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978-1-107-00992-9 - The U.S. Women's Jury Movements and Strategic Adaptation: A More Just Verdict

Holly J. McCammon

Excerpt

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## I

**Introduction***The Women's Jury Movements and Strategic Adaptation*

The right of trial by a jury of one's peers was so jealously guarded that States refused to ratify the original constitution until it was guaranteed by the Sixth Amendment. And yet the women of this nation have never been allowed a jury of their peers.... Young girls have been arraigned in our courts for the crime of infanticide; tried, convicted, hanged – victims, perchance, of judge, jurors, advocates – while no woman's voice could be heard in their defense.

– Susan B. Anthony, July 4, 1876

In 1868, Hester Vaughan was tried and sentenced to death in a Philadelphia court for killing her newborn infant. Following the verdict, women's organizations led by Susan B. Anthony and Elizabeth Cady Stanton rallied to her defense. They argued that Vaughan had not received a fair trial. Vaughan, an immigrant from Britain, had worked as a servant until it became apparent that she was carrying her employer's child. With her position terminated, she found herself without income or family support. After living alone for a number of months and trying to sustain herself by taking in sewing, she was discovered three days after the birth, severely ill and alone with the dead child. A letter to the editor in the *New York Times* argued that the facts of the case had simply not been carefully considered at trial. The writer explained, "the mother was, in midwinter, driven, forlorn and destitute, to a barren attic room where, freezing and starving, she gave birth to a child. The mystery is, not that the child died, but that the mother lived" (1868a, p. 5; see also *New York Times* 1868b, 1868c). The Working Women's National Association, led by Susan B. Anthony, took up Vaughan's cause and ultimately succeeded in winning a pardon from the Pennsylvania governor. The association stated that because no women were permitted on the jury that tried Hester Vaughan, the verdict was not just. The group was outraged that an all-male jury viewed Vaughan as the malefactor when, in fact, the women argued, Vaughan was the victim of a broader gender and class system in which women in her position had little or no power (Rakow and Kramarae 1990).

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[More information](#)

This case ignited one of the earliest collective protests in the United States against women's exclusion from juries. There were only a few early successes, however. Even after woman suffrage was granted in 1920, women in most states still had no voice in determining justice in their communities. Women now had the vote, but they remained disfranchised in the courts.<sup>1</sup> Women continued protesting all-male verdicts in a variety of cases (Kerber 1998; Perry 2001; Rogers 2000), including a widely publicized 1935 case in Virginia. Edith Maxwell had been found guilty by an all-male jury of murdering her father (Best 1994). Throughout her childhood, Maxwell's father drank and beat her. Now, although she was a twenty-one-year-old schoolteacher and was helping support her family, her father still insisted she follow his household rules. When she refused, he routinely became violent. After an evening out with friends, Maxwell returned home and her father threatened "to break her damn neck" and pulled her by her hair through the house. Maxwell fought back and by the end of the incident the father had a bleeding head wound. He went to bed and never awoke. Maxwell was charged and ultimately found guilty of murder. Women's groups, including the National Woman's Party and Business and Professional Women's Clubs, protested that Maxwell had not been tried by a jury of her peers. One member of the National Woman's Party conjectured, "I cannot conceive of a jury, consisting of both women and men, which would have convicted this girl under the evidence submitted" (Hamm 2001, pp. 115–116). While in the decades after suffrage, organized women in a variety of states launched campaigns to change laws so women could serve in the jury box, these efforts did not succeed in Virginia until 1950 – too late for Edith Maxwell. On appeal, Maxwell was again found guilty. At the request of various women's groups, however, First Lady Eleanor Roosevelt intervened on Maxwell's behalf, writing to the governor of Virginia, who agreed to pardon Maxwell. She was freed after serving four years in prison.

Court cases such as these repeatedly galvanized women in the United States to act collectively to change jury laws. During roughly the first half of the twentieth century, following their success in winning voting rights, women across the country mobilized to broaden women's citizenship further, so that they could serve on juries. They did so largely at the state level, targeting state legislatures with their arguments that women should have a voice in determining guilt and innocence. The jury campaigns were not on the same scale as those for woman suffrage, but they were nevertheless broad in scope, often involving statewide mobilizations. The campaigns were covered widely in the press and launched fierce debates in state legislatures over the scope of women's citizenship. In Wisconsin in 1921, one jury movement participant remarked that the woman-juror provision in the proposed state equal-rights amendment was the most contentious item in the bill (Putnam 1924). In Colorado, State Senator Eudochia Bell Smith reported that the law putting women on juries in her

<sup>1</sup> In Chapter 3, I discuss in detail when states began allowing women on juries.

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Excerpt

[More information](#)*Introduction*

3

state was “one of the hardest fought bills ever passed by the Colorado Senate” (Smith 1945, p. 18).

Today we know little about these jury campaigns. Few historians and social scientists have chronicled the women's mobilizations. In fact, some recent accounts of historical shifts in the demographic composition of U.S. juries fail to mention women's efforts to gain a place in the jury box (Abramson 1994; Oldham 2006). Yet across the United States in the early twentieth century, women came together to challenge existing law. The state jury campaigns were led by an assortment of women's organizations, including the League of Women Voters, women's bar associations, and state branches of the National Woman's Party. Women lobbied state lawmakers, publicized their efforts in the media, organized mass letter-writing campaigns, litigated, and staged scattered street protests to convince lawmakers and the public that women ought to be impaneled as jurors. Ultimately, in all states where women pressed for jury reform, they were successful in changing the law to include women, and in 1968, Mississippi was the last state to enact legislation permitting women to serve.

## WINNING A PLACE FOR WOMEN ON JURIES

In this book, I examine the women's jury movements and how they were able to win reforms in state-level jury laws. Little has been written about these women's actions, yet their mobilizations provide rich lessons, both historically and sociologically. In particular, the histories of these movements reveal that women have long been active agents in the political arena. Women's historians have strived to write women into our political history (Baker 1984; De Hart and Kerber 2004; Freeman 2000; Wolbrecht, Beckwith, and Baldez 2008), but the post-suffrage years in the United States have largely been overlooked, particularly women's activism to broaden their citizenship rights.<sup>2</sup> In fact, the women's jury campaigns call on us to adjust our thinking about the phases of feminist politics. The U.S. women's movement has routinely been characterized as having two “waves,” the first being women's late-nineteenth- and early-twentieth-century struggle for suffrage, and the second being women's mobilization in the 1960s and 1970s for an equal-rights amendment (ERA). The jury movements demonstrate, however, that *between* these surges in women's rights activism, women continued to push for greater legal rights, revealing that feminist politics were alive and well between the waves. In Maryland in 1931, for example, some 200 women from the Maryland Federation of Women's Clubs staged a protest rally on the steps of the Maryland capitol building, carrying signs demanding “Jury Service for Women” (Kennard 1931). Whereas some have called the period between suffrage and the ERA the

<sup>2</sup> A handful of scholars have examined women's actions following 1920 to expand social welfare policy (Lemons 1973; Muncy 1991; Skocpol 1992).

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Excerpt

[More information](#)

“doldrums,” with women’s collective mobilization on the wane, others have pointed to the continuities that characterize women’s organizational presence before and after suffrage and the continuing activism that marks these years (Cott 1987; Rupp and Taylor 1987; Sharer 2004). The state-level jury movements reveal a rich history of women’s mobilization from the 1920s through the 1960s, with concerted and coordinated collective action to expand women’s presence in the political sphere.

The women’s jury movements also provide another important insight, this one sociological. We learn from them that not only were the political context and movement resources important in helping these movements achieve political reforms, but activists’ strategic orientation also aids our understanding of how they succeeded. Some of these women’s organizations were highly strategic in their efforts to change jury law. They engaged in what I call *strategic adaptation*. Members of the jury movements who were strategically adaptive responded to exigencies in the larger political arena by continuing to revise their tactics in ways that would make them more effective in achieving their political goals. Activists who engaged in strategic adaptation:

- perceived and interpreted signals and other information from the environment;
- assessed the movement’s current tactics in light of this information;
- conceptualized revised tactics they deemed more effective; and
- implemented changes in their tactics.

In short, successful activists tailored their collective actions to the broader context. Other jury movement groups were far less strategic, often simply (and ineffectively) using the same tactics year after year, rarely altering their actions. Some missed critical signals from the political field and thus failed to respond at all. I argue that proponents of women on juries who carefully fit their tactics to contextual exigencies were more efficacious and able to accelerate the pace of reform. Less-strategic movements were slower in winning reforms. Women in the California jury movement who engaged in strategic adaptation were successful in just four years. In Colorado, on the other hand, where activists were substantially less strategic, women spent thirty-three years pressing to legalize women jurors. Quite simply, the more strategic movements won a change in jury law more rapidly.

It may seem axiomatic to argue that strategic movement activists will increase the pace of legal reform. Surprisingly, however, few social movement researchers pay close attention to social movement strategizing. Few scholars today debate the assertion that social movements can effect policy change (although see Burstein and Sausner 2005; Soule et al. 1999), but all in all, we still have only a limited number of studies that explore precisely *how* movement actors go about winning political reform. Major theoretical perspectives in the study of social movements lead researchers to focus on a variety of circumstances *other than the actions of movement actors*. For example, political opportunity

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Holly J. McCammon

Excerpt

[More information](#)*Introduction*

5

theorists point to the importance of a conducive political environment, arguing that broad social structural conditions create a more receptive political climate for activist demands (see Amenta and Caren 2004 for a review). The resource mobilization tradition draws our attention to the critical role of movement resources, with specific attention to the material and human resources necessary for successful mobilization (Edwards and McCarthy 2004). Moreover, organizational researchers working within the organizational ecology perspective (Barnett and Carroll 1995; Minkoff 1999) argue that groups – typically business organizations – that adapt to their surroundings are more likely in the end to fail and disband. I find the contrary for social movements, that more flexible groups, those who tailor their tactics – in this case, to the political field – are more likely to succeed in winning political reforms.

This book examines the agency of women activists as they pursued jury rights. By studying the jury activists and their collective actions, I show that what movement actors do matters. As will be seen, political opportunities and movement resources figure prominently in the histories of how the state woman-juror activists gained jury rights for women. The heart of the story, however, lies in organized women's strategic adaptation. Jury rights for women were ultimately won because of the strategic activism of mobilized women. This work will show how strategic adaptation unfolds over time within a variety of women's jury movements, as these collective actors responded to opponents, lawmakers, allies, and the larger political and cultural environment.

In addition to exploring how strategic adaptation impacted political reform, I also investigate the circumstances that led movement groups to engage in strategic adaptation in the first place. Whereas the jury movements in a number of states were strategic very early in their campaigns, others only became strategic later in their campaigns, after numerous years of little or no strategic engagement. For this latter group of state movements, the turn to a more purposeful and instrumental pursuit of their goals ultimately allowed them to gain the political reforms they sought.

A number of causal elements explaining why activists turned to strategic adaptation emerge from my investigation. For instance, internal tension fueled strategic adaptation among the jury movements. That is, dissent among members in the movements over appropriate tactics or ideological orientations sparked more innovative responses to defeats and hurdles presented by opponents. Also, ongoing activism helped challengers gain experience; they learned how to respond to opponents and how effectively to revise tactics to reach their goal. In addition, coalitions among movement organizations with diverse and bridging leadership, sometimes involving political insiders (members of the state legislature who were also jury activists), provided the needed space and personnel for dialogue and deliberation, and such partnerships also spurred more strategic responses. Finally, political opportunities, such as broad legal changes that made political elites more receptive to the activists' demands, also fostered a more strategic response among jury activists in some states.

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Excerpt

[More information](#)

The state jury movements thus reveal lessons for modern-day activists. How activists pursue their goals can importantly influence whether and how quickly they achieve their aims. The California, Illinois, New York, Tennessee, Wisconsin, and Vermont histories explored in this volume reveal precisely how. There is much to be learned from the historical jury movements. Those engaged in strategic adaptation sped up political reform. In addition, as the state jury movements reveal, there is important variation among them. In this volume, I compare movements that were strategic during their formative years with those that were less strategic in their earlier years. I also examine the turning points when less-strategic movements became more strategic. The histories in Colorado, Georgia, Maryland, Massachusetts, Missouri, Montana, Nebraska, South Carolina, and Texas illustrate such turning points. These movements, then, can help contemporary activists understand the conditions in which less strategic activists become more strategic. Thus, the comparisons in this volume shed light on both the circumstances producing strategic adaptation and the ways in which activists can succeed in changing the law.

My work draws on archival data – most of it unexplored by other researchers – to show that strategic adaptation helps us understand differences in the successes of the women's jury movements. I delve into the historical records for fifteen state jury movements, in California, Colorado, Georgia, Illinois, Maryland, Massachusetts, Missouri, Montana, Nebraska, New York, South Carolina, Tennessee, Texas, Vermont, and Wisconsin. I draw on organizational records for the various women's groups, personal archives for leaders and members of the movements, newspaper accounts of the campaigns, and legislative and court records revealing debates over women serving. The states and movements vary in the degree of strategic adaptation, the pace of reform, the political climate, and the resources of activists. The number of cases I examine is mid-range in scope, meaning that I include enough to compare multiple movements systematically to discern causal patterns across cases. But I also limit the number of cases so I can explore detailed information for each one concerning whether and how strategic adaptation unfolded.

In many of the chapters that follow, I provide analytic narratives for the state movements – that is, historically detailed accounts that outline a sequence of events, decisions, actions, and consequences that reveal the causal relationship between strategic adaptation and political change (Griffin 1992; Pedriana 2005; Stryker 1996; Tilly 2008). I then use the analytic narratives along with qualitative comparative analyses (QCA) to compare and contrast the various movements and their outcomes to discern broad patterns in how strategic adaptation occurs and how it influences jury reform. My method of analysis thus highlights both the case-specific ways in which strategic adaptation develops (or does not develop) *and* the broader causal processes occurring across cases. To draw on Pedriana's (2005, p. 350) language, my approach resides in the "eclectic messy center" between theoretical generality and case particularity," making use of both to provide a descriptive and explanatory account of the women's jury movements and changes in jury law.

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Holly J. McCammon

Excerpt

[More information](#)*Introduction*

7

Many historically contingent circumstances emerge from the states' histories in the pages that follow. At the same time, however, general patterns in both the causes and consequences of strategic adaptation can be discerned. For instance, in New York, the state's legal community as well as real estate and insurance companies strongly opposed granting women a place on juries, fearing that women would make jury decisions less predictable. Jury activists learned to respond strategically to this opposition. In Tennessee, activists were more likely to bump up against apathy rather than active resistance to women on juries, and much of the apathy came from members of women's groups themselves. But, as in New York, the Tennessee jury advocates learned to respond strategically to counteract this lack of interest.

Even though each jury movement followed a distinct pathway to win this new citizenship role for women, when the movements are viewed together, it becomes evident that they share common causal processes. Some movement actors learned to respond to signals from the broader environment and honed their tactics to best respond to these signals. When movement actors engaged in such strategic adaptation, they were clear agents of political reform and they could increase the pace of change. Other movement actors, however, did not engage in strategic activism, at least not for many years, and for these jury movements, political transformations took longer and, in fact, did not happen until the movement groups shifted their approach to more strategic activism.

The historical materials provide a rich and nuanced view of how some activists responded to opportunities in the broader political field as well as to political defeats or setbacks for the movement, while other activists missed important signals and failed to respond and adapt. The archival records also allow me to explore discursive opportunities for collective action framing and how some activists strategically responded to such opportunities by constructing movement frames to take advantage of cultural and ideational openings provided by the larger cultural context. The archival records permit me to examine how critical resources such as organizational coalition structures and diverse leadership fueled strategic adaptation. I use the historical records to develop a detailed conceptualization of strategic adaptation as well as a clear understanding of how movement actors *not* engaged in a strategic response behaved. The combination of these accounts allows me to find the general patterns and explain why some states granted women a place on juries more rapidly than others.

## THE ROAD AHEAD

In the chapters that follow, I further develop my theoretical argument and explore how strategic adaptation unfolds. In Chapter 2, I ask what it is that movement actors do to win the legal and political changes they seek. I begin with a brief overview of scholarly conceptualizations of social movement outcomes and the causes of movement political success. I define a number of

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Excerpt

[More information](#)

shortcomings in the existing literature, including our limited understanding of what it is that movement actors do to cause policy leaders to enact new law. The chapter then develops the concept of strategic adaptation and argues that movements that succeed in changing law and increase the pace of reform are those engaged in strategic adaptation.

Women did not gain the right to sit on juries when they won the right to vote. Instead, they launched new campaigns in the next step toward full citizenship. Chapter 3 traces the origins and development of the U.S. women's jury movements, including the importance attributed to them by activists, politicians, and the press at the time they took place. I discuss why jury service is an important part of citizenship and examine key legislative and judicial decisions concerning women's role on juries as well as how women's inclusion on juries fits into the overall history of juries in the United States. I also explore the race and class makeup of the jury movements and their typical tactics. I conclude with my rationale for focusing on the fifteen state jury movements.

How can a political loss sometimes turn into a political victory? For a number of the jury movements, defeats at the hands of lawmakers and sometimes voters signaled the need to revise tactics based on the precise reasons for the defeats. Chapter 4 examines the jury movements in California and Illinois, two states where jury activists responded to legislative setbacks in strategic ways and won jury laws more quickly. In California, for example, a grassroots campaign was launched to educate women on the importance of serving on juries. Meanwhile, in other states, defeats and signals about how to revise tactics became missed opportunities for renewed action. The chapter contrasts the strategic movements of California and Illinois with efforts in Montana and Nebraska, where activists, instead of engaging in strategic adaptation, responded to defeats with frustration and the same old tactics, which slowed the pace of reform in these latter states.

Activists in New York, Tennessee, Massachusetts, and Maryland confronted staunch opposition or, at best, ongoing apathy toward their goals. As Chapter 5 reveals, the jury movements in New York and Tennessee responded strategically to the opposition or apathy, whereas the movements in Massachusetts and Maryland did not, or at least did not until late in their campaigns. In New York, for instance, jury proponents learned that male lawyers and leaders in the insurance and real estate industries were the most vocal opponents of adding women to juries. Over time, activists revised their tactics and arguments to respond to this opposition. The chapter shows that the campaigns in New York and Tennessee, where activists engaged in strategic adaptation, came to fruition more swiftly than did those in Massachusetts and Maryland, where there was far less instrumental and goal-directed behavior among activists.

Chapter 6 explores how strategic actors articulate persuasive claims for political reform. Activists in both Vermont and Wisconsin, from the beginning of their campaigns, responded strategically to cues from the broader cultural



Cambridge University Press

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Holly J. McCammon

Excerpt

[More information](#)*Introduction*

9

environment. They constructed collective action frames that took advantage of discursive opportunities, including traditional beliefs about women's roles. Vermont activists harnessed the traditional gender culture that viewed women's place as in the home, claiming that women could better protect families if permitted on juries. In Wisconsin, jury proponents took advantage of democratic themes in the immediate post-suffrage context to challenge traditional views about women's roles. In both states, strategic movement framing quickened the pace of new jury legislation. In Georgia, on the other hand, organized women for many years missed cultural opportunities for strategic framing by failing to respond to claims by opponents that women had no place on juries. These missed opportunities helped delay women's jury rights in Georgia by some thirty years.

Ultimately, however, even activists who came to strategic adaptation more slowly were able to turn their movements around. Chapter 7 examines the jury movements in Colorado, Missouri, South Carolina, and Texas, all of which became strategic late in their campaigns. This final set of states allows me to examine why these various movements transformed from being nonstrategic to engaging in highly concerted campaigns. The emergence of a coalition among movement groups, as well as changes in the broader political context, sent critical signals to activists and triggered the strategic response. For instance, in Colorado, World War II offered a fundamentally different discursive climate that activists were poised to exploit, and in South Carolina, legal changes emerging because of the civil rights movement offered a coalition of white women's jury activists an opportunity for intensifying their efforts strategically and effectively in the state.

How common are the causal patterns found among these state jury movements? In Chapter 8, I examine both the causes and consequences of strategic adaptation for the jury movements using qualitative comparative analysis (QCA). QCA allows me to compare the states systematically, using Boolean logic to sort out similarities and differences across the jury movements. Whereas the analytic narratives for the individual states suggest commonalities and differences among the state movements, QCA discerns them in a more precise fashion, including identifying some patterns that are not readily apparent when one simply compares the state narratives. I ask two questions in these analyses: (1) What role did movement strategic adaptation play in winning reforms in the state jury laws? (2) What combination of circumstances produced strategic collective action among the activists? The QCA draws on the same key factors theorized in Chapter 2 and evident in the analytic narratives for the individual state movements in Chapters 4–7, but QCA moves the analysis forward by revealing that not all states followed precisely the same route to strategic action and jury reform. For instance, some state movements took a movement-led path to become strategically adaptive, and others followed a context-led route. QCA also reveals important differences between the swift and slower states, which help us understand why some of the movements were strategic early in their campaigns whereas others became strategic only later in their

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[More information](#)

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efforts. In Chapter 8, then, I “sum and tally” the various state trajectories in a systematic analysis to discern the recurring patterns as well as the differences among the state movements.

In the concluding chapter, I summarize the volume's theoretical and empirical contributions, pointing to the importance of considering how movement actors go about winning political reforms. I conclude that strategic adaptation plays a pivotal role in social movement political success.