

Substance Over Style:  
Institutional Activism and Amending State Constitutions to be Gender-Neutral in Maine, New  
York, and New Hampshire

By

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To Noah. Thank you. I love you.

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## I. Introduction

Gender inequality and language are intimately intertwined with wide-ranging societal consequences. In the United States (US), gender inequality has tangible effects on almost every aspect of a woman's life. Sexist beliefs about women's abilities and roles in US society diminish women's lifetime earnings, lower the likelihood of labor force participation, and lower the age at which women marry and have their first child (Charles, Guryan, Pan, 2018; Brenner, Tomkiewicz, & Schein, 1989; Dodge, Gilroy, & Fenzel, 1995; Heilman, Block, & Martell, 1995; Heilman, Block, Martell, & Simon, 1989; Schein, 2001). While the gender wage gap has narrowed, American women still earn only 80 percent of what their male colleagues make (Graf, Brown, & Patten, 2019). Additionally, despite graduating from college at higher rates than men (US Department of Education, 2018), women are 38 percent more likely to live in poverty than men (Patrick, 2017). While national trends provide a meta-level understanding of women's standing in society, state-level investigations can be more revealing as they provide a more nuanced picture.

State histories and values are delineated in how each state's constitution was written, maintained, and amended. Localized differences from state-to-state demonstrate how state governments are "simultaneously...[a] given (as the context within which agents think, speak, and act) and...a contingent (as a result of the agents' thoughts, words and actions)" (Schmidt, 2008, p. 314). The interaction is two-fold: the state is simultaneously an object that can be debated, understood, and improved upon, while also remaining a meta-structure that grounds those who participate in it as a social institution, which continues to exist despite changes to its functions and influence over time (Schmidt, 2008). These features preclude and inform state action while also being informed by citizen interaction with the state. The nature of this relationship means that state governments and the constitutions that imbue them with power should not be treated as neutral and are instead carriers of meaning that can change over time (Schmidt, 2008). Therefore, states can signal a full cultural embrace of the improved social status of women by changing its symbolic structure, such as amending their constitutions to be contain gender-neutral language.

Since language is a powerful vehicle for communicating bias, serving as "an anonymous, collective, and unconscious art; the result of the creativity of thousands of generations" (Sapir, 1921, p. 235), language used in state constitutions is therefore a vehicle through which change occurs within the parameters of what is considered socially acceptable in that state. Each state, therefore, uses its linguistic choices in governing documents as both a reflection of its accepted gender roles and the foundation from which those roles may evolve (Chew & Kelley-Chew, 2007). Although English as a language does not require gender when identifying nouns, as is true in the Romantic languages, gender-neutral options to refer to a person that has no assigned gender have only recently been adopted by the mainstream with many reluctant to change their speech. This grammatical reality has led to the masculine generic, or reflexively using the masculine form of a pronoun or noun, to persist as the default usage for subjects with no assigned gender. Seeking to change the language used in institutional documents, such as state constitutions, is therefore seeking to change the gender unequal status quo. In looking at activists' efforts to change the language in their states' constitutions, I seek to understand both a state's structural ability to respond to the products of institutional activism related to

constitutions and the prerequisite cultural conditions for changes to these foundational governing documents to take place.

In this paper, I examine how institutional activism was effective (or not) in changing three states' constitutions to contain gender-neutral language. I investigate two case studies where institutional activism in promoting gender-neutral constitutional changes was a success (Maine and New York) as well as one that was unsuccessful (New Hampshire). First, I provide an idio-cultural analysis (Fine, 1979) of each state to provide an understanding of the “system of knowledge, beliefs, behaviors, and customs shared by members of interacting group to which members can refer and employ as the basis of further interaction” that is hyper-specific to the states' the localized cultures (Fine, 1979, p. 734). A discussion of the opportunity structures and framing devices used by institutional activists follow in order to provide an understanding of how movement outcomes are influenced by structural and cultural phenomena. Finally, there is an analysis of the findings and conclusion that addresses weakness of the study and possible future research.

## **II. Literature Review and Theory**

Explaining the success of the movements to amend the gendered state constitutions in this study requires multiple coinciding factors, including movement actors and the opportunities they were able to exploit, that enabled these gender-neutral semantic modifications to occur. Up until this point, there have only been examinations of how such changes are impactful or important for women's equality and equity. In this paper, I evaluate how adopting gender-neutral language in foundational governing documents occurred, an important step for replicating this success in the states that have not realized these changes yet.

### **i. Institutional Activism**

Movement success in the case of amending state constitutions requires that people within government structures with the power to propose legislation not only be aware, but also willing to advocate on behalf of such a cause. Institutional activists and activism (Banaszak & Whitesell, 2019; Banaszak, 2005; Pierson, 1994; Santoro & McGuire, 1997; Tilly, 1978) are quite fluid. In the broadest sense, they can be understood as individuals and movements that affect change from within organizations and/or institutions (Pettinichio 2012). Institutional activism can be seen as an example of “unobtrusive politics” or a “mix of...interest group politics - the influence of elites within the rules of the institution - and discursive politics, referring to the changing the meanings of groups within the institution” (Pettinichio, 2012, p. 8; Katzenstein, 1998). Institutional activists often participate in causes that already exist external to their own design (Santoro & McGuire, 1997). Because of their access to decision-making power, they are able to work on movement issues even when there is abeyance in outside movement pressure (Pettinichio, 2012). This intervention can the continue the movement despite waning outside attention.

Institutional activists are likely to have their own background in movement participation which links them to larger social movement organizations (Costain & Majstrovic, 1994; Reichman & Canan, 2003; Sulkin, 2005; McAdam, 1999), so they may be promoting the agenda of a social movement organization with which they are already affiliated (Pettinichio, 2012). Despite these affiliations, institutional activists have a dynamic with those groups that is not based solely on reacting to the outsider group's action (Pettinichio, 2012). Dodson (2006), who interviewed three waves of women in the 103rd and 104th Congress, found that between 91 and 100 percent of women who were members of Congress felt they had a responsibility to women, whether that meant creating policy that aligns with the women's movement or responding to women's needs (2006 p. 49). In fact, Outshoorn (2010) demonstrates through a cross-national comparison that feminist institutional activism is more important than extra-institutional activism as a source of policy change. In addition, a collaborative effort between outsider groups, institutional activists, and receptive government insiders is the most effective means of feminist institutional activism (Weldon, 2002).

The collaborative strategy that these three groups employ to succeed in responding to the broader discursive environment and relevant political opportunities through strategic framing of the issue. Institutional activism that relies on legislative approval or judicial rulings does not necessarily have a component of popular approval by the electorate, as is the case in the processes examined here. Lobbying legislators and litigating before receptive judges can yield powerful results (McCammon & Brockman, 2019), though there is not an adequate understanding of the how institutional activism succeeds when subjected to popular referendum. Institutional actors, no matter how connected to outsider movements and receptive their fellow government insiders, cannot successfully translate institutional activism into popularly approved results without adequately incorporating political and discursive opportunities as well as framing.

## ii. Movement Success through Strategic Framing

Framing is imperative in relaying grievances of social movement actors to the general public, particularly in an environment that has a localized culture such as a particular state. However, the effectiveness of framing is reliant on how the frame is communicated as well as the broader cultural environment where the frame is being deployed (McCammon et al., 2007). Frames can be seen as "cognitive understandings of certain issues, events, or problems that guide actions" (White, 1999, p. 83). Frames are strategic and "developed and deployed to achieve a specific purpose" (Bedford & Snow, 2000, p. 64). Since framing must be operationalized under strategic conditions, "movement actors are agents who respond to such opportunities, discursive and otherwise" (McCammon et al., 2007, p. 732; Ferree, 2003; Gamson & Meyer, 1996).

Frame alignment (Snow et al., 1986) is the process through which grievances must be operationalized into movement talking points in order to impart the gravity of the issue to the larger community. Frame alignment serves to convey how movements connect movement issues to another ideologically congruent frames and values. That is, the movement actors must communicate the shared values among movement actors and the recipients as well as clarify the ways in which the issue affirms or violates these values (Snow et al., 1986). Creating a



successful frame, however, is not simply contingent on the frame being correctly aligned. To be successfully operationalized, framing relies on the broader political and discursive opportunity structures to be compatible with the frames social movement actors create and deploy. Institutional activists that can recognize and exploit the relevant opportunity structures and employ effective framing device are therefore likely achieve success for their cause.

## ii. Opportunity Structures

### a. Political Opportunity

Political opportunities are dominant in social movements research as a concept for understanding social movement emergence (McAdams, 1999; Tarrow, 1994). Political opportunities denote the relative openness or closure of an institutionalized political system that depends on the presence or absence of institutional allies (McAdams 1996). That is, how conducive the political environment is to the changes activists are attempting to promote. However, political opportunities themselves do not necessarily lead to successful outcomes.

Political mediation theory (Amenta, 1992) suggests that a combination of favorable political context and an active movement will yield a successful outcome. Political opportunities, therefore, serve as mediating forces of movement actions. The actions of activists are not dependent on the existence or lack of a specific political opportunity as outlined in political opportunity theory (McAdams, 1999), but rather would be unsuccessful without that opportunity mediating strategic movement tactics (Amenta, 1992). Structural openness to change is critical in responding to cultural phenomena that institutional activists may harness to bolster their chances of movement success.

### b. Discursive Opportunity

While framing is the means through which activists may communicate their message in a way that resonates with the public more broadly, there cannot be an understanding of what will resonate with the public without knowing the cultural realities of the specific environment in which the frames are being deployed. Like political opportunities, discursive opportunity structures can be stable or volatile (McCammon et al., 2007; Gamson & Meyer, 1996). The public's underlying principles and narratives of the cultural environment must align with movement for framing to succeed (McCammon et al., 2007). Discursive opportunities are those that stem from the broader cultural discourse of a place and are fluid by nature. That is, they are opportunities borne from cultural understandings of issues, which are consistently subject to change depending on what the popular imagination understands as "realistic" and "legitimate" (Koopmans & Statham, 1999, p. 228).

Similar to political mediation theory, discursive opportunities can serve as moderating variables for framing success (McCammon et al., 2007) and are a valuable tool for understanding how institutional activists position their issue to the public, especially when there is a public referendum required for a successful outcome. In the case of women's issues, framing the movement around salient and culturally significant issues that resonate with the public serves as a frame-bridging device for those who care about these issues, but had not recognized them as a facet of the larger movement (Snow et al., 1986). This means that the public's underlying principles and narratives of the cultural environment must align with movement goals for framing to be effective and lead to a successful outcome (McCammon et al., 2007). Put bluntly: "Movement framing that succeeds in persuading lawmakers to change the law is thus the result of the combined effect of a discursive opportunity structure *and* movement actors" (McCammon et al., 2007).

### III. Expectations

There is a body of research dedicated to how women's explicit exclusion from the language of the law creates a substandard state of being for women to occupy that must be overcome to provide equal and fair social conditions. Numerous state constitutions have been amended as a response to these findings. Maine and New York succeeded in changing this constitutional language to be gender-neutral through institutional activists employing framing tactics that were moderated by discursive and political opportunities that enabled their message to resonate with the electorate more broadly. I expected that the strategic framing employed in conjunction with political and discursive opportunities made gender-neutral language in Maine's and New York's constitutions a vehicle through which the citizens of those states could express their approval of the elevated status of women in the state. However, in New Hampshire, less amenable political and discursive circumstances resulted in a string of failures to implement the gender-neutral constitutional changes pushed for by institutional activists.

For the purposes of this research, gendered language will be understood as language referring or relating to one specific gender. Gendered pronouns (he/him/his or she/her/hers), nouns (e.g. mankind, manpower), and adjectives (e.g. feminine: communal/kind vs. masculine: strong/reliable) all have a bearing on this examination. The masculine generic is defined as reflexively using the masculine form of a noun or pronoun when there is a genderless subject or object. I employ the term gender-neutral language when discussing language that refers to no particular gender or the inclusion of the two genders on the binary as a means of neutralizing the masculine generic. While this is not ideal given that gender expression and identity is not contained by the binary, attempts to change the masculine generic to be inclusive of women occurred when discussions about gender were less informed and less nuanced. For each state, I provide the ballot question presented to voters that outlines how each state understood the term gender-neutral at the time the amendment was considered.

I use gender-neutral rather than the gender-fair or non-sexist, as I believe those terms have compounding and complicating factors not relevant to this study. Gender-fair implies that women and men will be presented together as equals rather than simply neutralizing the

reference to masculine forms (Sczesny, Formanowicz, and Moser, 2016). While non-sexist language addresses the same issues with gendered language as the term gender-neutral, I believe using the word sexist denotes intent, so I employed its less-loaded equivalent, gender-neutral.

#### **IV. Methods and Data**

I developed case studies of Maine, New York state, and New Hampshire to understand the process by which their constitutions came to be amended to contain gender-neutral language. Maine and New York were both successful in their attempts to change their constitutions while New Hampshire has been repeatedly unsuccessful. I chose these particular cases because they are all in the northeastern United States, which has regional similarities in politics and culture. Additionally, while Maine and New Hampshire are considered part of New England and New York is not, New York shares a border with Vermont, which is part of the region and also has a gender-neutral constitution. These cases all provide straightforward understandings of how institutional activists were successful or not in their pursuits of incorporating gender-neutral language into their respective state constitutions. These cases allow me to create a theory about the conditions needed for institutional activism to succeed in amending state constitutions, including activist framing and interacting discursive and political opportunities.

I gathered much of my data from myriad online resources. Many of my sources were secondary sources such as news media, which I found by conducting broad online searches with terms such as “gender neutral constitution,” “gender neutral language constitution changes [insert state],” “constitution change language [insert state],” for example.

I used the online bill research resources from the Maine, New Hampshire, and New York state legislatures to understand the official process the amendment went through prior to being on the ballot. I heavily referenced each state’s constitution, which I accessed from the respective states’ websites, making sure to note what had been amended since the year of the gender-neutral constitutional changes. The Rutgers Center for American Women in Politics provided the statistics and parties of the women in each state’s government dating back to 1975. I also conducted interviews with individuals who participated in the legislative process in each state to understand their perspectives on the process and the overall tenor of changes in their individual states. These interviews ranged significantly in length from seven to 35 minutes.

In order to understand the cultural contexts in which these constitutional changes did or did not occur, I surveyed online cultural databases, local paper culture sections, television show ratings, movies, as well as music and movie industry award winners popular during the periods when the amendment processes were happening. These were generally national-level searches, though the local papers are from specific areas in the state.

Once I collected all of my data, I employed thematic coding (Given, 2008) in order to find consistent patterns across the various sources. In order to have a more detailed understanding than the thematic coding provided, I then open coded (Corbin & Strauss, 2008) the data. The

products of these two related by independent coding processes became the basis for the opportunity structures and frames discussed below.

## V. Findings

Through these case studies, I discovered not only institutional activism, but also two major opportunity structures at play: political and discursive. These opportunity structures stemmed from Maine, New York, and New Hampshire's respective government structures and broader idio-cultural environments. The political opportunities are: 1) increase in the number of women in government, 2) increase in the number of women in leadership positions in government, and 3) relatively open constitutional amendment processes. There was one discursive opportunity which spanned across all three states with varying efficacy: the new era for women opportunity structure, which looks at the broader social context for women in which these changes were made. In Maine, shifting demographics also served as a discursive opportunity. In New York, 9/11 and the resulting wartime discursive opportunity (McCammon et al., 2007) also played a major role.

Two major frames were employed in all the states to varying degrees of success: the role reversal frame, which asks opponents to empathize with those who would benefit from gender-neutral language in a state constitution, and the low impact frame, which emphasizes that the changes made to the constitution will have a marginal semantic, financial, and logistical impact on the state and state legislature. Both of these frames were used to counter opponent claims meant to diminish the case for amending state constitutions to have gender-neutral language (McCammon et al., 2007).

### i. Idio-Cultural Environments

#### a. Maine

Maine was the 23<sup>rd</sup> state incorporated in the broader United States as part of the Missouri Compromise, almost 30 years after other states in New England. Its constitution was ratified as part of the Missouri Compromise in order to confirm that the state would not recognize slavery as legal. Prior to being an independent state, it was part of Commonwealth of Massachusetts and is one of only three states that have been formed out of other states without having been ceded to the US as a pre-Statehood Territory (Berg-Andersson, 2001). Maine's constitution, adopted in 1820, is the fourth oldest operating constitution after only Massachusetts (1780), New Hampshire and Vermont (both 1793) (Berg-Andersson, 2019b). When the amendment "to Clarify the Original Constitutional Resolution Making the Language of the Constitution Gender-Neutral" was passed in 1988 (Maine State Legislature, 2020), Maine's constitution had been amended 157 times (113th Legislature of the State of Maine, 1988b). The amendment sought to

replace “105 to 120” instances of the masculine generic with the appropriate nouns (113th Legislature of the State of Maine, 1988b).

Maine politics have always been unorthodox. There is an old adage that “As Maine goes, so goes the nation.” Indeed, Maine’s state motto is the Latin *Dirigo*, meaning “I lead”. Compared to other states, Mainers are more disdainful of party affiliation, a trend that gained steam with the success of independent James Longley’s run for governor in 1970 (Leary, 2018). This does not mean that registered independents do not lean towards a particular party. Rather, independents view party politics as setting up competition rather than building coalitions (Leary, 2018). There has been an overall marked increase in political polarization all over the United States (Jones, 2020), and Maine is no exception to that. However, Maine’s voting trends tend to be atypical, especially relative to its demographically similar counterparts (Reiter 1977). For example, in 2016, voters decided to legalize recreational marijuana, increase the minimum wage, create a new income tax for public education, but rejected an expansion on gun background checks (*New York Times*, 2017).

The best encapsulation of Maine’s atypical voting habits is the adoption of ranked choice, or instant run-off, voting (RCV) in the state (also approved in 2016). Maine had a persistent third-party spoiler issue that resulted in nine of the last 11 governors winning with less than 50 percent of the vote (Santucci, 2018). The switch to RCV is indicative of a broader trend in Maine wherein people have stratified interests that, if they cannot be met through the election of their chosen candidate, they will settle for someone who is not their opposition. That is, RCV encompasses the notion that of the “enemy of my enemy is my friend,” in keeping with the tendency of Maine voters to prioritize coalition building over party affiliation.

In line with creating coalitions of support, Maine empowers the state legislature to propose constitutional amendments to voters with support of 2/3rds of both the state legislature and state senate. The amendment is then presented to voters on the ballot at the next general election. The proposed amendment must garner a simple majority of approval in order to be adopted. The state legislature can directly call for a constitutional convention, but that has never happened in the history of the state.

Maine’s 158<sup>th</sup> amendment, the change that made the language of the constitution gender-neutral, occurred during the 113<sup>th</sup> legislature in 1988. The Committee on State and Local Government had done the work of illustrating the functional changes to the constitution by taking the text as it had been written and striking through the male-specific pronouns and providing the alternative gender-neutral replacements, underlined and next to the original phrasing. After the legislatively referred amendment was approved by both legislative houses, the 1988 general election ballot question read as “Shall the Constitution of Maine be amended to remove gender-biased language in order to clarify that the Constitution applies to all individuals?” (Maine State Legislature, 2020).

#### b. New York

New York State's culture is largely bifurcated into Upstate New York and New York City, with members of either group tending to cling to their chosen place of residence within the state (Wolfe, 2017). The Upstate and City economies vary drastically with Upstate New York being home to former industrial strongholds that have dwindled (McMahon, 2020). However, the Upstate population has clout in voting with 45 percent of voters living outside of the City (Strouse & Berkey-Gerard, n.d.). The New York State Legislature also controls much of New York City's finances, making the relationship more than simple culture contention. Those who live in New York City often refer to those coming from Upstate and other tourists as "bridge and tunnel," mocking the pilgrimage they have to make to reach what is considered a global cultural and finance capital.

These impressions that New York State is either New York City or Not-New York City is bolstered by popular media depictions. Shows from the 1990s and early 2000s like *Friends*, *Seinfeld*, *Sex and the City*, *Felicity*, and *Will & Grace* using the City as an influential backdrop (Brooks & Marsh, 2003). Life in New York City served as a central theme itself in these shows, allowing characters to experiment with their senses of self and make mistakes that could be forgiven. New York City was exulted as being the only place many of these characters could live, showing them flailing when they attempted to leave. These shows are heavily whitewashed and do not reflect the majority of Americans' or New Yorkers' experiences, but they occupied a significant portion of the American imagination and are still debated today (Armstrong, 2018). While far from perfect in their diversity and representation of race and the LGBTQ+ communities, media depictions of New York are integral to its continually developing identity as one the Greatest City in the World, despite the trials and tribulations of "making it" there.

Despite differing cultural realities and political priorities due to regional affiliation, institutional activists were able to effectively harness broadly held sentiments in the state about women to amend its constitution. During its history, New York has had four constitutions, the most recent of which was drafted in 1894 and revised in 1938. This constitution has been amended over 200 times (New York State Archives, 2019). The frequent amendments that New York's constitution has undergone reflects the political nature of these documents and its perceived importance for codifying change in the state. The bill was introduced to the New York State Legislature twice, once in 1998 and again in 2000.

In 2000, the amendment passed the Republican-controlled state Senate and Democratic-controlled state Assembly. It went on the ballot on the November 2001 referendum, coinciding with proposed charter amendments in New York City. The constitutional amendment went on to receive 56 percent voter approval with the highest concentration of approval in Queens County at about 70 percent and the lowest level of approval in Wyoming County with about 30 percent (Liep, 2007). In a majority of counties, there was a 55-45 percentage split either way with counties closer to major metropolitan areas (except Buffalo) approving the measure (Liep, 2007). New York changed its state constitution to contain gender-neutral language by adding feminine pronouns to the masculine generic. Additionally, gendered professions such as "fireman" were amended to say "firefighter". There are 170 instances in the 46-page New York state constitution where "she" was added where there had only been "he" (Murphy, 2003; Pawlak, 2000). On the ballot, the question read "Shall the proposed amendment making the Constitution gender-neutral, by revising references to the masculine form to include either an additional feminine reference or

to replace the masculine form of the term with a gender-neutral term be approved?” (New York Secretary of State, 2001).

### c. New Hampshire

Similar to Maine, New Hampshire considers itself a leader in national politics with “first in the nation” status for presidential primaries (Starr, 2012; Kaufman & Kaliner, 2011). This extends to firsts for women. The state had an elected woman breastfeeding on the House floor in 1984 and sent first all-women delegation to the US Congress in 2012 (Coles, 2018). In 1887, one of New Hampshire’s US Senator Henry Blair proposed an amendment to the US Constitution extending suffrage to women. In 1994, New Hampshire became, in fact, one of earliest states to adopt the use of gender-neutral language when writing legislation, making its gendered constitution dated within the context of the state itself.

Libertarianism and individualism are at the core of the state and its constituents have stood firm by the agendas of limited taxation and low state spending (Kaufman & Kaliner, 2011). It is commonplace to make a “no-new taxes” pledge when running for office in New Hampshire (Murphy, 2020). The Free State Project deemed New Hampshire the most libertarian-friendly state in the nation with every subsequent state at least 10 percent behind (Kaufman & Kaliner, 2011). New Hampshire’s citizenry takes their enshrined rights seriously, as seen in their state motto “Live Free or Die.” The legacy of libertarianism with elements of conservatism, such as union-busting and fiscal conservatism, was a cooperative effort between the historically heavily Republican-controlled interests of the state legislature and the state’s media landscape, which for years was dominated by one of the most conservative-libertarian newspapers in the US (Kaufman & Kaliner, 2011).

Culturally, New Hampshire has thrived marketing itself to people who wish to live in a state with low taxes and the advantages of industry without sacrificing access to pastoral views and rural sensibilities. The state has had very few controls on development and growth, and, in fact, many of its anti-growth laws have been routinely overturned by the New Hampshire Supreme Court (Kaufman & Kaliner, 2011). New Hampshire is also incredibly racially homogenous. According to the 2010 Census, New Hampshire was 92.3 percent non-Hispanic white, which could account for why other forms of diversity, such as gender, became more salient.

New Hampshire boasts the first constitution ever drafted by an American commonwealth, crafted in 1776. However, its constitution was redrafted and then ratified again in 1784, which was the first time women were explicitly denied the vote in the state (Coles, 2018). Other major changes occurred to the document in 1793, which the state views as simply a recodification of the 1784 document. It is therefore contested whether New Hampshire has had two or three functioning constitutions (Berg-Andersson, 2019). Regardless, the state is invested in its history. The process to amend the constitution requires that the, unlike the United States Constitution, amendments be listed in order to show how the document has evolved in order to show how the document has evolved; in this way, the constitution preserves its original language.

The practice of preserving the original language to demonstrate the document's evolution has hampered New Hampshire's ability to deal with questions of women's representation in its constitution, even prior to the attempts to amend the language of the entire document to be gender-neutral. For example, despite three attempts to amend Article 28 (which outlines voting procedures for the state Senate) for both semantic and logistical reasons, it took until 1958 to address and remove language that prevented eligible women from voting for state office (Jackson, 1959, p. 483). The United States Constitution's 19<sup>th</sup> Amendment, which afforded white women the right to vote, was adopted in 1920.

The New Hampshire State Legislature has attempted four separate times to make its constitution gender-neutral four separate times, in 1980, 1998, 2004, and 2010. The first two attempts resulted in ballot measures that were sent to voters and were rejected for not receiving 2/3rds approval. The 2004 and 2010 attempts, however, did not make it to the ballot. In 2004, the bill was ruled inexpedient to legislate in the House and did not crossover to the Senate. In 2010, this abandoned bill was reintroduced in the Senate, but did not proceed out of the House Judiciary Committee (Weber, personal communication, 2020; New Hampshire House of Representative, 2010). I will be looking at the 2010 attempt in the most depth given that it is the most recent attempt, it did not get on the ballot like its predecessors, and there is the most publicly available information about it.

## ii. Institutional Activism

### a. Maine

Nineteen eighty-seven was the beginning of what would become a legacy of women's leadership in Maine. The presence of more women in the state legislature, particularly in positions of leadership, prompted the gendered language in the state constitution to be functionally inaccurate in addition to contra philosophical considerations of gender equity. State Senator Nancy Randall Clark (D-Freeport), the first woman to serve as Maine's Senate Majority Leader, was a key proponent for the change to Maine's state constitution. Sen. Clark had a long history in Maine state government prior to her election as Senate Majority Leader. She had served as a state representative for five years, from 1973 to 1978, and was part of the Maine State Senate for eight years, beginning in 1979, before being elected to lead the legislative body in 1987. She would go on to serve as leader until 1992.

Sen. Clark was a pioneer for women in more than one way. Prior to Sen. Clark's tenure as Senate Majority Leader, women did not wear pants in the State House. On her first as Leader, she wore a pantsuit for the first day to "let the 'good old boys' know the pants were there to say [*sic*] and she was wearing them" (Moore, 2016). She was self-aware of her role as the first Majority Leader, and supported women in her community through organizations dedicated to women-only membership, such as the Freeport Woman's Club and the Daughters of the American Revolution (Moore, 2016). She was a visible member of her community in other ways, too, serving as an Honorable Matron of the Eastern Star, a board member of the Freeport Community Services, the



master of the Harrasekett Grange, and member of the Freeport Elders Association. Sen. Clark's membership to these groups likely bolstered her position in her local community as well as in the state legislature given her on-the-ground engagement with people with varying needs and backgrounds.

Sen. Clark, in her capacity as the Senate Majority Leader and eventual co-sponsor of the bill, commissioned a study by the Committee on State and Local Government to determine the effects of gendered language in Maine. She reached out specifically to Sen. John Tuttle, Jr. (D-York), who served as a chairperson of the Committee on State and Local Government at the time and would become another co-sponsor, asking him to ensure that the initial legislation that was submitted was "ready to pass" when it came to the floor (Tuttle personal communication, 2020). The bill was sponsored by the Democratic House Majority Leader at the time, John Diamond (D-Bangor) and co-sponsored by Rep. Ruth Foster (R-Ellsworth), who helped anchor the bill's bipartisan appeal.

Rep. Foster is another institutional activist in the attempt to amend Maine's constitution to be gender-neutral. Beyond working on the constitutional amendment discussed here, Rep. Foster served on the state's judiciary committee and spearheaded a requirement that if people seeking divorce have children under 18, they must participate in mediation if the case is not fully settled (Chabe, 2017). In light of the success of the legislation, Rep. Foster was honored by the Family Planning Association of Maine and the Adolescent Pregnancy Coalition. In 1988, the year the amendment was passed, she was named Legislator of the Year by the Maine Supreme Judicial Court to honor her work (*Businesswoman, Former Legislator Ruth Foster Honored*, 2014). Rep. Foster, who also ran her own children's clothing store, established herself as an intelligent and politically savvy defender of families, but especially children. This reputation would be employed to frame the issue of a gender-neutral constitution, as discussed below.

The committee was successful in its preparation of the bill for the floor. The bill left committee with a 7-6 "Ought to Pass" recommendation (Maine Women's Lobby, 1988). There was no debate on the House floor, only statements held regarding the amendment before the House roll call vote. The amendment also enjoyed support from the Maine's Women's Lobby in addition to unions, including the AFL/CIO (Maine's Women's Lobby, 1988; Tuttle personal communication, 2020). Sen. Clark's involvement in multiple facets of her community as well as her long career in state politics likely caused her directive to Sen. Tuttle to "get this done" hold a great deal of weight (Tuttle personal communication, 2020).

The findings and subsequent suggestion to amend the state constitution left the committee with bi-partisan support to be voted on in the next session (Tuttle personal communication, 2020). There was overwhelming support on the floor from both Democrats and Republicans with no marked opposition with the passage process being described as straight forward (Tuttle personal communication, 2020). Sen. Clark's role as a leader in Maine state government made her an institutional activist who used her insider access and connections to push the constitutional amendment legislation to be drafted and passed without issue.

#### b. New York

Institutional activism also played a major role in developing and furthering the constitutional amendment to make New York's constitution gender-neutral. Assemblywoman Sandy Galef (D-Ossining) was elected 1992, popularly dubbed "The Year of the Woman" due to the number of women running for and being elected to office that year (Zhou, 2018). Assemblywoman Galef had a long history of activism on women's issues, among various others, prior to being elected. According to her official biography, she was the president of both the League of Women Voters of Briarcliffe-Ossining and National Council of Jewish Women (Galef, 2019), positioning her to be an effective advocate for women's issues in office.

She noted that her interest in running for office came after the failure of the Equal Rights Amendment in New York in the 1970s, a campaign she had worked on extensively with the League of Women Voters (Galef personal communication, 2019). Assemblywoman Galef's biographical history with the League of Women Voters gave her the requisite relationships and connections with social movements outside of government to pursue women's issues as an elected institutional activist. However, the amendment was not unifying for the respective movement organizations. The National Organization for Women (NOW) was aware of the efforts to change the language in the New York state constitution, but chose not to engage with the issue, determining that they had other priorities to pursue (Galef personal communication, 2019).

Upon being elected, Assemblywoman Galef eventually read the constitution and noticed women were not mentioned once in the document (Galef personal communication, 2019). She brought the matter to her staff who also undertook the project. Similar to Maine, a trusted woman staffer, reworded the entire document to contain gender-neutral language so the bill could be submitted to the state legislature with the changes already made (Galef personal communication, 2019). This additional measure likely prevented attempts to deem the project too resource intensive to pursue, a criticism that would come forth repeatedly in response to this amendment.

Assemblywoman Galef and her staff created townhall forums, high school assemblies, and other public events to promote the gender-neutral language change despite public ambivalence about the issue after the events September 11<sup>th</sup> terrorist attacks (discussed below). Similar lack of enthusiasm would also affect New Hampshire's 2010 attempt to amend their own constitution.

### c. New Hampshire

Despite the eventual failure of the most recent amendment, it had institutional activist support. In 2010, State Senator Kathy Sgambati (D-Tilton), the chief sponsor of the legislation (which had 18 cosponsors) brought the constitutional amendment to change the document to contain gender-neutral language to the floor of the state Senate where it received support from all state Senators, Republican and Democrat, during a roll-call vote. The amendment was then sent to the House Judiciary Committee where it underwent review. When the amendment was passed on to the Secretary of State, it was determined that in order to place the measure on the ballot, the entire

amended text of the constitution would have to be included on the ballot, which is discussed further below (Weber personal communication, 2020; NH Rev Stat § 663:3, 2013).

Prior to this undertaking, Sen. Sgambati was a recognized advocate for women's issues. In 2007, she received the New Hampshire Women's Lobby Meritorious Service Award (Koziol, 2010). She was the beneficiary of EMILY's List financial resources, a mark of her commitment to being a pro-choice representative (EMILY's List, 2018). Prior to being elected Senator, she served the state in the Department of Health and Human Services for 26 years where she was the Deputy and Acting Commissioner (Our Campaign, n.d.). In this role, she worked with the state's first woman governor, Jeanne Shaheen, who also became the first woman to serve both as governor and US Senator. Sen. Shaheen was elected governor in 1996 when the second attempt at changing the constitution began and, according to the state's constitution, should have been addressed as "his Excellency," though no one used the term (Schweitzer, 2010).

In addition to serving in these roles, she was a member of the Senate Finance Committee, where she developed consecutive balanced budgets giving her a reputation for fiscal responsibility, key in a state that is skeptical of government spending (Koziol, 2010). She also worked to expand health care coverage for young adults through the state's Healthy Kids program and the Children's Health Insurance Program, and end waitlists for services that people with developmental differences need. She received the American Medical Association's award as the nation's most outstanding legislator for this work (Koziol, 2010).

Although Sen. Sgambati served as an advocate for this amendment, in the past she had been reluctant to make gender central to the explanation surrounding her campaign, success, or interests, a trend among New Hampshire women who succeed in running for public office (Perret, 2008). Rather, they attribute their success to the qualities they brought to bear, specifically saying that sexism and gender biases have not played more than a marginal role in their campaigns. However, they do mention that this is only true because of the long legacy of women participating in New Hampshire politics (Perret, 2008).

Sen. Sgambati's leadership in the state Senate likely promoted action on the item. She would not go on to seek a third term in 2010, which may have contributed to the bill dying in the House's interim study phase. She referenced four years of lost income when stepping down from her role as state Senator (Koziol, 2010). (New Hampshire state legislators make only \$100 a year plus gas costs making it essentially volunteer work [Daigneau, 2013; Snow & Milberger, 2008; Coles, 2019; Starr, 2019].) After the study period, the House Judiciary Committee recommended inserting a new section in the Constitution that would simultaneously preserve the existing language while denoting that the existing language was meant to be inclusive. However, the legislature flipped the next year, and this proposed solution failed to satisfy either party, and no new bill was introduced (Weber, personal communication, 2020). A consistent and dedicated institutional activist, therefore, likely has a bearing on the success or failure of attempts to amend constitutions to contain gender-neutral language.

### iii. Framing

## Role Reversal

### a. Maine

Rather than emphasizing the women with whom male-identifying members work, the role reversal frame deployed by the legislative advocates of the bill emphasized future generations of Mainers. In his statement introducing the bill, Rep. Carroll mentioned one of the many letters that he had received from a high school student who was not yet able to vote but expressed that she and her peers had a profound interest in the amendment's outcome. The author mentioned that her Christian denomination, the United Methodist Church, had taken steps to amend their materials to be gender-neutral.

Sen. Tuttle invoked his three daughters whom he said he knew would want him to support the measure. He also mentioned that he had grown up around strong women and was able to understand the importance of the semantic changes because of the environment in which he was raised, demonstrating that the ability to empathize with women had a marked effect.

A representative mentioned that he had sent out a questionnaire about this amendment to his constituents, 74 percent of whom responded "No, haven't you anything better to do up there?" (113th Legislature of the State of Maine, 1988b, p. 572). Additionally, two men invoked traditionalist legal scholarship to defend the presence of masculine generic language in the constitution. Rep. Foster responded that she, too, had initially been skeptical of the need of such changes. She then went on to acknowledge that she grew up with "different words and meanings", that language by nature evolves, and that the next generation should not be tethered to what could be dated understandings of language (113th Legislature of the State of Maine, 1988b, p. 572).

Rather than appealing to legislators to imagine what it would be like to be a woman and being ignored in the document, legislators were asked to imagine what it would be like not to be able to determine one's own future as a young person.

### b. New York

Movement framing allowed institutional activists to demonstrate the urgency behind the changes they were proposing by demonstrating their interpretations of the gender-neutral amendment issue (McCammon et al., 2007). Because of the symbolic nature of the proposed change to the constitution's language, Assemblywoman Galef sought to demonstrate the gravity of inclusion in language through a hypothetical about a lack of male-gendered language in the constitution. This constitutes role reversal framing wherein men are asked to imagine constitution with only containing only feminine pronouns.

Assemblywoman Galef consistently employed the role reversal frame to convey the extent to which women felt disaffected by the language in the constitution. For example, when confronted with the Conservative Party line that the proposal was simply “feel-good legislation”, Assemblywoman Galef responded, "...What would happen, as a man, if the constitution was written all about women? Wouldn't you want it changed to reflect that there are men involved too in the state?" Adding, that after critics heard that, “then they'd come along on board" (Galef via Murphy, 2003). The role reversal frame convinced enough people of the amendment’s value to pass the state legislature unanimously and be put on the ballot.

### c. New Hampshire

Similar to the tack taken in Maine, Sen. Sgambati appealed not to people’s lack of empathy for other genders, but rather for the younger generation. In justifying the desired changes against opposition that the “gray, socialist language” of gender-neutrality would ruin the “poetry” of the document, Sen. Sgambati countered that young children who are not trained to understand the difference between legal parlance that employs the masculine generic and colloquial English should be able to see themselves in their state’s constitution: “When fourth-graders come to the State House, they are amazed to hear that the Senate has a majority of women,” said Sgambati. “Those young girls should see themselves in the constitution. They shouldn’t have to try to figure out that it applies to them” (Schweitzer, 2010).

## **Low Impact**

### a. Maine

During debate on the State House floor, Representative Donnell P. Carroll (D-Gray) brought the amendment to the floor and invoked various relevant low impact frame issues. Importantly, he emphasized that the only concerns he heard during public hearings were from the former governor who believed these changes would alter the substantive meaning of the document. Rep. Carroll countered that making the constitution gender-neutral would make it more “readable” in an efficient and neutral manner: “[The amendment] does not in any way, shape or manner, extend rights, grant new rights or anything else to people, men, women, children, blacks, whites, gays or anyone else. It doesn’t change the meaning of the Constitution, it clarifies the Constitution” (113th Legislature of the State of Maine, 1988b, p. 572).

Rep. Carroll goes on to mention that the first efforts to change Maine’s constitution to contain gender-neutral language were envisioned as appealing to the Chief Justice of the Supreme Court to make the changes. However, the staff and committee members determined that the legislative process was more time and resource-efficient. Additionally, these changes were found to have “no cost” in itself, though the state would incur roughly \$3,000 worth of costs, or \$6,599.21 today, in order to create and send out a ballot of all of the referenda issues (113th Legislature of

the State of Maine, 1988b, p. 572). Given that there were other issues on the ballot, adding another question would, in itself, not increase the overall cost of the election (*Bangor Daily News*, 1988).

The low impact frame was also invoked by both Rep. Carroll and Rep. Ruth Foster (R-Ellsworth) who appealed to legislators to let voters decide on the issue rather than intervening themselves (113th Legislature of the State of Maine, 1988b, p. 572).

#### b. New York

The low impact frame refers to institutional activists mitigating the material impact of the changes and promoting the benefits of these low impact changes. The cost, both fiscal and time, dedicated to changing the constitution's language came under fire. This quote summarizes a variety of responses to the gender-neutral language amendment: "Frankly, this rises to the level of frivolity and fiction of political correctness. It's a waste of time and tax money" (Schulz via Pawlak, 2000). These lines were repeated by institutional activists in New York's Conservative Party (Murphy 2003), conservative talk radio shows (Galef personal communication, 2019), and by outsider groups who sought to preserve the constitution's original form (Pawlak, 2000).

Institutional activists used the low impact frame to point out that New York's state constitution was already reprinted and redistributed every year by the Secretary of State, so there would be no cost to reproducing the document (Murphy, 2003). Additionally, because Assemblywoman Galef's staffer had already gone through the constitution to neutralize all of the gendered references, no further state resources had to be allocated to the change (Galef personal communication, 2019). Lastly, to address the assertion of frivolity, Assemblywoman Galef would address the symbolic importance of something seemingly small, usually then employing the Role Reversal Frame to emphasize how profound the effects of a "frivolous" measure can be (McGrath, 2006; Pawlak, 2002; Murphy, 2003). The framing for this movement to be successful, however, would not have been effective without exploiting existing and temporarily urgent opportunity structures in New York.

#### c. New Hampshire

Opponents of the amendment said that given the financial impact of the 2008 Recession on the state, prioritizing these changes, regardless of cost, sent the wrong message (Schweitzer, 2010). Sen. Sgambati countered with the Low Impact frame: "Clearly everybody's priority is the budget and creating jobs. But this is not something that will take a lot of time. It's a matter of presenting the bill in both houses and taking a vote. We deal with hundreds of bills a session and this one is a simple vote up or down." (Schweitzer, 2010).

While the low impact frame was used to discuss the time language changes in the constitution, the fiscal issues that were negligible in the other states were critical in preventing the third

attempt at making the constitution gender-neutral to even reach the ballot for voters to decide: “Many in the majority very much favor the gender neutral language, but cannot justify the expense at a time when social services, the court system, funds for education and many other important programs are all strained to the limit” (New Hampshire House Record 41, 2010). Rep. Weber goes on to say that an estimate from the secretary of state’s office put the tab for such a ballot at roughly \$500,000, or \$596,819.17 today, far more than either Maine or New York.

While the low impact frame was employed, the countervailing argument of the cost that was not present in the other two states likely caused it to be less effective than it had been in Maine or New York. New Hampshire’s House Judiciary Committee was keenly aware of the state’s fiscal conservatism, which led to the amendment being, in essence, dropped from the agenda once the price was estimated.

#### iv. Political Opportunity Structures

##### **Increase in the Number of Women in Government**

###### a. Maine

A confluence of political opportunities lent themselves to the success of Maine’s gender-neutral state constitution. First, there was a marked increase in the amount of women’s representation in the Maine State Legislature from 1986 to 1987 when many of the representatives who would ultimately pass the amended constitution were elected. Overall in 1986, 23.7 percent of the state legislature was comprised of women, whereas in 1987, 28.5 percent of was female-identifying, making Maine a national leader in women’s representation in state government (CAWP, 2020a). Maine was also a leader in women’s representation for the state on the federal level, as is discussed below.

###### b. New York

The number of women in elected office, regardless of their level of activism, had an impact on the framing done by institutional activists in New York. The percentage of women in the state legislature increased dramatically from 12.8 percent in 1992 the “Year of the Woman”, to 18.5 percent in 1997 when the amendment was first introduced, to 21.8 percent 2001 when the constitutional language change was finally successful. In 2000, when the proposal passed the both the state Senate and state Assembly unanimously, there were 10 women in the Senate and 36 in the Assembly (CAWP, 2020c). While there was over twice the number of Democratic women as Republican in the Senate and almost three times as many Democratic women to Republic in the Assembly, there was substantially improved, bipartisan representation of women in the New York State Legislature. Rep. Galef and her colleagues acknowledged that people who

had traditional values were seeing changes in the gender composition of the state legislature. She noted, “They had to face it: more women were in government, more women were leaders, more women were running companies...and women were out in the workforce...Things were moving along. Women weren’t just traditionally at home taking care of their kids” (Galef personal communication, 2019). As a result, amending the state constitution to reflect this new reality became a priority.

### c. New Hampshire

Since women were afforded suffrage, they have been active in New Hampshire state politics. In fact, even before women were allowed to vote, Marilla Ricker, a suffragist and freethinker, ran for governor and received six votes from supportive men (Coles, 2018). Her portrait hangs in the statehouse despite her not having been elected to office. The state elected its first woman state Senator in 1930. This could be a result of the hyper-local representation in New Hampshire where the 400-person House of Representatives, the largest in the country and third largest in the world, have about 2,000-3,000 constituents each, meaning that they are intimately involved in the community (Daigneau, 2013; Starr, 2012). The large number of House seats means that there are also more points of entry to be elected (Daigneau, 2013; Snow & Milberger, 2008; Coles, 2019).

In 2006, New Hampshire had an all-women delegation in the US House of Representatives while Sen. Janine Shaheen became the first woman to serve as New Hampshire’s Governor and, eventually, as a US Senator. By 2008, 13 of the 24 members of the New Hampshire senate were women; the state was number three in the nation for women’s representation (CAWP, 2020b). Senate President Sylvia Larsen said that the critical mass of women candidates led to this majority, rather than a desire to elect the first majority of women in the state Senate (Snow & Milberger, 2008). In 1980, 1998, and 2010, the years when the amendment progressed through at least one legislative house, New Hampshire ranked in the top ten nationally for women’s representation in their state legislature (CAWP, 2020b).

## **Increase in the Number of Women in Leadership Positions in Government**

### a. Maine

In the Maine State Legislature, Sen. Clark’s structural power allowed her to have increased visibility for women, but also to garner the support of the Democrat-controlled bodies. She had allies helming the committee that would need to research and draft the legislation. Being in a position of structural political power allowed Sen. Clark to make use of both her political position as well as her relationships with her colleagues. Additionally, women in leadership positions within government also increased. Sen. Clark was the first woman Senate Majority Leader. Additionally, only the second woman ever to serve in the House of Representatives for



Maine, Olympia Snowe, had been elected in 1979. The first women joined Maine's Supreme Court in 1973, making women leaders present in every branch of government with the exception of the governor's mansion, though now-Senator Snowe served as Maine's First Lady while also serving as Maine's second female-identifying US Senator.

In addition to the support provided by her leadership, Rep. Snowe may have also played a role in causing the amendment to have a strong ally in the executive branch. In 1988, Maine had its first Republican governor in two decades, Gov. John "Jock" McKernan, Jr.. Gov. McKernan had served in the Maine House of Representatives and as the second delegate to the then Rep. Snowe in the US House of Representatives. Gov. McKernan was seen as able to compromise and displayed a willingness to embrace progressive legislation (Chappell, 2013). While Gov. McKernan was serving in the US House of Representatives, he and his co-delegate, then Rep. Olympia Snowe, were in a long-term relationship (they were married in 1989 and are still married today). They also served in the Maine House of Representatives together. It is possible that Gov. McKernan's relationship with his colleague and significant other, a woman who was at the forefront of her field at the state and national levels, led him to have a first-hand understanding of the impact such changes would have and potentially be more likely to support feminist causes.

#### b. New York

At the time the amendment was passed through the state legislature, there were women at every level of New York's government, including the Lieutenant Governor, six House representatives, and one Senator (CAWP, 2020c). Also, in 2001, the Chief Justice of the New York Court of Appeals, Judith Kaye, was the first woman to serve as chief judge in New York history, giving women prominent representation in each branch of government (Roberts, 2016). Because of the number of women from both parties participating in governing and the judiciary the state of New York, it became an undeniable reality that women in government was not a passing trend, but rather a new reality that required recognition. The number of women in government in the State of New York, regardless of their level of activism, created a politically beneficial environment to promote the change to gender-neutral language in the state constitution. Rep. Galef specifically mentioned the increase in women in leadership positions when discussing the shift in the political reality of the state legislature.

#### c. New Hampshire

In keeping with the relatively large number of women's representation in New Hampshire generally, women occupied leadership roles on the state and federal level in New Hampshire at higher rates than in either Maine or New York. By 2010, women occupied four of the top seven offices in the state, including the US Senate (Schweitzer, 2010). Additionally, the New Hampshire state Senate had a majority composed of women. Kelly Ayotte, the first woman Republican US Senator from the state, was also the woman appointed Attorney General in 2004,

serving until 2009 (Murphy, 2020; Coles, 2018). Linda Dalianis was the first woman appointed to the Supreme Court in 2000 and the first woman appointed chief justice in 2010, something she called “unheard of” when she began her tenure in the 1970s (Coles, 2018).

## **Each State’s Relative Standards for Constitutional Amendments**

### **a. Relatively Open Standards in Maine**

The multiple factors that aided in the amendment process were able to be brought to fruition because Maine’s constitutional amendment process is relatively open. Again, Maine empowers the Legislature to propose constitutional amendments to voters as long as it garners support of 2/3rds of both the state legislature and senate. The amendment is presented on the ballot at the next general election. An amendment must only garner a simple majority of voters in order to be enacted. While there is not a requisite ballot question asking if citizens if they wish to convene a constitutional convention every predetermined number of years, the Maine State Legislature may call for one directly, without a ballot question, as long as they secure 2/3 concurrent vote of both legislative bodies.

### **b. Relatively Open Standards in New York**

Similar to Maine, New York State’s process for amending the constitution is relatively open. According to the New York State constitution, a question asking voters whether or not a constitutional convention should be held is placed on the ballot every 20 years. If a majority of voters answer ‘yes’, then a convention is convened wherein delegates can craft and propose amendments. In order to be put on the ballot, the amendment need only receive a simple majority of all the delegates. However, the amendment must go through two rounds of legislative approval before being put on the ballot, meaning that the amendment must be approved by both bodies of the state legislature by a simple majority twice. When proposed to voters, either as a result of a convention or because of a legislative referral from a majority of both bodies of the state legislature, voters need only approve by a simple majority.

### **c. Relatively Closed Standards in New Hampshire**

New Hampshire has much higher standards that must be fulfilled before amending its constitution than the other two states examined here. Article 100 of the New Hampshire constitution outlines the procedures for its amendment. In New Hampshire, amendments can be legislatively referred by 3/5ths approval of both the senate and house of representatives or a constitutional convention can be called.

During the two prior attempts (1980 and 1998), the 2/3rds voter approval threshold for constitutional amendments thwarted attempts to make New Hampshire's constitution gender-neutral. In 1980, a year with five constitutional amendments on the ballot, Question #1 read "Are you in favor of amending the Constitution so that references in the bill of rights to 'men', 'man' and 'man's' are changed to 'people', 'person' and 'person's', respectively?" (Gardner & Ambrose, 1981, p. 315). Though voters approved of the changes at a rate of almost 62 percent, the 2/3rds required to make the changes was not attained. That same year, people voted to lower the approval threshold for amendments crafted at constitutional conventions to go on the statewide ballot from 2/3rds to 3/5ths of the convention membership (Gardner & Ambrose, 1981, p. 315).

In 1998, the question "Are you in favor of amending the constitution to make it more inclusive by changing specific references to the governor and other people to gender-neutral terms" was on the ballot and garnered 56.74 percent of the vote, which is on par with both Maine and New York, though dwindled from past voter support (Gardner, Ambrose, & Ladd, 1999, p. 351). However, because of New Hampshire's higher threshold for constitutional amendment adoption, the measure was rejected again.

In addition to having the highest threshold for voter approval for constitutional amendments of any state in the nation, New Hampshire began requiring that ballots with constitutional questions include the entire text of the article of the constitution as it is proposed to be amended (NH Rev Stat § 663:3, 2013). As a result, the 2010 New Hampshire ballot would have been five double-sided pages long to accommodate the entire text of the amended constitution, incurring a much larger cost than simply listing a question asking whether or not the constitution should be amended to be gender-neutral (New Hampshire House Record No. 41, 2010).

## v. Discursive Opportunity Structures

### **New Era for Women**

#### a. Maine

The 1970s were an era of second wave feminist success led by white women and their priorities. The 1980s were a time of backlash to the changes that had taken place during the decade previous. There was massive turnover in national and state level political representation, which caused a slew of new conservative politicians to join the fray, including President Ronald Reagan, who was a dedicated anti-choice and women's health, anti-affirmative action, and anti-government regulation activist. He opened the door for what is considered the New Right.

Despite this conservative trend, women became more prominent in both political and cultural arenas. Geraldine Ferraro became the first woman nominated as vice president to a major political party in 1984. Additionally, the Early Money Is Like Yeast List (or, as it is commonly

referred to, EMILY's List) was established to help raise money for pro-choice Democratic women running for national political office. In 1986, *Meritor Savings Bank v. Vinson* (1986) determined that sexual harassment is a form of illegal job discrimination. Black women and women of color who had been a part of the second wave but were not satisfied with the goals and ambitions were now at the forefront of the movement and achieving literary acclaim. Alice Walker and Toni Morrison both won Pulitzer Prizes in 1983 and 1986, respectively. Gloria Anzaldúa, Cherríe Moraga, Angela Y. Davis, bell hooks, and Audre Lorde all published some of their best-known works during the '80s. There was a new wave of feminism on the cusp of American society.

In the tradition of Maine leading the rest of the nation, Rep. Foster in her appeal on the floor said that, "This generation and the generations that follow us have learned that, when you write something you mean it...The dictionary has changed and teachers and those in the field are learning that words make the difference. That is what this whole bill is about. Our generation grew up with a different set of words and meanings. This generation should not" (113th Legislature of the State of Maine, 1988b, p. 572).

#### b. New York

The third wave of feminism took hold of the US in the 1990s beginning in 1992 with the Anita Hill trial. It was publicized and debated widely and served as an enduring example to women the battles that still needed to be fought and won (Walker, 1992). In response, women, Republican and Democrat, were elected to office, setting a new standard for inclusion. Workplace protections for women were in place and the judicial precedent supported women (McCammon & Brockman, 2019). The results of these structural changes in conjunction with the changes in the social perception of women was a discursive opportunity centered around women's agency and ability.

The late '90s and early '00s provided pro-women cultural artifacts that promoted women's elevated position in society. The Spice Girls had popularized a resurgence of "Girl Power" worldwide, Destiny's Child told women to dump men who couldn't pay their own bills, and the Dixie Chicks went multi-platinum singing about female friends getting homicidal revenge against a violent, abusive ex-husband. Even Britney Spears, teenage sex icon and infamous for telling men she would be a "Slave 4 U", had a hit centered around her power over a man with "Oops...I Did It Again". Being an empowered woman objectively sold pop hits. Additionally, women had become prominent across genres with alternative rock hits like Alanis Morissette and Fiona Apple. The riot grrrl feminist culture proliferating into the mainstream and promoted women's voices in underground culture through bands like Sleater Kinney. Popular media reimagined women's role in society creating a New Era for Women Discursive Opportunity structure that feminist institutional activists could respond to with strategic framing.

Rep. Galef invoked this frame calling the gendered constitution "old fashioned" and "behind the times" (McKinley, 2001). Women had become more accustomed to being outspoken in the New York State legislature, which meant that rather than simply being an exemplar by being a

representative, these women were more prone to speaking out for the changes they wished to see occur in the state (Galef personal communication, 2019). Women, particularly those from the Democratic party, were committed to making their perspective as women central to their work in the state legislature, including as heads of committees, which was a marked shift from the past roles women played in government even during overtly feminist-oriented times, such as the 1970s (Galef personal communication, 2019). Changing this language is meant to indicate what society has evolved to be – more inclusive – particularly to other countries (McGrath, 2001).

### c. New Hampshire

During each of the times that the amendment to make the New Hampshire state constitution was brought forward, women were experiencing increasing opportunities culturally and politically, as in the cases of Maine and New York. In 2010, the national attitude about women in leadership positions had shifted even more, with the most women (90) serving in US Congress in history up until that point (CAWP, 2020d). In New Hampshire, though, this was considered commonplace. Rather than invoking this more widely spread reality, advocates for the New Hampshire amendment invoked the pragmatic reality that women were government representatives and governing documents should reflect that reality. Sen. Sgambati expressed as much when she said, “The constitution should reflect our government, and that includes women” (Schweitzer, 2010). Acknowledging that women had made progress was peripheral but relevant. For example, Sen. Sylvia Larsen, the state Senate president, acknowledged, “We have women in leadership roles, and to have the Constitution reflect that changing status of women makes sense” (Schweitzer, 2010). These appeals do not seem to have had the same resonance in New Hampshire as in Maine and New York.

## **Shifting Demographics**

### a. Maine

In 1988, Maine was the least densely populated state east of the Mississippi. Net migration in Maine in the 1980s was four percent, a middling performance compared to other states (Plant et al., 1992, p. 165). The southern part of the state had 34 percent of its population. In 1989, there was a documented “bulge” in the population with a disproportionate number of people between the ages of 27 and 44, which mirrored the high birth rates following World War II (McGonigle, 1989). However, age cohorts on either side of that bulge did not reproduce at the same rate, which made Maine a peculiarly young state at the time, but now makes it the oldest state. The large age cohort placed major pressure on the housing market in the 1980s and resulted in a massive increase in new single-family housing permits (9,000), though there was a historic peak in multifamily homes being built as well (Muskie School of Public Service, 2012). People were relocating to more rural areas of the state, which was compounded by in-migration into the southern part of the state. In-migration to the state in 1988 was abnormally high, going from net

migration at about 1,500 in 1980 to 13,000 in 1988, which was considered aberrational. Overall, net migration in Maine in the '80s was higher than the previous decade (McGonigle, 1989).

Despite this relatively larger influx, most of the migration in Maine during the '80s was intrastate migration. New housing prices were relatively stable, but existing home values more than doubled. In York County, the southern-most county on the border of New Hampshire, home prices almost tripled due to people from out of state seeking cheaper housing than found in New Hampshire, Vermont, or Massachusetts (McGonigle, 1989). The shift to more numerous, smaller households changed the housing landscape, particularly for those who lived in state all year as opposed to those who are seasonal occupants. Additionally, most colleges and universities in Maine are either along the coast or along a 1-95, the major interstate. Complementary seasonal housing needs changed what year-round Mainers were able to afford and pushed them to more rural locales while generally young people from predominantly liberal state were moving into the state (Swann personal communication, 2020).

These changes also provided two distinct opportunities for discursive changes. Firstly, intergroup contact at two nodes that may not have occurred if not for the particularly large influx of new Mainers moving into the state. Intergroup contact is a major means of reducing prejudice (Pettigrew, 2017). If rural Mainers are now in more frequent contact with formerly coastal occupants, who would have increased contact with seasonal residents from out-of-state, issues that could have appeared anathema to rural voters with strong place-based identities could be less so (Cramer, 2016). Secondly, the younger, liberal people moving to the southern end of the state provided a larger, liberally-minded voting base to support measures such as a constitutional amendment to bolster women's cultural equity.

## **The September 11, 2001 Terrorist Attacks - a Wartime Discursive Opportunity**

### **a. New York**

The impact of the terrorist attacks on September 11, 2001 (9/11) on New York cannot be overstated. It is now American canon to know that 9/11 was the date that nearly 3,000 Americans died, the most fatal attack on US soil since Pearl Harbor. While the terrorists attacked multiple targets, including The Pentagon, the two towers of New York City's World Trade Center had the highest concentration of fatalities after being destroyed by planes flying into each of them. It shocked the region and the country, bringing life in New York and the US to a standstill. This massive loss created a new type of discursive environment that had not been reckoned with or even considered prior to the attacks. The 9/11 attacks constitute a wartime discursive opportunity structure (McCammon et al., 2007) wherein discourse about heightened democratic ideals promotes the cause of voting to change the New York constitution in order to 1) demonstrate patriotism and 2) show the world how women are treated in the US. The 9/11 attacks left an indelible mark on the region and the country, creating a legacy of changes that would define an entire era of US policy, both foreign and domestic. However, the immediate aftermath of 9/11 created a very narrow and short-lived opportunity that advocates of the gender-neutral

constitution change were able to use by promoting the democratic ideals and modeling attitudes about the treatment of women to serve as an example to allies and enemies abroad.

The wartime discursive opportunity was also used to exploit a formerly less consequential political opportunity in New York City: the charter amendment referendum. As previously mentioned, New York City was amending its charter to make progressive changes, such as making the Administration for Children’s Service a permanent agency and creating “gun-free” school safety zones (NYC Campaign Finance Board, 2001). These amendments were proposed in early 2001 by Mayor Giuliani’s administration (Worth, 2001). After 9/11, city officials were concerned about voter turnout still hoping to succeed at the polls despite the circumstances. They decided to transform their standard voter turnout messaging by linking it to patriotic sentiments in the aftermath of 9/11 (Snow et al., 1986). Relating the two events was accomplished by sending a postcard to all registered voters in New York City on which Mayor Giuliani was featured shaking the hand of a nameless firefighter, effectively capitalizing on being continuously valorized as the “Mayor of 9/11” (as comedian John Mulaney [2017] put it, “Because nobody else was mayor that day!”). The postcard encouraged people to vote on charter reform saying, “In these turbulent times, New Yorkers have a renewed appreciation for the courage of our emergency and public health workers. Now you can decide how New York City should address the issues of public safety and public health” (Worth, 2001). The wartime discursive opportunity emphasis on democratic values and the results of a tragedy that affected all New Yorkers was successful in eliciting voter participation and is credited with helping pass the gender-neutral changes to New York’s state constitution (Galef personal communication, 2019).

## **VI. Institutional Activism, Movement Framing, Opportunity Structures, and Their Effects**

Maine, New York, and New Hampshire are examples of the successes and failures of insider activism in conjunction with opportunity structures and strategic framing. All three states benefitted from insider activists invested in amending their respective state constitutions to contain gender-neutral language. The act of amending the constitution in each of the states requires an institutional activist within its legislature to initiate the process. Across these states, the activists each used the same framing device for their arguments that women are equal, and that the constitution in its current form is a relic that needs updating because the world it governs has changed drastically since the state’s constitution was written. These activists also invoked the marginal impact these changes would have on governance.

However, New Hampshire’s structural differences, namely the relatively closed constitutional amendment process in the state, thwarted this activism on multiple occasions. If New Hampshire had been held to the same voter approval standards as Maine and New York, its constitution would have been amended almost a decade prior to Maine’s. Instead, the same legislation is still being pursued under differing circumstances with waning enthusiasm from the legislature despite New Hampshire’s historical commitment to women’s equity. This has placed New Hampshire in the unenviable position of merely serving as a historical record of the constitutional craft. Rather than embracing the living nature of the document in a way that would reflect the majority, the

state places a barrier of 66.67 percent popular approval. Newer legislation also creates other hurdles that must be overcome, like the determination that the entire amended constitution would have to be placed on the ballot in order to vote on the amendment itself. New Hampshire's relatively early adoption of gender-neutrally worded legislation demonstrates how salient the different structural barriers to entry of traditional legislation versus constitutional amendments are.

The idio-cultural environment of the state is integral in understanding how New Hampshire can simultaneously seek to promote itself as a bastion of women's equity while being repeatedly unable to rid its constitution of gendered language. New Hampshire has embraced amending part of its constitution to prevent women from being disenfranchised in state elections in a highly targeted way, but on this front refuses to go further. The symbolic language is not concerning enough to the legislature to act, as evidenced in the blasé response to the inaccuracies of the required use of the male-gendered honorific when addressing the first woman serving as governor. While legislation can be done away with and overturned by the court system, constitutional matters hold a rarified place in a state who prides itself on its history and the preservation of that history. Additionally, the traditional structural reverence the state considers itself to have for women may hinder the desire to adopt measure that may be viewed as redundant and unnecessary given the libertarian proclivities of the state's population.

The importance of the idio-cultural environment of a state can also be seen in the cases of Maine and New York. The two states amended their constitutions in opposite political climates: Maine found success when there was little fanfare or political contention in the state, using quotidian circumstances to appeal to voters; and New York approved the amendment during one of its most tumultuous times, rife with political and existential confusion. The foundational cultures of these states were employed to appeal to voters. In Maine, Republican and Democratic representatives appealed to Mainers' independent streak and an influx of newly-minted, liberally-minded Mainers, essentially passing the buck to the voters and succeeding. In New York, appeals to vote to demonstrate the resilience of New Yorkers, democratic values, and how Americans treated women relative to other nations meant that the amendment succeeded even after the upheaval of the September 11<sup>th</sup> Terrorist Attacks. Newman, DeMora, and Reny (2020) found that women's economic empowerment relative to men in a state drives voter support for the amendment to make constitutions gender-neutral. Women's economic power, though, is tied to the discriminatory elements discussed in the section above that consistently hold women back from attaining financial equity with their male peers.

Overall, these case studies demonstrate that in order for strategic framing to be successful, there must be a confluence of political and discursive opportunities that allow for changes to constitutions to be made relatively easily in an environment that appreciates the evolving status toward equity that women are working towards. Simply acknowledging that a document is out-of-date or does not reflect the current reality is not enough; the broader environment these changes are made in must be amenable to promoting women's success as an integral part of its identity.



## VII. Conclusion

The three attempts to amend state constitutions to contain gender-neutral language examined in this paper demonstrate three main factors necessary to be successful: 1) committed institutional activist(s) to propose and provide support for the movement to amend the constitution, 2) structural openness that allows constitutional amendments to be made with a simple majority of voters, and 3) a cultural embrace of the distinct yet equitable place in society that women hold in a given state. The confluence of willing and well-equipped actors and corresponding opportunity structures made it possible for two of these amendments to be successful.

There are some limitations to this study. Firstly, it may be considered overly deterministic. Even though state-level changes may not be considered meta-level, there are still countless actors involved whom may have identified additional factors as causal to these processes. This examination should not be considered exhaustive, but rather a beginning to further research to understand how institutional activists are able (or not) to exploit the governing structure within which they operate. This study is also limited by its use of the gender binary. While American society and popular culture generally are coming to embrace gender expression as operating on a spectrum, the movements to amend state constitutions to be gender-neutral examined here took place before discussions of non-binary gender identity were mainstream. This study also focuses on three states in the northeastern United States, which, while all are individually distinct, have regional similarities that cannot necessarily be extrapolated to the remainder of the states and their respective governing structures.

This is a rich field of study for understanding movement outcomes, particularly those related to governance. Further research could focus on other regions in the United States to determine if or how regional similarity impacts movement outcomes related to amending state constitutions to contain gender-neutral language. Further research could also be conducted to determine if states that have tried and failed to amend their constitutions to be gender-neutral have similar structural limitations to those in New Hampshire. Additional research could also be done to see if states that are seeking to adopt language that does not rely on the gender binary face the same challenges as those examined here

Addressing gendered language in state constitutions has the potential to shift a state's culture to be more equitable for the women living therein. In a time when women's rights and bodily autonomy are threatened by an increasingly conservative federal Supreme Court and conservative-leaning US Congress, state actions to enshrine women's rights and value relative to their male-identifying counterparts are increasingly important. Additionally, empowering the majority by doing away with overly restrictive legislative hurdles is integral in implementing timely changes to constitutions. Having a democracy that values its constituents through the language it uses to govern and confidence of its electorate by making changes when a majority wishes them to be made is crucial for women to achieve equity in each of the United States.

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**IX. Appendix**

Figure 1.1

	<b>Political Opportunities</b>		
	<i>Increase in Number of Women in Government</i>	<i>Increase in Number of Women in Leadership Positions in Government</i>	<i>Relatively Open Constitutional Amendment Process?</i>
<i>Maine</i>	X	X	X
<i>New York</i>	X	X	X
<i>New Hampshire</i>	X	X	

Figure 1.2

	<b>Discursive Opportunities</b>		
	<i>New Era for Women</i>	<i>Wartime</i>	<i>Shifting Demographics</i>
<i>Maine</i>	X		X
<i>New York</i>	X	X	
<i>New Hampshire</i>	X		

Figure 1.3

	<b>Framing</b>	
	<i>Low Impact</i>	<i>Role Reversal</i>
<b>States</b>		
<i>Maine</i>	X	X
<i>New York</i>	X	X
<i>New Hampshire</i>	X	X

Figure 2.1

		<b>Automatic Ballot Question to Convene Constitutional Convention Every # of Years?</b>	<b>Can convention be called?</b>	<b>Delegate Approval Threshold to Propose Amendment to Voters</b>	<b>Percentage Voter Approval Needed to Adopt Amendments</b>
<b>Constitutional Convention</b>	<i>Maine</i>	No	Yes - 2/3rds approval both legislative bodies required	-	-
	<i>New York</i>	Yes - every 20 since 1957; must be approved by majority of voters	Yes - Question can be put on ballot by majority in both legislative bodies	Simple majority	Simple majority
	<i>New Hampshire</i>	Yes - every 10 since 1964; must be approved by majority of voters	Yes - Question can be put on ballot by majority in both legislative bodies	60 percent	2/3rds of voters - largest in the nation

Figure 2.2

		<b>Requisite Passing Majority Both Legislative Bodies</b>	<b>Second legislative approval required?</b>	<b>Requisite Voter Approval Threshold</b>	<b>What is on the ballot?</b>
<b>Legislative Referral</b>	<i>Maine</i>	2/3rds	No	Simple Majority	Question referencing the amendment
	<i>New York</i>	Simple Majority	Yes	Simple Majority	Question referencing the amendment
	<i>New Hampshire</i>	60 percent	No	2/3rds	Full text of amendment AND Question referencing the amendment