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Right v. Privilege: Contesting Public Sector Labor Rights in the United States

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The drama unfolding in various state legislatures since early 2011 has reopened debates about the status of public sector collective bargaining rights in the United States. This article critically examines the rhetorical strategies used by opponents of public sector collective bargaining rights. There are two types of political claims justifying these limitations: instrumental and normative. The instrumental argument claims that collective bargaining must be curtailed because of the necessity of economic crisis. The normative argument claims that collective bargaining for public servants is not a right, but rather a "privilege." I argue that the politics surrounding the passage of the Ohio and Wisconsin laws, including the strategies of proponents and public's response, reaffirms the residual legitimacy of collective bargaining as a right. However, it is important to note that this conception of right is limited and differs in various US communities.

While human rights scholars have theoretically and strategically argued that the indivisible body of human rights represents a broad and overlapping "consensus,"[1] the recent fights in Wisconsin and Ohio demonstrate how internationally recognized human rights remain deeply contested in the domestic sphere. Yet there is evidence that collective bargaining maintains significant legitimacy as a human right. This paper argues that the controversy of the 2011 legal changes suggests that collective bargaining rights are still considered human rights by many communities in the US.

Challenges to Collective Bargaining Rights

To understand why collective bargaining rights remain so contested, it is necessary to briefly note the contentious history of such rights within US. Trade unions in the

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[1] Jack Donnelly, *Universal Human Rights: Theory and Practice*, Cornell, Cornell University Press, 2002.

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private sector were first given the legal rights to recognition and collective bargaining (and the right to strike) under the 1935 National Labor Relations Act (NLRA).[2] The 1947 Labor Management Act (Taft–Hartley) tipped the balance back towards employers, giving them the right to "free speech" during union organizing campaigns (which has led to the growth of employer intimidation tactics and other methods to avoid unionization). Taft–Hartley also allowed states to establish "right to work" statutes,[3] which prevented unions and employers from requiring that all employees in a company pay dues to the certified and elected union.[4] Unions advocated for legislative changes to address shortcomings in federal labor law multiple times. For example, unions sought stricter legal penalties for violations of NLRA provisions during President Carter's administration, but this was defeated by a Senate filibuster.[5]

Despite the challenges of Taft Hartley, the next decades led to some positive legal protections for workers' union rights, especially in the public sector. Prior to any federal level protections, Wisconsin first provided basic union organization and collective bargaining rights to all local government employees in 1959. Another law in 1966 extended such rights to all state employees. The Wisconsin law was considered a breakthrough, a "Magna Carta for public employees," according to one labor activist.[6] Other states followed with similar statutes, although some states never provided such rights. Federal employees were granted collective bargaining rights through Executive Order 10988 (1962), later made permanent through a series of federal legislation.[7] It is important to note that collective bargaining rights for public employees were protected only some US states. The AFL-CIO reports that public employees in about half of the US states enjoy some legal protections of their basic trade union rights.[8]

Since the end of the twentieth century, however, collective bargaining and union rights have been under attack. In the private sector, the use of intimidation tactics to disrupt union certification campaigns has increased (certification provides legal protection of the collective bargaining process). When President Reagan fired striking air traffic controllers in 1981 and hired permanent replacements, he "normalized" the use of a Taft–Hartley provision that employers had until then considered socially

[2] It should be noted that key groups are excluded: domestic workers, agricultural workers, independent contractors, supervisors, workers employed by family members, and all public employees. See National Labor Relations Board, "NLRB | Workplace Rights | Employees/Employers NOT Covered by NLRA," NLRB: National Labor Relations Board, 2010, access online at http://www.nlrb.gov/Workplace_Rights/employees_or_employers_not_covered_by_nlra.aspx.

[3] There are 23 right to work states in the United States, according to the National Right to Work Legal Defense Foundation. See National Right to Work Legal Defense Foundation , "Right to Work States," accessed October 2011, http://www.nrtw.org/rtws.htm.

[4] Ibid., 52. The NLRA has allowed for many loopholes and administrative problems that make union certification and bargaining in the private sector problematic.

[5] James Gray Pope, "How American Workers Lost the Right to Strike, and Other Tales," *Michigan Law Review* 103, no. 3 (December 2004): 535.

[6] Todd C. Dvorak, "Heeding the Best of Prophets: Historical Perspective and Potential Reform of Public Sector Collective Bargaining in Indiana." *Indiana Law Journal* 85 (2010): 708.

[7] These laws include the Federal Labor Relations Act, or the Civil Service Reform Act of 1978 and the Postal Reorganization Act 1970. David Twomey, *Labor & Employment Law: Text and Cases, 13th ed.* (Mason, OH: Thompson West, 2006), 36.

[8] International Labour Organization, *Country Baselines Under the ILO Declaration Annual Review (2000-2010): Freedom of Association and the Effective Recognition of the Right to Collective Bargaining (FACB)*, Publication, Programme for the Promotion of the Declaration (Geneva, March 3, 2008), http://www.ilo.org/declaration/follow-up/annualreview/countrybaselines/lang–en/docName–WCMS_091262/index.htm.

inappropriate.[9] As employers began to take a more aggressive stance against unions, thousands of workers favoring union representation have been intimidated, threatened, and fired without timely recourse thousands of times because of NLRA loopholes.[10] The lack of efficient recourse to violations of the US' domestic laws on trade union rights are so severe that the International Confederation of Free Trade Unions called it a "state of corporate lawlessness."[11]

Federal and state level public sector unions have been under attack since the 2000s. At the federal level, the Aviation Transportation Security Act (2001) and the Homeland Security Act (2002) gave the executive branch the right to curtail or forbid collective bargaining rights for those workers engaged in security services.[12] While some states, mostly southern, right to work states, had no provisions for public sector collective bargaining (such as Mississippi, Colorado, North Carolina, South Carolina, Utah, Arkansas), other states that had historically protected these rights began to curtail them. In 2005, Indiana Governor Mitch Daniels issued Executive Order 05-14 to end all bargaining rights for state employees and to overturn existing collective agreements. States as diverse as Colorado, Michigan, Nebraska, New Hampshire, Nebraska, New Hampshire, Oklahoma, South Dakota, and famously Wisconsin and Ohio soon followed, introducing legislation banning or strongly restricting collective bargaining for most or all public sector workers.[13]

Instrumentalist Logic: Economic Exception and Public Sector Workers

Republican governors and state legislatures swept into power in Wisconsin, Ohio, and several other states in the 2010 elections, under a perceived mandate of fixing budget deficits while avoiding tax increases. According to the Center on Budget and Policy Priorities, US state legislatures (including the District of Columbia), had projected budget deficits of $125 billion for 2012. In the first quarter of 2011, Wisconsin and Ohio, despite high public sector union membership, passed laws that severely curtailed collective bargaining for state and municipal employees. Wisconsin's controversial anti-collective bargaining law is called the "Wisconsin Budget Repair Bill." Ohio's law was entitled Senate Bill 5 (S.B. 5).

Proponents of both laws claimed that the recent economic crisis made the curtailing of collective bargaining rights inevitable. The respective governors of Ohio and Wisconsin claimed that economic imperatives drove these legislative changes. Governor Kasich from Ohio claimed that the bill was necessary in order to close an $8 billion dollar budget deficit and promote economic growth.[14] In a statement prior to

[9] Jack Fiorito, "The State of Unions in the United States." *Journal of Labor Research* 28, no. 1 (January 1, 2007): 43–68.

[10] Kate Bronfenbrenner *No Holds Barred: The Intensification of Employer Opposition to Organizing Economic Policy Institute Briefing* Paper #235. May 20, 2009, 4.

[11] George Tsogas, *Labor Regulation in a Global Economy.* (New York: M. E. Sharpe, 2001), 56.

[12] Ruben J. Garcia, "Labor's Fragile Freedom of Association Post-9/11." *University of Pennsylvania Journal of Labor and Employment Law* 8 (2006 2005): 307.

[13] Jane McAlevey, "Labor's Last Stand," *The Nation*, March 7, 2011, http://www.thenation.com/article/158640/labors-last-stand.

[14] Mark Guarino, "Ohio Voters to Decide Bargaining Rights for Public Employees," *Christian Science Monitor*, November 5, 2011.

the bill's passing, Kasich cited high levels of job loss in Ohio. Likewise, Governor Scott Walker of Wisconsin argued that it was imperative to limit public sector collective bargaining because of pressing financial concerns. Claiming that he had no choice in the matter, Walker claimed that his bill that would supposedly save up to $137 million in the fiscal year, thus closing the gap on a $3.5 billion deficit.[15] This "emergency" bill would "meet the immediate needs of our state and give government the tools to deal with this and future budget crises."[16]

The fundamental problem with the narrative of "crisis" and "exception" used to justify anti-collective bargaining laws in Ohio and Wisconsin was that the permanent curtailing of collective bargaining rights was not required to save money. Prior Wisconsin state governments had closed larger deficits while still respecting the collective bargaining rights of public sector workers. Wisconsin Senate Majority leader Mark Miller told reporters that state unions had already agreed to cutbacks and greater contributions to pensions and health insurance. However, such concessions were not deemed sufficient.[17] Furthermore, many features of the bills were not related to cost savings. For instance, the Wisconsin law prohibited employers from withdrawing of union dues from members' paychecks, limited union's political spending, and forced annual recertification votes. Certification votes would *cost* public authorities more money. Additionally, highly paid public safety officers (firefighters, state troopers, police officers) were excluded from the Wisconsin bill. These unions traditionally donated money to Republicans,[18] a fact that prompted commentators to argue that the Wisconsin law was primarily motivated by attempts to limit funding for state Democrats, not save money.[19]

Similarly, many opponents of Ohio's S.B. 5 attacked supporters' claims about economic necessity. We are Ohio, a coalition of S.B. 5 opponents, published a list of various cut backs and collectively bargained cost savings measures agreed upon by public sector unions in recent years. This included over $1 billion in concessions since 2008. Between 2010 and 2011, 90 % of Ohio's public sector unions had accepted zero pay increases and paid for a more generous share of their benefits than the S.B. 5 mandated.[20] The majority of Ohio public employees also agreed to furloughs, rollovers, and "economic re-openers." A key part of the S.B. 5 required public employees to pay 15 % of health care premium costs and the full 10 % of its pension contributions. While this was meant to be a "reasonable" contribution, We are Ohio reported that the majority of local and state employees already made such health contributions. 93 % of all Ohio public employees also received no employer

[15] Monica Davey and Steven Greenhouse, "Wisconin's plan to cut benefits spark protests," *New York Times*, February 18, 2011.
[16] Office of the Governor Scott Walker, "Governor Walker Introduces Budget Repair," February 11, 2011, accessed at http://walker.wi.gov/journal_media_detail.asp?locid=177&prid=5622
[17] Brady Dennis and Peter Wallsten, "Wisconsin Governor Urging Others to Take Stand Against Unions," *Washington Post* February 24, 2011, A03.
[18] Kevin Drum, "Defunding the Democratic Party," *Mother Jones* Feburary 17, 2011, accessed at http://motherjones.com/kevin-drum/2011/02/defunding-democratic-party
[19] Andy Kroll, "What's Happening in Wisconsin Explained," *Mother Jones,* March 17, 2011, http://motherjones.com/mojo/2011/02/whats-happening-wisconsin-explained
[20] Joe Verdon and Jim Seagall, "IS SB 5 Good for Ohio?" *Columbus Dispatch,* October 16, 2011, http://www.dispatch.com/content/stories/local/2011/10/16/is-sb5-good-for-ohio.html

contributions to their pensions. Therefore, costs savings were not likely the key motivator for the law.[21]

Legitimacy: Procedural and Substantive

In addition to the instrumental argument, proponents of curtailing collective bargaining in both states also made normative arguments. Such proponents claimed that collective bargaining was not a right and, therefore, restrictions were legitimate. Public sector collective bargaining was a legislative privilege that created a privileged class of workers, vis-a-vis the private sector. This rhetorical claim was favored by conservative commentators who advocated curtailing collective bargaining rights. For example, Chris Edwards of the Cato Institute wrote in a March 2010 bulletin:

> Like other private groups, unions have free speech rights to voice their opinions about public policy. But collective bargaining gives unions the exclusive right to speak for covered workers, many of whom may disagree with the views of the monopoly union. Furthermore, collective bargaining is inconsistent with the right to freedom of association. Individuals are prevented from dealing directly with their employer and they cannot choose to be represented by another organization. Collective bargaining gives a privileged position in our democracy to government insiders who focus on expanding the public sector to their personal benefit. The special position of unions is strengthened in states that have mandatory union dues and fees.[22]

This is a creative attempt to reduce the internationally recognized organizing rights of workers to individual rights of "choice," and thus exclude any collective elements. Oddly, Edwards uses the language of "freedom of association," which conventionally includes a broad range of trade union rights under international law, rather than the more American idea of "freedom of assembly." The International Labor Organization has found that workers' freedom of association must include protections of collective bargaining and other collective action, in order to be meaningful.[23]

Provisions promoting individual rather than collective workers' rights were included within both bills. Under the new Wisconsin law, public sector contracts could only last one year, and all "bargaining units" (groups of workers represented by collective agreements) were required to hold an annual recertification vote to maintain union representation. Employers could not deduct union dues from member paychecks. The Wisconsin bill did not include public safety workers (fireman, police officers, and state troopers) from the new collective bargaining limitations.[24] Similarly, the Ohio law eased the initiation of union de-certification, now only requiring 30 % of workers

[21] We are Ohio, "The TRUTH about Issue 2," accessed December 10, 2011 https://contribute.weareohio.com/page/share/myth-vs-truth

[22] Chris Edwards, "Public-Sector Unions," *Tax and Budget Bulletin*, 61, March 2010, www.cato.org/pubs/tbb/tbb_61.pdf

[23] International Labour Office and Freedom of Association Committee. *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, 58.

[24] "Highlights of Gov. Walker's budget repair bill," *Wisconsin State Journal*, February 11, 2011, http://host.madison.com/wsj/news/local/govt-and-politics/article_3d93e6aa-363a-11e0-8493-001cc4c002e0.html

in a unit to sign a petition.[25] Furthermore, the bill limited the "inappropriate subjects for collective bargaining" to include issues, such as privatization and contracting, which were not clearly relevant to cost savings.[26] Ohio's S.B. 5 also banned members' dues from going directly to a union's political fund and prohibited any collective agreement from providing "fair share" provisions. "Fair share" provisions in public sector agreements compelled individual workers who declined union membership to pay a portion, or "fair share" of union dues to cover union services and contract negotiation costs. Such a provision allows non-union members to access collectively bargained benefits, but harms the organizational strength of a union.[27]

Governor Walker repeatedly claimed that collective bargaining was not a right. For example, he stated during an interview that because collective bargaining was not protected by the constitution, it was not a right. This was an attempt to operationalize rights as only those explicitly provided by the constitution.[28] During the April 2011 House testimony, Governor Walker also justified the Wisconsin law's requirement that all public sector unions to hold a recertification vote every year as necessary to protect workers' rights. He claimed:

> That and a number of other provisions that we put in, because if you're going to ask, if you're going to put in place a change like that, we wanted to make sure we protected the workers of our state so that they had a right to know what kind of value they got out it. The same reasons we gave American workers the right to choose, which is a fundamental right, right to choose whether they want to be part of a union, and whether they want up to a $1000 dollars taken out of their [paycheck] …It's giving workers their right. It's to give workers their right to choose.[29]

Here, Walker justifies recertification as cost savings for workers' take home pay, rather than for the state. He also claims it is necessary to undercut workers' collective power in order to protect workers' individual right to "choose" and right to information. In doing so, he prioritizes individual workers' rights over collective workers'

[25] Ohio Legislative Service Commission, "The Public Employees' Collective Bargaining Law," Sub. S.B. 5 129th General Assembly (As Reported by H. Commerce and Labor), http://www.legislature.state.oh.us/analysis.cfm?ID=129_SB_5&ACT=As%20Passed%20by%20House&hf=analyses129/s0005-rh-129.htm While proponents argue that privatization leads to cost savings for the state, this is not supported by empirical evidence. A recent study by the Project on Government Oversight found no evidence of savings. Ron Nixon, "Use of Private Contractors Doesn't Save Government Money, Study Finds." *The New York Times*, September 12, 2011, sec. U.S. http://www.nytimes.com/2011/09/13/us/13contractor.html.

[26] Ohio Legislative Service Commissions, "Am. Sub. S.B. 5" 129th General Assembly, (As Passed by the General Assembly), 2011, accessed at http://www.lsc.state.oh.us/bills/search_lscresults.cfm.

[27] Laura A. Bischoff, "Stakes high for both sides in SB 5 battle," *Hamilton Journal News,* September 18, 2011, http://www.journal-news.com/news/ohio-news/stakes-high-for-both-sides-in-sb-5stakes-high-for-both-sides-in-sb-5-battle-1255054.html?showComments=true&page=2&more_comments=false

[28] Christopher Goins, "Gov. Scott Walker: Collective Bargaining is not a God-Given Right," *CNS News*, April 14, 2011, http://cnsnews.com/news/article/gov-scott-walker-collective-bargaining-not-god-given-right

[29] US Congress, Committee on Oversight and Government Reform, "State and Municipal Debt: Tough Choices Ahead: Panel 1," http://www.youtube.com/watch?v=6Sxt4jMvtHs.

rights. The ILO and other international human rights organizations, while recognizing the voluntary nature of union membership, have long rejected this dichotomy between individual and collective rights.[30] In addition, the ILO has found burdensome bureaucratic requirements for a union's existence and activities to constitute a violation of workers' freedom of association.[31]

While certain politicians rhetorically construct public sector collective bargaining rights as illegitimate, their actions reveal an anxiety about possible negative political consequences. For example, if politicians believed that curtailing collecting bargaining rights would have popular support, we would expect them to mention this during election campaigns. However, this did not occur.[32] Walker admitted during the April 2011 Congressional hearings that he had discussed the "whole range of issues" as relating to pay and pension costs for public sector employees, but never explicitly campaigned around curtailing collective bargaining rights.[33] Likewise, Governor Kasich spoke generally about reducing public employee costs and disciplining unions, but even stated that after the election, "Once they're done taking shots at me, we [Kasich and public sector unions] will be able to get along."[34] While his opponent claimed otherwise, Kasich publicly stated during his campaign that he had no intention to make Ohio a "right to work" state and claimed to have no hostility towards unions. But following his election in December 2010, Kasich began to publicize his proposals to curtail collective bargaining and strikes.[35]

In addition, both laws were passed in an irregular manner. Resorting to extra-institutional measures in the legislative process not only harms the procedural

[30] The European Court of Human Rights has affirmed the case 2002 *Wilson, National Union of Journalists and Others v. the United Kingdom* that rendering trade union membership to nothing but a membership card with no protections for a union violates the European Convention on Human Rights. See *Wilson and the National Union of Journalists; Palmer, Wyeth and National Union of Rail, Maritime and Transport Workers; Doolan and others v United Kingdom* [2002] IRLR 128, paragraphs 15-20.

[31] International Labour Organization, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO*, Geneva, International Labour Organization, 2006. This principle resulted from a number of cases to the ILO's various committees. They include the 1994 case submitted by Paraguay to the Committee of Experts on the Application of Conventions and Recommendations, entitled "Individual Direct Request concerning Convention No. 87, Freedom of Association and Protection of the Right to Organise," (accessed online at http://www.ilo.org/ilolex/cgi-lex/single.pl?query=091994PRY087@ref&chspec=09). ILO Committee on Freedom of Association Case no. 1911 (Ecuador) reaffirmed that governments should refrain from excessive intervention into trade union administration, operation, and finances, and must avoid attempting to interfere with the internal administration of trade unions. See International Labour Organization, "Report of the Committee on Freedom of Association" (308th Report), *Official Bulletin* 82, ser. B, no. 3 (1997) para. 254

[32] Frank Deale, "Human Rights at Work: Perspectives on Law and Regulation (review)," *Human Rights Quarterly* 33, no. 4 (2011): 1177-1182.

[33] US Congress, Committee on Oversight and Government Reform, "State and Municipal Debt: Tough Choices Ahead: Panel 1," http://www.youtube.com/watch?v=6Sxt4jMvtHs, at 1:52:00

[34] Angela Gartner, "Kasich Speaks During Fair Appearance," *McClatchy-Tribune Business News*, September 5, 2010.

[35] William Hershey, "Kasich Appears Ready For Confrontation with Unions," *Dayton Daily News*, December 19, 2010, A6.

legitimacy of a law, it reveals that proponents perceived the need to circumvent regular processes. In Wisconsin, all bills that deal with financial matters require a quorum of at least 20 senators. Because the minority Democratic senators did not agree with the bill, they fled to Illinois to disrupt the bill's passage. In response, the Republic senators stripped financial language from the original bill and passed the bill in 30 minutes on March 10, 2011, with only 19 out of the 33 senators present.[36] *The Guardian* called this a "procedural ruse."[37] In the State Legislature, the Republican leadership suddenly "cut off" debate after 61 hours. Wisconsin Democrats claimed that this violated debate process and their attempts at amendments.[38] As a result of the confusion after the abrupt ending of debate, 28 legislators were not able to cast a vote.[39] This was later the basis of an unsuccessful court challenge to the law.

The passing of the Ohio bill was similarly controversial, albeit less dramatic. While Ohio lacks quorum laws, the Republican majority in the legislature still engaged in unusual strategies to pass the bill. Unlike Wisconsin, these actions were largely "disciplinary" actions against unsympathetic Republican state senators. For example, when a key Republican member of the Ohio Senate Insurance, Commerce and Labor Committee opposed the bill, thus denying majority support, he was replaced by a more sympathetic senator. Another Republican senator was removed and replaced from the Senate Rules Committee in a different stage of the process. Paul Beck, an Ohio State University political science professor called these actions "unprecedented."[40] In addition, opposition legislators argued that the bill was usually rushed through the legislative process, as means to exclude union input.[41]

Polling data, taken after both state laws were passed, demonstrated strong opposition to cut backs in collective bargaining. The Wisconsin Policy Research Institute, a "free market" think tank, found this lack of support evident in their survey research in March 2011. The Institute stated the following in a press release about public opinion towards the recent law:

> When the issue is framed as limiting bargaining rights to help local governments, 47 percent are in favor and 50 percent are opposed. When the issue is framed as eliminating bargaining rights to ultimately dismantle public employee unions, then the public overwhelmingly disapproves, with 32 in favor and 58 percent opposed.[42]

[36] Ed Lavandera, "Wisconsin Senate Passes Union Limits Despite Democratic Walkout," March 10, 2011, *CNN.com* limitshttp://www.cnn.com/2011/POLITICS/03/09/wisconsin.budget/index.html

[37] Ed Pilkington, "Wisconsin Republicans cut collective bargaining," *The Guardian*, March 9, 2011, http://www.guardian.co.uk/world/2011/mar/10/wisconsin-republicans-cut-collective-bargaining-unions

[38] Jason Stein, Steve Schultze and Bill Glauber, "Budget-Repair Bill Approved in Early-Morning Vote," *Journal Sentinel Online*, February 25, 2011, http://www.jsonline.com/news/statepolitics/116824378.html

[39] Esmé E. Deprez, "Wisconsin Assembly Passes Bill Curbing Collective Bargaining," *Bloomberg Businessweek*, Feburary 25, 2011, http://www.businessweek.com/news/2011-02-25/wisconsin-assembly-passes-bill-curbing-collective-bargaining.html

[40] Mark Guarino, "Ohio's union bill is tougher than Wisconsin's, so where is the outrage?" *The Christian Science Monitor*, March 3, 2011.

[41] "Kasich To Sign Senate Bill 5 Tonight," *TV10.com*, March 31, 2011, http://www.10tv.com/content/stories/2011/03/31/story-columbus-senate-bill-5-kasich-public-fight.html

[42] Washington Policy Research Institute, "The March 2011 WPRI Poll of Public Opinion," March 6, 2011, accessed online at http://www.wpri.org/polls/March2011/poll0311.html

This significant support for collective bargaining rights strongly suggests the legitimacy of such rights among Wisconsin poll respondents. Similarly, a Quinnapiac poll in May 2011 found that the majority of Ohio voters did not approve of the specific limitations on public sector collective bargaining. Overall, 52 % of voters disapproved of cutting collective bargaining to balance the budget, while only 32 % approved.[43]

Legitimacy and Political Fallout

While the US has never been a global exemplar of trade union rights, the controversies in Ohio and Wisconsin demonstrate that strong, majority support for protecting these rights remains, even in the context of financial crises. This was evident not only from the significant numbers of people protesting against the Ohio and Wisconsin laws, but also polling data. For example, even during the height of the political debates in Wisconsin, only 39 % of respondents in a March 2011 poll supported weakening collective bargaining rights.[44] Similarly, prior to the successful recall of Senate Bill 5 in Ohio, only 32 % of polled individuals reported support for the law.[45] This division was also reflected at the national level. According to a NY Times/CBS News poll in late February 2011, 60 % of Americans surveyed supported collective bargaining rights of public employees, compared to 33 % in opposition. By mid March 2011, as the protests progressed, an overwhelming 81 % responded positively to this question: "Do you think workers in this country should or should not have a right to form unions to negotiate with employers on things like their working conditions, pay, benefits and pensions?" When the question was altered specifically to state employees, 67 % of respondents were supported of collective bargaining rights.[46] As fewer people had favorable views of trade unions than unfavorable, this illustrated that many people found the right of collective bargaining intrinsically important.[47]

[43] Fifty-eight percent opposed banning strikes, while 35 % approved. Fifty-nine percent opposed the provisions mandating that workers pay 15 % of their health care costs, while 34 % approved. Fifty-eight percent opposed workers paying 10 % of their income into pensions, while 35 % approved. Fifty-four percent opposed the provision that excluded health care from collective bargaining, while 38 % approved. Quinnipiac University, "Ohio Gov's Approval Up, But More Still Disapprove, Quinnipiac University Poll Finds; Voters Back Repeal Of Law That Limits Unions," *Release Detail*, May 18, 2011, accessed at http://www.quinnipiac.edu/institutes-and-centers/polling-institute/ohio/release-detail?ReleaseId=1601&ss=print.

[44] Rasmussen Reports, "Wisconsin Poll: Support for Budget Cutting, Not for Weakening Collective Bargaining Rights," *Rasmussen Reports,* March 3, 2011 http://www.rasmussenreports.com/public_content/politics/general_state_surveys/wisconsin/wisconsin_poll_support_for_budget_cutting_not_for_weakening_collective_bargaining_rights

[45] "October 25, 2011—Opposition To Ohio's SB 5 Grows, Quinnipiac University Poll Finds; Women, Union Members Push Kasich Deeper In Hole," Quinnipiac University Polling Institute http://www.quinnipiac.edu/x1322.xml?ReleaseID=1665

[46] Washington Post-ABC News Poll, March 10-13, 2011, accessed online at http://www.washingtonpost.com/wp-srv/politics/polls/postpoll_03142011.html

[47] In contrast, only 33 % of the respondents claimed to have favorable views of unions. "New York Times/CBS News Poll: Collective Bargaining," February 28, 2011, accessed http://www.nytimes.com/interactive/2011/02/28/us/28union-poll-results.html

In fact, it is likely that legislators recognized the illegitimacy of their actions. One Ohio Republican Senator told *Washington Post* that while he agreed with the provisions of the law, he voted against it because he felt it would be overturned in a referendum. The same Senator mentioned that a Republican-led Ohio administration passed a "right to work" law in the 1950s, voters had overturned the measure 2–1, and the Republican governor lost his re-election bid. Despite claims to the contrary, public sector collective bargaining is considered a fundamental right in many American communities. In a recreation of past events, Ohio voters voted to strike down the anti-collective bargaining law 62–38 % in the referendum November 8, 2011. Many observers suggested that this was a bellwether of the general public rejection of the anti-collective bargaining agenda.[48] Wisconsin's recall efforts have been mixed, as Democrats succeeded in recalling only two Republican senators in 2011[49] but maintained their own recalled Senators, thus reducing the Republican majority to 17–16. This signals some dissatisfaction with the state government, as did the successful signature drive to recall Governor Walker.[50] While the effort to recall Governor Walker was not successful in June 2012 (and arguably less immediately related to the law in question as the Ohio recall campaign), that election did lead to a Democratic majority in the Wisconsin Senate.[51]

Other governors seemed to recognize the illegitimacy of Ohio and Wisconsin's legislative actions by committing not to attack public sector collective bargaining. The formerly recalcitrant governors of Iowa, Indiana, Pennsylvania, and New Jersey signaled that they would work within the state collective bargaining process.[52] Even the defenders of Michigan's emergency manager provision, which gave state-appointed financial managers the ability to remove elected officials and to negate existing aspects of collective agreements, have backpedaled.[53] Fearing popular backlash similar to Ohio and Wisconsin's, the Michigan government has explicitly stated that this law was not intended to undercut collective bargaining and that the governor "has repeatedly said he will work within the collective bargaining system."[54]

I do not wish, however, to underplay the seriousness of the political attack on collective bargaining rights in the US. Political commentators have begun to question support for public sector unions in light of the failed recall of Governor Walker.[55]

[48] Sabrina Taverins, "Ohio Overturns A Law Limiting Unions' Rights," *New York Times*, November 9, 2011, A1.

[49] Scott Bauer, "After losing most recall races, Wis. Democrats look ahead," *Washington Post*, August 11, 2011, A3.

[50] Andy Kroll, "Scott Walker Recall Effort Collected 507,000 Signatures in a Month," *Mother Jones,* Dec. 15, 2011 http://motherjones.com/mojo/2011/12/scott-walker-recall-signatures-half-million

[51] Bob Sector, "Democrats Gain Control of Senate in Wisconsin Recall Election," *Los Angeles Times*, June 6, 2012, http://articles.latimes.com/2012/jun/06/news/la-pn-democrats-gain-control-of-senate-in-wisconsin-recall-election-20120606

[52] R. M. Schneiderman and Andrew Romano, "Forget Wisconsin' meltdown," *Newsweek*, March 7, 2011.

[53] Local Government and School District Fiscal Accountability Act (Excerpt) Act 4 of 2011, http://legislature.mi.gov/doc.aspx?mcl-141-1519

[54] Government of Michigan, "Emergency Manager Law," accessed December 1, 2011, www.michigan.gov/documents/snyder/EMF_Fact_Sheet2_347889_7.pdf

[55] David Kocieniewski, "Unions at the Center of Wisconsin Recall Vote, Suffer a New Setback in its Outcome," *The New York Times,* June 6, 2012, http://www.nytimes.com/2012/06/07/us/politics/scott-walkers-win-in-wisconsin-casts-doubts-on-union-power.html

Similarly, just days after the successful repeal in Ohio, anti-union activists in Ohio and its neighboring state Indiana announced a campaign to push for "right to work" legislation. While it would not affect public employees, it is a similar political attempt to scapegoat union rights for continued high private sector unemployment.[56] Clearly, the political desire to attack basic collective rights for workers remains strong. Recent polling data finds that a majority of Ohioans (54 %) polled do support "right to work" legislation, suggesting that many Americans may not see union security provisions as necessary for workers' collective bargaining rights.[57] While Right to Work statutes represent a general desire to undercut collective power for workers in the US, the ILO has stated that such provisions do not necessarily violate fundamental trade union rights, as they are based on voluntarism.[58]

Despite the continued political attack on trade union rights in general, the public response to the fights in Ohio and Wisconsin demonstrates the perceived illegitimacy of the curtailing of such rights. Trade union rights continue to be problematic and contested in the US, as federal-level legislation remains incomplete and poorly enforced. However, I argue optimistically that because collective bargaining maintains support *as a right,* unions and other advocates were successful at resisting this opportunistic attempt to further undercut the power of working people because of an economic crisis. The rhetorical attempts to pit private and public sector workers has not strongly resonated even in the free-market oriented US, suggesting that such rights retain normative power, even in times of economic hardship.

[56] Marc Kovac, "'Right to Work' effort launched after Ohioans voted against SB5," *The Daily Record*, November 13, 2011, accessed at http://www.the-daily-record.com/news/article/5123378?page=4.

[57] Kim Palmer, "Ohio Voters Open to "Right-to-Work" Law: Poll," *Reuters*, February 14, 2012. http://www.reuters.com/article/2012/02/14/us-labor-ohio-idUSTRE81D1SM20120214

[58] The ILO first stated, and reaffirmed multiple times, the following decision in regards to a case brought against Venezuela, case number 1611, in 1993: "both situations where union security clauses are authorised and those where these are prohibited can be considered to be in conformity with ILO principles and standards on freedom of association." See International Labor Organization, *Freedom of Association: Digest of Decisions and Principles of the Freedom of Association Committee of the Governing Body of the ILO,* 75.