then oversaw the merger of the AFL and CIO in 1955 where he remained president, only stepping down in 1979 at the age of 85.

George Meany did not fit the model of the politically disruptive, radical unionist. Instead, he led the AFL-CIO in a more conservative, business unionism direction focused on backroom lobbying in Congress and tough contract negotiations. Meany's leadership reflected the times: after World War II, organized labor gained a more prominent and accepted position counterbalancing business and the state, but labor's newfound status was premised on their acceptance of the liberal consensus, the driving out of many of the most radical union leaders (especially the Communists), and full fledged support of the United States in the Cold War. As a consequence of labor's organizational identity forged in the post-war years, Meany did not endorse the March on Washington and had a strong Cold War mindset, vehemently supporting the war in Vietnam leading him to refuse to endorse Democratic candidate George McGovern in the 1972 presidential race.

The refusal to endorse McGovern over his anti-war stance is particularly striking because McGovern had a strong pro-labor record throughout his career leading up to his nomination and labor had endorsed the Democratic presidential candidate for the past twenty years before 1972 (Zieger and Gall 2002, 219).<sup>33</sup> A political advisor to George Meany anonymously analyzed the AFL-CIO's decision to remain neutral in cultural terms saying that "This is our showdown with the new politics" and "at some point the movement within the Democratic Party had to be stemmed, and this is it" (as quoted in Shabecoff 1972). The anonymous advisor's statement echoed the analysis of Nixon's campaign leader Clark MacGregor that the AFL-CIO saw the Democratic ticket as "a new McGovern elite accepting within its ranks radical professors,

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<sup>33</sup> For a detailed description of the conflict between AFSCME and the AFL-CIO over the McGovern nomination and the fallout within the Democratic Party, see Chapter 8 in Hower 2013.

student agitators, professional welfarists, extremists of virtually every sort, an élite which makes the ordinary working man feel unwelcome and unwanted” (as quoted in Shabecoff 1972). Such descriptions cast the Democratic Party at two opposing sides—the old-line New Deal liberals and the up and coming new left movements. The labor movement mirrored these two sides with George Meany and the AFL-CIO executive council on one side, and the up and coming public sector unions in the opposition.

In sharp contrast to George Meany’s intractable leadership, Walter Reuther, president of the United Autoworkers (UAW) and former president of the more activist CIO (then vice-president of the merged AFL-CIO), was the champion of the more liberal wing of labor. It was Reuther who helped stage the March on Washington, stood beside MLK as he delivered his famous speech, and eventually pulled the UAW out of the AFL-CIO in opposition to the War in Vietnam. Reuther accused the AFL-CIO of becoming “historically obsolete” and criticized the executive council of being “increasingly comfortable custodians of the status quo” who displayed “complacency,” “indifference,” and a “lack of social vision” (as quoted in Cowie 2010, 43). Reuther died in a plane crash in 1970, leaving the more radical elements of the labor movement without a spokesperson.

One of the best candidates to take up Reuther’s more radical mantle was Jerry Wurf, the president of the quickly expanding American Federation of State, County and Municipal Employees (AFSCME). Wurf was a Civil Rights veteran unwilling to toe the line of AFL-CIO positions and, as the head of an expanding union, gained a seat on the AFL-CIO executive council. Despite his seat at the table, existing union leaders bristled at Wurf’s quick rise and more radical politics. As Jefferson R. Cowie (2010) explained, “AFSCME and Jerry Wurf were regarded as barely tolerated mavericks and outsiders in mainstream labor circles” (62). Jerry

Wurf himself told one reporter at the time that, “People resent us” and that “our role in the AFL-CIO was that of being the oddballs, the peculiar ones” (Pryor and Steiger 1977; as quoted in Goulden 1982, 184). Resentment stemmed from AFSCME’s rapid growth and activist membership at a time when the industrial unions were struggling to maintain their membership levels. Other unions shared Wurf and AFSCME’s sentiment. While admittedly not affiliated with the AFL-CIO, National Education Association Executive Secretary Terry Herndon remarked publicly in 1975 that public employee groups had been “struggling valiantly, with at best tolerant silence from the AFL-CIO” (Broder 1975a). Whereas the private sector unions were already powerful entities, with longstanding contracts protecting their members, public sector unions—embodying the radical, social movement tradition of the period—continued to battle for legal recognition and acceptance within the union movement.

The timing of public sector union growth did not align with the private sector, heightening their differences. Private sector unions and the AFL-CIO leadership were largely content with the gains they had made, convinced that the bureaucratized labor relations crafted in the post-war era that had brought them to power were here to stay. Private sector unions content with the status quo and public sector union growth and militancy at times led to an organizational divide between AFSCME and the AFL-CIO. As one AFSCME leader remembers:

As we grew, we sought to increase our presence and influence inside the house of labor, the AFL-CIO. That involved the playing out of a strategic argument between us and George Meany and the mainstream of the house of labor. We didn’t go along with the support of the AFL-CIO for the Vietnam War. When the AFL-CIO was neutral between Nixon and McGovern, we were for McGovern. Federal employees that were kicked out of another union because they were anti-war found their way into our union. In 1972, we operated a political action coalition for the presidency that functioned independently from the AFL-CIO. We continued growing and adopting our own strategy and stance in regard to national politics. That sometimes resulted in votes on the [AFL-CIO] executive council of 32-1 against whatever we were putting forward. (Interview #40)

In the face of an existing AFL-CIO leadership that was out of step with the New Left movement and more radical politics of the 1960s and 1970s, AFSCME and Jerry Wurf were often forced to act alone (Cowie 2010, 72).

AFSCME's outsider status was shared by other public sector unions. The American Federation of Teachers (AFT) was an early supporter of the Civil Rights Movement. Their future president Al Shanker, when he was leading the NYC teachers in the United Federation of Teachers, marched with Dr. King from Selma to Montgomery and helped fund the A. Phillip Randolph Institute to promote relations between labor and civil rights (Kahlenberg 2007, 61, 63). While Shanker himself was a vocal proponent of the Vietnam War, as early as 1967 the membership of AFT adopted an anti-Vietnam resolution at their annual convention (147). Aside from his ideological reasons for supporting the war, Shanker also recognized what Jerry Wurf experienced firsthand: "George Meany used Vietnam as a litmus test among labor-union leaders. The AFT would not be taken seriously within the labor movement so long as it took a position on Vietnam far outside of labor's mainstream" (148). The AFT membership also, despite Shanker's misgivings, overwhelmingly voted, like AFSCME, to give McGovern their endorsement in 1972 (157).

The AFL-CIO responded to the AFT's McGovern endorsement by elevating Al Shanker to the AFL-CIO Executive Council in 1973 over the current AFT president. At the time, Shanker was a president of a union local and one of twenty AFT vice presidents. The Executive Council was traditionally filled with presidents of the national unions thus Shanker's election was an unprecedented move by the AFL-CIO. The message was clear, as one union leader put it at the time, Shanker's position on Vietnam was more in line with the AFL-CIO leadership than the rest of the AFT, and as a result, "George loved Al" (as quoted in Kahlenberg 2007, 159).

Shanker was rewarded for his Vietnam stance, while the AFT's and AFSCME's outspoken positions on the War and McGovern were met with hostility by Meany and the entrenched leadership of the AFL-CIO.

The AFL-CIO's cold response to the public sector unions was reflected in a variety of ways. It was slow to create a public sector department within the federation and to add Wurf to the executive council, despite the fact that it was one of the fastest growing and dynamic unions within the movement (Goulden 1982, 207-8). The AFL-CIO was also slow at times to vocally back or provide lobbying support for key public sector issues. For instance, the AFL-CIO pulled its support in 1972 from the State and Local Fiscal Assistance Act, a key policy priority for AFSCME that would support precarious local government finances and protect AFSCME union jobs. The AFL-CIO's refusal to support the measure was seen by AFSCME as a "striking betrayal, and for Wurf, it only seemed further evidence that critical public sector issues were at best secondary concerns for the Federation's lobbyists" (Hower 2013, 282-283). AFSCME leadership lamented having to act alone and watch their backs, for fear that the AFL-CIO would betray them for another unions' interests (282). AFSCME joined with several other public sector unions in 1971 to form the Coalition of American Public Employees (CAPE) to lobby for a national level collective bargaining law. The group acted independently of the AFL-CIO because the federation had yet to form a public employee department and, once formed, CAPE "drew little support from the rest of the AFL-CIO" (300). CAPE is just one illustration of public sector unions having to look outside of the AFL-CIO for organizational support. Likewise, in 1975 AFSCME and the NEA joined with several liberal private sector unions to form the Labor Coalition Clearinghouse to organize electoral efforts after the AFL-CIO's refusal to take an

active role in the Democratic Party nomination process (360). These organizational divides were emblematic of the splits within organized labor due to opposing organizational viewpoints.

Jerry Wurf's anti-war stance on Vietnam was certainly part of the rift as Meany's Cold War mindset kept the AFL-CIO's position pro-war, but Wurf's isolation was also emblematic of his outsider status representing an up and coming group, embodying a new radical cultural and political movement, trying to force recognition from a stalwart, established leadership order. As Jefferson Cowie notes, "Unlike any previous struggles in American labor history, during this one, the labor question already had its solution, and there was a host of institutional interests invested in maintaining those solutions exactly how they already existed" (2010, 72). Public sector unions, lacking the legal standing and size to be included in the answer to the labor question devised by the liberal consensus in the post-war era, were relegated, with a host of other insurgents, to outsider status. As a result, they were unable to transform the course of the labor movement in the 1970s.

### ***B. Economic Crises and the End of the Post-War Boom***

There certainly would have been leadership clashes between public and private sector unions, regardless of the time period, but the existing leadership within organized labor were encouraged to dig in their heels when public sector unions came knocking in the 1970s because this was not a period of plenty; a series of economic crises threatened all of the advancements labor had gained in the post-war years. For the private sector, the post-war boom and the ascendance of organized labor, which had led to a remarkable thirty-year period of economic and social empowerment for the working class, was coming to a close by the 1970s. As Cowie (2010) notes, "by mid-decade the record-breaking strikes, rank-and-file movements, and vibrant organizing drives...were reduced to a trickle in the new economic climate" and "were then

replaced by layoffs, plant closures, and union decertification drives” (12). While union contracts insulated private sector unions for a time from the economic downturn, over time they too were affected by decreased manufacturing productivity and wages that were not rising commensurate with cost of living increases as a result of the economic slowdown and inflation.

The end of the post-war industrial boom, the oil shocks, deindustrialization and other forms of economic restructuring hit the private sector hard, gradually pressuring unions to make concessions in the face of declining company profits and manufacturing unemployment (Pizzolato 2009, 234). Just six years after the “plague of strikes,” things had changed dramatically with “labor’s tired leaders” facing a union movement “in a quiet state of crisis” (Kotz 1977). The difficult economic climate was worsened by increasingly virulent employer resistance to union organizing and contract negotiation, out of date labor laws, weakened strike effectiveness, and union leaders who had yet to fully recognize the problem or devise solutions. The result was a private sector union movement on the decline both in terms of density as well as power and influence.

In contrast, public sector unions in the mid-1970s were thriving and using their energy and aggressive tactics to finally bring their members’ pay and benefits on par with the private sector. Public sector unions became increasingly militant evidenced by their rising strike activity. In 1958, there were 15 public sector strikes involving 1,730 workers. By 1980, there were 536 strikes involving 223,600 workers (PSRC 1982). As illustrated in Figure 7 on page 69, by the mid-1970s, there were over three hundred-fifty to a high of nearly six hundred work stoppages each year. Public sector unions coupled their strike activity with high political pressure. As one newspaper article put it at the time: “It used to be said you could tell a civil servant by his white socks, the pencils in his shirt pocket, and the tattered briefcase that smelled

of apples and peanut butter. Today, add a union card, a checkbook, and, conceivably, a primer on what makes the political system tick” (Skelton and Endicott 1974). Whereas private sector labor was entering crisis mode, public sector labor was ramping up the political pressure.

In interviews, public sector labor leaders recall the period as one of great potential. As one AFSCME leader explained, “Change trends were gathering momentum and new entrants into the movement had the ability to look to the future. I count myself as one of the people” (Interview #40). A leader within the American Federation of Teachers described the period as “big organizing and mobilizing days. Teachers found a voice through their unions.” The bottom line, she explained, was that “we were building a movement” (Interview #34). Caught up in the energy and excitement of the public sector union movement, it is not surprising that the public sector unions were not as acutely aware or involved in what was going on in the private sector. As a leader within AFT explained, “We didn’t see it [private sector decline] happening. We were not as aware of it because it wasn’t impacting us directly. It’s human nature, if the public sector felt secure in their own right, [then they were] not worried about the private sector” (Interview 40). Multiple leaders in my interviews noted that it wasn’t until the mid-1980s that public sector unions truly began to worry about private sector decline. The economic crises of the 1970s affected public and private sector unions in different ways because the sectors themselves are distinct, but also because public and private sector unions were at different stages in their development. It would be a gross generalization to say that public sector unions were ignorant of and did not care about the trouble in the private sector. However, the momentum of the public sector union movement masked private sector problems; it is harder to worry about a sinking ship when you are riding in a newly built boat that is just starting to sail at full speed.

Because private sector unions were experiencing membership losses rather than gains in the 1960s and 1970s, some private sector labor leaders saw the growth of the public sector as an opportunity to improve their declining membership numbers by organizing public sector workers into their own unions, or in some cases stealing them from existing unions. Unions relished the addition of new members because, thanks to automatic dues check-off from members' paychecks, these members could inject cash into the union almost immediately. The public sector was ripe for raiding for several reasons. First, public sector employees were a largely untapped resource just beginning to organize. Second, there was tremendous job diversity in the public sector meaning almost any private sector union could find complementary occupations in the public sector. Finally, organizing public sector employees was attractive because, as one labor leader remembers, "public sector organizing was easier to do in bulk...as we had fewer and fewer large scale employers with large scale worksites in the private sector, it became attractive to try to grow your union through public sector work" (Interview #31). The Building Services Employees Union was one of the most successful unions to organize public sector workers leading one AFSCME leader to declare that the union "transformed itself more than any other into a public employee union during that time" (Interview #40). As a result, the union renamed itself to reflect their new membership in the public service as well as their service sector members; the Service Employees International Union (SEIU) is now one of the largest public employee unions in the country with nearly half of its membership in the public sector (SEIU 2014).

Turf wars and raiding over which union would organize groups of public sector workers led to conflict and animosity among competing unions. AFSCME filed 28 separate complaints with the AFL-CIO from 1972-1974 over jurisdictional disputes (Hower 2013, 297).When one

AFSCME organizer requested a list of union locals from Jerry Wurf, then president of District Council 37, Wurf told him: “Oh...we couldn’t possibly keep anything like that. If we did, the Teamsters would steal it and go raiding” (Wurf as quoted in Goulden 1982, 43). Indeed, Wurf learned the hard way how cutthroat union raiding in the public sector could be; when in charge of the then fledgling District Council 37, a Teamsters led raiding effort, condoned by the New York City AFL, left Council 37 with only 600 members (Goulden 1982, 44). There have always been turf wars between unions for members, so the scramble to unionize public sector workers was not unique. However, because public sector unionization came later, just when the private sector encountered membership troubles, private sector unions had a strong incentive to raid public sector union members and competition was fostered between the unions for members.

The economic crises of the mid to late 1970s further amplified the divergence between the public and private sector unions. The energy crises, economic slowdown and other conditions combined to produce stagflation whereby economic growth slows, unemployment remains high, and inflation rises. Stagflation placed cities and states across the country in the precarious position of declining tax revenues, ballooning deficits, and not enough revenue to cover their rising expenditures.

Public sector unions faced employers in severe financial situations. New York City nearly went bankrupt and the city’s large and influential public employee unions were forced to navigate how they would respond to the city’s fiscal crisis, without the support of the rest of organized labor. In their response, one AFSCME leader recalls, they “had to grapple with that on our own” because “it was our problem to solve” (Interview #40). When Jerry Wurf, recognizing how dire the situation was in New York City, suggested meeting with other public sector unions to devise a strategy, including the building trades union who had raided members, he

encountered indifference: “Most of their [building trades union] members worked in the private sector, they could care less about city employees. ‘Howie McClellan [building trades union president] sat at the end of the table and smiled at Wurf, as if he was powerless to do anything’” (as quoted in Goulden 1982, 223). Ultimately, public sector unions in New York City, particularly AFSCME’s District 37 voluntarily deferred and gave up benefits as well as using pension funds to buy \$3.5 billion in Municipal Assistance Corporation bonds to help bail out the city. Despite these life-saving measures for the city, as Wurf noted, they “still ended up the villains” (as quoted in Goulden 1982, 240).

The grim economic situation facing cities and states put public and private sector unions in difficult, uncompromising positions, which amplified their differences. The economic crises put the interests of public sector union members, whose paychecks relied on shrinking local, state and federal funds, against the interest of private sector union members, whose tax burdens remained steady even as the value of their paychecks decreased. Public sector union members were feeling the economic strain their employers were facing, making it hard for them to acquiesce to benefit cutbacks. In contrast, private sector union members were in difficult financial straits, and a high tax burden during an economic slowdown caused them to see the public sector struggle in a different, negative light.

Private sector union members, facing a tough economic climate became receptive to growing animosity against public sector union members. Rising animosity against public sector unions was partially a natural reaction against public sector union militancy, especially during a period of economic crisis. However, there was also a deliberate, coordinated effort to discount public sector unions by conservative think tanks, politicians, and advocacy organizations. The tax revolt in California spearheaded by Howard Jarvis primarily targeted high property taxes but

his criticism of big government included public sector workers. Jarvis argued that California needed tax relief because the ratio of local government employees to residents in the state was, he claimed, 1:15 and these government employees were paid 25% higher than comparable private sector jobs which he saw as “a case of the poorer supporting the richer” (Jarvis 1979, 110-11).

At the same time, new organizations sprung up to research the negative effects of public sector unions, most notably the Public Service Research Foundation (1977), which was founded by members of the National Right to Work Committee and produced a newsletter, academic journal and lobbying organization (McCartin 2011; Hower 2013, 373).<sup>34</sup> Conservative academics furthered the anti-public sector union effort with a string of publications emphasizing the fundamental difference between private and public sector labor relations and reviving earlier fears of being “governed by our servants.” The most influential analysis on the subject was Harry H. Wellington and Ralph K. Winter’s 1971 book *The Unions and the Cities*, which held that public sector unions possessed tools their private sector counterparts do not that enable them to exert excessive power over their employer, the government. Other conservative academics buttressed this claim by reviving the history of the 1919 Boston Police Strike as a “city in terror” (Russell 1975), stressing the threat to state sovereignty public sector unions posed (Petro 1974), and emphasizing the dangerous threat of public sector strikes (Toledano 1975).

The press aided this effort to discredit public sector unions, frequently blaming city and state budget woes squarely on public sector workers and unions (e.g. Goulden 1982, 241; Broder 1975a, 1975b). During a particularly heated strike in Baltimore, after a meeting with Jerry Wurf, Maryland Governor Marvin Mandel alleged that Wurf threatened that “Baltimore city would

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<sup>34</sup> For a more complete description of the rise and organization of anti-public sector union groups in the 1970s, see Chapter 8 in Hower 2013.

burn to the ground unless the city gave into the demands [of AFSCME].” While Wurf claimed Governor Mandel’s story was an “absolute lie,” his alleged threat to “let the city burn” were reprinted in anti-public sector union forums as well as mainstream media for years to come as a symbol of the dangers of public sector unionism (Goulden 1982, 243-3).

The demonization of public sector union members gained traction with the general public for two reasons. First, public sector unions continued to demand, even increased their demands, expanded benefits and cost of living increases in the face of economic crises and state budget collapse. As Joseph A. McCartin (2009) notes, “‘stagflation’ had the perverse effect of simultaneously ballooning government deficits” and “goading government workers into increasingly unpopular strikes for wage increases to offset raging inflation” (749). In 1975 and 1978, two years when economic crises were at a boiling point, public sector strikes rose by 24 and 18 percent respectively (McCartin 2008). Returning to Figure 7 on page 69, public sector work stoppages did not decline in the latter half of the 1970s but instead rose to a high of 593 stoppages in 1979. Public sector strike activity during the economic crises turned public sentiment “so ferociously against striking civil servants that nongovernment union members won’t even support them” (Pryor and Steiger 1977).<sup>35</sup> It is understandable why public sector

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<sup>35</sup> In 1975, the AFL-CIO national convention came out in favor of the right to strike for all workers, including those in the public sector. This may have just been a way for the AFL-CIO to discredit public sector unionism and avoid supporting a national public sector law akin to the Wagner Act (see Goulden 1982, 221). However, at times, private sector unions bristled against the full use of militant strikes by public sector unions. A few instances from articles during the time period include: (1) “‘Nobody ever dreamed that the municipal unions would apply tough trade-union tactics,’ recalled the leader of a nonmunicipal union. ‘Everybody thought that they would understand that they were working for a nonprofit institution’” (Tolchin 1975); (2) “When striking black Memphis laborers, including street cleaners, appealed to the local building trades for help, an AFSCME official said, he was told: ‘You owe the people of Memphis an apology. Those niggers didn’t work. Someone might have slipped on the ice and gotten hurt’” (Johnson and Kotz 1972); (3) When John Crowley, Secretary Treasurer of AFL-CIO’s San Francisco Labor Council threatened a general strike as a way to escalate a strike by the city’s craft workers, may have been too hasty. “When Mr. Crowley sought support from fellow labor leaders last week, the Marine Cooks and Stewards Union sent a telegram saying it didn’t consider the pay issue a cause for a general strike. One knowledgeable source says that Harry Bridges, president of the

unions, having just recently gained these benefits and seeing their own wages and benefits lose value with cost of living increases, would resort to heightened demand making and strikes, however, this activity helped fuel a massive backlash against public sector unionism.

The second reason the demonization of public sector unions was successful was because Americans, including private sector union members, came to see public sector unionization through the lens of their own struggles. Some private sector union members, “increasingly worried about plant closings, facing give-backs at the bargaining table, and inflation in their own tax bills,” felt public sector unions were part of the problem (McCartin 2009, 751). The reality is, “when the taxpayers are flush, it’s much easier to argue that we deserve a first class public sector” (Cowie 2013). In the latter half of the 1970s, taxpayers felt far from flush. Jerry Wurf admitted in an interview at the time that the growing anti-tax revolt attitude “flows over into our relationship with our colleagues” (Pryor and Steiger 1977). Private sector labor leaders, still cognizant of the importance of labor solidarity, were not always open with these sentiments but they did spill over publicly at times. The president of the UAW, Douglas Fraser, was quoted as saying that “if public employees make demands that ‘go way beyond’ what the taxpayers themselves have, ‘then I think you’re going to have this conflict. And I think it’s happened.’” (Flint 1978). Likewise, a president of an “old-line craft union” speaking anonymously to a reporter, reputedly “questioned whether public employees ought to be organized at all, expressing concern for higher costs and whether the United States could become ‘another England’” (Pryor and Steiger 1977). Further, “in California, lobbyists for one of the most progressive industrial unions are privately opposing collective bargaining rights for public

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International Longshoremen’s and Warehousemen’s Union took the same position. Mr. Bridges has declined to comment. Another of the city’s powerful labor leaders said he agreed with Mr. Bridge’s position” (Libman 1976).

employees—on the grounds that its members’ taxes will have to pay the higher benefits that collective bargaining will yield for state workers” (Broder 1975b). Rather than banding together in the face of difficulties, public and private sector unions were pushed apart by their separate struggles. As Cowie (2012) notes, “from the perspective of their brothers and sisters in private jobs, public sector raises were costing them tax dollars—a problem that would become a crisis with the tax revolts at the end of the decade” (62). Private sector unions were already in difficult straits when public sector unions came under duress, making it easier for the criticisms against public sector unions to resonate among private sector union members.

The differences between public and private sector unions was magnified by the deteriorating economic climate hitting just as public sector unions’ militant efforts began to pay off. Public sector unions became “political lightning rods” and “scapegoats” who “serve[d] as a fulcrum for a lurch to the right in political life” (13, Johnston *Success While Others Fail* 1994). In Washington State, the divide between public and private sector unions erupted in a very public fashion. When Seattle Mayor Wes Uhlman faced a recall election in 1975 spurred by firefighters angry over the Mayor’s firing of a longtime firefighter, the King County Labor Council remained officially neutral. While the Council was strategically hedging their bets in case Uhlman prevailed, it was also noted at the time that “there is little rank-and-file union sympathy for the firefighters, who make \$15,000 a year after four years...and enjoy greater job security than private sector employees” (Broder 1975a). That very same year, when school levies failed to pass in several communities in Washington, the National Education Association sought a sales tax increase from the legislature to close the budget shortfall. Joe Davis, president of the Washington State AFL-CIO, refused to endorse the measure, which proved “an unexpected

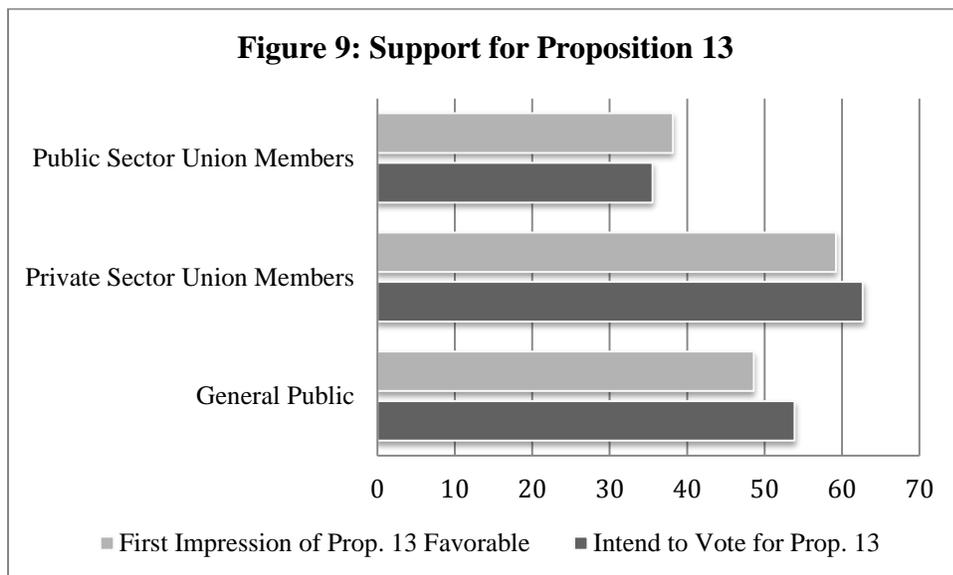
stumbling block” (Broder 1975a). These two public events in Washington illustrated the growing schism within the labor movement made possible by the economic crises of the time.

### ***C. Political Backlash***

The economic crises amplified conflict between public and private sector unions, ultimately spilling over into political clashes. Nowhere was the divide between public and private sector unions more evident than in the battle over Proposition 13 in California. Across the country, the economic crises fostered a growing resentment against higher taxes and the perception that public sector unions were to blame. This anger was harnessed in California by Howard Jarvis, who spearheaded the campaign to pass Proposition 13, which would place caps on state property taxes and limit tax increases of any kind by requiring a two thirds majority in the state legislature. Proposition 13 would severely limit California’s ability to raise revenue and thus was a threat to public sector unions and their members whose jobs and paychecks were dependent on state and local tax dollars. The “tax revolt” beginning in California and gaining steam elsewhere threatened public sector union livelihood just like the economic downturns and restructuring occurring in the private sector threatened private sector unions. However, private sector union members did not all favor solidarity and defending public sector unions against the tax revolt because “union members are tax payers too” and just as susceptible to the anti-public sector union rhetoric (“What’s Wrong with Labor” 1978).

Anecdotally, after Proposition 13 passed, many newspaper articles argued that private sector union members had become “foot soldiers in the so-called tax revolt” and “voted overwhelmingly for Proposition 13, in full knowledge that the 57% cut in property taxes that it called for would wipe out the jobs of many of their brother unionists working in local governments” (Shabecoff 1978 ; “Labor Comes to a Crossroads” 1978; Bernstein 1978). A *Los*

*Angeles Times* poll conducted in 1978 just prior to the election suggests that these anecdotes were accurately capturing a divide between public and private sector union members. Figure 9 displays the percentage of the respondents who viewed Proposition 13 favorably and were leaning toward/intended to vote for the measure. Just 38 percent of public sector union members favored Prop. 13 and 35 percent were considering voting for the proposition. The general public was more favorable, at 49 percent, and 54 percent of the general public planned to vote for the proposition. Most surprising, private sector union members were the most supportive of Proposition 13 in the poll. Nearly 60 percent of private sector union members were in favor of the measure and 63 percent leaned toward voting for Prop. 13. The poll suggests that private sector union members were receptive to anti-tax rhetoric and measures despite how it would adversely affect their public sector union brothers and sisters.



N=1,003; Public Sector=76; Private Sector=201  
 Source: Los Angeles Times 1978

The tax revolt was a product of the 1970s economic crises, stagflation and the incredible growth of the local, state and federal government since the New Deal. Public/private sector union differences were amplified because the differences between public and private sector

unions aligned with many of the cultural, economic and political conflicts animating the decade and there were few pressures to promote cooperation between the two union sectors. Public sector unions were still wrapped up in the heady times of astronomical growth, whereas private sector unions were reeling from economic crises and a decade of setbacks following a period when organized labor felt unstoppable. Thus, the tax revolt caught organized labor at a time when the public/private divide could easily be amplified and exploited.

### **III. Imagining a Different Outcome**

Going into the 1970s, the potential for organized labor seemed promising. Private sector union density was still relatively high and was bolstered by the growing size and political might of the public sector unions. Rather than a period when organized labor forged a cohesive public/private sector movement to tackle head on the challenges of the decade, the period was often marked by schisms between the two sectors.

By the end of the 1970s, the United States was unrecognizable in many respects: organized labor's power had waned, the New Deal coalition and liberal consensus were truly dead, a massive transformation of the American economy was underway, and a conservative turn in American politics had begun. On the cusp of this change, President Jimmy Carter and a Democratic legislature entered office, signaling the possibility of the passage of private sector labor law reform in 1978. However, the moment for a public and private sector labor movement to push through labor law reform had already passed. The backlash against the public sector unions was well underway, even Democrats were hesitant to be associated with the public sector pariahs (McCartin 2009). For instance, San Francisco Mayor Joseph Alioto, president of the U.S. Conference of Mayors urged passage of legislation at the Mayors conference that would fire

public employees who work in broadly defined emergency roles and go out on strike (Brown 1975). Likewise, Seattle Mayor Wes Uhlman, having survived the recall election brought about by unionized city firefighters, received national attention for his criticisms of municipal unions and call for mayors to stand up to the unions (Negronida 1975). Finally, Atlanta Mayor Maynard Jackson, who had longstanding ties to the Civil Rights Movement, fired hundreds of striking black municipal workers who he saw as a threat to the city's tenuous municipal finances (Lichtenstein 2002, 232).

As a consequence of this changing sentiment, public sector unions now lacked the power and influence of just a few years before to help with labor law reform or pursue a national Wagner Act for public sector workers: “For public sector labor, the decade of the 1970s can be divided neatly in two, with the first half of the decade characterized by aggressive expansion and rising expectations, and the second half by defensiveness and disappointed dreams” (McCartin 2009, 211). In the early 1970s they were upstarts fighting their way into the mainstream of American politics and the labor movement. When the opportunity for labor law reform finally presented itself in 1978, it was too late. The backlash against public sector unions, increasingly an organized and mobilized conservative movement, and *National League of Cities v. Usury* closed the window of opportunity for labor law reform. Ronald Reagan's firing of the striking Air Traffic Controllers in 1981 was a vivid illustration of the dramatic reversal of the public sector unions' fortunes. The timing never came together to align public and private sector unions before the window of opportunity closed at the end of the decade.

When public sector employees gained their collective bargaining rights—both the economic, political and cultural context as well as the sequencing of gaining these rights well after the private sector—has proven consequential for labor's organizational solidarity; the

timing and sequencing of public and private sector union development pushed against a unified union movement. Private sector unions developed earlier, forging a distinct organizational identity in the 1930s-1950s that would clash with the public sector unions' identity with the tactics and politics of their contemporaries in New Left movements in the 1960s and 1970s. Further, public sector unions delayed growth meant they encountered an already entrenched labor leadership and sought recognition and resources, not during the post-war boom but rather during a period of stagflation, budget cuts and austerity measures. Because public sector union legal recognition came late, their growth occurred during a time of cultural, economic and political crises that amplified the differences between public and private sector unions, preventing the kind of union movement needed to push for labor law reform.

We could imagine a different outcome. If public sector employees had gained collective bargaining rights in the 1935 Wagner Act or from their own national piece of legislation, their unionization would not have been artificially suppressed in the 1940s and 1950s. Instead, they would have grown and developed at the same time as their private sector counterparts. Thus, they would not have been fighting to gain entrance to an already established leadership circle in the 1970s and their organizational identities would have formed together. Likewise, if closer organizational ties and identities were established earlier, the more diverse membership within the public sector unions and their involvement in the New Left could have emerged from within organized labor rather than public sector unions being associated with the rest of the New Left as outsider insurgents.

Public sector leaders, already integrated into the AFL-CIO, could have led the way for a more socially and politically vibrant labor movement. Instead of Jerry Wurf criticizing from the outside the current AFL-CIO leadership for preventing the labor movement from acting as "a

force that will speak out and influence peace, justice, freedom and equality for all mankind,” Wurf could have been an insider helping enact just such an activist orientation within labor’s leadership (as quoted in Hower 2013, 295). Thus, private sector unions may have been better equipped to accept and absorb the new social movements and the divides in organizational identity between public and private sector unions—and the lack of cooperation and understanding they engendered—may not have been so stark in the 1970s. Further, the public sector unions’ fight for workplace rights and legal recognition would have taken place during the economic boom of the postwar years rather than in the midst of economic crises that made their claims and militant tactics easily criticized, alienating private sector union members. Instead of growing during the peak of private sector unions gains in the post-war years, public sector union demands occurred during a period of scarcity, pitting the public sector’s needs for robust local, state and federal budgets against the private sector’s declining incomes. Public sector union growth occurred in a decade complicated by private sector decline, economic downturns and conservative backlash, fostering moments of conflict and lack of understanding between private and public sector unions and ultimately limiting the growth of public sector unions and the possibility of a strong, vibrant public/private sector union movement. Thus, the decade of the 1970s is one of missed opportunities, illustrating vividly a union movement with two sectors out of alignment, their differences amplified by cultural, economic and political crises that pit public and private sector union leaders and members against each other.

#### **IV. Similar Crises, Different Labor Movements**

The financial crisis in 2008 represents an economic crisis on par to those faced in the 1970s, yet we do not see the same level of conflict between public and private sector unions as

we did then. Certainly there are some episodes reminiscent of the amplified public/private divisions of the 1970s. The negative association between public sector unions, big government, and high tax burdens has persisted over time and private sector union members have remained receptive to this interpretation.

The analysis in Chapter Four will illustrate that private sector union members continue to remain less supportive of existing or increasing taxes than their public sector counterparts. Private sector union members' resentment may have been exacerbated by the continuing decline of the private sector union movement. A leader in the AFT described private sector union members' "envy and resentment" over the benefits the public sector has managed to hold onto that have been lost in the private sector (Interview #34). They further related a second-hand story of a former president of a national teachers union going before a school board that included private sector union board members and receiving no sympathy because "we have become islands of benefits" (Interview #34). Another union leader described how, as private sector union density declines, "more and more people view unions as something that exists in the public sector..." which "affects people's experience of unions in terms of competition for public resources which has been a lot of the fight the last decade or so around healthcare and public pensions. Things that, especially in contrast to what has happened to private sector workers generally, peoples' belief that public sector workers have a set of privileges they don't have access to and they are paying for" (Interview #31). Many leaders referenced this divide as something that "goes back decades" as "good jobs have been shipped overseas leaving people without a union and wages depressed for the private sector unions that are left and "the private sector union members see the public sector and hear these messages about how greedy they are" (Interview #19). Ultimately, private and public sector unions developed at different times, they

have come under attack from separate forces, and their interests have been pitted against each other in such a way as to magnify their differences increasing the salience of the public/private divide fueling feelings of resentment and envy rather than solidarity.

One thing that continues to foster conflict is that anti-union opponents play up these differences, trying to generate conflict between the public and the private sector. When the law distinguishes between unions, this creates an opportunity for union opponents to sow discord. Examples of politicians seeking to divide unions are prevalent today. Governor Chris Christie of New Jersey has attacked teacher and government unions while simultaneously appearing on the cover of Time Magazine wearing a NJ Building Trades pin (“The Boss” 2013). Christie’s message to private sector workers, union and non-union is that they are on the losing side of a divide: “At some point...there has to be parity between what is happening in the real world and what is happening in the public-sector world” (as quoted in McCartin 2011). Then Governor Tim Pawlenty of Minnesota declared that, “It used to be that public employees were underpaid and over-benefited...Now they are over-benefited and overpaid compared to their private-sector counterparts” (as quoted in McCartin 2011). In Wisconsin, Governor Scott Walker’s push to eliminate public sector collective bargaining utilized a “divide and conquer” approach that pit the private sector against the public (Martin 2011). Legal divides create openings for dissension not only between private and public sector unions.

The Wisconsin Act to eliminate public sector collective bargaining specifically excluded police and firefighters. One anonymous interview revealed that when the legislation was announced on February 11, 2011, the firefighters’ union actually initially planned to support the bill. It was only after significant lobbying by more progressive wings of the union over the weekend that a majority of members were willing to stand against the bill. It took a concerted

effort over that weekend in February for the Wisconsin IAFF to see beyond the legal division created between public sector unions in the bill.

Despite these examples, however, the union movement has become far more united across sectors than in the 1970s in the face of economic crises. The massive turnout to protest the attack on public sector collective bargaining rights in Wisconsin, which involved numerous private and public sector unions in coordinated response, was emblematic of this cooperation. Why, given that the 2008 financial crisis strained government budgets, once again pitting the interests of public and private sector union members against each other, do we not see the same amplification of differences and lack of cooperation as we did in the 1970s? Over the past thirty years, total union density has steadily declined. Private sector unions have withered under eviscerated labor law that fails to reign in hostile employer resistance, inhibiting their ability to organize new members (see Chapter Two). The attacks on public sector unions beginning in 2011 served as a wake up call for many leaders as the last bastion of the labor movement was threatened.

With the hindsight of time, the labor movement seems to have finally recognized that their fates are tied together and attacks on either sector threatens the strength of the entire labor movement. The attacks in Wisconsin are not seen as an isolated event, but instead part of a larger crisis. As Lee Saunders, President of AFSCME explained about the events in Wisconsin: “It’s about survival... What’s happened didn’t just hurt public-sector unions, it hurt the entire labor movement” (as quoted in Greenhouse 2014b). Ultimately, the new sense of purpose in the labor movement appears to be because, for the first time, public and private sector unions are on parallel trajectories—crisis and decline. As one AFL-CIO leader put it, “I guess it takes a crisis. Our fates are tied together” (Interview #35). Today, the timing of public and private sector

decline now coincide and the sequencing of the economic crisis in the private sector and the attacks on the public sector are aligned, promoting a sense of shared fate.

As a result of the most recent attacks, there has been a dramatic effort within the labor movement to forge solidarity. Many public sector leaders emphasized that, “Public sector unions are very aware that...we can’t be an island of growth in an ocean of decline. Ultimately, our ability to grow and our strength is going to depend on a growing labor movement. We desperately need a stronger private sector labor movement. That is clearly understood” (Interview #29). This sentiment is different from the 1970s when public sector unions were less aware of and, to some extent, indifferent to the fate of the private sector. One former state level AFL-CIO president remembers trying to spearhead a union organizing campaign in the 1980s but “the response from locals was lukewarm at best.” He saw that failed effort as representative of “a tipping point for labor [toward decline] that wasn’t recognized at the time” (Interview #20). Lacking resources and national networks to help, his state level campaign to organize new workers failed.

Labor leaders have a general sense that the labor movement is different now, ripe for new initiatives, and that major change is needed. Interviewed at the 2013 AFL-CIO National Convention, Lee Saunders, president of AFSCME, reported that “Everyone has come to the realization that we need more partners, that we got to rebuild the movement, that we have faced all these vicious attacks...Maybe it takes a bat to your head, but people get it now. People are engaged” (as quoted in Greenhouse 2013). The bat to the head of labor appears to be the seemingly irreversible declining total union density and coordinated attacks against both public and private sector unions, made worse by decades of only partial cooperation and shared purpose between unions.

Today, the labor movement is emphasizing solidarity like never before, trying to deliberately forge shared organizational identities. This solidarity is taking the form of tangible efforts at cooperation and coordination. Labor unity tables, formed after the devastating defeats of the 2010 mid-term elections, were created in states identified as vulnerable in order to prepare an infrastructure to address any potential attacks. In interviews with labor leaders, they reference meetings, phone calls, and strategizing among unions occurring at an unprecedented level. The breaking off of the Change to Win unions from the AFL-CIO in 2005 is increasingly a division in name only. There is concerted effort to forge ties with likeminded progressive groups including immigrants' rights, environmental, and anti-poverty organizations. It remains to be seen whether this period of solidarity will have lasting repercussions, but it does suggest that when labor's development trajectories align, the potential for a coordinated, unified labor movement that truly embodies the idea of solidarity increases. For labor, it is a shame that alignment has come in the form of shared crises rather than parallel growth.

In this moment when labor leaders express shared purpose and tentative optimism, it is important to recognize that the dramatically different response of the labor movement to the economic crises and political attacks today compared to the 1970s is not simply a matter of new leadership. Public sector unions' delayed legal recognition meant they emerged as a real force in the labor movement not during the prosperous height of American labor in the 1940s and 1950s, but instead in the midst of cultural, economic and political crises in the 1970s. The timing of their growth magnified the differences between public and private sector unions, making the potential for cooperation in the labor movement that much more difficult. Today, the aligning of both the public and private sector union movements in a mode of crisis has fostered shared purpose and understanding, creating the foundation for cooperation and a stronger labor

movement in this decade, which was lacking in the 1970s. The house of labor may no longer be deeply divided, however, but this change has perhaps come too little, too late to have a dramatic effect on labor's fortunes; labor may have punched below its weight for too long to recover what they have lost over the course of these decades of missed opportunities and conflict.

## CHAPTER FOUR

### **The Public Face of Labor: The Heterogeneous Political Preferences and Behavior of Public and Private Sector Union Members**

#### **I. Introduction**

The center of gravity within organized labor has shifted dramatically in the United States over the last half-century. The changes in union power and membership beginning in the 1970s have magnified over time. Labor has followed two distinct trajectories: private sector union density began declining in the 1960s, at the very time public sector union density increased dramatically. Private sector density has continued to decline unabated whereas public sector density leveled off in the 1980s and has remained relatively steady since that time. These separate trajectories are neither natural nor inevitable, but rather shaped by the divided nature of American labor law which artificially suppressed public sector union growth, then promoted the brief surge of public sector union density and exacerbated the prolonged decline of private sector union density. One consequence of these development trajectories is a transformation in the composition of labor's rank-and-file membership, from private to public: public sector union members outnumbered private sector members for the first time in American history in 2010 (Greenhouse 2010). We know very little about whether this compositional shift matters for union members' political behavior. The central question of this chapter is: as union membership in the United States transforms from primarily private sector to primarily public sector, have union member political preferences and behavior changed? In other words, does the new public face of labor behave differently?

There is reason to suspect that public sector union members may behave differently from their private sector counterparts for two reasons. First, public sector union members, on average, are more likely to possess higher levels of education and income, and be female; all three of

these characteristics have been found to have important consequences for political behavior. Second, the nature of public sector employment is unique: public sector unions can influence their employment conditions not only through collective bargaining but also through political action and the economic exigencies of public sector employment differ from the private sector. As a result, public sector unions are some of the most politically active in the labor movement and political issues are salient for their members, increasing member's incentives to participate and influencing their policy preferences.

Organized labor remains a large, highly organized, and well-funded mass membership organization that is well positioned to influence politics. While union membership has declined as a percentage of the overall workforce, the total number of unionized workers is still impressive; union density may have been cut in half since its 1953 high, but the number of union members has declined by less than 5 million. Thus, even at their current diminished levels, organized labor still represents over 14 million Americans (Hirsch and Macpherson 2013). Labor unions are consistently among the top contributors to federal elections and independent expenditures through PACs (Francia 2010, 294). During the 2008 presidential election, the AFL-CIO's get out the vote (GOTV) "included knocking on 10 million doors, distributing 27 million flyers at worksites, sending 57 million political mailers, and making 70 million phone calls to encourage union voters to go to the polls" (Orr and Francia 2011). Labor's GOTV efforts appear to pay off, as union members comprise a disproportionate share of the voting population. Peter Francia (2012) estimates that "union households accounted for more than one of every five voters in the 2004, 2006, and 2008 elections" (4).<sup>36</sup> Labor's influence in American politics has

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<sup>36</sup> Similar union turnout results were found by Roland Zullo (2004) using private surveys conducted by the AFL-CIO.

remained steadfast—particularly the high turnout of union members in elections—but this consistency is in contrast to labor’s significant compositional changes over the last half century.

Instead of treating union members as a homogenous group, this chapter explores whether the changing composition of labor has led to heterogeneous political preferences and behavior among union members in two key areas: (1) public sector union members may be more likely to turn out to vote, and (2) public sector and private sector union members may have different levels of support for specific policy issues. This analysis finds support for both hypotheses suggesting that the increasing number of public sector rank and file union members may lead to higher levels of union turnout in elections and disagreements over policy positions within organized labor. Ultimately, this analysis upholds the continued political importance and influence of union members while emphasizing that public sector union members are qualitatively different from private sector union members with important ramifications for the extent of union member political participation and policy support in American politics.

## **II. Union Members’ Distinctive Electoral Behavior**

Although past research has consistently found effects of labor unions on political behavior, both at the macro and individual level, this work consistently treats union members as a homogenous group, assuming like behavior within the group. At the macro level, union density is found to have an effect beyond union members and union households. Looking cross-nationally and across the fifty US states, Benjamin Radcliff and Patricia Davis (2000) find that higher levels of union density are associated with higher levels of turnout. In a similar vein, Radcliffe (2001) finds higher levels of union density increase the probability of all citizens to vote and Gray and Caul (2000) find that declining turnout levels in industrial democracies are a

result of declining union density levels.<sup>37</sup> The decline in union density has important ramifications for turnout in American elections. Jan E. Leighley and Jonathan Nagler (2007) estimate that if unions were as strong as they were in 1964, turnout in the 2004 election would be 3 percentage points higher. These studies offer important insights into the benefits of higher union density for political participation more broadly, but, because they use the aggregate measure of union density, they cannot tell us about the behavior of union members themselves. Thus, the majority of research has focused on the behavior of individual union members.

Micro behavioral research does examine union members, exploring the political activities of both union members and households.<sup>38</sup> Analysis of union members and union households has produced one central finding: union members and union households turn out in higher numbers relative to the rest of the population (Delaney, Masters and Schwochau 1988; Verba et al. 1995; Chang 2001; Radcliffe 2001; Masters 2004; Freeman 2010; Kerrissey and Schofer 2013).<sup>39</sup> Looking at the American National Election Studies cumulative file, Francia (2012) finds that, controlling for other factors affecting turnout, living in a union household increases one's probability of voting by 4 percentage points. He notes that "[i]n 2011...there were a reported 14.8 million members in the United States with an estimated 28.3 million Americans in union households. When 28.3 million union households are multiplied by the model's estimated impact of .04, the overall aggregate impact is about 1.1 million more votes nationally" (8). The

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<sup>37</sup> Unions are thought to encourage higher turnout more broadly because unions mobilize non-members and indirectly encourage turnout by championing the interests of low and middle-income people (Radcliffe and Davis 2000). Radcliffe (2001) further hypothesizes that larger unions mean larger political organizations with the time and resources to be involved in elections and promote turnout of members and non-members alike.

<sup>38</sup> Individuals living in union households are studied as well because they are thought to be influenced by the union member they live with as well as targeted for mobilization by the unions themselves. Unions call members' homes, send mailings, and go door to door in GOTV efforts—all activities that are just as likely to contact other residents in the household as the union members themselves.

<sup>39</sup> Some research has not established higher turnout for union members suggesting the effect may be contingent on election specific circumstances. See Juravich and Shergold 1988 and Sousa 1993.

higher rates of participation among union members and households have been recorded over time and across elections.

There are a variety of reasons why union members and households participate in politics at higher rates. Participation is frequently thought of in terms of costs and benefits. Labor unions promote member participation by lowering the costs of participating and increasing the benefits. Unions lower the costs by developing members' capacity to participate through fostering civic skills, asking members to take part, providing information on how they can be involved, and by exposing members to political issues and discussion (Verba et al.1995, 385). Labor unions also employ strategic mobilization, targeting their members during elections and urging them to turn out, ultimately helping them overcome many of the costs of voting (Rosenstone and Hansen 1993, 164). Labor unions further help make the benefits of members' participation resonate by identifying salient issues in the election that are of direct relevance to members and by functioning as a social network creating a sense of shared purpose and fostering the expectation to participate (24). This solidarity puts pressure on members to participate but also rewards members for their vote.

Although a great deal of research has examined union member electoral behavior, little is known about whether union membership shapes members' policy preferences. Research has found that compared to non-members, union members have consistently voted more for union endorsed candidates and thus more Democratic candidates (Juravitch and Shergold 1988; Sousa 1993; Delaney, Masters and Schwochau 1988, 1990; Clark and Masters 2001).<sup>40</sup> However, greater support for the Democratic Party does not mean that all union members hold identical

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<sup>40</sup> Union households also over time have been found to be more supportive of Democratic candidates relative to the rest of the population (Delaney, Masters and Schwochau 1990; Francia and Bigelow 2010; Francia 2012).

policy preferences or that these opinions all align with the Democratic Party platform. These electoral findings may be masking greater diversity in opinion among union members.

There is reason to suspect greater heterogeneity in members' political behavior and preferences than in the past. As discussed in Chapter Two, the divided legal regime governing public and private sector labor law, in conjunction with changes in the economy and composition of the workforce, have led to important demographic shifts in the makeup of the unionized workforce. White males working in manufacturing jobs no longer swell the ranks of organized labor. As Leighley and Nagler (2007) note:

Between 1971 and 2004 the proportion of union members in the poorest third of the nation's income distribution *decreased* from 17.5% to 9.7% while the proportion of union members in the top third of the income distribution *increased* from 40.0% to 49.4%, and the proportion of union members in the middle third of the income distribution remained about the same (42.6% to 40.9%) (430).

Income is just one of the changes occurring within labor. Schmitt and Warner (2009) contrast union demographics in 2008 with 1983, the first year comparable data exists. Only one in ten union workers are in manufacturing compared to nearly 30 percent in 1983. Women now account for 45 percent of unionized workers versus 35 percent in 1983. Over a third of union members now have a college degree compared to 20 percent in 1983. White men made up 51.7 percent of the unionized workforce in 1983, today they only account for 38.1 percent; minorities now account for nearly a third of union members. This data is remarkable because it underestimates the dramatic changes occurring within the labor movement because the comparison is limited to 1983, rather than earlier when labor was likely even more homogenous.

One of the factors driving demographic changes within labor is the rise in public sector unionization. The persistence of gendered divisions of labor means that "61 percent of unionized women are in the public sector, compared to about 38 percent for men" (Schmitt and Warner

2009, 1). Moreover, public sector union members differ because of the types of jobs in the public versus the private sector. Although there is certainly important variation, on average, public sector workers earn more and are higher educated than their private sector counterparts because the nature of public sector employment is on average highly skilled, demanding higher educated employees (Fessenden 2011). The growth of public sector unionism has thus led to a new class of American union members. As the face of American labor changes, we cannot assume that past research on labor unions still holds true.

While public sector union members share an important trait with their private sector counterparts—their union membership—they differ on several other key characteristics: education, income, gender, and type of employer. All four of these characteristics have the potential to increase public sector union members' levels of participation in relation to their private sector counterparts as well as lead to large divergences in policy preferences between private and public sector union members.

## **II. Theory and Hypotheses**

Public sector unions have a unique historical past and relationship with their employer that makes them distinct from private sector unions. Whereas private sector unions have their origins in mutual aid societies and Samuel Gompers' "pure and simple unionism" which eschewed politics in the early days of the labor movement, public sector unions have been explicitly political from the outset. The first local of the American Federation of State, County and Municipal Employees (AFSCME) was formed by Wisconsin state employees for the purpose of lobbying the Wisconsin state legislature on issues of importance to state workers. The origins of AFSCME speak to the overtly political nature of public sector unionism. The very nature of

their employer—the local, state or federal government—politicizes public sector unionism. As

Paul Johnston (1994) notes:

For better or worse, though, they are involved in public issues: because they confront them face-to-face—at the point of production, so to speak, of society itself; because their fate is closely linked to the status, funding, and fate of their employing agencies; because the discourse of demand and response produces a dialogue about ‘what should be public policy.’ Thus, they are participants in the never-ending argument over ‘what is the public good’ and join—and increasingly organize—coalitions on behalf of politically defined public goals associated with their work” (13).

Public sector workers, and in turn their unions, are deeply involved in the debate over the nature of government and public policy decisions. In other words, “public employment relations...operate in an environment the very essence of which is politics” (Spero and Capazola 1973, 235). The political nature of public sector collective bargaining thus serves to politicize public sector workers and their unions.

In addition, the origins of public sector unions in the United States also promoted political activism and even radicalism within the public sector unions. The battle for public sector collective bargaining rights finally gained traction on the heels of the Civil Rights Movement. Public sector unions, like other movements that emerged during this time, employed protest tactics reminiscent of the Civil Rights struggle including: defiance of strike bans with leaders being jailed for their activity; public marches including Al Shanker, of the American Federation of Teachers, leading protesters in a march across the Brooklyn Bridge; and the intermingling of the two movements, most famously with Dr. King’s involvement in the AFSCME Memphis Sanitation Workers strike in 1968. MLK’s assassination in Memphis cemented a connection between AFSCME and the Civil Rights Movement. As Joseph E. Hower (2013) notes, “Memphis marked the fusion of militancy (strike), traditional goals (collective bargaining and the contract), and a social movement spirit that looked beyond the union to

society-at-large” (246). In a sense, the events in Memphis help form AFSCME’s identity as a social movement union. This identity was buoyed by AFSCME’s diverse membership as well.

Public sector unions have been more diverse than their private sector counterparts and the greater proportion of females and ethnic and racial minorities further promoted their radicalism. By the late 1960s, approximately 30% of AFSCME’s membership was black and they were at the forefront of this radicalism (Beifuss 1989). Hower (2013) argues that, “The size and visibility of the union’s black membership...predisposed AFSCME to a greater awareness of issues of racial, and later, gender discrimination” (243). Jerry Wurf described the alliance between Civil Rights leaders and AFSCME as a “common struggle” with “mutual foes and compatible objectives” (as quoted in Hower 2013, 244). Jane Berger’s (2007) analysis of Baltimore details the overlapping of the labor and civil rights movements. Historically, African-Americans have made significant inroads in public sector employment where civil service laws have tamed virulent employment discrimination. Baltimore was no exception: by 1980, nearly forty percent of employed African-American women and nearly a third of employed African-American men worked in the public sector (10). As a result of this high representation, “the public-sector labor movement became inextricably tied to the city’s racial politics” as the “Baltimore Teachers’ Union and AFSCME, the city’s most aggressive public unions, combined concerns about working conditions, employment discrimination and the quality of public services available to the city’s largely African-American population of poor residents” (122). The activities in Baltimore speak to the larger social justice tradition and identity being forged in many public sector unions across the United States that continues to this day (134, 139). Many public sector unions’ trace their roots to political lobbying organization and battles over broader issues of civil rights. The radical—overtly political—social justice orientation that is part of the

historical identity of many public sector unions indicates another key distinction in the political attitudes and behavior of public vs. private sector union members.

The nature of public sector employment, the uniquely political origins and outlook of public sector unions in the United States, and the more diverse membership of public sector unions all suggest public sector union members should behave differently in politics than their private sector counterparts. This chapter explores whether public sector union members differ in their political behavior from their private sector counterparts and the public at large by testing two hypotheses:

**H1: While union members in general will have higher rates of participation than the public at large, public sector union members will be even more likely to participate than their private sector counterparts.**

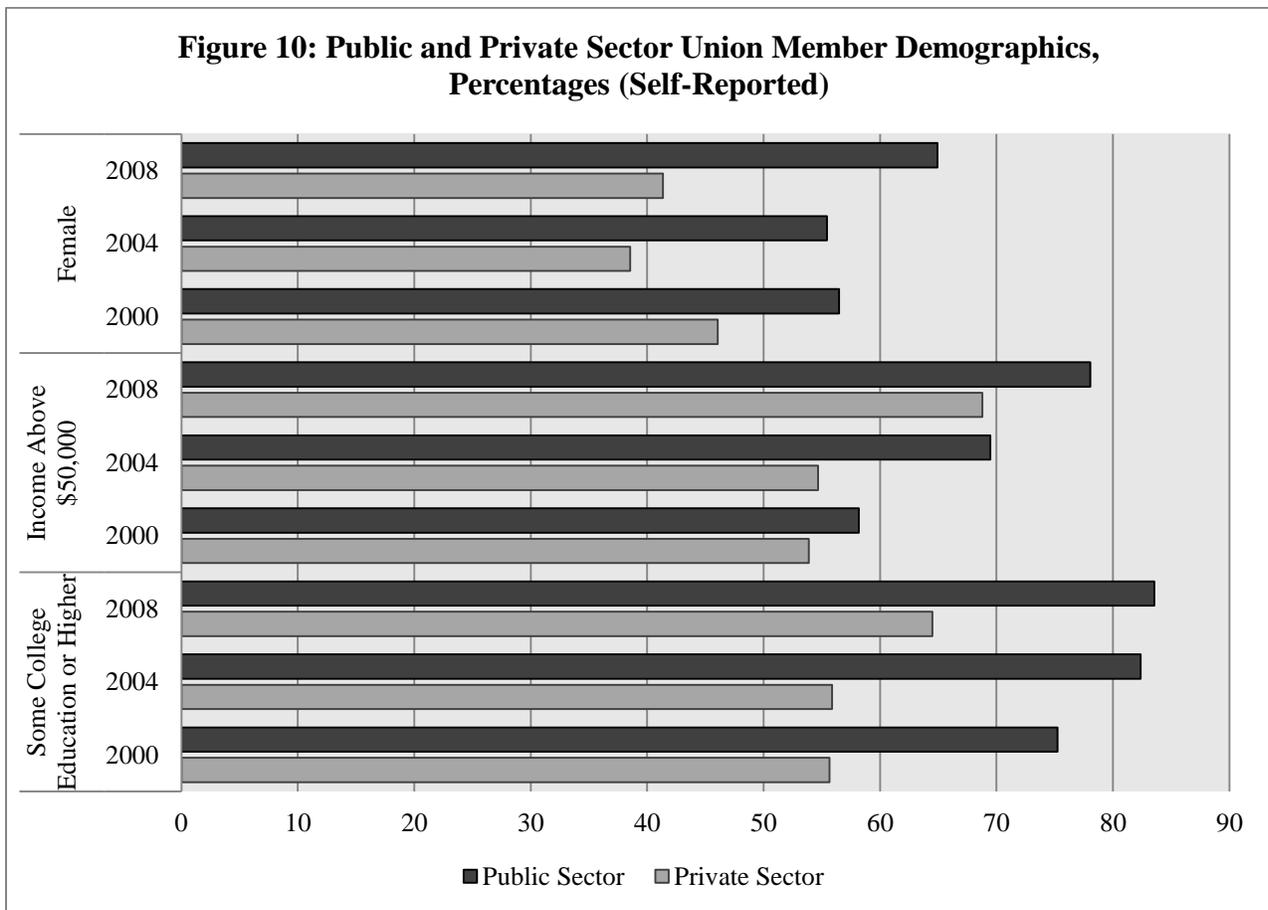
**H2: Public and private sector union members will hold statistically different levels of support on specific policy issues.**

Rather than treating union members as a homogenous group, these hypotheses explore whether there are inherent differences between public and private sector union members, which lead them to hold different policy positions and political behaviors. There are two mechanisms that I hypothesize drive the differences in political behavior and opinion between public and private sector members: (1) a *compositional effect* due to unequal participatory resources and interests shaped by demographic differences between public and private sector union members (education, income and gender), and (2) a *causal effect* due to the nature of public sector employment which pushes public sector unions to be even more politicized than private sector unions and hold different policy positions.

### ***Compositional Effect: Demographic Differences in Labor's Rank-And-File***

Public sector union members may have different political behaviors solely due to their demographic differences. Public sector union members, on average, have higher levels of

education and income and are more likely to be female. In the 2000, 2004, and 2008 National Annenberg Election Surveys, the primary source of data used in the present analysis, these trends are largely born out. Figure 10 displays demographic characteristics of the union population surveyed in the Annenberg studies. Twenty to over twenty-five percent more of the public sector union members in the Annenberg surveys reported having some college education or higher. While not as substantial, in all three studies, approximate five to ten percent more public sector union members reported a household income over \$50,000. Finally, the majority of public sector union members were female in the Annenberg surveys, whereas the majority of private sector union members were male in all three samples.



Source: NAES 2000, 2004, 2008

These demographic differences matter for political participation because past research has found that these attributes matter for who votes. Countless studies conclude that individuals with higher levels of education and income are more likely to be politically active (e.g. Verba et al. 1995). High education and income provide individuals with resources that help them overcome the costs of voting and are indicative of their access to social networks, especially workplaces, which promote participation (Verba et al. 1995). In addition, the number of women voting in presidential elections has exceeded men in the U.S. since 1964 and the proportion of women eligible to vote who participated has exceeded the proportion of eligible men who participated since 1980 (CAWP 2012). Given that public sector union members are more likely to be higher educated, higher income, and female, we should expect to see higher turnout based on these attributes alone; these demographic features may amplify the effect of union membership on turnout.

### ***Causal Effect: Politicized, Economically Insulated Public Sector Unions***

Beyond demographics, however, I further hypothesize that public sector union membership itself may have a causal effect on turnout and the policy preferences of public sector union members. Public sector union members differ from their private sector counterparts because of the nature of their employer—the local, state or federal government—which is consequential for two reasons: greater salience of political action and different policy incentives.

#### ***a. The Salience of Political Action***

First, public sector employers, unlike their private sector counterparts, are often elected officials. Thus, public sector unions can influence their employers through collective bargaining *and* political action creating incentives for greater political participation. Public sector employees thus may more easily see connections between policy decisions and the workplace,

generating issue salience that could also promote heightened politicization. Public sector unions also stand apart from private sector unions because they “depend for power less on their market position...than on their political position” leading to their heightened political activity (Johnston 1994, 4). High political engagement is necessary because “politics exerts a direct influence on the determination of employment conditions in the public sector” (Katz 2012). Public sector unions and members are incentivized to turn to politics because so many workplace decisions are political: changes in school curriculum affect what material teachers cover; police commissioners are frequently political appointees who shape officers’ daily routines; and state budget cuts can mean layoffs, a lack of resources, and furloughs for government employees. Public sector unions emphasize the link between the workplace and politics to their members, heightening issue salience and promoting involvement. Thus public sector unions are incentivized to mobilize members politically and emphasize the important role of politics. Political action can be a tool for members to shape the work environment that is as effective and important as collective bargaining and public sector unions draw on this leverage to mobilize their members.

I hypothesize that public sector workers are more likely to vote than their private sector counterparts not simply because of demographic differences but also because the nature of public sector employment creates unique incentives to be highly active and public sector unions work to make these incentives abundantly clear to their membership. The Annenberg Survey data used in the present research suggests heightened politicization of public sector union members may be the case. As displayed in Table 1, when restricting our sample to union members with some college education or higher, approximately 4-9% more public sector union members in the survey reported that they follow politics more and discussed politics more days in the week

before they were interviewed than their private sector counterparts. These are crude measures of heightened union politicization, however, the higher percentage of public sector union members than private sector members who reported higher daily engagement with politics in 2000 and 2008 suggest that the nature of public sector unionism, beyond just demographic differences, may be influencing turnout.

<b>Table 1: Higher Educated Public and Private Sector Union Member Weekly Engagement With Politics</b>			
<b>A. Percentage of Union Members with Some College Education or Higher Who Reported Following Politics Sometimes or Most Times</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	72.45	83.47	88.66
<b>Public Sector</b>	81.80	84.41	92.21
<b>Difference:</b>	9.35*	0.94	3.55*
<b>B. Percentage of Union Members with Some College Education or Higher Who Reported Discussing Politics At Least Five Days in the Week Before the Interview</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	19.44	36.44	45.84
<b>Public Sector</b>	23.31	36.75	52.77
<b>Difference:</b>	3.87*	0.31	6.93*
*=.05 significance level, calculated using the independent group t-test.			

Source: NAES 2000, 2004, 2008

The historical origins of public sector unions likely reinforce the higher political awareness of public sector unions. Historically, many public sector unions emerged as political lobbying organizations and have maintained a politicized identity over time. These historical origins, particularly the deep connections between many public sector unions and the Civil Rights Movement and other New Left movements could shape public sector union members policy attitudes. Public sector union members may be more supportive of social issues like gay marriage because public sector employees have been more inclusive of minorities and public sector unions have a long history of social activism on civil rights issues compared to private sector unions.

### ***b. Different Policy Incentives***

Second, the public sector is primarily involved in service provision of non-tradable goods rather than industrial production. As a result, public sector unions and members face different economic constraints and incentives than their private sector counterparts that are likely to shape policy preferences. Public sector employment is insulated from international economic competition and instead based in the more stable and isolated government sector. This crucial difference likely contributes to different policy preferences. Public sector workers may be more likely to favor higher taxes, be more supportive of free trade policies, and support environmental protection, whereas private sector union members may see these things as direct threats to their jobs, incomes, and the health of the economy. Public sector union members may also be less likely to support policies that directly undermine their jobs like school vouchers. The nature of public vs. private sector employment likely encourages members to hold different policy positions and public and private sector unions heighten these differences through member communications, issue advocacy, and political efforts. Ultimately, the heightened politicization and economic insulation of public sector unions may encourage public sector union members to participate more in elections and hold opposing policy positions from their private sector counterparts.

### **III. Data and Methods**

The data for this study is drawn from the 2000, 2004, and 2008 National Annenberg Election Survey (NAES 2000; 2004; 2008). These studies are national, rolling cross-sectional surveys fielded in the lead-up to the presidential elections with post-election surveys conducted among a smaller sample of the original population. These surveys interviewed 58,373; 81,422

and 57,967 respondents respectively. The Annenberg is uniquely suited to this study because it combines questions about political behavior, policy preferences, and demographic information, as well as questions that allow for a comparison between private and public sector union members. Moreover, the large survey populations include a large enough sample of public and private sector union members to make meaningful comparisons.

The predictor variables in this study are dummy variables for whether a respondent belongs to a public sector or private sector union. These variables were generated using several questions from the Annenberg surveys. The 2000, 2004, and 2008 National Annenberg Election Survey each asked questions that allow us to, with caveats, identify private and public sector union members. Both the 2000 and 2004 Annenberg Surveys ask respondents if they belong to a union household (Question cw29; cWB06) and 2004 also distinguished between union members and union households. Both years also ask respondents if they are employed by the federal, state or local government (Question cw13; cWB05). Thus, a respondent who reports that they belong to a labor union and says they are employed by the government is coded as a public sector member, whereas a respondent who says they are a union member but do not work for the government is coded as a private sector union member.<sup>41</sup> The 2008 Annenberg asked respondents if they belong to a union (Question WB05) and, if so, which union they belong to (Restricted Question WB06). Respondents were then coded public or private sector based on their union. Although unions these days often represent both public and private sector members,

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<sup>41</sup> The remainder of this chapter will refer to union members rather than union households and all of the analysis was run using union members rather than union household data. The exception is the 2000 Annenberg that does not distinguish between union members and union households. Further discussion will refer only to union members, but any data referencing the 2000 Annenberg survey actually can only speak to union households.

each union was classified as public or private based on the sector of the majority of their members.<sup>42</sup>

The Annenberg surveys limit our ability to wholly identify public sector union members because union members may not recognize they work for the government if they work in a school for instance. Furthermore, the 2008 Annenberg coding may be mislabeling members. For instance, members of the United Auto Workers are coded as private sector but, to give an example, UC Berkeley Postdoctoral Researchers comprise UAW Local 5810 with over 6,000 members. No data is sufficient and the findings of this paper should be seen in light of the limitations of identifying public and private sector union members and households. However, all of the issues inherent in the Annenberg surveys are likely to under-identify rather than over-identify public sector union members by leaving some public sector union members grouped with private sector union members: in the 2000 and 2004 data, public sector union members may not recognize they work for the local, state and federal government, and in the 2008 data, a small percentage of public sector union members are members of private sector unions that cannot be singled out. Thus, any statistically significant differences found in the preferences and behavior of public and private sector union members in this study are likely underestimated.

There are two key sets of dependent variables in this study: (1) self-reported turnout in the 2000-2008 presidential primary and general elections, and (2) public opinion variables that are detailed in Appendix B. A series of control variables are also included in the models. These variables are drawn from prior research that has found that they are likely to influence primary and general election turnout including dummies for gender, black, employed and self-reported measures of age, education, household income, and an individual's strength of partisanship. Individuals have also been found to be less likely to turn out in primaries due to lower

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<sup>42</sup> To see how each union was coded, see Appendix B.

registration rates among those who have recently moved so the models also control for how long a person has lived in their current residence (Highton 2000; Squire et al. 1987). Lastly, a set of controls is included to account for election specific influences on turnout. Given that the presence of statewide races may increase turnout, a dummy variable is included for whether there was a state governor race that year in the voter's state. The state's vote margin—the percentage of a state's electorate voting Republican subtracted from the percentage voting Democratic in the election is included in order to control for party competitiveness, because closer races likely promote higher turnout. The final control is the average turnout percentage over the last three presidential elections of each state's voting eligible population (VEP), because, due to unique state characteristics, turnout can vary by state independently of all of these individual and election specific characteristics.<sup>43</sup>

This analysis utilizes independent group t-tests that compare the difference of means of public and private sector union members on specific variables. These simple t-tests demonstrate whether, on any specific variable, the mean value of public sector union members is statistically different from the mean value of private sector union members. This does not tell us what is driving the difference between the two groups. Being a member of a public or private sector union as well as demographic differences—gender, education and income—are likely just as important, as are unknown variables. However, the value in using t-tests is to establish for the first time whether there are in fact statistically significant differences between public and private sector union members. Binary logit, OLS regressions, and coarsened exact matching is then used to determine what mechanisms—union membership, education, income and/or gender—are leading to different preferences and behaviors among public and private sector union members.

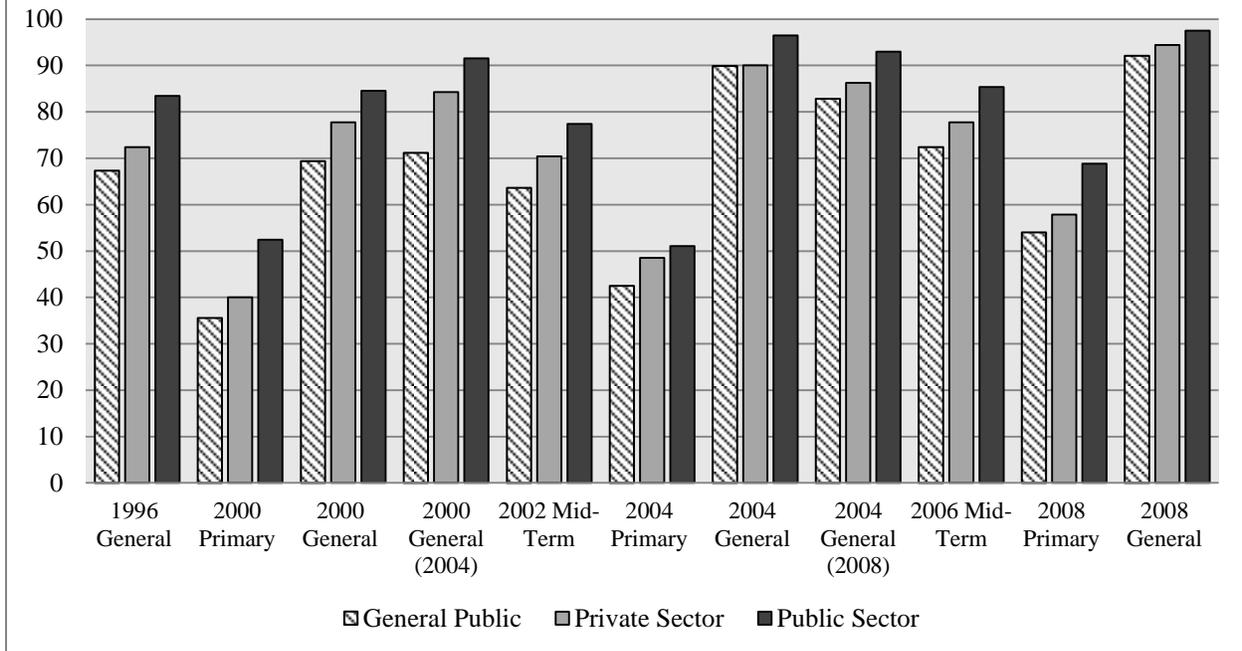
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<sup>43</sup> State level dummies were included with no effect on the results and thus are not displayed in these models.

#### **IV. Public and Private Sector Union Member Turnout**

The first hypothesis tested is that, while union members in general will have higher rates of participation than the public at large, public sector union members will be more likely to participate than their private sector counterparts. The most straightforward way to explore this question is to compare self-reported turnout of public and private sector union members as well as non-union members. Figure 11 compares self-reported voting of these three groups within the Annenberg surveys. For every election, a higher percentage of both public and private sector union members reported voting compared to the rest of the survey respondents. Most interesting, however, in every election, a higher and statistically significant percentage of public sector workers reported voting than their private sector counterparts. Averaging the difference between public and private sector turnout across the elections, 7.88% more public sector union members reported voting than private sector union members. Thus, the descriptive statistics suggest that while union members overall are more likely to vote, public sector union members are *even more likely* to vote than their private sector counterparts.

**Figure 11: Percentage Self-Reporting Voting Among Private Sector Union Members, Public Sector Union Members, and the Public**



Source: NAES 2000, 2004, and 2008. Repeat elections were reported retrospectively in the following Annenberg survey (e.g. 2000 general election voting is reported for respondents in the 2000 and 2004 Annenberg surveys)

These descriptive statistics uphold hypothesis one but do not shed light on the underlying mechanisms driving the differences between public and private sector union members. Logistic regressions controlling for gender, education, income and other variables can help separate out what may be driving public sector union members’ higher rates of voting. The Annenberg surveys’ general election voting questions are unfortunately plagued by unusually high reports of voting. For instance, in the 2008 survey, over 92 percent of individuals surveyed after the election reported having voted in the election. Such high, and in all likelihood over-reported, voting means there is not sufficient variation of the dependent variable to identify differences between public and private sector union members in general election voting.

Luckily, the Annenberg surveys also ask about voting in the 2000, 2004, and 2008 presidential primaries. In the 2008 survey, only 60% of respondents reported voting in the

primary. While this may also be an over-reporting of voting, this is less of a concern because there is no reason to suspect a bias in over-reporting in favor of public or private sector union members. Table 2 displays the results of three logistic regressions, which provide the predicted probabilities of voting in the 2000, 2004 and 2008 presidential primaries. In 2000 and 2008, being a public sector union member—controlling for the traditional predictors of turnout including gender, education, and income—remains a statistically significant predictor of turnout. Moreover, in both 2000 and 2008 there is a statistically significant difference between the variables for public and private sector union members. These findings support the hypothesis that public sector union membership itself promotes higher turnout.

Another way to explore the robustness of the finding that public sector union membership itself may influence turnout is by using statistical matching. Coarsened exact matching (CEM) identifies observations that match on specified covariates and discards observations that do not fit within the specified strata of values on covariates (Iacus, King and Porro 2008; Blackwell et al. 2009). This matched data can then be used to estimate the causal effect using fewer restrictive assumptions than the logistic regressions. Endogeneity is a concern in the preceding logistic regressions because the causal effect of public sector unionism on turnout may be due to selection bias; public sector union members may be more likely to vote not because of their union membership but rather because of an unmeasured variable, like public spiritedness or political interest, which led them into public service and leads them to vote in elections. The benefit of using coarsened exact matching is that we can try and match public sector union members to other observations in the data on a variety of specified variables that are likely to affect selection into the treatment group (being a member of a public sector union). The variables used to match observations are education; dummies for age, sex, and whether an

individual is unemployed; strength of partisan identity; years in residence (a stand in for community embeddedness); state of residence (because the ability to join a public sector union varies greatly by state); and how closely an individual follows politics and discussed politics in the past week (stand ins for public spiritedness and political interest).<sup>44</sup>

Estimating the same 2008 model for primary voting using the matched data tries to take into account selection into a public sector union, ultimately however there may still be unmeasured variables affecting selection. The results of the revised logistic regression are displayed in column four of Table 2. Most importantly, utilizing CEM does not affect the positive and statistically significant effect of public sector unionism on turnout in the 2008 primary election. Taken with the earlier model's results, this suggests that being a public sector union member may—beyond the demographic factors that increase turnout—independently promotes higher levels of voting among members due to the heightened politicization of public sector unions and their members.

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<sup>44</sup> See Appendix B for details of Coarsened Exact Matching.

<b>Table 2: Likelihood of Voting in the 2000, 2004, and 2008 Presidential Primary</b>				
	<b>2000</b>	<b>2004</b>	<b>2008</b>	<b>2008 CEM Weights</b>
Public Union Member	0.370* (0.050)	0.283* (0.046)	0.470* (0.081)	0.535* (0.090)
Private Union Member	0.122* (0.040)	0.234* (0.036)	0.225* (0.044)	0.110 (0.096)
Education	0.113* (0.007)	0.067* (0.004)	0.127* (0.006)	0.106* (0.014)
Income	0.088* (0.008)	0.080* (0.005)	0.097* (0.006)	0.062* (0.016)
Strength Party ID	0.393* (0.014)	0.321* (0.009)	0.437* (0.012)	0.477* (0.027)
Female	-0.019 (0.027)	0.101* (0.018)	0.124* (0.024)	0.090 (0.054)
Black	0.267* (0.045)	0.415* (0.032)	0.483* (0.044)	0.453* (0.103)
Age	0.032* (0.001)	0.024* (0.001)	0.019* (0.001)	0.018* (0.003)
Employed	0.112 (0.158)	0.072* (0.027)	0.141* (0.038)	-0.285 (0.301)
Years in Residence	0.027* (0.002)	0.010* (0.001)	0.009* (0.001)	0.007* (0.003)
Governor Race	0.024 (0.040)	-0.035 (0.026)	0.200* (0.035)	-0.002 (0.079)
VEP Average Turnout	0.678* (0.281)	0.332 (0.181)	-1.904* (0.238)	-2.543* (0.516)
Vote Margin	0.013 (0.099)	0.065 (0.066)	-0.260 (0.088)	-0.389* (0.195)
Constant	-4.795* (0.234)	-3.586* (0.116)	-2.547* (0.161)	-1.395 (0.475)
Test Public Union Member=Private Union Member	17.040*	0.750	7.370*	9.210*
N	28,2135	58,795	34,050	7213
N Public Union Member	2,037	2,181	820	751
N Private Union Member	3,544	3,581	2,622	562
Pseudo R <sup>2</sup>	0.105	0.070	0.087	0.073

Note: Table entries are binary logit regression coefficients with estimated standard errors in parentheses. \*p<.05 (two-tailed)

Source: 2000, 2004, and 2008 NAES

The CEM results cannot conclusively show that public sector union membership itself has an independent effect on turnout but does provide more confidence in the earlier regressions

due to less restrictive model assumptions. Returning to the earlier regressions in Table 2, given that public sector union membership is a significant predictor of primary election turnout in 2000 and 2008 and this relationship is statistically different than private sector union membership, we can explore the magnitude of the difference. The predicted probabilities of public and private sector union members voting in the primary election are displayed in Table 3. In both 2000 and 2008, holding all the other variables at their means, the predicted probability of a public sector union member voting in the primary election was approximately 6% higher respectively than the predicted probability of a private sector union member voting. This 6% predicted greater probability of a public sector union member voting than a private sector union member is remarkable because it is calculated by holding factors like education, income and gender at their mean, which are likely to promote public sector union members' turnout even more.

<b>Table 3: Predicted Probability of Public and Private Sector Union Members Voting in the 2000 and 2008 Presidential Primary Elections</b>			
<b>Union Sector</b>	<b>Predicted Probability</b>	<b>95% Confidence Intervals</b>	
<b>2000</b>			
Public	0.088* (0.012)	0.064	0.112
Private	0.028* (0.009)	0.010	0.045
Difference	0.060		
<b>2008</b>			
Public	0.112* (0.018)	0.075	0.147
Private	0.055* (0.011)	0.034	0.076
Difference	0.057		
<b>Average Difference</b>	<b>0.059</b>		
<b>2008 CEM</b>			
Public	0.112* (0.018)	0.075	0.147
Private	0.055 (0.011)	0.034	0.076
Difference	0.057		
Note: Probabilities calculated using Clarify in Stata (King, Tomz and Wittenber 2000). *p<.05 (two-tailed)			

Source: 2000 and 2008 NAES

We can utilize this predicted probability to estimate the number of extra voters in the 2000 and 2008 election as a result of union members belonging in public rather than private sector unions. In the 2000 and 2008 regression models, holding all the other variables at their mean, the predicted probability of a public sector union member voting compared to a private sector member is about 6 percentage points. In 2000, there were 7,110,500 public sector union members (Hirsch and Macpherson 2013). When this number is multiplied by the higher probability of public sector union members voting than private sector members predicted in the models, 6 percentage points, the aggregate impact of public sector members is an additional 426,630 votes nationally in the 2000 presidential primary election than if all union members in 2000 had belonged in the private sector. For 2008, there were approximately 8,676,200 public

sector union members. Using the 2008 model's prediction of 5.7 percentage points, the aggregate impact of public sector members is an additional 494,543 votes nationally in the 2008 presidential primary election than if all union members belonged to private sector unions.

Approximately half a million voters in a nationwide primary election contest may seem like a trivial number until we consider the geographical and partisan concentration of organized labor. As Joseph A. McCartin notes, “[f]ully one-half of all union members lived in only six states by 2000” (2008, 123). Moreover, union members have generally been more supportive of Democratic candidates than the public at large. Thus, the extra half million public sector union voters are likely concentrated in the Democratic primaries within union dense states. Seen from this light, these extra voters could have influenced the primary election results. At the very least, this analysis suggests that public sector union membership, beyond demographic characteristics and union membership in general, can promote higher turnout in primary elections. Further study is needed to see if these findings hold for general election voting as well.

## **V. Public and Private Sector Union Member Policy Opinions**

Labor unions are influential in politics in a variety of ways beyond the turnout of their members in elections. Unions donate time, money, and endorsements to specific candidates; they lobby elected officials on specific policies; and they raise awareness among the public on important issues. Thus, depending on the candidates unions endorse and the policies they support, organized labor can influence the policy agenda at the local, state and national level. Union leadership plays an important role in selecting which policies their union or labor federation will endorse, but ultimately these decisions are grounded to some degree in the membership's political preferences. For instance, at the state AFL-CIO conventions, a majority

of delegates representing each member union choose to endorse or reject specific policy resolutions that then dictate the state AFL-CIO's policy agenda for the year. Thus, as the composition of labor has shifted toward a majority public sector, has this shift also led to new policy preferences within organized labor? This broader question is beyond the scope of this chapter, but the first step in answering this question is to see if union members differ in their policy preferences. I hypothesize that while tending to vote more Democratic than the public at large, public and private sector union members will diverge on certain policy issues.

The Annenberg survey asks respondents a variety of public opinion questions. Some of the questions vary from year to year so the responses should not be taken as comparable across years but instead be examined for the differences between public and private sector unions for any given year and question. We can compare public and private sector union members' policy preferences in two ways. First, simple t-test comparisons of the average mean responses of public and private sector union members on a given policy question can be used. These are valuable for giving an overall estimate of the different policy opinions of public and private sector union members. The downside of comparing the average mean responses of the two groups is that we do not know what is driving the differences. Thus, a second way to compare policy preferences is with a series of OLS regressions and tests that enable us to differentiate between the four hypothesized mechanisms: (1) public or private sector union membership itself, (2) income, (3) education, and (4) gender. The steps are conducted as follows:

**Step 1:** Policy Opinion =  $\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \epsilon_i$

**Step 1a:**  $\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})$

**Step 2:** Policy Opinion =  $\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \beta_3(\text{Education}) + \beta_4(\text{Income}) + \beta_5(\text{Male}) + \epsilon_i$

**Step 2a:**  $\beta_1(\text{PubUnionMember}) = 0$

**Step 2b:**  $\beta_2(\text{PrivUnionMember}) = 0$

**Step 2c:**  $\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})$

Step 1 looks to see if public sector union membership and private sector union membership have significant effects on policy opinion that are statistically different from each other. In other words, Step 1 tests whether it is even worthwhile to differentiate between public and private sector union members. In Step 2, the other three hypothesized mechanisms are included. Step 2 looks to see if public and private sector union membership are still significant predictors of policy opinion when we control for the other three mechanisms (education, income and gender) and if public and private sector union membership remain statistically different predictors. The results of both the t-tests and the OLS regressions for each policy area are discussed below.

The first policy issue area where public and private sector union members may diverge is on the issue of free trade. Table 3 displays union members' opinions on policy issues with comparisons of average means using t-tests for significance. One of the larger differences in opinion in Table 3 is support for the federal government negotiating more free trade agreements like the North American Free Trade Agreement (NAFTA). Opposition free trade measures in one of labor's bread and butter issues. The AFL-CIO strongly opposed NAFTA and manufacturing unions especially have stood in opposition to free trade measures that they see as threatening manufacturing jobs at home. Because the public sector deals in non-tradable goods, free trade is an issue that is unlikely to be as salient for public sector union members. This conclusion is suggested in the data because a statically significant and larger percentage of public sector union members support more free trade agreements than private sector union members. The influence of union membership itself, beyond the other mechanisms hypothesized, is supported by Table 4, which displays the results of the OLS regressions and tests. Both public and private sector union membership are statistically significant and independent predictors of less support for free trade. However, the effect is stronger for private sector union membership;

holding the other variables at their means, private sector union membership doubles one's likelihood of holding a negative policy position on free trade. This suggests that public and private sector union membership, beyond the demographic predictors, is contributing to divergent opinions on free trade.

<b>Table 4: Public Opinion Positions of Public and Private Sector Union Members<sup>45</sup></b>			
<b>A. Percentage Who Somewhat or Strongly Favor the Federal Government Negotiate More Free Trade Agreements Like NAFTA</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	NA	32.43	29.96
<b>Public Sector</b>	NA	42.50	38.10
<b>Difference:</b>	NA	10.07*	8.14*
<b>B. Percentage Supporting Existing or Increasing Tax Rates, Rather than Tax Cuts</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	53.69	29.31	60.64
<b>Public Sector</b>	58.40	31.49	70.52
<b>Difference:</b>	4.71*	1.70*	10.20*
<b>C. Percentage Who Somewhat or Strongly Oppose School Vouchers</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	66.06	52.82	51.96
<b>Public Sector</b>	68.04	59.05	71.15
<b>Difference:</b>	1.98	5.72*	19.19*
<b>D. Percentage Supporting Protecting the Environment</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	71.14	96.85	38.46
<b>Public Sector</b>	71.03	96.24	46.66
<b>Difference:</b>	0.11	-0.61	8.20*
<b>E. Percentage Opposing Expanded Use and Extraction of Oil</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	39.76	NA	22.46
<b>Public Sector</b>	44.83	NA	39.78
<b>Difference:</b>	5.07*	NA	17.32*
<b>F. Percentage Supporting Gay Rights</b>			
	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Private Sector</b>	40.23	31.99	62.25
<b>Public Sector</b>	45.23	41.38	73.15
<b>Difference:</b>	5.00*	9.39*	10.90*

\*=.05 significance level, calculated using the independent group t-test.

Source: NAES 2000, 2004, 2008

While free trade may not be as salient for public sector workers, taxes do have a direct bearing on their jobs. Public sector workers thus have incentive to support maintaining or increasing current tax levels. When localities, states and the federal government do not bring in

<sup>45</sup> See Appendix B for variables used in this table. Please note, many of the questions vary from survey to survey so comparisons should not be made across time, but rather between public and private sector union members for each year and question individually.

enough revenue, they often implement austerity measures to offset rising budget deficits. This can mean layoffs, work furloughs, reduced resources, and a whole host of other negative consequences for public sector workers. As displayed in Table 4, in 2000, 2004, and 2008, a higher and statistically significant percentage of public sector union members support maintaining or even raising taxes as compared to private sector members. Public sector union membership does appear to have an independent effect on support for taxes with public sector union membership predicting less support for tax cuts as displayed in Table 5. This difference was statistically different from private sector union members in 2008 indicating that public sector union membership may in and of itself lead members to be less supportive of tax cuts.

<b>Table 4: Regression Tests for Independent Effect of Public and Private Union Membership on Members' Policy Opinions</b>									
	<b>A. Support Free Trade</b>			<b>B. Support for Cutting Taxes</b>			<b>C. Support for School Vouchers</b>		
	<b>2000</b>	<b>2004</b>	<b>2008</b>	<b>2000</b>	<b>2004</b>	<b>2008</b>	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Step 1: Policy Opinion = <math>\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \varepsilon_i</math></b>									
Public Union Member	NA	-0.252*	-0.196*	-0.154*	-0.180*	-0.177*	-0.311*	-0.457*	-0.988*
		(0.034)	(0.061)	(0.032)	(0.038)	(0.022)	(0.071)	(0.034)	(0.240)
Private Union Member		-0.636*	-0.511*	-0.064*	-0.070*	-0.009	-0.221*	-0.238*	-0.220
		(0.027)	(0.040)	(0.025)	(0.030)	(0.013)	(0.054)	(0.028)	(0.174)
Constant		-0.030*	-0.234*	0.008	0.902*	0.208*	-0.445*	0.022*	0.122*
		(0.007)	(0.011)	(0.009)	(0.007)	(0.003)	(0.019)	(0.007)	(0.044)
<b>Step 1a: <math>\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})</math></b>									
F		82.47*	19.70*	5.46*	5.32*	44.36*	1.13	24.75*	7.00*
<b>Step 2: Policy Opinion = <math>\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \beta_3(\text{Education}) + \beta_4(\text{Income}) + \beta_5(\text{Male}) + \varepsilon_i</math></b>									
Public Union Member	NA	-0.319*	-0.316*	-0.123*	-0.078*	-0.148*	-0.266*	-0.413*	-0.982*
		(0.035)	(0.076)	(0.033)	(0.039)	(0.026)	(0.073)	(0.037)	(0.246)
Private Union Member		-0.607*	-0.521*	-0.095*	-0.116*	-0.012	-0.207*	-0.281*	-0.330
		(0.028)	(0.049)	(0.026)	(0.031)	(0.014)	(0.057)	(0.029)	(0.185)
Education		0.044*	0.073*	0.061*	-0.107*	-0.046*	0.012	-0.041*	-0.034
		(0.003)	(0.006)	(0.004)	(0.004)	(0.002)	(0.009)	(0.003)	(0.022)
Income		0.022*	0.058*	0.005	0.029*	0.012*	-0.031*	-0.003	0.008
		(0.004)	(0.007)	(0.005)	(0.004)	(0.002)	(0.011)	(0.004)	(0.024)
Female		0.064*	-0.068*	-0.121*	0.018	-0.023*	-0.200*	-0.207*	-0.162
		(0.013)	(0.026)	(0.017)	(0.015)	(0.008)	(0.037)	(0.014)	(0.092)
Constant		-0.352*	-1.000*	-0.408*	1.329*	0.376*	-0.453*	0.164*	0.202
		(0.021)	(0.043)	(0.028)	(0.023)	(0.012)	(0.061)	(0.021)	(0.149)
<b>Step 2a: <math>\beta_1(\text{PubUnionMember}) = 0</math></b>									
F		83.04*	17.27*	13.67*	3.94*	33.27*	13.17*	127.36*	15.98*
<b>Step 2b: <math>\beta_2(\text{PrivUnionMember}) = 0</math></b>									
F		486/61*	111.2*	13.03*	13.76*	0.71	13.18*	94.65*	3.20*
<b>Step 2c: <math>\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})</math></b>									
F		43.73*	5.30*	0.49	0.62	22.37*	0.45	8.37*	4.66*
N		55,838	22,707	14,273	40,451	52,227	13,485	64,726	1,642
N Public Union Member		50,335	13,689	13,162	36,208	38,649	12,547	57,825	1,438
		2,012	643	1,007	1,448	1,082	992	2,266	52
N Private Union Member		1,917	404	939	1,365	813	938	2,147	50
		3,407	1,599	1,752	2,361	3,633	1,759	3,811	102
		3,179	1,012	1,620	2,185	2,851	1,630	3,529	92

<b>Table 4 (Continued): Regression Tests for Independent Effect of Public and Private Union Membership on Members' Policy Opinions</b>								
	<b>D. Support Incr. Protection Envir.</b>			<b>E. Support More Oil Drilling</b>		<b>F. Support for Gay Rights</b>		
	<b>2000</b>	<b>2004</b>	<b>2008</b>	<b>2000</b>	<b>2008</b>	<b>2000</b>	<b>2004</b>	<b>2008</b>
<b>Step 1:</b> Policy Opinion = $\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \varepsilon_i$								
Pub. Union Member	0.037 (0.021)	0.079 (0.055)	0.239* (0.036)	-0.005 (0.056)	-0.428* (0.065)	0.091* (0.024)	0.369* (0.060)	0.274* (0.029)
Priv. Union Member	0.037* (0.017)	0.178* (0.043)	0.071* (0.023)	0.089* (0.043)	-0.103* (0.041)	-0.031 (0.019)	-0.014 (0.047)	0.065* (0.016)
Constant	3.599* (0.006)	3.605* (0.011)	-0.249* (0.006)	0.100* (0.016)	3.006* (0.011)	2.992* (0.007)	-0.625* (0.012)	2.857* (0.004)
<b>Step 1a:</b> $\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})$								
F	0.00	2.12*	15.89*	1.97	18.66*	18.32*	26.40*	41.41*
<b>Step 2:</b> Policy Opinion = $\beta_0 + \beta_1(\text{PubUnionMember}) + \beta_2(\text{PrivUnionMember}) + \beta_3(\text{Education}) + \beta_4(\text{Income}) + \beta_5(\text{Male}) + \varepsilon_i$								
Pub. Union Member	0.060* (0.021)	0.127* (0.057)	0.181* (0.046)	0.014 (0.057)	-0.337* (0.067)	0.092* (0.024)	0.157* (0.061)	0.148* (0.029)
Priv. Union Member	0.065* (0.017)	0.201* (0.045)	0.078* (0.030)	0.119* (0.045)	-0.170* (0.043)	0.0167 (0.019)	0.065 (0.048)	0.073* (0.016)
Education	0.003 (0.003)	0.002 (0.005)	0.072* (0.004)	-0.001 (0.007)	-0.092* (0.005)	0.027* (0.003)	0.147* (0.006)	0.066* (0.002)
Income	-0.028* (0.003)	-0.022* (0.006)	-0.004 (0.004)	-0.037* (0.009)	0.043* (0.006)	-0.038* (0.004)	0.025* (0.006)	0.029* (0.002)
Female	0.086* (0.011)	0.095* (0.021)	0.050* (0.015)	0.188* (0.029)	-0.165* (0.022)	0.300* (0.013)	0.322* (0.024)	0.173* (0.009)
Constant	3.768* (0.018)	3.745* (0.033)	-0.595* (0.024)	0.393* (0.048)	3.207* (0.036)	3.189* (0.021)	-1.380* (0.037)	2.423* (0.013)
<b>Step 2a:</b> $\beta_1(\text{PubUnionMember}) = 0$								
F	7.83*	5.01*	15.70*	0.06	25.73*	14.56*	6.68*	25.60*
<b>Step 2b:</b> $\beta_2(\text{PrivUnionMember}) = 0$								
F	14.32*	20.15*	6.98*	7.01*	15.86*	0.75	1.83	20.54*
<b>Step 2c:</b> $\beta_1(\text{PubUnionMember}) = \beta_2(\text{PrivUnionMember})$								
F	0.04	1.11*	3.74*	2.33	4.63*	6.66*	1.49	5.24*
N	14,564	3,784	26,216	4,583	14,339	31,688	20,364	45,269
	13,506	3,464	15,445	4,223	12,525	29,429	18,239	39,207
N Pub. Union Member	1,102	133	703	317	372	2,314	754	894
	1,027	125	432	298	346	2,174	713	833
N Priv. Union Member	1,840	222	1,750	562	953	3,979	1,263	3,200
	1,713	206	1,089	519	876	3,679	1,175	2,915

Note: Table entries are OLS regression coefficients, estimated standard errors in parentheses, F statistics from indicated tests. \*p<.05 two-tailed Ordered logistic regressions were also run for all of the non-dichotomous variables with similar results as the OLS regressions.

Another issue salient to a large portion of public sector union members—teachers—is school vouchers, which teacher unions have devoted significant time and resources to oppose. A difference between public and private sector union members in their opposition to school vouchers was not large or significant in 2000, but in 2004 and even more so in 2008 a larger portion of public sector union members opposed vouchers (Table 4). The increasing opposition across surveys may be because school vouchers have become a more publicized and politicized issue over time and teacher unions have focused their members' attention on this topic, but this is only speculation. Regardless, a larger portion of public sector union members report opposition to school vouchers. This difference holds when looking at regression estimates in Table 5. In addition, in 2004 and 2008, public sector union membership has an independent and negative effect on support for school vouchers. The results did not hold for the independent effect of public sector union membership in 2000 making the results inconclusive.

On issues relating to the environment, the Annenberg surveys do not ask a consistent question each year. The questions in 2008 most directly put the environment and economy in conflict asking if protecting the environment or growing the economy should be more important and whether the government should end the ban on coastal oil drilling. The 2008 questions elicit the greatest difference in support for the environment vs. the economy with a higher percentage of public sector union members supporting protecting the environment and limiting oil extraction (Table 4). Questions in the 2000 and 2004 Annenberg surveys did not pit the environment against job creation and only 2000 elicited statistically significant differences with a higher percentage of public sector workers opposing oil extraction.

The results of regression analyses displayed in Table 5 suggest that income and gender as well as union membership itself are driving the differences between public and private sector

union members policy positions on the environment. Public sector union members likely enjoy more job security that is not dependent on new work projects, some may also be local, state or federal workers employed in jobs devoted to resource protection and land management. In contrast, the decline in manufacturing and loss of jobs in the private sector is a looming threat for private sector workers that could make them less sympathetic to the environmental cause. In interviews<sup>46</sup> conducted with unions in 2012 in Washington and Wisconsin, I found that two of the major issues dividing unions centered on the tradeoff between environmental protection and job creation. In Washington State, the most recent conflict was over the creation of a coal port that would ship coal on trains through the state and export it to Asia. In Wisconsin, the debate was over opening a new mining operation that could threaten the surrounding watershed. Jobs versus the environment is an important fault line within organized labor's leadership and these questions suggests the divide may be salient to members as well.

Public and private sector union members also appear to diverge in their levels of support for gay rights. A larger percentage of public sector union members are supportive of employment protections for gays and lesbians as well as same-sex marriage (Table 4). There is no simple answer for why public and private sector union members may diverge on support for liberal social issues like gay rights. Public sector employment has historically been more open and inclusive to minorities like African-Americans. Public sector unions, especially AFSCME, also have a long history of being active on behalf of social justice issues. Table 5 suggests an independent effect of public sector union membership on support for gay rights. In 2000 and 2008, being a public sector union member increased the probability that a respondent would support gay rights, even when controlling for education, income and gender. This independent

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<sup>46</sup> See Appendix A for detailed description of interviews and methods.

effect may be because public sector unions are particularly active on the issue of gay rights but this contention cannot be confirmed by the data alone.

Ultimately, these analyses suggest some important cleavages within the labor movement on issues of trade, taxation, job-specific topics, the environment and social issues. Public sector union members appear to be more supportive of free trade, existing or increasing taxes, environmental protections, and gay marriage, while opposing school vouchers. The data further suggests that varying levels of support on free trade, taxes and gay marriage are not only the result of a compositional effect, but rather the result of a causal effect of public sector union membership itself. Insulated from economic competition, public sector union members face different economic incentives that shape their policy preferences. Given the changing composition of organized labor, these cleavages may become more pressing as public and private sector union members and leaders clash on the policy priorities of the labor movement.

## **VI. Conclusion**

Much of the research on political behavior, when it includes union membership in the models, treats union membership as an important causal factor but has not sought to unpack this variable. As Benjamin Radcliff and Patricia Davis (2000) note, “[o]n balance, the literature of voting has typically either ignored unionization entirely or treated it as an uninteresting control variable” (133). This chapter is a direct challenge to the casual use of union membership as an ‘uninteresting control variable.’ When we unpack union membership and explore the variation within this diverse group, important differences emerge: public sector union members appear qualitatively different than their private sector counterparts. The analysis in this chapter suggests that public sector union members are more likely to turn out to vote and public and private sector

union members diverge on important policy issues, namely free trade, taxes, environmental protection, school vouchers and gay rights. These differences are driven by both compositional and causal factors. These results suggest that the higher likelihood of public sector union members voting is caused not only by demographic differences but also due to the heightened politicization of public sector unions. Further, this analysis suggests that public and private sector union members policy opinion differences are due in part to public sector union membership itself, particularly the economic insulation of public sector employment.

For researchers, these findings offer us three lessons. First, both public and private sector union members continue to behave differently than the general public and thus should not be left out of political behavior models; but when we include union membership as a control variable, we should not assume that public and private sector union members are interchangeable—indeed, this analysis finds that public sector union members are less supportive of one of labor’s bread and butter issues, opposing free trade measures. Second, controlling for union membership across time is problematic because the meaning of union membership has changed as the composition and subsequent political preferences and behavior of union members has changed. Finally, surveys should include questions about union membership that ensure we can accurately identify union members and whether they belong to public or private sector unions.

Beyond shaping our research methods, these findings suggest that we should be asking bigger questions. As the composition of organized labor changes leading to a new union rank and file that holds different political preferences and behaves differently in politics, how does this matter for labor’s influence in elections, lobbying, and other political activities? Given that this transformed labor movement is neither natural nor inevitable, but rather the result of specific policy arrangements, the consequences for labor’s political activities today become even more

important. Ultimately, labor's new rank and file is important beyond the confines of any one union. The new public face of labor may matter for organized labor's influence in American politics more broadly, driving up union turnout in elections and pushing labor federations into supporting new issues and coalitions. Divided labor law has helped bring about a new public face of labor, which may lead to a transformed American union movement. The next chapter will look at one slice of these bigger questions, whether the differences in public and private sector union members shapes the internal leadership dynamics within organized labor.

## CHAPTER FIVE

### **Labor's Organized Divisions: How Divided Labor Law Engenders Organizational Rifts in Union Political Activities**

#### **I. Introduction**

Big Labor of the 1950s would likely find Big Labor of today unrecognizable. As the labor movement shifts to a majority public sector, spurred by divided labor law and macro-economic forces, the changes within organized labor are not limited to organized labor's membership composition. Table 5 shows the ten largest labor unions in the United States by membership in 2013 and in 1953, the year when organized labor reached its highest union density in American history. In 2013, the three largest unions' membership is at least half public sector employees. This represents a significant change from just a half-century before when none of the public sector unions (perhaps with the exception of the NEA<sup>47</sup>) came close to breaking the top ten. AFSCME, for instance, was less than one tenth the size of the largest union in 1953, the Autoworkers. The growth of public sector unions has shifted the balance of power within organized labor from the mighty industrial unions of the post-war era to the large public (and service) sector unions of today. Public sector unions no longer struggle for a seat at the table of organized labor like they did in the 1960s and 1970s. Instead, they are firmly entrenched in the leadership circles of the modern labor movement, embodied by the election in 1995 of John Sweeney, the first AFL-CIO president from a mixed union, rather than craft or industrial background.

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<sup>47</sup> The National Education Association was not included in the 1953 measures because, at the time, the organization thought of itself more as an association and was thus not counted as a union. It is estimated that the NEA had over 450,000 members in the 1950s (Foster 1997, 1). If accurate, this would place the NEA as the eighth largest union in 1953.

<b>Table 5: Top Ten Largest Unions by Membership, 1953 and 2012</b>				
<b>1953<sup>48</sup></b>			<b>2012</b>	
1,184,507	Automobile [later UAW]	1	<b>NEA<sup>47</sup></b>	<b>3,068,237</b>
1,100,000	Steelworkers	2	<b>SEIU</b>	<b>1,878,808</b>
1,000,000	Teamsters	3	<b>AFSCME</b>	<b>1,386,280</b>
750,000	Carpenters	4	UFCW	1,272,313
699,298	Machinists	5	Teamsters	1,257,766
600,000	United Mine Workers	6	<b>AFT</b>	<b>848,323</b>
500,000	IBEW	7	IBEW	660,599
402,000	Hotel, Restaurant [later UNITE HERE]	8	Steelworkers	614,054
390,000	ILGWU [later UNITE HERE]	9	LIUNA	633,000
386,000	Hod Carriers [later LIUNA]	10	Machinists	576,947
Unions Not Represented in the Top Ten in both 1953 and 2013				
<b>1953</b>			<b>2012</b>	
<b>AFSCME</b>	<b>85,000</b>		Carpenters	415, 806
<b>AFT</b>	<b>50,000</b>		UNITE HERE	281,019
<b>Building Service (SEIU)</b>	<b>185,000</b>		United Mine Workers	74,777
			UAW	382,513
<b>Bold: At least half of the union membership works in the public sector</b>				

Source: Bureau of Labor Statistics 1953, 2013

Chapter Four illustrated the important differences between public and private sector union members' political attitudes and behaviors. This chapter explores whether these differences filter up to the highest levels of organized labor. Divided labor law has helped organized labor transform into the union movement of today, where four of the largest, most influential unions are in the public sector. The central question guiding this chapter is: has this shift in the balance of power within labor been accompanied by a shift in organized labor's

<sup>48</sup> Membership information was submitted by labor unions to the Department of Labor. The information was self-reported and some did not submit anything, so this list is not exhaustive or verifiable.

internal organization, policy agenda and political strategies? In other words, does labor's new leadership lead the labor movement differently?

Interviews with labor leaders<sup>49</sup> and data on union political activities reveal that this shift in the balance of power has opened the way for public sector unions to usher in a new policy agenda as well as political strategies for the labor movement. Further, divided labor law creates different incentives for where public and private sector unions target their political activities; thus, as public sector unions have grown, they have shifted the location of organized labor's political activities which contributes to labor's weaker political presence at the national level. Ultimately, the rising power and influence of public sector unions has enabled them to shape the political outlook and activities of the modern labor movement.

## **II. Shifting Balance of Power**

As detailed in Chapter Two, the federalized nature of American labor law promoted the brief growth and then plateauing of public sector union density at the same time limiting the ability of private sector unions to organize new members exacerbating their declining density. As a result, public sector union members outnumbered private sector union members for the first time in American history in 2010 and constituted four of the ten largest unions in 2013 (Table 5). This new balance of power—with public sector unions dominating the landscape—was brought about in part by divided labor law. Divided labor law matters because it shapes not only the aggregate level of total union density, but has also contributed to the different development trajectories within organized labor: over the last half century, public sector unions have grown while private sector union declined. These changes within the labor movement have important

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<sup>49</sup> For more information on the interviews conducted with labor leaders, see Appendix A.

ramifications for the composition of organized labor and the leadership of the labor movement which has become increasingly dominated by the public sector. As private sector union density continues to decline, public sector unions are becoming increasingly influential unions in the American labor movement. Several key differences between public and private sector unions suggest that the shift in the balance of power within organized labor to an increasingly public sector leadership may shape labor's policy agenda and political strategies.

The first key difference likely to affect the public sector leadership is that public sector unions have developed a different organizational identity. As detailed in Chapter Three, public sector unions emerged in the 1960s and 1970s and forged connection to the New Left movements of the era. The highly political, activist nature of public sector unions contrasted sharply with the complacent, business unionism of the AFL-CIO leadership and many private sector unions in the 1970s. Their origins in this period forged a more politically active, social movement identity with an emphasis on social justice issues within many of the top of public sector unions. Today, as the balance of power has shifted to the public sector unions in the labor movement, we have seen an accompanying shift in emphasis within the movement to politics as public sector unions have used their newfound power to change the way labor does business (or rather politics).

The second key difference likely to affect the public sector unions' leadership, as explored in Chapter Four, is that the nature of public sector unions places a priority on political activities. In the early history of the labor movement, private sector unions were not explicitly political. Indeed, the AFL's first President, Samuel Gompers, eschewed politics, preferring "pure and simple unionism," which involved dealing directly with employers rather than risk the intervention of the pro-business state. In contrast, public sector unions have always been

explicitly political because of the nature of their employer—the local, state and federal government. The first AFSCME local, the Wisconsin State Employees Association was formed initially as an organization to lobby the Wisconsin state legislature. Because “public employment relations...operate in an environment the very essence of which is politics,” public sector unions have never operated under the principle of “pure and simple unionism” (Spero and Capazola 1973, 235). These two key differences between public and private sector unions are likely to matter for labor’s political activities today because public sector leaders have capitalized on the changing membership within the labor movement to wrest power and leadership positions from the private sector unions.

By the end of the 1970s, public sector union organizing had eclipsed private sector unions, many of which were losing members. At the time, Jerry Wurf, president of AFSCME remarked that, now that his union was the number one union organizing new members, “we get a measure of respect within the highest councils of the A.F.L.-C.I.O.” (Flint 1978). An AFSCME leader today recalling his union’s many stands in opposition to the AFL-CIO leadership in the decade noted that “We stuck to our guns and our guns got bigger. By the end of the 1970s, we could no longer be ignored” (Interview #40). What these two comments suggest is that public sector unions gained influence within organized labor through force. As detailed in Chapter Three, private sector unions, an already entrenched force in the labor movement, were resistant to sharing power. Thus, growing membership numbers was not enough for public sector unions to gain leadership within the movement. Instead, public sector unions had to wield their greater organizing might and growing membership numbers to demand recognition and attention within the labor movement.

Public sector unions grew dramatically from the 1960s onward but their power within the movement was much slower to develop. It was only in the 1990s that public sector unions saw significant dividends. In Washington State, the power transition occurred even later, but reflects the transition that began within the states and the national labor movement at the end of the 20<sup>th</sup> century. The public sector's demand in for recognition occurred in a highly public fashion in Washington State. The Washington Federation of State Employees (WFSE), wrested power from the labor establishment, dominated by the private sector unions, during the 2010 state labor convention. At the state labor conventions, delegates representing all of the state federation's unions vote on policy resolutions that determine the state labor council's agenda for the year. WFSE gained full collective bargaining rights in 2002, making them one of the largest unions in the state but not automatically granting them power and influence within organized labor. Interviews with Washington labor leaders reveal what led to the upheaval at the 2010 convention. WFSE members were frustrated by a growing sense that the "trades were getting what they wanted and they [WFSE] were not" (Interview #11). Members' anger was "fueled by being betrayed by politicians they had supported...spending millions to elect a governor and legislature that was then doing things that were harmful to members" (Interview #12). Lacking influence over the labor leadership in Washington, WFSE members felt their needs were being ignored.

WFSE members felt labor was helping elect politicians who were only attentive to the trade unions' rather than all the unions' needs, private *and* public sector. By 2010, WFSE member frustration had reached a boiling point, described colorfully by one leader that "they wanted to fuck the world" (Interview #12). WFSE accomplished this goal by having a tremendously high number of locals send delegates to the convention, overwhelming the voting

by sheer numbers. This “showed the [Washington State] Labor Council that they had to ability to shut the whole things down” (Interview #12). WFSE is now the single biggest affiliate in the Washington labor council, with significant influence over the council’s business. One WFSE leader likes to tease the labor council “about how they work for me” (Interview #12). The power grab was a bold move that has engendered some resentment among other Washington labor unions, but ultimately WFSE’s size and power demands attention and cooperation.

The example of Washington state illustrates a more general trend occurring as public sector unions have grown while the private sector unions decline: as public sector unions have become a greater share of the American labor movement, the balance of power has shifted in their favor as they have demanded and succeeded in gaining a greater influence on labor’s political agenda with important repercussions for labor as a political actor. The unique organizational identity of the public sector unions and inherent differences between the public and private sector unions suggest that this internal leadership reordering is not in name only. The shift in balance of power from private to public has been accompanied by important changes in labor’s political activities.

### ***Labor’s Policy Agenda***

The first way the growth of public sector unions has influenced labor politically is creating policy conflicts that lead to inaction. Organized labor is a loose grouping of member unions that relies on the cohesion and cooperation of the constituent unions for success. As a result, the federation is adverse to conflict among the member unions and frequently avoids issues that could create such divisions. The different policy priorities between public and private sector unions have over time prevented the labor movement from acting on much of the public

sector's policy agenda. However, as the public sector becomes an increasingly powerful part of the labor movement, we have seen their policy agenda move to the forefront.

Central labor councils representing metropolitan areas, state labor federations, and the national AFL-CIO are all federations of labor unions. Member unions voluntarily choose to affiliate, contributing member dues to the larger associations. This design means that the AFL-CIO has little formal authority over affiliates. As a result, the AFL-CIO operates by consensus, pursuing issues that foster agreement among member unions. Where there is significant conflict, the AFL-CIO will often avoid taking a position. A description of the AFL-CIO executive council written in 1978 is still apt today:

The executive council usually resolves such issues, when they come up, with a kind of rough consensus on broad policy areas, where the member unions generally are in concert. But the council members either ignore completely or agree to disagree on matters where their rank-and-file members' interests come in conflict. The council, for example, is often wary about taking broad stands on environmental issues or issues such as mass transit versus highway construction. That does not mean that the conflicts and divisions disappear. They are there simmering constantly under the surface (Shabecoff 1978).

In interviews with labor leaders, they emphasized that there is far more consensus than conflict. While this is certainly the case, the public opinion analysis detailed in Chapter Four illustrates that there are important rifts within organized labor between public and private sector union members. The policy differences between public and private sector unions can result in inaction by the labor movement on key issues in order to avoid conflict between the two sectors.

As Chapter Three detailed, the social justice priorities of some of the key public sector unions are not always reflected in the labor movement as a whole. The AFL-CIO was slow to adopt Civil Rights, supported the Vietnam War, and remained a male dominated, patriarchal institution in the face of the women's rights movement. Thus, while AFSCME, AFT and other

unions acted independently on these issues, the labor movement as a whole—always adverse to conflict—avoided many of the social justice issues that animated politics in the 1960s and 1970s.

Understanding the pressure on the AFL-CIO for conflict avoidance is an important lesson. Academics, reporters and others often characterize organized labor as one of the most powerful progressive forces in American politics. For example, Margaret Levi writes that, “organized labor is arguably the most effective popular vehicle for achieving a democratic and equitable society” (2003, 45). Likewise, Dorian Warren (2012) describes organized labor as “America’s last hope” and contends that, “the fate of the labor movement is the fate of American democracy.” While these claims about the progressive influence of organized labor are not a mischaracterization, it is important to recognize that organized labor’s progressivism has important limits.

In general, labor acts as a progressive force only when there is broad consensus among union affiliates. On any issue, labor is only as progressive as its least progressive, powerful union. Thus, environmental protection and social issues like abortion have not been areas where labor has been particularly proactive because they continue to divide the membership base. As one labor leader explained, “sometimes the House of Labor is apartments” (Interview #34). Where we are likely to see labor as an effective and unified force in American politics are issues with broad consensus like workplace protections, minimum wage laws, and unemployment insurance—so called lunch box or bread and butter issues. When Levi, Warren, other academics, reporters and pundits proclaim organized labor as the most important force on the left, it should be with full recognition that organized labor is the most powerful progressive force *on economic issues* on the American left, but often hamstrung on social and environmental issues due to the strong pressure for conflict avoidance.

Labor's conflict avoidance on previously controversial issues may be decreasing, however, as public sector unions hover at majority status. Indeed, today's labor movement has shifted on important policy issues. This is due in part because the largest, most influential unions within organized labor today, SEIU, AFSCME, and the teacher unions (the NEA and AFT), are all heavily public sector; their influence is especially remarkable because the NEA and SEIU are not formal members of the AFL-CIO. These unions on average represent a higher education, higher income and more diverse membership. In interviews, labor leaders attributed the increasing proportion of the labor movement that works in the public sector, as well as the service sector, to helping shift labor's position on gay rights at the state level and immigration at the national level. The labor leaders interviewed also emphasized that public sector unions helped elevate the issue of health care reform, resulting in labor's central role in Obama's health care reform effort. As discussed in Chapter Three, the public sector unions, especially AFSCME, have historically had a strong social justice focus thanks to their connections with the Civil Rights Movement. As these public sector unions have moved to the forefront of the labor movement, they have continued to emphasize their social justice roots (Interview #20). As one AFSCME leader noted, "We try to be a force for good, even if ultimately it isn't directly related to wages and working conditions" (Interview #18). This orientation has promoted labor's new progressivism on issues as diverse as immigration and gay rights.

### ***Labor's Political Strategies***

The second way the growth of public sector unions has influenced the labor movement is by promoting a renewed emphasis on political activity as equally important to workplace bargaining. The growth and prominence of AFSCME in particular has shaped the labor movement by promoting a highly politicized and sophisticated approach to politics. As Chapter

Three illustrated, public sector unions stand out for their heightened involvement in politics. Traditionally, the head of the AFL-CIO political committee is the president of AFSCME because, as one AFL-CIO leader put it, “they are very good at it” (Interview #35). As the labor movement has declined in total density and membership, politics has become an increasingly important element of labor’s activities. The Federation and individual unions turned to AFSCME as an exemplar of political activity. As one AFSCME leader explained, “Our aggressive brand of political action has now generally been accepted as the key survival strategy for the labor movement” (Interview #40). The movement has incorporated AFSCME’s political strategies into their traditional electoral activity.

The battle over the presidency of the AFL-CIO in 1995, which pushed then President Lane Kirkland, George Meany’s handpicked successor, and led to the election of the reform-minded candidate exemplified the growing acceptance of the public sector’s approach to politics; one reporter noted at the time that the election marked “a transformation in what the AFL-CIO is—more public- and fewer private sector union members—and what the federation does” (Troy 1995). John Sweeney’s victory in the election was notable because he was the first AFL-CIO president to emerge, not from the private sector unions, but rather out of the ranks of the dynamic public/service sector front of the union movement. Sweeney was the president of the Service Employees International Union (SEIU). Under his presidency, the union had focused quite successfully on membership gains including absorbing the National Association of Government Employees. In his fifteen years as president, the union nearly doubled its membership and adopted a more political, confrontational style. John Sweeney’s victory in the election thus signaled the new dominance of the public and service sector unions and acceptance of AFSCME’s and SEIU’s “aggressive brand of political action” (Interview #40).

Sweeney chose to run for the AFL-CIO presidency because he was frustrated by the seeming complacency of President Lane Kirkland to declines in membership and the string of labor-backed candidate losses in the 1994 mid-term election. Sweeney's frustration was shared by others and he joined forces with other leaders looking for a reinvigorated labor movement. In particular, Sweeney linked up with Gerald McEntee, president of AFSCME, in calling for a more aggressive, politicized union movement that is more inclusive of women, minorities and youths and can "work the streets as well as the suites" (Rose 1995). Sweeney's presidency devoted significantly more time and resources to organizing new members and has created a new normal of political activity within organized labor.

Thus, as the balance of power within organized labor has shifted, public sector unions represent both continuity and change within the movement. They continue to advocate many of the bread and butter issues that are hallmarks of the labor movement. However, public sector unions also diverge from their private sector counterparts on key issues. Often, this leads the labor federations to shy away from divisive policy areas. However, as public sector unions have grown, they have helped lead the movement in new directions including more open positions on social issues like gay marriage. The result is a more politicized labor movement—prioritizing political action and member organizing in addition to collective bargaining of existing contracts—with the potential to be more active and liberal on social justice issues.

### ***Federalized Divisions of Political Resources***

As the balance of power has shifted from the private sector unions to the public sector, in part as a result of divided labor law, this may have consequences not only for the substance of labor's political activities but also for the location of labor's political efforts. Labor unions, both public and private sector, have reasons to care about politics at the local, state and federal level.

Teacher unions care about who is elected to the local school board, state spending on education, and national level policymaking like No Child Left Behind. State worker unions are concerned with state level budgets and policies but are also affected by federal cuts to state block grants and policies that affect their jobs like welfare reform, for instance. Construction unions are concerned with government support of building projects at all levels of government. Industrial unions like the autoworkers care about federal trade policy that affects the competitiveness of American manufacturing but also more local policies that encourage American automakers to keep factories located at home.<sup>50</sup> Thus, we might expect public and private sector unions to divide their energy and resources relatively equally across the levels of government. However, as Chapter Two made clear, one key policy area is not divided evenly across the three jurisdictions: labor law.

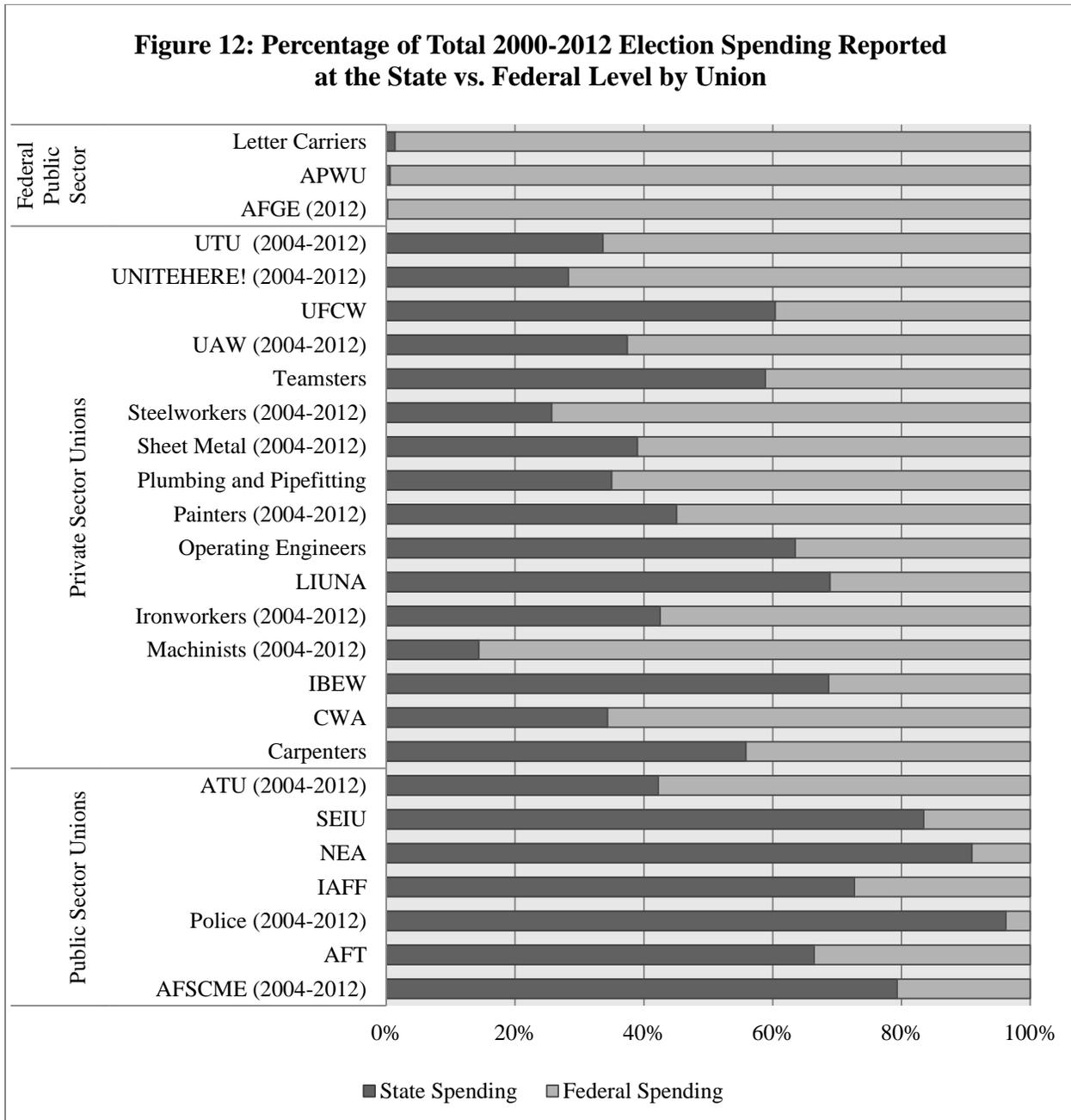
Private sector labor law is controlled at the federal level whereas public sector labor law is set by the states and localities. The federalized nature of American labor law may thus create different incentives for private and public sector labor union political action. Private sector unions have been hampered in their organizing efforts due to the failure of labor law reform at the federal level. Thus, the passage of federal labor law reform is one of the top priorities of private sector unions. In contrast, with the exception of the federal government unions, public sector unions' right to organize and bargain collectively has been more erratic under the control of the states and localities. Thus, public sector unions have a strong incentive to push for state and local labor law protections and maintenance.

Do we observe differences in public and private sector union political activities? One way to measure union political activity is through campaign spending. If public sector unions

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<sup>50</sup> See the New York Times series of local and state business subsidies to see just how much of local spending and policy is geared toward encouraging business in localities (Story, Fehr and Watson 2012).

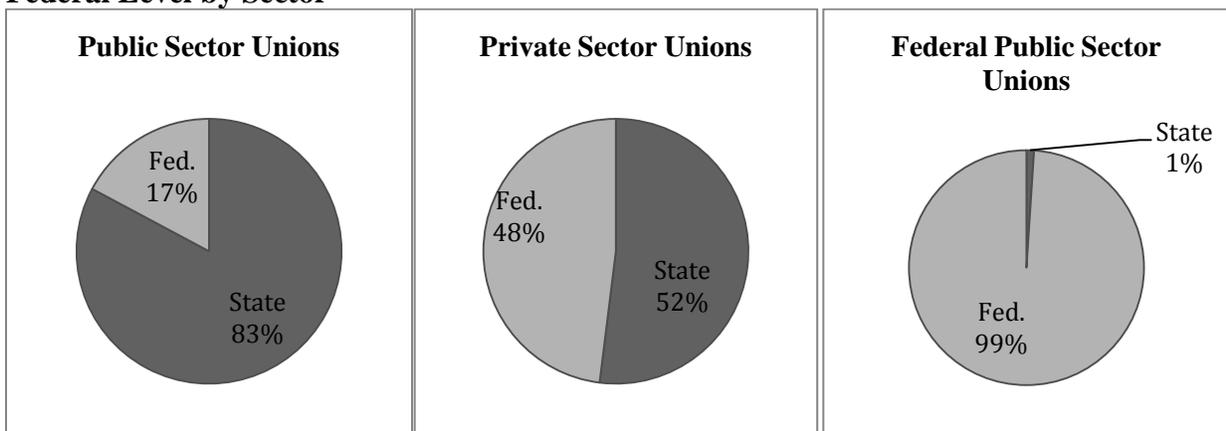
have a greater incentive to influence state level rather than federal politics, then we should expect to see public sector unions devoting a higher proportion of their campaign spending to the state level. The exception is unions of federal workers who would be predicted to focus on the federal level for policy reasons and because their collective bargaining rights are set by Congress and executive orders.



Source: NIMPS 2013b and CRP 2013

Figure 12 shows the percentage of twenty-six unions' political spending from 2000-2012 that went to state level elections versus federal level candidates, PAC's, parties and outside spending groups. The unions are divided between public sector, private sector, and federal public sector unions. In general, the public sector unions devoted the majority of their spending to the state level, whereas the private sector unions spent more at the federal level. The federal public sector unions spent virtually nothing at the state level. The averages across the three types of unions are displayed in Figure 13. From 2000-2012, public sector unions spent 82% at the state level, whereas private sector unions spent just over half at the state level. Federal public sector unions spent less than 1% of their total spending at the state level. Figures 12 and 13 demonstrate a clear divide in spending between public and private sector unions. On average, from 2000 to 2012, public sector unions spent \$7 at the state level for every \$1 spent at the national level. For private sector unions, their money was divided evenly across the two jurisdictions. For federal public sector unions, only one cent was sent to the state level for every \$1 spent at the national level.

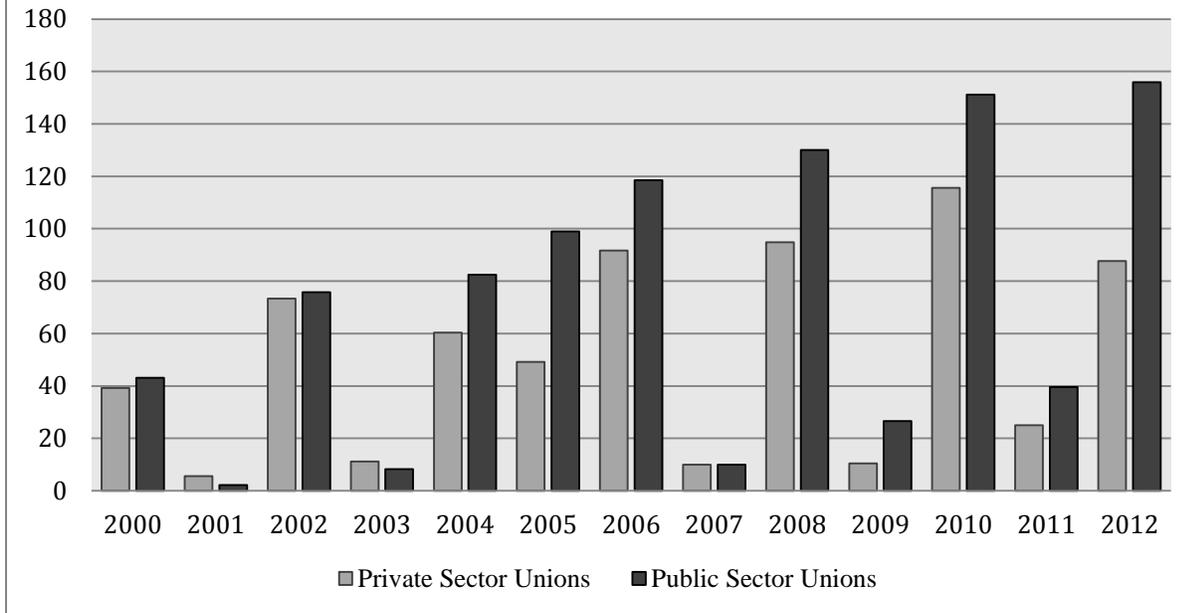
**Figure 13: Percentage of Total 2000-2012 Election Spending Reported at the State vs. Federal Level by Sector**



Source: NIMPS 2013b and CRP 2013

Not surprisingly, public sector unions not only devote a higher proportion of their total spending to state elections but this translates into more total public sector spending at the state level than private sector unions. Figure 14 displays the total spending of private and public sector unions at the state level during the 2000-2012 elections. In every election except the 2001 and 2003 mid-terms, public sector unions outspent their private sector counterparts at the state level. In total, public sector unions spent over \$942 million during the twelve year span compared to just under \$674 million spent by private sector unions at the state level. This is a difference in total spending of over \$268 million. It is not surprising that public sector unions spend more given that they are the largest unions in movement. However, this difference is important because the largest unions in the labor movement today have an incentive to spend their proportionally larger share of resources at the state and local rather than the national level. As the unions with the most members and money, the public sector unions are thus pushing the labor movement to move their time and resources to demand-making at a different level of government. This represents an important shift within the labor movement with potentially important ramifications for labors' effectiveness at the national level.

**Figure 14: Total State Level Spending (in Millions of Dollars) by Public and Private Sector Unions Per Election**



Source: NIMSP 2013a

These aggregate measures are suggestive but cannot confirm that the divided legal regime is the cause of the differences in location of election spending. However, for public sector union leaders, focusing electoral spending on the state and local level is a clear choice given recent events. The most recent attacks on public sector workers in states like Wisconsin and Indiana have certainly made the tenuous nature of public sector labor law abundantly clear to public sector unions leading them to increase their political efforts. A former AFSCME political director, Larry Scanlon, noting the increased political spending remarked that, "It makes sense that our political spending has ramped up over the last year and a half as our members have come under attack like never before." Scanlon estimated that approximately two-thirds of AFSCME's political budget went to the state and local level (McGinty and Mullins 2012). For AFSCME, political spending at the state and local level is a matter of life and death.

Unions have many shared goals and organizational connections but when it comes to where to devote their political energy and resources, there is a divide perhaps promoted by the

federalized nature of American labor law. Excluded from the Wagner Act and lacking their own national level law, public sector unions were relegated to the state and local level as their sites of demand making and this appears to still be the case. Public sector unions devote a higher share of their political spending and a higher level of spending overall at the state level, than private sector unions. As public sector unions become an increasing portion of the labor movement due to the shifting balance of power, we are likely to see labor's influence at the state and local level increase. Indeed, in the last few election cycles, AFSCME has led the charge for renewed attention to state and local level politics, beginning with the state budget and sequestration battles. In national level interviews, almost all leaders emphasized a growing emphasis on state and local level politics. At their annual winter meeting in 2014, AFL-CIO labor leaders explicitly announced a larger focus on state and local level politics. They plan to target four industrial states that have been the site of such backlash recently—Michigan, Ohio, Pennsylvania and Wisconsin—as well as Florida (Greenhouse 2014b).

This growing attention to the state and local level may help combat the most recent attacks on public sector unions and foster pro-labor policy, but the tradeoff is clear. Focusing attention and resources at the state and local level could lead to potentially negative repercussions for labor's role in national level politics. It is no mistake that academics point to organized labor as the most powerful progressive force on the left. While this chapter amended that statement to emphasize that labor's progressivism is often limited to economic issues, the point remains that labor serves a unique role on the American left. As organized labor's focus turns to the survival of public sector unions at the state level, this is likely to come at a cost. Labor may be sacrificing the time, money, resources, and lobbying efforts at the national level to this state level focus. On important issues like economic inequality, it is unclear who or if there

is anyone to fill the void at the national level if organized labor pulls back. Labor is a unique voice for working Americans and the focus on the state level, while crucial to the survival of public sector unions and thus labor as a whole, may have unforeseen consequences at the national level.

## **V. Conclusion**

The dominance of public sector unions in the modern labor movement is neither natural nor inevitable, but rather the result of broad macro-economic forces patterned by a specific institutional arrangement, divided labor law. Excluding public sector employees from the Wagner Act, or their own national level law, delayed and limited public sector union expansion. It further disrupted the balance of power within organized labor, promoting the brief growth and then plateauing of public sector unions and the decline of private sector union density, resulting in the now majority status of public sector unions within the movement. As the balance of power has shifted and public sector unions have become dominant; this has modified labor's policy agenda, leading to more policy conflict, but also the potential for public sector unions to push labor's policy agenda leftward on issues like gay marriage. Further, the rise of public sector unions has helped bring about a renewed focus of the AFL-CIO to organizing and aggressive political activity, including greater attention to state and local level politics. Thus, the rise of public sector unions has potentially helped make labor more liberal and activist, but perhaps at the expense of further weakening labor's political power at the national level.

Ultimately, a union movement that is more politicized and focused on organizing new members seems crucial if labor ever hopes to pass labor law reform and stop the decline of union density. However, the acceptance of public sector unions into the leadership circles of organized

labor is most embodied in John Sweeney's election as president of the AFL-CIO, which did not occur until 1995, perhaps too little, too late to stem the decline. Change has been slow within organized labor and the efforts to revive the labor movement have come well after private sector unions suffered devastating setbacks in the 1980s. Further, while public and service sector unions have taken up the mantle of leadership, their unions are not immune to attack and decline themselves. Their new role as the vanguard of the labor movement makes them prime targets for anti-union opponents, particularly given their politically active membership and activist leaders. This has pushed labor to focus much of their energy on the state and local level, perhaps at the expense of their crucial role representing the economically disadvantaged at the national level.

Despite the efforts beginning in the mid-1990s to revive labor, the situation remains dire. Private sector union density, now down to less than 6 percent of the private sector workforce, is at its lowest point since the 1920s. Meanwhile, public sector unions have come under attack across the country with their collective bargaining rights being retrenched and state budget crises leading to layoffs, work furloughs, and major union concessions. The position public and private sector unions are in today has roots in institutions put in place during the New Deal. In the next chapter, this new moment of shared crisis will be explored through the lens of a salient case, the most recent attacks on public sector collective bargaining rights in Wisconsin in 2011. What happened in Wisconsin encapsulates much of the analysis laid out in the last three chapters and illustrates how labor's past continues to shape, and hinder, organized labor today.

## CHAPTER SIX

### Conclusion

The month-long battle over public sector collective bargaining rights in Wisconsin was a noteworthy moment in labor's history of protest.<sup>51</sup> While the massive protests and international media coverage of the events in Wisconsin were unique, the budget repair bill that inspired the protest was not. Instead, Governor Walker's attack on public sector collective bargaining rights should be seen as part of a longer history of contention over public sector unionism in the United States as a result of the lack of a national level law addressing public sector collective bargaining rights. The events in Wisconsin thus offer a lens for understanding the consequences of divided labor law for organized labor in the United States. This chapter looks at the events in Wisconsin leading up to Act 10 and its aftermath because it encapsulates the conclusions drawn throughout this project about the ramifications of divided labor law for labor's current political effectiveness which at times falls short of its potential. This chapter begins with Wisconsin and ends by drawing together the broader conclusions of this work. Examining the events in Wisconsin can tell us a great deal about the consequences of divided labor law for organized labor today, both in Wisconsin and nationally, and serves as a reminder that the issues discussed in this project remain a very real, ongoing struggle within the labor movement.

#### *Labor Through the Lens of Wisconsin*

The metaphor of sleep pervades Wisconsin labor leaders memories of their movement before Scott Walker took office. Prior to Act 10, they were "asleep at the wheel" and relatively peaceful labor relations in the public sector had "put everybody to sleep, you could pay your monthly dues, know that your contract would improve a bit each year, and not have to do

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<sup>51</sup> Wisconsin was chosen as a case study for this project in part because it was center of conflict over public sector collective bargaining rights. See Appendix A for a full explanation of why Wisconsin and Washington State were chosen as the sites of field research.

anything for it” (Interview #16, 18).<sup>52</sup> Wisconsin labor leaders remember a complacent movement that had lost the connection to their communities, with a disparate group of unions who were not communicating with each other: “it used to be you could just show up to the [state] AFL-CIO executive board, report on your own issues, then leave” (Interview #16). Looking back, labor leaders felt that they and their unions were just going through the motions, rather than leading a vibrant, influential social movement.

Part of the reason labor was “asleep” prior to Act 10 can be traced back to the divided history and contentious relationship between public and private sector unions in the United States. The public and private sector unions in Wisconsin were not a fully integrated, cohesive force prior to Governor Walker’s attack. Union membership differences were one source of conflict. Beginning in 2011, the creation of a proposed open-pit iron-ore mine split the movement in the state, pitting conservation-minded public sector unions against private sector unions desperate for jobs. Some public sector unions sided with environmentalists in criticizing the potential devastating environmental impacts of the mining operation as well as the dangers posed to a nearby reservation, its residents and their groundwater. In contrast, many private sector unions saw the mining venture as desperately needed capital investment and jobs in a depressed economy (Interview #23). The plan including mining equipment being built in Milwaukee by union labor. The proposed mine created dissension among unions and their members: As one reporter noted, “Randy Bryce, the political coordinator of Milwaukee Iron Workers Local 8 and one of Walker’s most tenacious opponents, reluctantly supported the legislation. ‘They’re trying to divide us,’ he told me, ‘but my members need work’” (Kaufman

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<sup>52</sup> See Appendix A for interview details.

2010). As the analysis in Chapter Four suggests, the conflict over environmental protection vs. jobs cut through the labor movement in Wisconsin, pitting public vs. private sector unions.

Likewise, in 2006 when a constitutional amendment to ban gay marriage was on the ballot, public sector unions—especially the teachers—were some of the largest contributors to the campaign to oppose the referendum (Moore 2007). While the state AFL-CIO came out in opposition to the referendum, it was clear that they “aren’t part of the big movements like gay marriage and women” (Interview #16). Membership policy differences were not the only source of division prior to Act 10.

Public and private sector union differences also go back decades to a lack of shared understanding as private sector union density declined precipitously and public sector union issues received little sympathy from private sector unions (Interview #23). In general, “there was rhetoric but not a lot of behavior of helping each other” (Interview #23). When Governor Walker’s budget repair bill was introduced, these differences were emphasized by anti-union forces in an effort to divide the labor movement. For instance a television advertisement from the Wisconsin Club for Growth, a conservative advocacy group exclaimed:

But state workers haven’t had to sacrifice. They pay next to nothing for their pensions, and a fraction of their health care. It’s not fair. Call your state legislator and tell them to vote for Gov. Walker’s budget repair bill. It’s time state employees paid their fair share, just like the rest of us (Milwaukee Journal Sentinel 2011).

Governor Walker recognized the danger of a unified labor movement and hoped to create inter-union conflict (Interview #20). In an infamous prank phone call, a radio talk show host managed to call and speak to Governor Walker impersonating the conservative billionaire David Koch. In the discussion, Walker explained his effort to differentiate public vs. private sector unions:

“cause I’m trying to keep out the, as many of the private unions as possible, I said this is about

the budget, this is about public-sector unions” (Wisconsin State Journal 2011). The conditions in 2011 were ripe for sowing discord between the private and public sector unions.

The private sector industrial unions had been suffering for decades as a result of de-industrialization leading to the loss of key manufacturing industries. As one labor leader explained, “it was clear during the campaign that Walker was trying to divide private from public sector workers by emphasizing public sector as the haves being supported by the have nots. The private sector unions have a longstanding frustration over this...The private sector has been hammered so hard, it’s very easy to exploit that.” (Interview #20). As discussed in Chapter Three, the effort to divide public and private sector unions was far less successful than in the 1970s thanks to the shared sense of crisis in the movement that helped overcome these divisions. However, the “sleeping” labor movement, complacent and lacking cohesion between unions prior to the budget repair bill, helps illustrate the failure of the 1970s to create a unified, vibrant labor movement before the difficulties of the 1980s, a failure that has persisted until today.

When Wisconsin Governor Scott Walker proposed his budget repair bill on February 11, 2011, it caught many in the labor movement by surprise and, drawing on the same metaphor, awoke a movement that had been asleep for too long. Walker’s attack on public sector collective bargaining rights “gave them a wake-up call” and “the entire labor movement was dunked into freezing Lake Michigan and woken up like never before” (Interviews #19, 28). Labor leaders may have been less surprised by Governor Walker’s attack if they had taken a longer and more expansive view on public sector labor history. What happened in Wisconsin was not new, nor is it likely to be the last time such retrenchment of public sector collective bargaining rights will occur.

The effects of divided labor law were evident in Wisconsin: even in a seemingly safe state the rights of public sector workers proved inherently tenuous and subject to the whims of state and local lawmakers. Scott Walker's actions were part of a longer tradition: "In fact, states change their collective bargaining rules frequently, and often without much protest or dissent...In many states, collective bargaining rights have been a fleeting thing that can easily come and go with changes in administration." When Governor Daniels rescinded the executive order granting public sector collective bargaining rights to state workers in Indiana, "it was a very quiet transition" (Maynard and Goodman 2011). Wisconsin was unique because of the unprecedented protests to try and protect public sector collective bargaining rights, not because of the legislation itself.

Like the national landscape, public sector collective bargaining rights in Wisconsin also remain highly unequal. The lack of collective bargaining rights in Wisconsin now stands in stark contrast to states that grant their state and local employees such protections. Within the state, there is great variation as well. In progressive areas of the state, like Madison, local elected officials and schools boards continue to negotiate contracts with the public sector unions. In other areas of the state, as one local president somewhat hyperbolically explained, "what was once a seventy-four page contract can now be printed on a sticky note. Decades of developing best practices, agreements and negotiations are just gone. Now all of those decisions are in the hands of they employer." (WI AFL-CIO Convention 10/2/2012). By eliminating many collective bargaining rights, Act 10 returns Wisconsin to the period before the 1960s, when local unions obtained recognition largely through the beneficence of their employer and with few protections if that relationship turns sour.

Divided labor law gave state lawmakers in Wisconsin the opportunity to scale back rights because of the features inherent in federal arrangements. First, at any time, a state or locality has abundant examples of policy alternatives in action. There is no single standard for state treatment of public sector employees. As illustrated in Chapter Two, states vary tremendously in the generosity of their collective bargaining rights and the uniformity of these rights across employee categories and levels of government. Opponents of Act 10 could not simply look to other states who grant public sector collective bargaining rights to serve as an example in Wisconsin because Governor Walker and his supporters could easily point to just as many states to illustrate that public sector employees do not merit collective bargaining rights. Walker could even justify scaling back public sector rights because the neighboring state of Indiana had done just that in 2005.

Second, groups engaged in political conflicts that have become intractable at the national level can find more success capturing politics at lower levels of government. Anti-union opponents at the national level have proven successful at ossifying private sector labor law but failed in outright retrenchment of the Wagner Act. One response to the impasse at the national level has been to focus attention on the state and local level. Right-to-work laws are one such example and the renewed focus of anti-union opponents on public sector collective bargaining rights is a similar development. While it was not the model used in Wisconsin, the American Legislative Exchange Council, a conservative organization that teams with state legislators to draft legislation, has produced numerous draft bills targeting public sector collective bargaining rights that have been introduced and passed in legislatures across the country (McIntire 2012).

Third, national level rights become reinforcing as case law over time creates path dependent pressures to maintain existing law. While Wisconsin's collective bargaining law had

a much longer history than most, when Walker proposed his legislation opponents could not claim public sector workers have a protected right to collectively bargain because no national statute exists. In contrast, private sector labor law has over seventy-five years of NLRB case law serving as positive feedback on national level private sector collective bargaining rights.

Fourth, federalism as a governing structure welcomes and even encourages variation and innovation at the local level. Supreme Court Justice Brandeis first invoked the metaphor of states as policy laboratories in a dissenting opinion in 1932. In his opinion, Brandeis noted that, “It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country” (Volden 1997, 78-79). Presidents from Ronald Reagan to Clinton to Obama have all included the idea of states as sites of experimentation in executive orders and memoranda they have issued regarding federalism.<sup>53</sup> As Ronald Reagan noted, it is “The nature of our constitutional system” that “individual States and communities are free to experiment with a variety of approaches to public issues.”<sup>54</sup> From Supreme Court Justices to Presidents, there is a pervading belief that experimentation at the state and local level is a natural, and laudable, feature of American federalism. Thus, Governor Walker’s proposal of Act 10 can be seen as part of the longstanding tradition of experimentation states have taken over public sector collective bargaining rights.

Finally, and most fundamentally, states and localities lack the expectations of national standards and equality—in other words, a floor of protection—that have been central to rights protections at the national level. Leaving public sector collective bargaining rights unanswered

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<sup>53</sup> Exec. Order No. 12612, 1987 (Reagan); Exec. Order No. 13132, 1999 (Clinton); 74 Fed. Reg. 24693, 2009 (Obama).

<sup>54</sup> Exec. Order No. 12612, 1987 (Reagan).

at the national level, states answered the question in a variety of ways. Many states, not having to match the actions of other states, deliberately denied their public sector employees collective bargaining rights. As a consequence, states and localities remain sites where the basic tenets of public sector unionism can be contested leading to the volatility surrounding public sector collective bargaining rights.

Federalism provided the opportunity and also the motive for Walker's budget repair bill. The close ties between organized labor and the Democrat Party often creates Republican animosity to labor and union-friendly policies. Divided labor law, by promoting the growth of the public sector and the decline of the private sector put a target on the back of the public sector. It is not surprising that the slew of attacks on public sector collective bargaining in 2011 occurred just one year after public sector union members became the majority of the labor movement. As one labor leader noted

I think the Right realizes that the strength of the progressive movement is rooted in the public sector and it is trying to kill, going for the jugular, kill the remaining strength of the progressive movement. The Democratic Party barely exists, the organizational muscle is rooted in unions and the strength of that is rooted in the public sector...the Right sees that very clearly (Interview #29).

The organizing and financial might public sector unions can mount for Democratic candidates are not lost on Republicans. After the Republican landslide in the 2010 elections, conservative commentator Dick Morris wrote that, "We may, at long last, have a way to liberate our nation from the domination of those who should be our public servants but instead are frequently our union masters" (as quoted in McCartin 2011). In public, Governor Walker vigorously maintained that his budget repair bill was strictly about improving Wisconsin's budget situation. In private, he was more candid. Prior to announcing his budget repair bill at a private dinner in the executive residence with his cabinet, "Walker held up a photograph of Ronald Reagan and

told his cabinet that what they were about to do recalled Reagan's breaking of the air-traffic-controllers' union strike in 1981. 'This is our time to change the course of history,' Walker said" (Kaufman 2012). Walker understood the significance of his proposed bill; the consequences of Act 10 have been a serious setback to the union movement in Wisconsin.

The significance of divided labor law is not an abstraction, but rather reality for organized labor. The enactment of Act 10 was both an emotional and tangible blow to organized labor in Wisconsin. Emotionally, organized labor's significant efforts to oppose Act 10 failed. As a consequence, "a lot of time, energy, and an awful lot of work [was] decimated with a stroke of the pen" (Interview #20). The time, energy and work this comment refers to is not simply the effort to oppose the bill, but also the half-century of public sector labor relations that this labor leader and other had devoted their lives to cultivating.

Tangibly, the labor movement lost members and money after Act 10. Public sector union density in Wisconsin dropped from 50.3 percent in 2011 to 35.8 percent in 2013, a loss of nearly 50,000 members in just two years in a state with only approximately 350,000 union members total in 2011 (Hirsch and MacPherson 2013). The General AFL-CIO state fund lost \$100,000 due to loss of membership dues in 2011 (WI State AFL-CIO Convention 10/1/2012). AFSCME Council 24, representing state employees, estimated that they lost 60% of their membership between 2011 and 2014, and their annual budget has declined from \$6 million to \$2 million since Act 10 became law (Greenhouse 2014a). The founding local of AFSCME, Local 1, dropped from 1,000 to 122 members in 2014 (Greenhouse 2014a).

Membership losses have been severe because public sector unions must recertify every year and no longer receive automatic dues check-off. This requires significant energy and resources. Some unions have chosen not to recertify, given the limits on what they can bargain

over anyway, and focus instead on servicing members without formal recognition. Other unions have tried to maintain their official status. One AFSCME organizer, who represents maintenance, security and other low-paid building personnel described the difficulties in reconnecting with the membership of her local. Because her members are some of the lowest paid state workers, many do not have email or up to date contact information, which meant she had to connect with them at the worksite—all one hundred buildings. Many of the members work the third shift, which meant showing up at 2:30 am, often with an interpreter in hand, to convince the members to re-up with the union (WI State AFL-CIO Convention 10/1/2012). This exercise will have to be repeated every year.

While the membership declines in Wisconsin have been particularly steep, the losses in Wisconsin are echoed in other states as well. The concerted effort against public sector unions has proven successful and has contributed to the loss of public sector union members. For the first time since 2010, private sector union members outnumbered public sector union members in 2013. There are now 7.3 million private sector union members and 7.2 million public sector union members (Trottman 2014).

Looking purely at numbers, the situation for public sector unions, and organized labor more broadly, appears dire. However, labor leaders do see a major positive emerging from the events in Wisconsin: the labor movement is no longer sleeping. Rhetorically, the movement in Wisconsin is emphasizing solidarity like never before. Common refrains at the Wisconsin State AFL-CIO Convention in 2012 were: “We’re in this together, not just private vs. public,” “We’ve put aside our differences...solidarity is the private sector standing with the public sector,” and “We’ve had petty difference and turf battles in the past. All of that was put aside” (10/1-10/2/2012). Leaders emphasized that the experience protesting Act 10 taught them and their

members “what solidarity is supposed to look like” and reified the sacrosanct principle of solidarity: “If you pick a fight with one of our brothers and sisters, this whole family is coming after you” (10/1/2012). The change within the movement appears to extend beyond the rhetoric and intangible sense of shared interests as well.

Wisconsin’s labor unions are also trying to forge a more engaged, activist membership with deeper roots in their communities and with other groups. Labor leaders spoke hopefully about making their workplaces, like the firehouses, more open to the public and recreating the union halls as community spaces once again (Interview #16, 19). Leaders hope to revive the feeling that the unions are part of the community so that the public wants to fight on behalf of the unions because they feel that the unions fight on behalf of them. Practically, this translates into fostering better relationships across unions and forging alliances with other likeminded groups. We Are Wisconsin, an organization that emerged to oppose Act 10, is one example of a broader alliance between labor and progressive groups. We Are Wisconsin now engages in voter education and mobilization and includes a PAC and political fund to help elect progressive candidates.

Wisconsin labor unions are also seeking to return to their more activist roots by moving beyond just servicing their members to instead remake the union movement into a social movement (Interview #16). Labor leaders described the movement as having become “much more like an insurance company that you paid into and were provided with services” (Interview #18). In the old model, “you just pay your dues, the union hires staff and lawyers, and bargains and protects contract” (Interview #20). Before Act 10, leaders and members “defined the union as the contract” (Interview #23). For the public sector unions, centering your organization’s identity on a contract was no longer possible after Act 10. Thus, there is a strong emphasis on

creating a new identity and stressing that “collective bargaining is a tactic, not the union” (WI State AFL-CIO Convention 10/2/2012). Many unions in Wisconsin responded to Act 10 by electing new leaders to help usher in this new activist orientation. If unions are to find their identity and strength outside the contract and instead through avenues like political activity, then they need a coordinated effort. All of the labor leaders interviewed stressed much greater coordination across unions at the local, state and national level. The labor unity tables, which were discussed in Chapter Five, are one such example of the concrete efforts at inter-union coordination and cooperation.

Efforts to reorient the labor movement in Wisconsin and nationally may have come too little, too late. The window of opportunity for a national public sector labor law closed nearly forty years ago and it remains unclear if it will ever reopen. The labor movement today requires a new approach to organizing and political activity but may lack the concrete measures to adapt to the new reality of a post-Act 10 environment. In particular, “the current [labor] leadership has never experienced an organizing model” (Interview #20). If unions have been operating as insurance agencies, one glaring problem is that all of the union’s employees have been trained to run the insurance model of handling grievance procedures, rather than to kick-start a social movement. In other words, ““staff that was built to be litigators, now have to be organizers” (Interview #18). The transition has not been easy or wholly successful. One national leader described travelling to union locals across the country to help them:

Reimagine their reason for being and helped them to kind of reframe their agenda to their own members and to the public. It really was a wake up call, for them too. The wake up call is that you can’t just be working with your own members. You really have to consider the broad public as your constituency, not just your dues paying members. In some ways, the union has to see itself as operating in the public interest (Interview #33).

One local president that he worked with had ousted the former president in a bid to revitalize the union after Act 10. The staff of the union local was so entrenched in the old, grievance-based model of doing business that “It took him 9 months but the staff all left. All left. It was a really good thing” (Interview #33). While things worked out for this local, it begs the question of what is happening in the countless other unions who are not undergoing such a fundamental leadership shake-up. Another leader described staff retiring early to keep their benefits before Act 10 takes full effect, resulting in a loss of institutional knowledge at the union (Interview #18). It is unclear whether labor is willing and capable of moving to an organizing, activist model or whether the talk of change and solidarity is just rhetoric.

Reinventing the labor movement will further be difficult because all of this renewed energy comes at a time when both public and private sector unions are on the defensive and weakening, their opponents have become highly mobilized, and a serious economic crisis pushes against increased union strength. In Wisconsin, the labor leaders interviewed in 2012 were gearing up for the presidential election but were “all suffering from emotional and election fatigue” (Interview #21). Many of Wisconsin’s local elections do not coincide with the national election and, on top of that, anti-Walker opponents mounted an ultimately unsuccessful recall campaign against the governor. Counting all of the elections and their primaries individually, one labor leader figured that they had mobilized for seven elections from 2011 to 2012 (Interview #21). While labor leaders try to remain hopeful, after so much effort with only modest payoffs, there were cracks in the façade. Leaders described the month-long takeover of the capital as one of the most remarkable and powerful experiences in their lives, but ultimately they lost. Leah Lipska, president of AFSCME Local 1, thinks the numerous defeats combined with severe financial strains have left public sector workers beaten: “A lot of people are tired,”

she said. “They’re tired of politics” (as quoted in Greenhouse 2014a). As another labor leader explained, “I will never forget. This was personal, especially for those of us who believe in the movement... Thinking and talking about it is like reliving a funeral” (Interview #21). The labor movement is not beaten but the retrenchment of public sector collective bargaining rights has significantly damaged labor’s strength and resiliency.

The events in Wisconsin vividly illustrate the vulnerability of public sector collective bargaining rights. Despite all of labor’s resources and the significant protests they mounted against Act 10, the labor movement punched below their weight because, absent a national floor of protection, Wisconsin was able to remove public sector collective bargaining rights through state level legislation. Divided labor law has contributed to an embattled and weakened labor movement in Wisconsin that is struggling to redefine themselves in the face of a new legal environment.

### ***Solidarity’s Wedge: Divided Labor Law***

The events in Wisconsin should be seen as part of a longer history of continued contention over public sector collective bargaining rights. Governor Walker’s stripping of public sector collective bargaining rights in Wisconsin can be traced back to the lack of institutional consolidation of public sector labor law at the very time private sector labor law was consolidated at the national level in the 1935 Wagner Act. Labor’s significant membership might and political resources cannot overcome the institutional vulnerability of federalized labor law. By paving the way for legislation like Act 10, divided labor law thus continues to shape the fortunes of organized labor today, weakening labor’s political effectiveness.

This project set out to understand why organized labor’s effectiveness in politics does not appear to match their aggregate membership and political resources. In answering this question,

this work focused on explaining why public sector union density rise dramatically in the 1960s and 1970s and then plateaued at the very time private sector union density began declining precipitously the consequences of these separate development paths, and the resulting public sector union ascendancy, for organized labor's political activities. The separate density patterns displayed in Figure 1 on page 5 are neither nor inevitable. Instead, this project has focused our attention on the timing and sequencing of when public and private sector employees gained collective bargaining rights and where they obtained these rights. The United States stands apart for the divided nature of its labor law with private sector labor law firmly entrenched at the national level and public sector labor law relegated to the states and localities. Divided labor law is the crucial link in explaining why organized labor punches below its weight in American politics.

The passage of the Wagner Act in 1935 consolidated private sector labor law at the national level, whereas public sector labor law remained unconsolidated, leaving the institutional environment of the public sector unstable. Federalized labor law is problematic because public sector collective bargaining rights remained unresolved and the state and local level are not equivalent sites of demand making as the national level; public sector unions could never achieve the same rights and results at the state and local level than if they had applied equal organizing effort under a national law. By relegating public sector employees' demand-making to the state and local level, public sector workers' lack a floor of protection for their collective bargaining rights. As a consequence, their rights have proven more unequal and vulnerable than their private sector counterparts. Private sector labor law has suffered from obstruction and ossification at the national level, but never outright retrenchment like occurred in Wisconsin in 2011.

The exclusion of public sector employees from the Wagner Act and the lack of their own national statute meant public sector union growth was delayed, fundamentally altering the labor movement as public and private sector unions development was thrown out of alignment. In other words, the timing and sequencing of when public and private sector employees gained collective bargaining rights discouraged cooperation and a strong, unified labor movement. The brief moment when high private sector union density overlapped with a strong public sector—the 1970s—was one of missed opportunities as the public sector unions, delayed in their growth because of divided labor law, encountered an already entrenched private sector labor leadership rather than an ally. The cultural, economic and political crises of the decade magnified labor’s differences, making a strong public-private labor movement in the 1970s difficult.

In turn, the public sector unions’ legislative success was ultimately limited. It was limited to union-friendly states, reinforcing the geographic concentration of labor. As Jerry Wurf explained, AFSCME preferred “a federal law governing state and local government labor-management relations, than to dribble out our lives trying to convince 50 state legislatures, 5,000 city councils, 10,000 school boards and who knows how many other public bodies to devise an impartial mechanism at the lower level” (as quoted in Flynn 1975, 83). Absent a national law, dribbling out their time pursuing state and local level collective bargaining rights was the only option for public sector employees and unions. Public sector unions’ legislative success was further limited because economic crises and conservative backlash at the end of the 1970s closed the window of opportunity for public sector union rights legislation at the local and national level.

The dual trajectories of organized labor have resulted in a transformed labor movement today. While obstruction at the national level contributed to declining private sector union

density, public sector union density grew dramatically in the 1960s and 1970s thanks to passage of collective bargaining rights in union friendly states. The rise of public sector unions matters for labor's political activities today. This study finds that public sector union members participate at even higher rates in national elections than their private sector counterparts and differ on important policy issues from the private sector, including free trade, taxes, the environment and gay marriage. Further, as public sector unions have grown, they have disrupted the balance of power within organized labor. Public sector union leaders now help shape organized labor's course, promoting a more politicized movement with greater involvement in social issues and, perhaps at the expense of national level influence, state and local level politics. Thus, in a very real sense, the institutions of federalism and divided labor law have actively shaped politics as the policy arrangements put in place in 1935 have had lasting repercussions on a seemingly private organization, organized labor.

In thinking through the consequences of divided labor law, it is helpful to consider the alternative. What if public sector employees had been included in the Wagner Act or received their own national level law? The public sector may have had greater success with a national level law. The private sector unions illustrate that one of the greatest barriers at the national level is that the Wagner Act lacks severe punishments to reign in hostile employer resistance. This would be less of an issue in the public sector where there is less employer resistance to organizing. Public sector employees face greater pressures to obey the law and behave civilly. This would likely prevent the same kind of opposition to organizing that private sector unions have faced at the national level due to hostile employer resistance and a toothless law to punish such behavior. Thus, public sector unions would likely have success organizing in anti-union states if given the opportunity through a national level protection of their rights. The Wagner Act

era was a moment when a stronger labor movement was much more of a possibility but the lack of a national Wagner Act for the public sector, the delayed collective bargaining rights situated at the state and local level for public sector employees, and the divides engendered by these laws kept this possibility from becoming reality.

What about the private sector, would they benefit from devolving their collective bargaining rights to the state and local level? In the short run, as Richard Freeman (2006) predicts, private sector union density would likely grow thanks to union friendly states passing greater protections for union organizing. However, this short-term growth would come at great expense as private sector collective bargaining rights would become just as vulnerable to retrenchment as their private sector counterparts. The example of the one aspect of private sector labor law that has been left up to the states, right-to-work provisions, is a sobering reminder. In 2011, Michigan—one of the great bastions of union strength—passed right-to-work legislation, suggestion devolving private sector collective bargaining rights is too great a risk. Ultimately, the best chance for the growth of organized labor is full national rights for both private and public sector workers. Absent labor law reform at the national level, labor's successes will be limited. Most troubling for organized labor, labor law reform has become increasingly remote because of the geographical concentration of union density that is exacerbated by divided labor law.

Tracing the separate development trajectories of public and private sector unions leaves us with one fundamental question: “what would have happened if the most political unions [the public sector unions] had been larger and more influential in the labor movement's formative years, or when labor was larger and more influential within society as a whole?” (Slater 2004 200). The conclusions reached in this project emphasize the overwhelmingly negative effects of

divided labor law. Public sector union growth came after the peak of private sector union strength, too late to have a significant effect on New Deal politics, assist in the opposition to Taft-Hartley in 1947, or help exert pressure for national labor law overhaul before the window of opportunity closed at the end of the 1970s. Further, public sector unions were forced to fight their way into an already established labor movement, meaning their politicized, social justice outlook was derided instead of welcomed, and labor eschewed rather than joined forces with the New Politics movements that the public sector unions were associated with. The labor movement that emerged at the end of the 1970s was divided, overly complacent and ill prepared to deal with the challenges of de-industrialization and the growing hostility of employers and the state to unionization. Now that public sector unions have become such a dominant force in the labor movement, their legal vulnerability has made them ready targets for anti-union forces.

The timing and sequencing of when public sector employees gained their collective bargaining rights compared to their private sector counterparts is also crucial because labor unions' power and influence comes not from the sum of the individual unions but also through their organization into a larger federation, the AFL-CIO. The timing of public sector union growth meant private sector unions peaked when almost all public sector employees still lacked collective bargaining rights. The late arrival of public sector unions—arriving during a period of strained resources and economic, political and cultural conflict—created conflict within the labor movement. The delayed growth of public sector unions meant the AFL-CIO was never comprised of a unified union movement representing private and public sector unions, both at their peak of power and membership. Divided labor law has thus weakened organized labor as a force in American politics, contributing to labor's seemingly weak political power given their unique organizational and membership resources.

This project is a powerful illustration of the potent role public policies can play in shaping the internal dynamics and external fortunes of a seemingly private organization—organized labor. Policies may be playing a significant role in shaping other private organizations including corporations, non-profits, and PACs. Thus, policymakers should be fully aware of the impact policies can have in affecting organization and the environment they operate within, two things that are often thought of as external to politics. Further, the conclusions drawn in this project about federalism should apply to other cases as well. Rights and privileges relegated to the state and local level, absent a floor of protection should display the same vulnerability to retrenchment as public sector collective bargaining rights. Gay marriage, right-to-work laws, consumer protection, and election laws (e.g. voter ID laws and primary election rules) are all examples where this feature of federalism should be found. The decision to devolve to the state and local level should not be made without an appreciation of the vulnerability such federalized arrangements entail. The conclusions reached in this project speak to a larger universe of cases but also have important lessons for thinking about organized labor's central and threatened place in American politics today.

During an interview with a local labor leader in Wisconsin in 2012, he was visibly upset and distracted, having just finished meeting with a police officer before our meeting. At the end of our conversation, he revealed that he had arrived at the office that morning to find their American flag had been stolen from the flagpole outside. The police officer had told him it was likely just some local vandals, but the labor leader couldn't help but think that it was something more, that it was someone making a statement about unions, and people like him, being unpatriotic (Interview #25). Today's attacks and rhetoric against organized labor should not make this leader or the public doubt the important role labor plays in American politics. Union

forces, whether it was the CIO in the 1930s or the public sector unions in the 1960s, have been at the forefront of American progressivism, helping mobilize broad swaths of Americans to be involved in politics and protect the interests of working Americans in our political system.

Looking toward the future, public sector unions, weakened due to their legal vulnerability and the attacks this has allowed, appear unlikely to continue to stave off private sector union decline. Labor's decline poses a significant threat to the representation of working Americans' interests in our political system and the rise of economic inequality and insecurity. As Joseph A. McCartin (2011) notes, "With less than 7 percent of nongovernmental workers unionized, private sector unions no longer have the leverage to improve wages and benefits for those beyond their ranks. Thus, by default, public sector unions have become the single most effective social force capable of speaking out for a just economy that lifts the standards of all workers, public and private." Thus, the institutional forces that have contributed to private sector union decline and the unequal, vulnerable collective bargaining rights of public sector workers should be of concern to all Americans.

As a consequence, the importance of national labor law reform, which includes both private and public sector unions members, should be recognized as crucially important to ensuring representation of working Americans' interests in our political system. Private sector union density is unlikely to bounce back without updates to existing law that reign in hostile employer resistance. Likewise, the instability of public sector collective bargaining rights are likely to continue, including the large portion of public sector employees lacking any collective bargaining rights, until public sector unions receive a national level law of their own. Jerry Wurf's declaration at AFSCME's 1972 convention still holds true today: "The needs of our membership in the fifty states for the rights and protections such as those extended to other

workers cannot be met by a law here and a law there” (Hower 2013, 301). Public sector collective bargaining rights will remain vulnerable; public sector union success will remain limited; and labor will continue to punch below its political weight until a national statute protects public sector employees’ collective bargaining rights.

Ultimately, organized labor wants their members to believe that “what separates us is so little compared to what we share,” but divided labor law has served as a countervailing force sowing division and discord within labor’s ranks (WI AFL-CIO Convention 10/2/2012).

Looking at the development of public and private sector unions over the last half-century reveals that public policies have influenced the course of organized labor’s development. Divided labor law is not an inconsequential division, but rather has acted as solidarity’s wedge, limiting the cohesion, effectiveness and ultimately strength of organized labor in American politics.

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## Appendix A: Interview Method Description

As I began thinking about how the legal divide between public and private sector unions might matter for labor as a political organization, there was no past research to turn to for help generating hypotheses. As such, I utilized my initial interviews primarily as theory generating. In the fall of 2012, I interviewed twenty-eight labor leaders in Washington State and Wisconsin about labor's political activities both past and present. The full list of interviews are detailed below. I also sat in on several political strategy meetings, attended the Wisconsin State AFL-CIO convention, and spent time with union members. My thinking was also shaped by learning about the private sector union movement before the Wagner Act and how other differences within labor moved from benign distinctions to salient divisions in the union movement.

Washington State and Wisconsin were chosen as sites for my field research for several reasons. First, both states have large public sector union movements allowing for the possibility of differences between public and private sector unions to emerge. Second, both states have a relatively high private sector union movement also permitting comparison. Third, Wisconsin is emblematic of the most recent conflicts over public sector collective bargaining rights whereas Washington State has remained relatively conflict free. This enables comparison between the two cases as well as avoiding mistakenly attributing something to a public/private difference when it may be the most recent attacks that is driving the difference. Finally, I visited both states in the buildup to the 2012 president election in order to examine union political activities at a time when they are most salient for organized labor.

Interviews were set up through a snowball sampling method. Many of the labor leaders I spoke with, particularly local union presidents, were less accustomed to dealing with the press, much less researchers. I found that setting up interviews based on personal recommendations from others helped me gain entrance and trust in future interviews. By the end, I spoke with a variety of labor leaders including presidents of local public and private sector unions, state union presidents and political directors, central labor council leaders, and state AFL-CIO executives. These initial interviews helped generate my theory about how the public/private divide matters for organized labor's cohesion: divided labor law, by setting public and private sector unions on different development trajectories made the public/private division more salient due to (a) the incongruent timing of public sector union growth during a period—the 1970s—where economic pressures heightened this conflict, and (b) permanently disrupted the balance of power.

To test this theory, I then used multiple methods to triangulate my findings including examining union electoral spending, public opinion data, secondary source analysis, and national level interviews with labor leaders. I conducted twelve interviews with national level leaders including union vice presidents, political directors, and legislative directors, as well as AFL-CIO political strategists. Multiple methods were utilized in this chapter because measuring organizational behavior is difficult and thus using a variety of techniques to get at the same question can increase the confidence in our conclusions. Through the interviews and other methods, it became clear that the legal divide between public and private sector labor law still matters in important ways for labor's political activities today.

<b>Union Leaders Interview Details</b>			
<b>Interview #</b>	<b>Date</b>	<b>Public/Private/AFL-CIO</b>	<b>Local/State/National</b>
<b>Washington State</b>			
1	8/13/12	Private	Local
2	8/13/12	Private	Local
3	8/13/12	AFL-CIO	Local
4	8/13/12	Private	Local
5	8/13/12	AFL-CIO	State
6	8/14/12	Private	State
7	8/15/12	Public	State
8	8/16/12	Public	Local
9	8/23/12	Public	State
10	8/23/12	Public	State
11	8/23/12	Public	State
12	8/23/12	Public	State
13	8/27/12	Public	State
14	8/30/12	AFL-CIO	State
15	11/7/12	AFL-CIO	State
<b>Wisconsin</b>			
16	9/18/12	Public	State
17	9/18/12	Public	State
18	9/19/12	Public	Local
19	9/20/12	AFL-CIO	Local
20	9/24/12	AFL-CIO	State
21	9/25/12	AFL-CIO	Local
22	9/25/12	Public	Local
<b>10/1-10/2 WI AFL-CIO State Labor Convention</b>			
23	10/4/12	Public	Local
24	10/5/13	Public	Local
25	10/8/13	Private	Local
26	10/9/13	Public	Local
27	10/9/13	Public	Local
28	10/9/13	AFL-CIO	State
<b>Washington, DC</b>			
29	5/9/13	Public	National
30	5/10/13	Public	National
31	5/13/13	Public	National
32	5/13/13	Public	National
33	5/14/13	Public	National
34	5/15/13	Public	National
35	5/16/13	AFL-CIO	National
36	5/16/13	AFL-CIO	National
37	5/17/13	Public	National
38	5/28/13	Public	National
39	5/28/13	Public	National
40	5/29/13	Public	National

## Appendix B: Survey Questions, Coding Decisions, and CEM Model

### 1) 2008 Annenberg Public/Private Sector Coding Decisions:

Public Sector Union Member: Dummy Variable, coded 1 if respondent reported belonging to ATU (WB06rAA), AFGE (WB06rAB), AFSCME (WB06rAC), AFT (WB06rAD), IAFF (WB06rAJ), NALC (WB06rAT), NEA (WB06rAU) or SEIU (WB06rAY). SEIU's 2.1 million members are approximately half public and half private sector (SEIU 2014). SEIU was included in the public sector union member variable. However, all of the regressions and t-tests were run with SEIU members included in the private sector union member variable instead and all of the results presented in this paper still stand.

Private Sector Union Member: Dummy variable, coded 1 if the respondent reported belonging to a union (WB05\_c) and not belonging to one of the six unions listed above. The unions coded as private sector are BCTC, CWA, CWU, IATSE, IMAAW, SMART, IBB, IBEW, IBT, IUBAC, IUPAT, LIUNA, OPEIU, OPCMIA, TWU, TCIU, UAPP, UAW, UBCJA, UFWA, UFCWIU, United Steelworkers, UTU, and Other.

### Overall Coding Decisions:

Public Sector Union Member (2000 and 2004): Dummy variable constructed from respondents' self-reported union membership (2000: cw29; 2004: cWB06) and employment by the state, local or federal government (2000: cw13; 2004: cWB05).

Private Sector Union Member (2000 and 2004): Dummy variable constructed from respondents' self-reported union membership (2000: cw29; 2004: cWB06) and not being employed by the state, local or federal government (2000: cw13; 2004: cWB05).

Education: Numerical variable coded by self-reported level of education beginning at 1, grade 8 or lower received, and going to 9, graduate or professional degree (2000: cw06; 2004: cWA03; 2008: WA03\_c).

Income: Numerical variable coded by self-reported level of household income beginning at 1, less than \$10,000/year, and going to 9, more than \$150,000 (2000: cw28; 2004: cWA04; 2008: WA04\_c).

Strength Party ID: Numerical coded from 1 for Independents to 4 for strong Democrats or Republicans. The variable is coded using three variables of self-reported party identification, strength of their party identification, and for those answering don't know or independent on party ID, a follow-up question on whether they lean Democrat or Republican (2000: cv01, cv02, cv03; 2004: cMA01, cMA02, cMA03; 2008: MA01\_c, MA02\_c, MA03\_c)

Female: Dummy variable coded as 1 if respondents self-reported their sex as female (2000: cw02; 2004: cWA01; 2008: WA01\_c).

Black: Dummy variable coded as 1 if respondents self-reported their race as black (2000: cw03; 2004: cWC03; 2008: WC03\_c).

Age: Numerical variable from 18-99 created from self-reported age (2000: cw02; 2004: cWA02; 2008: WA02\_c)

Employed: Dummy variable coded as 1 if respondents self-reported they were employed or retired (2000: cw09; 2004: CWB01; 2008: WB01\_c).

Years in Current Residence: Numerical variable from 1-99 for the number of years respondent has lived at their current address (2000: cw18; 2004: cWC07; 2008: WFb01\_c).

Governor Race: Dummy variable coded 1 for states with a governor's race at the same time as the general election.

VEP Turnout: Average percentage over the past three elections of the voting eligible population that turned out to vote by state in the general election. For 2008, the average is the VEP percentage for the 2000, 2004, and 2008 elections. For 2004, the average is the VEP percentage for the 1996, 2000, and 2004 elections. For 2000, the average is the VEP percentage for the 1992, 1996, and 2000 elections.

Vote Margin: The percentage of a state's electorate voting Republican subtracted from the percentage voting Democratic in the general election.

Voted: Dummy variable for self-reported voting in the specified election.

2008 General Election (RCb01\_r)

2008 Primary Election (2008: RBr02\_c)

2006 General Election (2008: RD02\_c)

2004 General Election (2004: rRC28; 2008: RD01\_c)

2004 Primary Election (2004: cRB11)

2002 General Election (2004: cUA07, cUA08)

2000 General Election (2000: cr34; 2004: cRD01)

2000 Primary Election (2000: cr15)

1996 General Election (2000: cr43)

Follows Politics: Numerical variable coded from 1, does not follow politics closely at all, to 4, follows politics very closely (2000: ck01; 2004: cKA01; 2008: KA01\_c).

Discussed Politics: Numerical variable coded from 1-7 for the self-reported number of days the respondent discussed politics. For 2004, the question asked about discussing politics at work. In 2000 and 2008, the question asked about discussing politics with family and friends (2000: ck05; 2004: cKB01; 2008: KB01\_c).

## 2) Table 4 and 5 Public Opinion Coding Decisions:

**Bolded answers were used to calculate percentages in Table 9.**

### *A. Percentage Who Somewhat or Strongly Favor the Federal Government Negotiate More Free Trade Agreements Like NAFTA (2004: cCB82; 2008: CBc01\_c)*

The federal government negotiating more free trade agreements like NAFTA—do you favor or oppose the federal government doing this?

If favor/oppose: Do you strongly (favor/oppose) or somewhat (favor/oppose) the federal government doing this?

- 1 Strongly favor**
- 2 Somewhat favor**
- 3 Somewhat oppose
- 4 Strongly oppose
- 5 Neither favor nor oppose

### *B. Percentage Supporting Existing or Increasing Tax Rates (2000: cbb07; 2004: cCB13; 2008: CBb01)*

2000: Which do you personally think is more important, cutting taxes or paying down the national debt? Q98

Which do you personally think is more important, cutting taxes or paying down the national debt?

- 1 Cutting taxes
- 2 Paying national debt**

2004: The federal government reducing federal taxes—do you favor or oppose the federal government doing this?

If favor/oppose: Do you strongly (favor/oppose) or somewhat (favor/oppose) the federal government doing this?

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose**
- 4 Strongly oppose**
- 5 Neither favor nor oppose**

2008: I'm going to read you some options about federal income taxes. Please tell me which one comes closest to your view on what we should be doing about federal income taxes:

Taxes should be cut.

Taxes should be kept pretty much as they are.

Taxes should be raised if necessary in order to maintain current federal programs and services.

- 1 Cut taxes
- 2 Keep taxes as they are**
- 3 Raise taxes if necessary**
- 4 None of these**

### *C. Percentage Who Somewhat or Strongly Oppose School Vouchers (2000: cbd01; 2004: cCC39; 2008: CCc01\_c)*

2000: Do you personally favor or oppose using government money to help some parents send their children to private schools? Do you personally favor or oppose using government money to help some parents send their children to private schools?

- 1 Favor
- 2 Oppose**

2004: The federal government giving tax credits or vouchers to help parents send their children to private schools—do you favor or oppose the federal government doing this?

If favor/oppose: Do you strongly (favor/oppose) or somewhat (favor/oppose) the federal government doing this?

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose**
- 4 Strongly oppose**
- 5 Neither favor nor oppose

2008: Do you favor or oppose vouchers which would help parents pay the cost of charter or private elementary or secondary schools for their children?

[If favor:] Do you strongly favor or somewhat favor this?

[If oppose:] Do you strongly oppose or somewhat oppose this?

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose**
- 4 Strongly oppose**
- 5 Neither favor nor oppose

*D. Percentage Supporting Protecting the Environment (2000: cbs01; 2004: cCf08; 2008: CFb01\_c)*

2000: Federal government should expend effort to protect environment Federal government should expend effort to protect environment Protecting the environment and natural resources—should the federal government do more about this, the same as now, less or nothing at all?

- 1 More**
- 2 Same
- 3 Less
- 4 None

2004: Protecting the environment—should the federal government do more about it, do the same as now, do less about it, or do nothing at all?

- 1 More**
- 2 Same
- 3 Less
- 4 Nothing

2008: I am going to read you a pair of statements. Please tell me which of the two statements comes closest to your opinion:

Protecting the environment should be a top priority, even if that means higher consumer prices.

Protecting the environment is important, but it is more important to keep the economy growing.

- 1 Environment should be top priority**
- 2 More important to keep economy growing
- 3 Both equally
- 4 Neither

*E. Percentage Opposing Expanded Use and Extraction of Oil (2000: cbn01; 2008=CFa09)*

2000: This fall, the government has decided to sell some of the country's strategic oil reserve to increase the supply of winter heating oil. Do you personally favor or oppose this?

- 1 Favor
- 2 Oppose**

2008: Do you favor or oppose lifting the federal ban on oil drilling in waters off the coast of the United States?

[If favor:] Do you strongly favor or somewhat favor this?

[If oppose:] Do you strongly oppose or somewhat oppose this?

- 1 Strongly favor
- 2 Somewhat favor
- 3 Somewhat oppose**
- 4 Strongly oppose**
- 5 Neither favor nor oppose

*F. Percentage Supporting Gay Rights* (2000: cbl05; 2004: cCE24, cCE25; 2008: CEc01)

2000: Trying to stop job discrimination against homosexuals—should the federal government do more about this, the same as now, less or nothing at all?

- 1 More**
- 2 Same
- 3 Less
- 4 None

2004: Would you favor or oppose a law in your state that would allow gays and lesbians to marry a partner of the same sex?

Alternative wording: Would you favor or oppose a law in your state that would allow two men to marry each other or two women to marry each other?

If favor/oppose: Is that strongly (favor/oppose) or somewhat (favor/oppose)?

- 1 Strongly favor**
- 2 Somewhat favor**
- 3 Somewhat oppose
- 4 Strongly oppose

2008: There has been much talk recently about whether gays and lesbians should have the legal right to marry someone of the same sex. Which of the following options comes closest to your position on this issue?

I support full marriage rights for gay and lesbian couples.

I support civil unions or domestic partnerships, but not gay marriage.

I do not support any form of legal recognition of the relationships of gay and lesbian couples.

- 1 Full marriage rights**
- 2 Civil unions or domestic partnerships**
- 3 No legal recognition
- 4 None of these

### 3) 2008 Coarsened Exact Matching Results

**Coarsened Exact Matching Algorithm Variables:** Education, Age, Sex, Employed, Strength of Partisan Identity, Years in Residence, How Closely Individual Follows Politics, Number of Days Individual Discussed Politics in the Past Week, State of Residence

Matching Summary:

	<b>General Public</b>	<b>Public Sector Union Members</b>
<b>All</b>	33,377	821
<b>Matched</b>	6,462	751
<b>Unmatched</b>	26,915	70