


# Collective Bargaining Retrenchment in Union Country: The Politics of 2011 Wisconsin's "Budget Repair" Bill

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## Research Article

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### Abstract

In 2011, the passage of Governor Scott Walker's "Budget Repair" policy retrenched collective bargaining rights for public workers in Wisconsin, a state that was the earliest adopter of these rights and locally celebrated as "union country." In this article, I use critical juncture analysis to examine this significant case of institutional change. I argue that newly elected GOP politicians initially saw opportunity in a new legislative majority—emerging from the popularity of the Tea Party during the 2010 midterm elections—and attempted strategic policy crafting to mobilize support for this anti-union bill. However, these efforts eventually devolved into a reactive struggle for power with entrenched Democratic legislators and previous policy beneficiaries. Incorporating work on organizational deviance, I show how politicians in both parties sought to control the policymaking process with improvised oppositional tactics that undermined governing norms, ultimately resulting in the bill's passage. This study, thus, expands on theories of institutional change, illuminating the subversive politics of many contemporary movements and political parties.

## 1. Introduction

In the last decade, Wisconsin has become a symbol of the polarization and "norms-bdamned"<sup>1</sup> tactics that now characterize American policymaking. Prior to 2011, however, Wisconsin had a longstanding reputation for promoting progressivism and pluralist democracy, with high union membership,<sup>2</sup> a history of welfare and labor policy innovation, and idols like "Fighting Bob" La Follette, the Wisconsin governor and head of the Progressive Party in the early 1900s. In 2011, these traditions transformed into a "politics of resentment"<sup>3</sup> when the newly elected governor, Scott Walker, passed "Budget Repair," a bill repealing a celebrated collective bargaining policy. How, then, did this contentious bill retrenching worker rights pass in a state once celebrated as "union country"?

Research on policymaking often emphasizes policies' path dependence, showing how they create interests and stakeholders who act to preserve the status quo. When institutional change does occur, it is because strategic efforts from social movements mobilize policymakers toward change. However, this literature often does not account for the effect that improvised, subversive politics can have on the policymaking process. Expanding on this work, this study examines a case of significant institutional change, the passage of 2011 Wisconsin's retrenchment policy of Budget Repair. Based on an analysis of the policy's critical junctures, I argue that in the early stages, newly elected GOP politicians, under the influence of the Tea Party movement, used mobilization strategies to obfuscate costs, avoid blame, and secure votes from hesitant legislators.<sup>4</sup> However, these strategies ultimately devolved into a reactive struggle for power with entrenched Democratic legislators and previous policy beneficiaries. Integrating research on oppositional tactics,<sup>5</sup> then, I show how politicians in each party wrested control over the policymaking process by adopting subversive tactics that eroded governance norms.

<sup>1</sup>Charles J. Sykes, "Wisconsin Republicans Are Shooting Themselves in the Foot," *The Atlantic*, December 6, 2018, <https://www.theatlantic.com/ideas/archive/2018/12/wisconsin-debacle-wasnt-worth-it-gop/577522/>.

<sup>2</sup>Bureau of Labor Statistics, U.S. Department of Labor, "Union Membership, 2011," *TED: The Economics Daily*, January 30, 2012, [http://www.bls.gov/opub/ted/2012/ted\\_20120130.htm](http://www.bls.gov/opub/ted/2012/ted_20120130.htm).

<sup>3</sup>Katharine J. Cramer, *The Politics of Resentment: Rural Consciousness in Wisconsin and the Rise of Scott Walker* (Chicago: University of Chicago Press, 2016).

<sup>4</sup>Isaac Martin, "Redistributing toward the Rich: Strategic Policy Crafting in the Campaign to Repeal the Sixteenth Amendment, 1938–1958," *American Journal of Sociology* 116, no. 1 (2010): 1–52; Paul Pierson, *Dismantling the Welfare State? Reagan, Thatcher and the Politics of Retrenchment* (New York: Cambridge University Press, 1994); Barbara Vis, "Taking Stock of the Comparative Literature on the Role of Blame Avoidance Strategies in Social Policy Reform," *Journal of Comparative Policy Analysis: Research and Practice* 18, no. 2 (2016): 122–37; R. Kent Weaver, "The Politics of Blame Avoidance," *Journal of Public Policy* 6, no. 4 (1986): 371–98.

<sup>5</sup>Rodrigo Canales, "Rule Bending, Sociological Citizenship, and Organizational Contestation in Microfinance," *Regulation & Governance* 5, no. 1 (2011): 90–117; Anna Johansson and Stellan Vinthagen, "Dimensions of Everyday Resistance: An Analytical

## 2. Mobilization and Opposition in the Face of Change

Policies, norms, and procedures—as institutionalized structures that habituate action and take on “a rulelike status”<sup>6</sup>—can have “lock-in effects”: in organizing power and resources, they establish institutional stakeholders and patterned action that is difficult to undo.<sup>7</sup> For example, the dramatic expansion of social welfare in the twentieth century created constituencies of policy beneficiaries willing to engage in activism to protect these programs.<sup>8</sup> These social policies also expanded government, creating bureaucrats with an interest in preserving and expanding these policies.<sup>9</sup> Institutional structures, thus, create incumbents who benefit from and reinforce the status quo.

When institutional change does occur, it often happens when insurgent social movements seize opportunities to target those in power, appealing to their identities and beliefs to mobilize them toward new ideologies and agendas.<sup>10</sup> For example, contemporary conservative movements created majorities in courts and local legislatures through legal and policy networks that subtly perpetuated conservative ideology.<sup>11</sup> Additionally, in the 2010 midterm campaign, GOP elites and conservative media partnered together with Tea Party activists to win majorities in the House and Senate.<sup>12</sup>

In turn, policymakers often rely on these social movements for storytelling and framing that can package these agendas in meaningful ways. This often involves obfuscating, scapegoating, or exempting key constituencies to avoid blame when changing

policies with lock-in effects.<sup>13</sup> Advocates for redistributive policy in favor of the wealthy, for example, were successful when they used “strategic policy crafting,” drawing on familiar policy frames and obfuscating social costs.<sup>14</sup> Generally, policymakers emphasize benefits and downplay risks to build or retain support.

However, contemporary work on institutional change does not yet fully articulate how strategies and political opportunity can change through ongoing interaction with opponents.<sup>15</sup> For example, work on conservative movements often focuses on premeditated strategies, showing how they create and mobilize Republican majorities to retrench social policy.<sup>16</sup> Similarly, analysts of abortion and same-sex marriage politics concentrate on how social movements on the left strategize preemptively against the “perceived threat” of conservatives rather than on any direct politicking.<sup>17</sup> Such analyses do not typically consider how these mobilization strategies can prompt improvised, direct responses from locked-in incumbents, who, through their action, complicate the path toward change.

Indeed, struggles for power can also invite more reactive oppositional tactics. In contrast to the mobilization strategies that build consensus through institutionally acceptable means (e.g., coalition-building, framing), these improvised tactics subvert the institutional mechanisms that give others control. The often-highlighted site for these politics is the workplace, where workers use everyday forms of deviance and resistance such as rule bending, theft, calling in sick, work slowdowns, and feigning productivity.<sup>18</sup> In contrast to more general theories of mobilization,<sup>19</sup> these organizational politics are particularly understood as “weapons of the weak,”<sup>20</sup> whereby those with less leverage subtly undermine the existing institutional structure to create change (e.g., new rules, more equity, more efficient production processes).<sup>21</sup>

Framework,” *Critical Sociology* 42, no. 3 (2016): 417–35; Stephen Linstead, Garance Maréchal, and Ricky W. Griffin, “Theorizing and Researching the Dark Side of Organization,” *Organization Studies* 35, no. 2 (2014): 165–88.

<sup>6</sup>John W. Meyer and Brian Rowan, “Institutionalized Organizations: Formal Structure as Myth and Ceremony,” *American Journal of Sociology* 83, no. 2 (1977): 340–63.

<sup>7</sup>Paul Pierson, “When Effect Becomes Cause: Policy Feedback and Political Change,” *World Politics* 45, no. 4 (1993): 595–628; Paul Pierson, “Increasing Returns, Path Dependence, and the Study of Politics,” *American Political Science Review* 94, no. 2 (2000): 251–67.

<sup>8</sup>Andrea Louise Campbell, *How Policies Make Citizens: Senior Political Activism and the American Welfare State* (Princeton, NJ: Princeton University Press, 2005); Andrea Louise Campbell, “Policy Feedbacks and the Impact of Policy Designs on Public Opinion,” *Journal of Health Politics, Policy and Law* 36, no. 6 (2011): 961–73; Suzanne Mettler, *Soldiers to Citizens: The G.I. Bill and the Making of the Greatest Generation* (New York: Oxford University Press, 2007); Pierson, “When Effect Becomes Cause.”

<sup>9</sup>Daniel Béland, “Reconsidering Policy Feedback: How Policies Affect Politics,” *Administration & Society* 42, no. 5 (2010): 568–90; Edward D. Berkowitz, *Robert Ball and the Politics of Social Security* (Madison: University of Wisconsin Press, 2005); Theda Skocpol, *Protecting Soldiers and Mothers: The Political Origins of Social Policy in United States* (Cambridge, MA: Belknap Press, 1995).

<sup>10</sup>Robert D. Benford and David A. Snow, “Framing Processes and Social Movements: An Overview and Assessment,” *Annual Review of Sociology* 26 (January 2000): 611–39; Elisabeth S. Clemens, “Organizational Repertoires and Institutional Change: Women’s Groups and the Transformation of U.S. Politics, 1890–1920,” *American Journal of Sociology* 98, no. 4 (1993): 755–98; Neil Fligstein and Doug McAdam, *A Theory of Fields* (New York: Oxford University Press, 2012); Roger Friedland and Robert Alford, “Bringing Society Back In: Symbols, Practices, and Institutional Contradictions,” in *The New Institutionalism in Organizational Analysis*, ed. Walter W. Powell and Paul J. DiMaggio (Chicago: University of Chicago Press, 1991); Andrew J. Hoffman, “Talking Past Each Other? Cultural Framing of Skeptical and Convinced Logics in the Climate Change Debate,” *Organization & Environment* 24, no. 1 (2011): 3–33; Martin, “Redistributing toward the Rich”; Francesca Polletta, *It Was Like a Fever: Storytelling in Protest and Politics* (Chicago: University of Chicago Press, 2009).

<sup>11</sup>Alex Hertel-Fernandez, *State Capture: How Conservative Activists, Big Businesses, and Wealthy Donors Reshaped the American States—and the Nation* (New York: Oxford University Press, 2019); Thomas Medvetz, *Think Tanks in America* (Chicago: University of Chicago Press, 2012); Steven M. Teles, *The Rise of the Conservative Legal Movement: The Battle for Control of the Law: The Battle for Control of the Law* (Princeton, NJ: Princeton University Press, 2012).

<sup>12</sup>Theda Skocpol and Vanessa Williamson, *The Tea Party and the Remaking of Republican Conservatism* (New York: Oxford University Press, 2016).

<sup>13</sup>Pierson, *Dismantling the Welfare State?*; Vis, “Taking Stock of the Comparative Literature”; Weaver, “The Politics of Blame Avoidance.”

<sup>14</sup>Martin, “Redistributing toward the Rich.”

<sup>15</sup>See similar critiques in Olivier Fillieule and Christophe Broqua, “Sexual and Reproductive Rights Movements and Counter Movements from an Interactionist Perspective,” *Social Movement Studies* 19, no. 1 (2020): 1–20; Tim Hallett and Marc J. Ventresca, “Inhabited Institutions: Social Interactions and Organizational Forms in Gouldner’s Patterns of Industrial Bureaucracy,” *Theory and Society* 35 no. 2 (2006): 213–36; Mary-Hunter McDonnell, Brayden G. King, and Sarah A. Soule, “A Dynamic Process Model of Private Politics: Activist Targeting and Corporate Receptivity to Social Challenges,” *American Sociological Review* 80 no. 3 (2015): 654–78; Edward T. Walker, “Social Movements, Organizations, and Fields: A Decade of Theoretical Integration,” *Contemporary Sociology: A Journal of Reviews* 41, no. 5 (2012): 576–87.

<sup>16</sup>See, e.g., Hertel-Fernandez, *State Capture*; Martin, “Redistributing toward the Rich”; Isaac Martin, *Rich People’s Movements: Grassroots Campaigns to Untax the One Percent* (New York: Oxford University Press, 2013); Skocpol and Williamson, *The Tea Party and the Remaking of Republican Conservatism*.

<sup>17</sup>See, e.g., Michael C. Dorf and Sidney Tarrow, “Strange Bedfellows: How an Anticipatory Countermovement Brought Same-Sex Marriage into the Public Arena,” *Law & Social Inquiry* 39, no. 2 (2014): 449–73; Dawn McCaffrey and Jennifer Keys, “Competitive Processes in the Abortion Debate: Polarization-Vilification, Frame Saving, and Frame Debunking,” *The Sociological Quarterly* 41, no. 1 (2000): 41–61, 44; Deana A. Rohlinger, “Framing the Abortion Debate: Organizational Resources, Media Strategies, and Movement-Countermovement Dynamics,” *The Sociological Quarterly* 43, no. 4 (2002): 479–507.

<sup>18</sup>Canales, “Rule Bending”; James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven, CT: Yale University Press, 1987); Yoav Vardi and Yoash Wiener, “Misbehavior in Organizations: A Motivational Framework,” *Organization Science* 7, no. 2 (1996): 151–65; see reviews in Johansson and Vinthagen, “Dimensions of Everyday Resistance”; Linstead et al., “Theorizing and Researching the Dark Side of Organization.”

<sup>19</sup>See, e.g., Fligstein and McAdam, *A Theory of Fields*.

<sup>20</sup>Scott, *Weapons of the Weak*; Michel de Certeau, *The Practice of Everyday Life* (Berkeley: University of California Press, 1984).

<sup>21</sup>Andrew Baker, “The Gradual Transformation? The Incremental Dynamics of Macroprudential Regulation,” *Regulation & Governance* 7, no. 4 (2013): 417–34;

Extending work on institutional change, then, I argue that policymakers' strategies for enacting change do not always anticipate the reactive responses that arise from *lock-in effects*, in which incumbents engage in their own efforts to protect the status quo. My argument does affirm that *mobilization strategies*,<sup>22</sup> which pursue institutionally accepted methods for generating consensus such as coalition-building, blame avoidance, and framing, are powerful tools for insurgents, in that they mobilize allies and constituents to action.<sup>23</sup> However, when, in spite of these strategies, insurgents still face ardent opposition from locked-in incumbents,<sup>24</sup> their efforts may devolve into reactive attempts to gain control. Engaged in a struggle for power, both incumbents or insurgents may turn to *oppositional tactics*, which, in eroding the institutional norms and rules that give opponents' control,<sup>25</sup> help them to either preserve (incumbents) or advance (insurgents) their interests.

### 3. Analytic Approach

To analyze the passage of Budget Repair, I use the case method, which can show how institutions and actors change vis-à-vis ongoing interaction and identify causal mechanisms that elaborate on theories of change.<sup>26</sup> In particular, I use critical juncture analysis, examining the events and actions through which path-dependent institutional structures with lock-in effects become susceptible to change.<sup>27</sup> A critical juncture is a brief phase, following a period of institutional stability, during which an event creates opportunity. Critical juncture analysis, thus, involves constructing a narrative of the juncture, including the instigating event, the ensuing choices made, and the plausible alternative paths (i.e., counterfactuals). In analyzing policymaking, counterfactuals must be theoretically and historically consistent, representing a narrow range of policy options that were "available, considered, and narrowly defeated."<sup>28</sup> Applying this approach to Budget Repair, I identified a period of institutional stability in which collective bargaining for public employees persisted (IS1 in Figure 1), followed by two junctures (CJ1 and CJ2 in Figure 1) in 2010 and 2011.

Elizabeth A. Hoffmann, "Revenge' and 'Rescue': Workplace Deviance in the Taxicab Industry," *Sociological Inquiry* 78, no. 3 (2008): 270–89; Alexander E. Kentikelenis and Sarah Babb, "The Making of Neoliberal Globalization: Norm Substitution and the Politics of Clandestine Institutional Change," *American Journal of Sociology* 124, no. 6 (2019): 1720–62; Elizabeth W. Morrison, "Doing the Job Well: An Investigation of Pro-Social Rule Breaking," *Journal of Management* 32, no. 1 (2006): 5–28.

<sup>22</sup>I use de Certeau's distinction between "strategies," which involve actions that work within an institutional order to build relationships, and "tactics," which manipulate the order to create opportunity (de Certeau, *The Practice of Everyday Life*).

<sup>23</sup>Neil Fligstein, "Social Skill and the Theory of Fields," *Sociological Theory* 19, no. 2 (2001): 105–25; Fligstein and McAdam, *A Theory of Fields*.

<sup>24</sup>Campbell, *How Policies Make Citizens*; Fligstein and McAdam, *A Theory of Fields*; Mettler, *Soldiers to Citizens*; Pierson, "When Effect Becomes Cause."

<sup>25</sup>Johansson and Vinthagen, "Dimensions of Everyday Resistance."

<sup>26</sup>Tim Büthe, "Taking Temporality Seriously: Modeling History and the Use of Narratives as Evidence," *The American Political Science Review* 96, no. 3 (2002): 481–93; Elisabeth S. Clemens, "Toward a Historicized Sociology: Theorizing Events, Processes, and Emergence," *Annual Review of Sociology* 33, no. 1 (2007): 527–49; Rebecca Jean Emigh, "The Power of Negative Thinking: The Use of Negative Case Methodology in the Development of Sociological Theory," *Theory and Society* 26, no. 5 (1997): 649–84; George Steinmetz, "Odious Comparisons: Incommensurability, the Case Study, and 'Small N's' in Sociology," *Sociological Theory* 22, no. 3 (2004): 371–400.

<sup>27</sup>Giovanni Capocchia and R. Daniel Kelemen, "The Study of Critical Junctures: Theory, Narrative, and Counterfactuals in Historical Institutionalism," *World Politics* 59, no. 3 (2007): 341–69; James Mahoney, "Path Dependence in Historical Sociology," *Theory and Society* 29, no. 4 (2000): 507–48; Pierson, "Increasing Returns."

<sup>28</sup>Capocchia and Kelemen, "The Study of Critical Junctures," 356; Mahoney, "Path Dependence in Historical Sociology."

Using secondary sources on labor and collective bargaining history,<sup>29</sup> I traced how the passage of the collective bargaining policy (E0 in Figure 1) cultivated public-employee-union identities and broad bipartisan support, facilitating protection of these rights for more than fifty years (IS1 in Figure 1). The first critical juncture (CJ1 in Figure 1) followed the election of a new state legislature in the 2010 midterm elections (E1 in Figure 1). Analyzing the tenure and affiliations of legislators (presented in Tables 1 and 2) described in the 2009–2010 and 2011–2012 *State of Wisconsin Blue Books*, data on Wisconsin's legislative majorities from the Lucy Burns Institute, and work on contemporary conservative movements,<sup>30</sup> I identified how the 2010 midterm elections created a political opportunity for Republicans, giving them a unified government and the political will to make changes to the collective bargaining law.

However, my analysis of the previous period, the votes on Budget Repair, and the competing policy options circulating during the time of the bill indicated a theoretically and historically consistent counterfactual of the collective bargaining policy's continued path dependence (O0 in Figure 1). The original collective bargaining law, passed in 1959, had generated popularity for public-sector unions and collective bargaining in Wisconsin; as such, several incumbent Republicans had a stake in preserving the status quo and initially favored a budget policy that cut public program funding but not collective bargaining rights. Both the empirical reality and theories on lock-in and path dependence<sup>31</sup> (M0 in Figure 1) suggested that the insurgent Republicans desiring change would need to mobilize votes or the bill would fail.

To understand how insurgent Republican legislators avoided this counterfactual outcome, I looked closely at newspaper articles, media interviews with legislators, government documents, and book-length accounts about Budget Repair.<sup>32</sup> I triangulated these accounts to identify key features of the bill—the "Budget" framing and the exemption of police and fire—that helped to mobilize the necessary votes. The findings were consistent with work on mobilization strategies,<sup>33</sup> indicating how insurgents can use framing and coalition building to move others toward change (M1 in Figure 1).

The second critical juncture (CJ2 in Figure 1) began after the bill's introduction (E2 in Figure 1), when a countermovement of public-sector employees and state Democrats complicated the efforts of the Republican insurgency. Again, I drew on primary and secondary accounts of Budget Repair's policymaking process as well as interviews with protest attendees,<sup>34</sup> finding that, even

<sup>29</sup>See, e.g., Richard B. Freeman and Eunice Han, "The War Against Public Sector Collective Bargaining in the US," *Journal of Industrial Relations* 54, no. 3 (2012): 386–408; William C. Houlihan, "Interest Arbitration and Municipal Employee Bargaining: The Wisconsin Experience," in *Collective Bargaining in the Public Sector: The Experience of Eight States*, ed. J. M. Najita and J. L. Stern (Armonk, NY: M. E. Sharpe, 2001), 69–105.

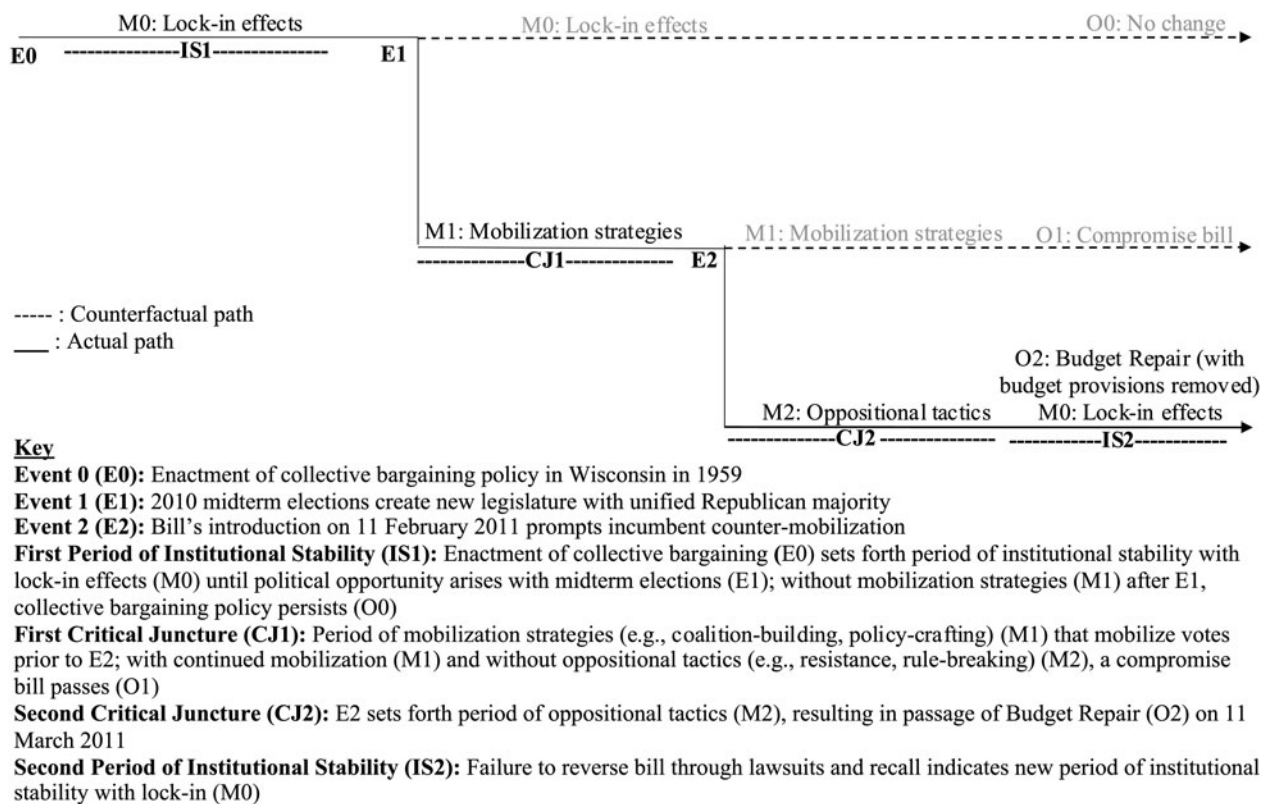
<sup>30</sup>See, e.g., Rachel M. Blum, *How the Tea Party Captured the GOP* (Chicago: University of Chicago Press, 2020); Cramer, *The Politics of Resentment*; Hertel-Fernandez, *State Capture*; Skocpol and Williamson, *The Tea Party and the Remaking of Republican Conservatism*.

<sup>31</sup>Campbell, *How Policies Make Citizens*; Campbell, "Policy Feedbacks"; Pierson, "When Effect Becomes Cause"; Pierson, "Increasing Returns."

<sup>32</sup>See, e.g., Mari Jo Buhle and Paul Buhle, eds., *It Started in Wisconsin: Dispatches from the Front Lines of the New Labor Protest* (New York: Verso, 2012); Jason Stein and Patrick Marley, *More Than They Bargained For: Scott Walker, Unions, and the Fight for Wisconsin* (Madison: University of Wisconsin Press, 2013).

<sup>33</sup>Fligstein and McAdam, *A Theory of Fields*; Martin, "Redistributing toward the Rich."

<sup>34</sup>These interviews were part of another project on the Wisconsin protests of 2011 and thus, no systematic sampling strategy was applied for the purposes of this article. The interviews were instead used as supplemental data to enhance the narrative.



**Figure 1.** Events (E), Mechanisms (M), and Outcomes (O) during Periods of Institutional Stability (IS) and Two Critical Junctures (CJ), 1959–2011 Wisconsin

**Table 1.** Composition of the Wisconsin State Legislature, 2011

	Republican		Democrat	
<i>Assembly</i>				
Incumbents	33	(57%)	33	(87%)
Insurgents	25	(43%)	5	(13%)
<i>Senate</i>				
Incumbents	13	(68%)	13	(93%)
Insurgents	6	(32%)	1	(7%)

Note: Legislators were coded as insurgents if they had been in that branch of the legislature for less than one year by January 2011.

though insurgent Republicans secured the support of incumbent Republicans, these legislators did not anticipate the policymaking stalemate that would arise from the countermovement against Budget Repair. Consistent with the insurgency's previous strategies and theories on mobilization (M1 in Figure 1), they could have attempted strategic policy crafting once again to appeal to Democrats' priorities and secure their cooperation in passing the bill.

However, Republicans ultimately rejected this option in favor of a more controversial choice. Frustrated by the opposition's stalling tactics, Republicans also defied procedure and bypassed the technical obstacle producing the stalemate. As described in the literature on oppositional tactics,<sup>35</sup> each side attempted to

<sup>35</sup>Johansson and Vinthagen, "Dimensions of Everyday Resistance"; Scott, *Weapons of the Weak*.

**Table 2.** Business Ties in the 2011 Wisconsin State Legislature

	Republican		Democrat	
Assembly	28	(48%)	6	(18%)
Senate	9	(47%)	2	(14%)

Note: Business ties were recorded if legislators indicated that they were previously or currently a small business owner, business manager, or CEO.

undermine their opponents through oppositional tactics that defied norms and rules (M2 in Figure 1), eventually resulting in Budget Repair's passage (O2 in Figure 1). While protests, recall elections for Republican senators and Governor Scott Walker, and several court battles continued over the next year, these efforts were unsuccessful in reversing the bill. Because of the failure of these actions, a new period of institutional stability and lock-in began (IS2 and M0 in Figure 1), indicating to me the end of the critical juncture analysis.<sup>36</sup>

#### 4. Institutional Stability (IS1): The Emergence of Public-Sector Collective Bargaining Rights (E0) and Subsequent Lock-in Effects (M0)

My analysis of historical accounts of the initial 1959 collective bargaining policy, public opinion, and legislative majorities in Wisconsin following the initial policy's passage, indicate that, in

<sup>36</sup>Capoccia and Kelemen, "The Study of Critical Junctures"; Pierson, "Increasing Returns"; Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton, NJ: Princeton University Press, 2004).

addition to securing bargaining rights for public workers, the policy created stakeholders with an interest in protecting those rights. Collective bargaining rights for public-sector workers emerged in the mid-twentieth century to address disparities in wages and benefits between these workers and private-sector employees. The National Labor Relations (Wagner) Act of 1935 enabled private employees to negotiate contract terms, wages, and working conditions via union organization. However, public-employee-union rights were not federally mandated and were stalled in state policymaking because of lack of public support, the emerging “right-to-work” movement of the 1940s, and fear of permitting public workers, particularly police, with the right to strike. Despite these setbacks, however, the labor movement continued to grow, and organizations such as the American Federation of State, County, and Municipal Employees (AFSCME)—which originated in Wisconsin—emerged using informal negotiation tactics and lobbying to advocate for public-employee interests.<sup>37</sup>

In the 1950s, the Wisconsin chapter of AFSCME, the Wisconsin Council of County and Municipal Employees (WCCME) began lobbying the state legislature to implement public-employee union rights, with extensive efforts to pass bills in 1951, 1955, and 1957. Republican majorities in the legislature killed such attempts each time, often citing concerns about police strikes and walkouts.<sup>38</sup> In 1958, however, Democrats made gains in both the Assembly and governorship for the first time in decades and growing public support for unions provided a new opportunity. WCCME crafted a new bill, which excluded public safety officials like police and included a commission that would oversee any conflicts or impasses. In 1959, with a few revised provisions, the legislature passed the bill and Wisconsin became the first state to recognize public-sector unions and their rights.

Over the years, policymakers amended the original 1959 law. In 1961, the Wisconsin legislature elaborated the role of the commission in arbitration, authorized legally binding collective bargaining agreements, and prohibited strikes. In 1965, it extended rights from local government employees to those in state government.<sup>39</sup> The legislation, however, still excluded police and firefighters, who continued to strike illegally until legislators passed an amendment to include these workers in 1971.<sup>40</sup>

The 1959 policy, and its subsequent amendments, had local feedback effects in Wisconsin. By endowing public employees with the right to negotiate their contracts and conditions, it expanded union membership and political power. In an indication of public employees’ increased organizational capacity, the number of bargaining units grew to nearly 2,000 in the period following the 1959 policy and before the passage of Budget Repair.<sup>41</sup> The policy also had cognitive consequences, contributing to the creation and legitimation of public-employee union identities and mass acceptance of public-sector unions in Wisconsin. According to polls, between 53 and 71 percent of the Wisconsin general public supported public-employee unions and collective bargaining by 2011.<sup>42</sup> As the first state to pass

public-sector collective bargaining and a holdout against “right-to-work” policies, Wisconsin emerged as a bastion of the progressive movement and union organizing.

Indeed, the public popularity of unions and collective bargaining in Wisconsin corresponded with bipartisan preservation of the law. Prior to the midterm elections of 2010, repealing collective bargaining was not a prioritized agenda for either Democrats or Republicans in Wisconsin. From 1992 until 2010, Republicans had majority power in two of the three legislating state bodies (Senate, Assembly, or governorship) for twelve of the observed eighteen years.<sup>43</sup> For two of these years, 1995 and 1998, Republicans had a fully unified government,<sup>44</sup> and yet they did not enact any policies that challenged the collective bargaining law. Rather, it appears that the more entrenched interest for both Republicans and Democrats in Wisconsin was to avoid such legislation.

Thus, my analysis of historical accounts of the worker organizing, public opinion on public-sector unions and their rights, and legislative majorities in Wisconsin suggests that the passage of the 1959 policy (E0 in Figure 1) not only provided concrete benefits for public employees, but also generated powerful lock-in effects (M0 in Figure 1) that contributed to its long-term persistence (IS1 in Figure 1). In the periods preceding and following the passage of the 1959 public-sector bargaining law, public employees became a critical part of Wisconsin’s labor movement; the institutionalization of their rights through the law also institutionalized their organizational identities as public employees. Their presence, and the continued popularity of unions and collective bargaining among the public, made it politically risky for legislators of any party to make changes to the law, facilitating its persistence for more than fifty years. Such lock-in effects eventually presented challenges throughout the two critical junctures of Budget Repair’s passage, creating both hesitance among incumbent Republicans to support Budget Repair (during CJ1 in Figure 1) and oppositional resistance from Democrats and their entrenched public-employee constituents (during CJ2 in Figure 1).

## 5. First Critical Juncture (CJ1): The 2010 Midterm Elections (E1), the Counterfactual Path of Lock-in (M0), and the Chosen Path of Mobilization Strategies (M1)

Analyses of primary and secondary accounts of conservative movements, the 2010 midterm campaign, and the elected 2011 Wisconsin state legislature suggest that the emergent Tea Party movement in the 2010 midterm elections created a new Republican majority (E1 in Figure 1) and, as a result, a critical juncture (CJ1 in Figure 1) during which GOP insurgents had an opportunity to make changes to Wisconsin’s public-sector bargaining laws. However, my analyses of the previous period (IS1), competing policy options, the Budget Repair vote tally, and reports of hesitant incumbent Republicans also indicate a counterfactual path in which the lock-in effects of the 1959 policy could have influenced these key legislators to reject the bill (E1 to O0 in Figure 1). To convince these Republican colleagues and secure their votes, the new Republican insurgency used strategic policy crafting, giving these incumbent legislators a means to avoid blame and maintain the support of powerful constituents.

<sup>37</sup>Joseph E. Slater, *Public Workers: Government Employee Unions, the Law, and the State, 1900–1962* (Ithaca, NY: ILR Press, 2004).

<sup>38</sup>Ibid.; Paul Onsager, “State and Local Government Employment Relations Law (Under 2011 Acts 10 and 32)” (Informational Paper, Wisconsin Legislative Fiscal Bureau, Madison, WI, 2015), <http://rbdigital.legis.wisconsin.gov/digital/collection/p16831coll3/id/185/rec/3>.

<sup>39</sup>Houlihan, “Interest Arbitration and Municipal Employee Bargaining.”

<sup>40</sup>Ibid.; Onsager, “State and Local Government Employment Relations Law.”

<sup>41</sup>Houlihan, “Interest Arbitration and Municipal Employee Bargaining.”

<sup>42</sup>Freeman and Han, “The War Against Public Sector Collective Bargaining.”

<sup>43</sup>Lucy Burns Institute, “Ballotpedia: Who Runs the States, Partisanship Report” (public spreadsheet, Lucy Burns Institute, Madison, WI, 2013), [https://docs.google.com/spreadsheets/d/1Lxot3i-SYXJo1mPg4Nbe-\\_GFUuj0aEvUf\\_bgN8j7Q/edit#gid=1161541724](https://docs.google.com/spreadsheets/d/1Lxot3i-SYXJo1mPg4Nbe-_GFUuj0aEvUf_bgN8j7Q/edit#gid=1161541724).

<sup>44</sup>Ibid.

Mobilization strategies (M1 in Figure 1) thus facilitated the policymaking process until the next critical juncture (CJ2 in Figure 1).

### 5.1 The 2010 Midterm Elections (E1)

In 2010, Republican politicians were using symbols of business efficiency, austerity, and fairness to condemn President Obama's first two years in office, the state of the Great Recession, and Democrats' management of the economy and federal budget deficit. These discussions were a reflection of two major factions in conservative politics at the time: (1) business elites, who were drawing on logics of the free market and efficiency to advocate for a pro-business agenda<sup>45</sup> and (2) the Tea Party, which was channeling mounting white anxiety and rural resentment to advocate for a smaller government that favored "hard-working" Americans, as opposed to "freeloaders."<sup>46</sup>

During the midterm campaign, these two factions partnered together to put forth a vision of fiscal conservatism.<sup>47</sup> Business, conservative media, and Tea Party activists argued that President Obama and Democrats, through the policies like the Affordable Care Act and American Recovery and Reinvestment Act, had run rampant with spending projects.<sup>48</sup> The influential Americans for Prosperity, largely supported by business elites the Koch brothers, served as a primary vehicle for organizing Tea Party rallies and election campaigns.<sup>49</sup> In 2010, this campaign succeeded, with Tea Party politicians replacing many Democrats' and more centrist Republicans' seats in Congress.

The conservative movement permeating national politics also had local effects in Wisconsin. The state Senate and Assembly transitioned from a Democratic majority to a Republican majority in 2010, with a considerable number of novice legislators and business elites contributing to this majority. Upon the inauguration in January 2011, the number of novice Republicans was five times larger than the number of novice Democrats in the state Assembly and six times larger in the state Senate, indicating a strong Tea Party influence in the Republican legislature (see Table 1). Furthermore, business was the largest single professional background represented among Republican legislators and exceeded the business representation among Democratic legislators by double (see Table 2).

As a gubernatorial candidate who would eventually have aspirations for higher office, Scott Walker won the governor's race by capitalizing on the Tea Party discourse and the growing resentment of liberal elites, urban centers, and public institutions within Wisconsin's primarily white and rural communities.<sup>50</sup> Positioning

<sup>45</sup>Neil Gross, Thomas Medvetz, and Rupert Russell, "The Contemporary American Conservative Movement," *Annual Review of Sociology* 37, no. 1 (2011): 325–54; Kim Phillips-Fein, *Invisible Hands: The Businessmen's Crusade Against the New Deal* (New York: W.W. Norton, 2010).

<sup>46</sup>Blum, *How the Tea Party Captured the GOP*; Vanessa Williamson, Theda Skocpol, and John Coggin, "The Tea Party and the Remaking of Republican Conservatism," *Perspectives on Politics* 9, no. 1 (2011): 25–43; Cramer, *The Politics of Resentment*; Christopher Sebastian Parker, "Race and Politics in the Age of Obama," *Annual Review of Sociology* 42, no. 1 (2016): 217–30.

<sup>47</sup>Jules Boykoff and Eulalie Laschever, "The Tea Party Movement, Framing, and the US Media," *Social Movement Studies* 10, no. 4 (2011): 341–66; Williamson et al., "The Tea Party and the Remaking of Republican Conservatism."

<sup>48</sup>Boykoff and Laschever, "The Tea Party Movement, Framing, and the US Media."

<sup>49</sup>Williamson et al., "The Tea Party and the Remaking of Republican Conservatism."

<sup>50</sup>Michael A. Memoli and Tom Hamburger, "Conservative Group Kicks Off \$4.1-Million Election Ad Campaign," *Los Angeles Times*, August 16, 2010, <http://articles.latimes.com/2010/aug/16/nation/la-na-conservative-ads-20100816>; Cramer, *The Politics of Resentment*.

himself as a reformer willing to bring bold changes to government, he also attracted the support of business elites like the Koch brothers, who saw him as a vehicle for their anti-union agenda.<sup>51</sup> Furthermore, the Bradley Foundation, a think-tank funder promoting anti-union ideology in Wisconsin, facilitated Scott Walker's political grooming, with the president Michael Grebe chairing his campaign.<sup>52</sup>

The American Legislative Exchange Council (ALEC), a conservative organization that drafts pro-business policies for state legislators, was another clear influence on Walker's policy agenda. The incoming governor was a longtime ALEC member and, in his first year, signed nineteen ALEC bills into law. While Budget Repair was not modeled on one particular ALEC policy, it drew heavily from the organization's anti-union policy ideas, including preventing unions from mandatorily enrolling members and collecting dues.<sup>53</sup> To be sure, ALEC's retrenchment agenda was reflected in a substantial amount of legislation introduced nationally in 2011 and 2012 curbing union rights, including 820 bills in nineteen states.<sup>54</sup> Armed with these policy models and noticing the "stable of newly elected conservatives in both chambers who were eager to shake things up,"<sup>55</sup> the insurgent governor saw an opportunity to enact the reform that would be his signature legislation.

### 5.2 Counterfactual: Lock-In (M0) and No change (O0)

The political opportunity provided by the midterm elections (E1 in Figure 1) was a necessary but not sufficient condition for changing the public-sector bargaining policy, given that the policy's lock-in effects (M0 in Figure 1) could have generated a counterfactual path that preserved the law (O0 in Figure 1). Because of unions' popularity<sup>56</sup> and polling that suggested that "economy and jobs" and "budget, deficit, and taxes" were top concerns for Wisconsin voters,<sup>57</sup> a polarizing bill that did not have a clear connection to these issues was politically risky for incumbent legislators, especially for those from moderate and swing voting districts. According to several accounts, many incumbent Republicans, particularly those in the Senate and with ties to organized labor, expressed little desire to participate in legislation explicitly aimed at dismantling public-sector unions.<sup>58</sup> Senator

<sup>51</sup>Scott Walker and Marc Thiessen, *Unintimidated: A Governor's Story and a Nation's Challenge* (New York: Penguin, 2013); Theda Skocpol and Alexander Hertel-Fernandez, "The Koch Network and Republican Party Extremism," *Perspectives on Politics* 14, no. 3 (2016): 681–99; John Nichols, "David Koch Got What He Paid For," August 23, 2019, <https://www.thenation.com/article/archive/david-koch-americans-for-prosperity-scott-walker/>.

<sup>52</sup>Patrick Healy and Monica Davey, "Behind Scott Walker, a Longstanding Conservative Alliance Against Unions," *New York Times*, June 8, 2015, sec. U.S., <https://www.nytimes.com/2015/06/08/us/politics/behind-scott-walker-a-longstanding-conservative-alliance-against-unions.html>; Jane Mayer, *Dark Money: The Hidden History of the Billionaires Behind the Rise of the Radical Right* (New York: Doubleday, 2016).

<sup>53</sup>Hertel-Fernandez, *State Capture*.

<sup>54</sup>Gordon Lafer, "The Legislative Attack on American Wages and Labor Standards, 2011–2012," Economic Policy Institute, October 31, 2013, <https://www.epi.org/publication/attack-on-american-labor-standards/>; David Schaper, "Collective Bargaining Curbs Spread across the U.S.," *NPR*, May 24, 2011, <https://www.npr.org/2011/05/24/136610879/collective-bargaining-curbs-spread-across-the-u-s>.

<sup>55</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*, 45.

<sup>56</sup>Freeman and Han, "The War Against Public Sector Collective Bargaining."

<sup>57</sup>St. Norbert College Survey Center, *The St. Norbert College/Wisconsin Public Radio Wisconsin Survey—Fall 2010* (DePere, WI: St. Norbert College Survey Center, 2010), [http://www.snc.edu/sri/docs/2010/201010\\_wpr\\_stateissues.pdf](http://www.snc.edu/sri/docs/2010/201010_wpr_stateissues.pdf).

<sup>58</sup>Evan McMorris-Santoro, "AWOL WI Dem: GOP May End Collective Bargaining Without Us," *Talking Points Memo*, February 21, 2011, <http://talkingpointsmemo.com/dc/awol-wi-dem-gop-may-end-collective-bargaining-without-us>; Stein and Marley, *More Than They Bargained For*; Walker and Thiessen, *Unintimidated: A Governor's Story*.

Luther Olsen (R) emphasized this concern publicly right before the bill's introduction, expressing that he was ready to take on cuts to pensions and healthcare but not to strip collective bargaining away from "a lot of good working people."<sup>59</sup> Senator Kapanke (R) expressed a similar sentiment, saying that the vote on Budget Repair was "one of the toughest votes."<sup>60</sup>

Such evidence suggests that the handful of votes that ensured an eighteen-vote majority and the bill's passing in the Senate on March 11, 2011, were not inevitable achievements but were hard-won. The Wisconsin State Senate consists of thirty-three seats, which in 2011 included nineteen Republicans and fourteen Democrats. The final vote in the Senate for Budget Repair was 18–0,<sup>61</sup> with one incumbent Republican, Senator Dale Shultz, voting no. Up until the vote, however, at least two incumbent Republicans aside from Shultz—perhaps even "five or six" from moderate districts" by some reports<sup>62</sup>—were publicly wavering on the bill. If even two of these senators acted on their hesitance or any entrenched interests in their voting districts, Budget Repair would have died in the Senate.

Indeed, other policy models that focused strictly on budget issues may have been more appealing to these hesitant senators. From a public policy perspective, the specific provisions in the Budget Repair bill, on their own, did not immediately connect with these legislators' primary priority: the economy. While other states with public-sector collective bargaining laws had slightly higher deficits, the budgetary problems of states in 2010 and 2011 were largely attributed to the recession.<sup>63</sup> More fitting policy measures for resolving the budget crisis at that time, then, would have been those proposed by both Tea Party and moderate Republicans during the midterm election campaigns, such as cutting programs that drew directly from state budgets. Many state legislatures in 2011 were making cuts to welfare programs, including reducing Medicaid coverage and Temporary Assistance for Needy Families (TANF).<sup>64</sup> Other, more fitting, policy models that focused on austerity and program cuts were thus available as an option for Wisconsin legislators looking to address the budget crisis.

Public-employee unions in Wisconsin—having failed to pass a contract with the previous legislature in December—were anticipating these austerity measures and were ready to negotiate and mobilize around any proposed legislation. They, and incumbents like Senator Luther Olsen (R)—who was ready to support such cuts—were shocked when the revealed bill went much further.<sup>65</sup> By Walker's own account, each time he shared his proposal to restrict collective bargaining with Republican legislators in the months

leading up to public introduction, he was met with hesitance or responses that he had "lost his mind,"<sup>66</sup> indicating that rejection of the bill from incumbent senators was possible. To avoid a counterfactual outcome in which public-sector bargaining persisted (counterfactual path from E1 to O0 in Figure 1), the bill's advocates had to make a case as to why restricting collective bargaining should be a policy priority in the context of more pressing budgetary issues.

### 5.3 Mobilization Strategies (M1)

To make this case and mobilize hesitant incumbent senators, the bill's proponents used mobilization strategies (M1 in Figure 1). First, in naming the bill "Budget Repair" and framing all changes to public employment as solutions to the budget crisis, they obfuscated the loss of public-employee unions' bargaining rights. In the publicly announced version of the bill, Walker connected balancing the budget to collective bargaining, stating, "this budget repair bill will meet the immediate needs of our state and give government the tools to deal with this and future budget crises ... through changing some provisions of the state's collective bargaining laws."<sup>67</sup> The press release summarizing the bill listed fiscal measures first—such as "Pension contributions" and "Health insurance cost containment strategies"—with the more controversial collective bargaining measure toward the bottom. Walker and his colleagues further obfuscated by including more familiar welfare-oriented provisions that gave the governor more power to reorganize funding for Medicaid and TANF programs, which had more clear connections to the state budget.

Additionally, the bill framing connected with the Tea Party argument of "fairness." Walker contended that the bill would end union cronyism and ask employees to make healthcare and pension contributions equivalent to those of private-sector employees.<sup>68</sup> This argument cut to the Tea Party's "freeloader" concern, a point that a sympathizer echoed during our interview. As a teacher at a charter school (and thus, not unionized), she thought unionized public teachers had an unfair advantage, stating, "I don't deem it [collective bargaining] a right ... it's a luxury ... I just wanted the playing field leveled."<sup>69</sup>

Walker and his colleagues also framed the bill as economically efficient to appeal to Republican legislators. They suggested that the bill would lower the state's interest rate, save nearly \$200 million and "lay the foundation for a long-term sustainable budget ... without raising taxes."<sup>70</sup> Walker restated this logic in his account, reasoning that even with a Republican majority, Budget Repair would not have passed were it not for "the magnitude of the deficit" and the ways the policy would "balance the budget."<sup>71</sup> In a nod to the business-minded approach of both the bill and the GOP, he held up a "Wisconsin is open for business" bumper sticker when signing the bill into law on March 11, 2011.

The final key policy design was the exemption of police and firefighters, a constituency who historically concerned Wisconsin lawmakers. Police and firefighter unions in Wisconsin, initially barred from the 1959 collective bargaining policy, had a history of

<sup>59</sup>Stein and Marley, *More Than They Bargained For*, 60.

<sup>60</sup>Dan Kapanke, "Capitol Interviews: Sen. Dan Kapanke Interview by Steve Walters," *Wisconsin Eye*, February 15, 2011, <http://www.wiseye.org/Programming/VideoArchive/EventDetail.aspx?evhid=3729>.

<sup>61</sup>Democrats were not present. They absconded during the vote, as discussed in the following section.

<sup>62</sup>McMorris-Santoro, "AWOL WI Dem."

<sup>63</sup>Freeman and Han, "The War Against Public Sector Collective Bargaining."

<sup>64</sup>Michael Leachman, Erica Williams, and Nicholas Johnson, "New Fiscal Year Brings Further Budget Cuts to Most States, Slowing Economic Recovery," Center on Budget and Policy Priorities, June 28, 2011, <http://www.cbpp.org/research/new-fiscal-year-brings-further-budget-cuts-to-most-states-slowing-economic-recovery?fa=view&id=3526>; Liz Schott and LaDonna Pavetti, "Many States Cutting TANF Benefits Harshly Despite High Unemployment and Unprecedented Need," Center on Budget and Policy Priorities, October 3, 2011, <http://www.cbpp.org/research/many-states-cutting-tanf-benefits-harshly-despite-high-unemployment-and-unprecedented-need?fa=view&id=3498>.

<sup>65</sup>Jason Stein and Patrick Marley, "Walker Budget Plan Would Limit State Unions to Negotiating Only on Salaries," *Milwaukee Journal Sentinel*, February 10, 2011, [www.jsonline.com/news/statepolitics/115726754.html](http://www.jsonline.com/news/statepolitics/115726754.html); Walker and Thiessen, *Unintimidated: A Governor's Story*.

<sup>66</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*, 48.

<sup>67</sup>Office of the Governor, "Governor Walker Introduces Budget Repair," February 11, 2011, <http://walker.wi.gov/newsroom/press-release/governor-walker-introduces-budget-repair>.

<sup>68</sup>Office of the Governor, "Governor Walker Introduces Budget Repair"; Walker and Thiessen, *Unintimidated: A Governor's Story*.

<sup>69</sup>Interview with Kelly Gilbert, May 1, 2012.

<sup>70</sup>Office of the Governor, "Governor Walker Introduces Budget Repair."

<sup>71</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*, 46–54.

striking and walkouts, even in spite of laws prohibiting such action.<sup>72</sup> Madison firefighters also had a history of striking and were encouraged by the union president to do so following the introduction of Budget Repair, despite their exemption.<sup>73</sup> This history suggests that if police and firefighters had been included in the bill, a walkout by the whole of law enforcement would have been possible.

In addition to threat of walkouts, including public safety officials in the bill would have been politically risky. Several of the 300 police and firefighter unions in Wisconsin had endorsed Walker for governor.<sup>74</sup> Additionally, during the time after September 11, 2001 (but prior to movements for Black lives and police reform), the public was largely supportive of law enforcement communities.<sup>75</sup> A bill including police and firefighters, then, would have risked activating this powerful constituency. However, Governor Walker acknowledged that exempting this particular public sector was not initially an intended measure but was included after a few top Republican colleagues echoed the early concerns around the 1959 policy: the risk that police and correctional officers would walk off the job.<sup>76</sup>

Thus, while the midterm elections (E1 in Figure 1) gave Scott Walker and his allies a majority in the legislature, they needed first to secure the votes of incumbent Republicans. Reducing collective bargaining rights was not an inherent Republican motivation in Wisconsin prior to 2011, where the 1959 policy had created powerful constituencies of public union supporters and lock-in effects (M0 in Figure 1). Other policy options were available to address the budget crisis, so Walker had to convince these incumbents that cutting collective bargaining for public workers was the most viable path, particularly if law enforcement threatened a walkout. Without incumbent Republicans' support, Budget Repair would have failed in the state Senate and the collective bargaining policy would have persisted (counterfactual path from E1 to O0 in Figure 1). Through mobilization strategies that framed the bill as "Budget Repair" and exempted police and firefighters from the bill (M1 in Figure 1), Walker and his allies secured the necessary votes.

## 6. CJ2: Incumbent Countermovement Following Budget Repair's Introduction (E2), a Counterfactual Path of Continued Mobilization Strategies (M1), and the Chosen Path of Oppositional Tactics (M2)

My analysis of primary and secondary sources on the protests and bill proceedings indicates the countermovement of Senate

<sup>72</sup>Associated Press, "Milwaukee Police Officers Strike after two Officers Are Slain," *New York Times*, December 24, 1981, <http://www.nytimes.com/1981/12/24/us/milwaukee-police-strike-after-2-officers-are-slain.html>; Houlihan, "Interest Arbitration and Municipal Employee Bargaining"; Onsager, "State and Local Government Employment Relations Law."

<sup>73</sup>City of Madison Fire Department, "Notable Department Milestones (1908–1991)," accessed November 11, 2022, <https://www.cityofmadison.com/fire/about/history/notable-department-milestones>; Michael McIntee, "Madison Firefighters Prez Calls for General Strike," *The Uptake*, March 10, 2011, [https://www.youtube.com/watch?v=i\\_Z\\_TvRBUtw/](https://www.youtube.com/watch?v=i_Z_TvRBUtw/).

<sup>74</sup>Mike Riggs, "Scott Walker May Have Wasted Political Capital by Sparing Wisconsin's Police and Fire Fighters," *Daily Caller*, February 22, 2011, <http://dailycaller.com/2011/02/22/walker-may-have-wasted-political-capital-by-sparing-wisconsin-police-and-firemen/#ixzz3BpE2OWgk>.

<sup>75</sup>Jeannette Neumann, "Sparing Police, Firefighters Makes Cost-Cutting Tough," *Wall Street Journal*, March 11, 2011, <http://online.wsj.com/news/articles/SB10001424052748703726904576192952699125170>; Riggs, "Scott Walker May Have Wasted Political Capital"; Michael Tooley, "The Media, the Public, and the Law Enforcement Community: Correcting Misperceptions," *Police Chief Magazine*, June 2009, <https://www.policechiefmagazine.org/the-media-the-public-and-the-law-enforcement-community-correcting-misperceptions/>.

<sup>76</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*.

Democrats and public employees following the bill's introduction (E2 in Figure 1) complicated the bill's path. News reports and released emails of legislator negotiations suggest that following this event, Republicans considered pursuing more mobilization strategies (M1 in Figure 1) that would have created a compromise bill to lure Democrats back for a vote (counterfactual path to O1 in Figure 1). Instead, Republicans, frustrated with Democrats' continued opposition, also defied political norms to rush the bill's passage. These events indicate that, engaged in a struggle for power, politicians in each party used oppositional tactics (M2 in Figure 1) to gain leverage over the policymaking process during the second critical juncture (CJ2 in Figure 1), ultimately resulting in the bill's passage (O2 in Figure 1).

### 6.1 The Introduction of Budget Repair (E2) and Incumbent Counter-Mobilization

Like the reaction of incumbent Republicans, Senate Minority Leader Mark Miller (D) and Assembly Minority Leader Peter Barca (D) were alarmed by the bill's radical measures, telling Governor Walker in a meeting just moments before the bill's introduction on February 11, 2011, that he was "blowing up the state."<sup>77</sup> Public workers were also surprised; the Teaching Assistants Association at the University of Wisconsin-Madison (UW-Madison) had already coordinated a Valentine's Day demonstration to protest what they expected would be cuts to the UW system. However, when the announcement revealed that gutting collective bargaining was part of the bill, they shifted their efforts to a more disruptive strategy.<sup>78</sup>

Following the initial Valentine's Day demonstration, thousands showed up at the state capitol daily, disrupting the bill's legislative proceedings. On February 15, 2011, masses of protesters arrived to participate in Assembly hearings over the bill, "a citizen filibuster" that lasted until 3 a.m.<sup>79</sup> This event also inspired encampments in the capitol rotunda as protesters targeted lawmakers and waited for their turn to speak. On February 22, 2011, assembly members began debating the bill, a session that became the longest in state history.<sup>80</sup>

In addition to these tactics, a critical form of disruption was the action by the fourteen Democratic senators who fled the state in response to the bill. Wisconsin state law requires a quorum of at least twenty senators for votes involving budget provisions. Just shy of this number with nineteen senators, the Republican Senate needed at least one Democratic senator present to pass the bill. However, on February 17, 2011, when the bill was up for vote, Senate Democrats fled to Illinois to prevent the quorum. Citing the injustices of the bill and its assault on Wisconsin workers and history, these senators used their absence to pursue a compromise bill that would concede some fiscal provisions but preserve collective bargaining rights.<sup>81</sup>

<sup>77</sup>Stein and Marley, *More Than They Bargained For*, 63.

<sup>78</sup>Interview with Alex Hanna, April 26, 2012.

<sup>79</sup>Stephanie Jones, "Hearing Day in Madison: Hundreds Come to Testify on Budget Bill," *Journal Times*, February 15, 2011, [http://journaltimes.com/news/local/govt-and-politics/article\\_7fbef44-391e-11e0-b9eb-001cc4c002e0.html](http://journaltimes.com/news/local/govt-and-politics/article_7fbef44-391e-11e0-b9eb-001cc4c002e0.html); Walker and Thiessen, *Unintimidated: A Governor's Story*.

<sup>80</sup>Stein and Marley, *More Than They Bargained For*.

<sup>81</sup>Lee Bergquist, Don Walker, and Bill Glauber, "Wis. Gov. Walker Rejects Union Offer to Accept Concessions," *Milwaukee Journal Sentinel*, February 20, 2011, [https://www.eagletribune.com/news/wis-gov-walker-rejects-union-offer-to-accept-concessions/article\\_5815dea2-0669-50da-80c2-1bd1ec0ccb93.html](https://www.eagletribune.com/news/wis-gov-walker-rejects-union-offer-to-accept-concessions/article_5815dea2-0669-50da-80c2-1bd1ec0ccb93.html).



## 6.2 Counterfactual: Mobilization Strategies (M1) and Compromise (O1)

By fleeing the state, Senate Democrats did create a window of opportunity, prompting Republicans to consider mobilization strategies (M1 in Figure 1) that would produce a compromise bill with Democrats (counterfactual path from E2 to O1 in Figure 1). Throughout the protests, Governor Walker and Senate Majority Leader Scott Fitzgerald also considered removing the budget items that necessitated the quorum, to facilitate the bill's passage.<sup>82</sup> Up until March 9, 2011, however, many incumbent legislators were hesitant to support such changes; as Walker stated, they "didn't want to send the message that the bill was about breaking the unions instead of balancing the budget,"<sup>83</sup> which, indeed, would have challenged the framing of "Budget Repair." Instead, these Republicans asked that Walker "tone down" his proposal.<sup>84</sup>

Throughout this time, then, Governor Walker and his allies pursued talks with senators Cullen (D) and Jauch (D) about a compromise, while also attempting more aggressive tactics to lure them back (e.g., publicly blaming them for shirking their duties, issuing fines, and filing recall petitions).<sup>85</sup> On the one hand, the Democrats were holding out for a compromise that would include the preservation of collective bargaining for public employees, a stance that had the support of both public workers and the public (in polls).<sup>86</sup> On the other hand, the Walker administration remained adamant about restricting collective bargaining in some capacity but was open to making changes that would allow public-sector unions to bargain over mandatory overtime, hazardous duty pay, and workplace safety and also open to dropping the restriction that tied bargaining over wages to inflation.<sup>87</sup>

If they had successfully negotiated with Democrats, a less restrictive bill could have emerged. While Walker and his allies were never likely to completely retreat from their goal of weakening unions, Democrats could have negotiated to preserve some key pieces of the collective bargaining law, particularly regarding pay and workplace conditions. Continued mobilization strategies on both sides (M1 in Figure 1), then, would have produced a counterfactual path in which Budget Repair would have been replaced with a newly negotiated bill that included small gains for each party (E2 to O1 in Figure 1).

## 6.3 Oppositional Tactics (M2)

However, each party's continued use of oppositional tactics (M2 in Figure 1) eventually foreclosed this counterfactual path. In public statements during the week of March 7, 2011, Senator

<sup>82</sup>Stein and Marley, *More Than They Bargained For*; Walker and Thiessen, *Unintimidated: A Governor's Story*.

<sup>83</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*, 71.

<sup>84</sup>Healy and Davey, "Behind Scott Walker."

<sup>85</sup>Stephanie Condon, "Wisconsin Gov. Releases E-Mails Revealing Union Bill Negotiations," *CBS News*, March 9, 2011, <http://www.cbsnews.com/news/wisconsin-gov-releases-e-mails-revealing-union-bill-negotiations/>; Stein and Marley, "Walker Budget Plan Would Limit State Unions."

<sup>86</sup>Mary Spicuzza and Clay Barbour, "Walker Blames Senate Minority Leader for Ongoing Budget Stalemate," *Wisconsin State Journal*, March 8, 2011, [https://madison.com/news/local/govt-and-politics/walker-blames-senate-minority-leader-for-ongoing-budget-stalemate/article\\_2fc9a1d2-48d1-11e0-90e1-001cc4c03286.html](https://madison.com/news/local/govt-and-politics/walker-blames-senate-minority-leader-for-ongoing-budget-stalemate/article_2fc9a1d2-48d1-11e0-90e1-001cc4c03286.html); Bergquist et al., "Wis. Gov. Walker Rejects Union Offer."

<sup>87</sup>Condon, "Wisconsin Gov. Releases E-Mails; Jason Stein and Patrick Marley, "E-Mails Reveal Possible Walker Concessions on Union Bill," *Milwaukee Journal Sentinel*, March 8, 2011, [www.jsonline.com/news/statepolitics/117584003.html](http://www.jsonline.com/news/statepolitics/117584003.html); Bergquist et al., "Wis. Gov. Walker Rejects Union Offer"; Spicuzza and Barbour, "Walker Blames Senate Minority Leader."

Mark Miller (D) criticized Republicans' unwillingness to compromise, while Governor Walker claimed otherwise, revealing emails in which his office was negotiating with other Democrats.<sup>88</sup> Frustrated and blaming Miller for a botched compromise, Governor Walker met with the Republican Senate on March 9, 2011, to discuss removing budget items from the bill. During the meeting, which he described as "testy" and fraught with uncertainty,<sup>89</sup> he delineated a choice between splitting up the bill or raising taxes and gutting schools. Following this meeting, the Republican legislators decided that removing some of the budget provisions was the only way to overcome the stalemate.<sup>90</sup>

The same day, Republican leaders in the Assembly rushed the bill through conference committee, giving less than two hours' public notice before their brief meeting. While arguably violating the state's open meetings laws, GOP leadership worried that with more delays and public deliberation, the votes for the bill would not hold.<sup>91</sup> Shortly after, the Senate voted; all but one Republican senator supported the bill, though none commented after their vote that day.<sup>92</sup> The next day, the Assembly held a vote, passing the bill 53–42, with one assemblymember abstaining. On March 11, 2011, Walker signed the bill into law, marking the bill's deliberation period (24 days) as among the shortest in Wisconsin history.<sup>93</sup>

Thus, after the bill's introduction (E2), the countermovement of public employees and Senate Democrats complicated Republicans' efforts. Fleeing the state and creating a stalemate were oppositional tactics (M2 in Figure 1) that allowed Democrats' some leverage to negotiate with Republicans. If Republicans had continued with mobilization strategies (M1 in Figure 1) to lure these Democrats back, they could have created a compromise bill in which public employees retained some or all of their collective bargaining rights but conceded on some fiscal matters (counterfactual path from E2 to O1 in Figure 1). However, eventually frustrated with Democrats' continued resistance, Republicans also resorted to oppositional tactics (M2 in Figure 1). Like their counterparts, Republican legislators defied precedent and procedure, bypassing the quorum requirement, holding closed-door meetings, and rushing any deliberation to ensure Budget Repair's passage.

## 7. Discussion

As the epicenter of a national labor movement for public-sector bargaining, Wisconsin passed the first policy in 1959 (E0 in Figure 1) and, in doing so, produced effects beyond allocating those rights. The passage of the first public-sector collective bargaining policy both facilitated the expansion of public-employee

<sup>88</sup>Condon, "Wisconsin Gov. Releases E-Mails; Spicuzza and Barbour, "Walker Blames Senate Minority Leader"; John Beard, "Sen. Miller Proposes Meeting," *WKOW*, March 7, 2011, <http://www.wkow.com/story/14200645/sen-miller-proposes-meeting>.

<sup>89</sup>Walker and Thiessen, *Unintimidated: A Governor's Story*, 120.

<sup>90</sup>Stein and Marley, *More Than They Bargained For*.

<sup>91</sup>Judith Davidoff, Kristin Czubkowski, and Shawn Doherty, "Budget Bill Foes Say Stealthy Vote Broke Open Meetings Law; Challenges Coming," *Capital Times*, March 10, 2011, [https://madison.com/news/local/govt-and-politics/budget-bill-foes-say-stealthy-vote-broke-open-meetings-law-challenges-coming/article\\_66b46584-4ae2-11e0-98ae-001cc4c002e0.html](https://madison.com/news/local/govt-and-politics/budget-bill-foes-say-stealthy-vote-broke-open-meetings-law-challenges-coming/article_66b46584-4ae2-11e0-98ae-001cc4c002e0.html); Walker and Thiessen, *Unintimidated: A Governor's Story*.

<sup>92</sup>Mary Spicuzza and Clay Barbour, "Budget Repair Bill Passes Senate, Thursday Vote Set in Assembly," *Wisconsin State Journal*, March 10, 2011, [https://madison.com/news/local/govt-and-politics/budget-repair-bill-passes-senate-thursday-vote-set-in-assembly/article\\_8747fa04-4a74-11e0-8e6b-001cc4c03286.html](https://madison.com/news/local/govt-and-politics/budget-repair-bill-passes-senate-thursday-vote-set-in-assembly/article_8747fa04-4a74-11e0-8e6b-001cc4c03286.html).

<sup>93</sup>Teodor Teofilov, "The Acceleration Of Legislation Under Scott Walker," *WisContext*, August 20, 2018, <https://www.wiscontext.org/acceleration-legislation-under-scott-walker>.

labor unions and affirmed public employees' identities as union members. As the policy became institutionalized over time, it also became a celebrated Wisconsin tradition. The policy, thus, enjoyed an over 50-year tenure (IS1 in Figure 1), in which legislators, public employees, and public opinion, through lock-in effects (M0 in Figure 1), supported and preserved the status quo.

In 2011, an opportunity to retrench the policy emerged when a national Tea Party insurgency delivered a unified Republican government to the Wisconsin State Legislature (E1 in Figure 1). However, a cadre of incumbent Republicans, though generally sympathetic to the Tea Party insurgency's goals, were hesitant to overturn such a popular policy; without their votes, the collective bargaining policy would have remained unchanged (O0 in Figure 1). To secure their votes, the insurgency buried the threat to collective bargaining rights in other familiar policy provisions that more directly affected state budgets. To appeal to GOP sensibilities, they also positioned Budget Repair as a cost-saving measure that would resolve the deficit and lead to more economic prosperity and fairness. Finally, Republican lawmakers exempted police and firefighters from the bill, preempting any major opposition from these key Republican constituencies. These mobilization strategies (M1 in Figure 1) built a majority that could change the collective bargaining law (CJ1 in Figure 1).

However, the insurgency did not anticipate the massive counter-movement that emerged. Following public-employee protests, Senate Democrats decided to engage in their own opposition (M2 in Figure 1), fleeing the state to stall the bill's proceedings. Republicans attempted to build consensus for a short while, negotiating a compromise bill that would have preserved some bargaining rights for public workers (O1 in Figure 1). However, eventually, frustrated by Democrat obstinance, they opted for a more controversial course, removing fiscal items from Budget Repair to bypass the quorum requirement. They also veiled these controversial decisions with closed-door meetings, rushed votes, and limited engagement with the public following the vote. With these tactics (M2 in Figure 1), Republicans passed Budget Repair (O2 in Figure 1).

Theories on institutional persistence suggest that policies have lock-in effects, creating institutional relationships, stakeholders, and movements that work to ensure policies' path dependence.<sup>94</sup> Such lock-ins can be overcome when insurgents seize political opportunities and mobilize key allies toward change.<sup>95</sup> In the context of policymaking, these mobilization strategies often involve "strategic policy crafting,"<sup>96</sup> whereby policymakers emphasize benefits and downplay risks to appeal to allies and avoid blame.<sup>97</sup>

The analysis presented above provides some support for these theories. The lock-in effects (M0 in Figure 1) of the 1959 policy (E0 in Figure 1) created incumbents who ensured the policy's path-dependent, 50-year tenure (IS1 in Figure 1). Recognizing the opportunity from the 2010 midterm elections (E1 in Figure 1), the insurgency drew on familiar policy frames and obfuscated social costs to provide ample political cover for hesitant Republicans. Such mobilization strategies (M1 in Figure 1) created the coalition needed to pass Budget Repair (CJ1).

<sup>94</sup>Campbell, *How Policies Make Citizens*; Pierson, "When Effect Becomes Cause"; Pierson, "Increasing Returns"

<sup>95</sup>Fligstein, "Social Skill and the Theory of Fields"; Fligstein and McAdam, *A Theory of Fields*; Doug McAdam, *Political Process and the Development of Black Insurgency, 1930–1970* (Chicago: University of Chicago Press, 1982).

<sup>96</sup>Martin, "Redistributing toward the Rich."

<sup>97</sup>Pierson, *Dismantling the Welfare State?*; Vis, "Taking Stock of the Comparative Literature"; Weaver, "The Politics of Blame Avoidance."

However, typically, this literature overlooks how such strategies can prompt subversive responses from locked-in incumbents and stakeholders and how this struggle for power can complicate insurgents' efforts.<sup>98</sup> Indeed, theories on mobilization could not fully illuminate the reactive sequences in this case, when, following the bill's introduction (E2 in Figure 1), Democrats fled the state to avoid a quorum and Republicans, in turn, worked to overcome this stalemate (CJ2 in Figure 1). Building on this work, then, I incorporate theories of organizational deviance<sup>99</sup> to argue that when mobilization strategies fail to generate a sufficiently powerful coalition, insurgents may turn to oppositional tactics, subverting the norms and rules that give opponents control. Democrats' shirking of Senate duties and Republicans' tactics to evade deliberation and public involvement were forms of oppositional tactics (M2 in Figure 1) that flouted policymaking norms to recover political leverage.

## 8. Conclusion

The institutional change that accompanied Budget Repair in 2011 set off a wave of local anti-union legislation, with eighteen states considering retrenchment policies that year. It was also part of a new shift in contemporary politics, with Wisconsin becoming a symbol of the increasing divide between urban and rural, left and right, and various racial and ethnic groups. My analysis of this case helps to advance understanding of this contemporary period of political hostility, showing how political parties and movements subvert their opponents' efforts and power. In the case of Budget Repair, policymakers, rather than using strategies to build consensus, opted for subversive tactics that eroded governing norms, marking a new period of retrenchment policy and polarization in American politics.

This study, then, lays the groundwork for furthering work on oppositional tactics and their implications for democratic governance. For example, a unique feature of the Trump administration was its repeated defiance of political norms, and the crises that have emerged as a result.<sup>100</sup> However, Trump was not the first to engage in this form of politics; he was preceded by President Obama's and President Bush's unprecedented expansions of executive power<sup>101</sup> and Senate Republicans' defiance of norms in 2016, when they refused to deliberate Merrick Garland's nomination to the Supreme Court.<sup>102</sup>

At the state level, local legislators nationwide have engaged in a similar set of oppositional strategies. In 2019 Oregon, Republicans fled the state, successfully blocking gun control and vaccine bills, and in Pennsylvania, Republicans defied procedure by refusing to swear in a reelected senator; these events suggest that the political model used in Wisconsin in 2011 has been

<sup>98</sup>See similar critiques in Fillieule and Broqua, "Sexual and Reproductive Rights Movements"; Hallett and Ventresca, "Inhabited Institutions"; McDonnell et al., *A Dynamic Process Model of Private Politics*; Walker, "Social Movements, Organizations, and Fields."

<sup>99</sup>Johansson and Vinthagen, "Dimensions of Everyday Resistance"; Scott, *Weapons of the Weak*.

<sup>100</sup>Emily Bazelon, "How Do We Contend With Trump's Defiance of 'Norms?'" *New York Times*, July 11, 2017, <https://www.nytimes.com/2017/07/11/magazine/how-do-we-contend-with-trumps-defiance-of-norms.html>.

<sup>101</sup>Jeffrey Crouch, Mark J. Rozell, and Mitchel A. Sollenberger, "The Law: The Unitary Executive Theory and President Donald J. Trump," *Presidential Studies Quarterly* 47, no. 3 (2017): 561–73; William P. Marshall, "Actually We Should Wait: Evaluating the Obama Administration's Commitment to Unilateral Executive-Branch Action Symposium: Governing the United States in 2020," *Utah Law Review* 4 (2014): 773–92.

<sup>102</sup>Robin Bradley Kar and Jason Mazzone, "The Garland Affair: What History and the Constitution Really Say about President Obama's Powers to Appoint a Replacement for Justice Scalia Essay," *New York University Law Review Online* 91 (2016): 53–114.

replicated.<sup>103</sup> Future analyses of the dynamics underpinning these politicians' struggle for control could enrich understanding of institutional change and its consequences for democracy.

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<sup>103</sup>Katie Meyer, "In Explosive Debate, Pa. GOP Refuses to Swear In Reelected Democratic Senator," *NPR*, January 5, 2021, <https://www.npr.org/2021/01/05/953738158/in-explosive-debate-pa-gop-refuses-to-swear-in-reelected-democratic-senator>; Dirk VanderHart and Lauren Drake, "Senate Democrats Appear to Give Up Gun Control, Vaccine Bills to Get GOP Back," *Oregon Public Broadcasting*, May 13, 2019, <https://www.opb.org/news/article/oregon-senate-democrats-give-up-gun-control-vaccine-bills-gop-walkout-return/>.