

Women in Law

A BIO-BIBLIOGRAPHICAL SOURCEBOOK

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BEVERLY BLAIR COOK (1927–)

At a roundtable held in her honor, Beverly Blair Cook remarked that a “scientist who receives a prize has a conventional modest disclaimer—‘I am standing on the shoulders of giants.’ My response to being honored by this panel is to point to two lines of predecessors on whose scholarship I have tried to build. One is a line of male giants; the other a line of female ghosts.”¹ She went on to describe the contributions of three of those “ghosts,” Sophonisba Breckinridge, Alice Paul, and Charlotte Williams.

To be sure, Cook is right: Several women contributed mightily to the study of law and courts, and their contributions have largely gone ignored or underappreciated at best. Yet, at the same time, Cook’s comments are characteristically modest. For, in the general scheme of things, it was Beverly Blair Cook—not Breckinridge, Paul, or Williams—who paved the way for women in the scientific study of courts and law. No account of the emergence of judicial process within the discipline of political science would be complete without a reckoning of her contributions.

EDUCATION AND CAREER DEVELOPMENT

Cook’s progression in the professional world of political science was, like many women of her generation, something short of linear. After receiving a Bachelor of Arts degree (with high honors) from Wellesley College in 1948 and a Master of Arts from the University of Wisconsin—Madison in 1949, she served as an instructor of political science at Iowa State University from 1949 to 1950. Following that, she entered into a domestic period, bearing and rearing four children.

In 1960, Cook resumed her graduate work at Claremont University and Grad-

uate School, receiving her doctorate in 1962. Cook then took an assistant professorship at California State University—Fullerton, where she gained tenure in 1966. In that same year, she met Neil Cotter, another political scientist, at a National Science Foundation summer seminar; they were married five weeks later.

In 1967, Cook, Cotter, and their combined brood of eight moved to the University of Wisconsin—Milwaukee. At first, it seemed that Cook and her husband would be unable to work together in the Department of Political Science. The University, in 1969, claimed to have a nepotism rule that barred female spouses or married couples from obtaining tenure in the same department. So Cook transferred to the School of Social Welfare for a year, “while [she] helped the university discover that the rule was unwritten and in any case contradicted federal law.”¹² With that matter cleared up, she moved back to the Department of Political Science, where she would produce some of her most important work and where she would remain until her retirement in 1989.

To term Cook in retirement is something of a misnomer, however. From her home in Atascadero, California, she continues to write at a breathtaking pace. Recent essays have offered a measure of significant U.S. Supreme Court decisions,³ commented on the Court’s agenda⁴ and considered opinion assignment on the Burger Court.⁵ Her service to the profession also continues. Over the past decade, she served on Project ’87, the joint American Historical Association—American Political Science Association (APSA) Committee on the Bicentennial of the Constitution. Even more recently, she received an appointment to the Executive Committee of the Law and Courts Section of the APSA.

At the time Cook was studying for her Ph.D., an intellectual struggle of sorts was ongoing in the field of law and courts.⁶ On the one side were those who supported the traditional approach to law and courts, that is, examining the legal content of judicial opinions in the style of Edward Corwin and Robert Cushman. On the other side were those scholars who advocated the scientific study of legal phenomena. Their intellectual leader was C. Herman Pritchett, who, in the 1940s, published several studies of the Roosevelt Court.⁷ Rather than focusing exclusively on doctrine, Pritchett examined voting patterns in an attempt to understand systematically divisions of opinion among the justices.

This intellectual engagement was perhaps in its most heated stage by the time Cook completed her doctoral work. Important journals published acrimonious debates between proponents of the two schools;⁸ articles appeared delineating the key players and their views.⁹ At the end of the day, however, it was clear that Pritchett and his followers had emerged as the winners. In 1964, for the first time, judicial process articles outnumbered constitutional law pieces and, with the exception of only one year (1976), continued to dominate the field.¹⁰

With this debate largely settled, the victors began to see just how far scientific approaches to the study of law and courts would take them. As Thomas G. Walker notes, “theoretical innovation exploded.”¹¹ Attitude theory, social background theory, role theory, fact pattern analysis, and others were used in at-

tempts to explain judicial decision making. And seminal books such as Walter F. Murphy’s *Elements of Judicial Strategy* and Glendon A. Schubert’s *Judicial Mind*¹² were published.

Cook may not have been a part of this “heyday” period, but, during the 1970s, she became a major player. By way of illustration, consider her series of path-breaking articles on judicial socialization. Defining socialization as “individual learning of the behavioral patterns and the values of institutional roles,” Cook was the first to recognize its importance for understanding what it is judges do.¹³ Early pieces considered ways in which court systems attempt to socialize new judges; for example, in an article published in the *Washington University Law Quarterly*, she took up two questions relating to the introductory seminars established by the federal government to train new judges in effective case management and processing techniques: Why were they established and what impact did they have?¹⁴ By invoking a wide range of data sources, Cook demonstrated that socialization through these seminars failed to have the desired effect of making courts more efficient.¹⁵

Not only were Cook’s articles on judicial socialization theoretically and methodologically innovative, but they were also substantively distinct from much of the research being produced by her male counterparts. While many of Cook’s peers, including Glendon Schubert, S. Sidney Ulmer, and Harold J. Spaeth, tended to focus on the U.S. Supreme Court, she set her sights on state and federal trial courts. In so doing, she rewrote the agenda for a generation of researchers to come. They heeded her warning that our understanding of the judicial process would be incomplete unless we incorporated other judicial bodies into our work.

ACHIEVEMENTS AND CONTRIBUTIONS

Cook’s earliest research shows the importance of asking interesting questions, thinking theoretically, invoking a wide range of sources, and analyzing data with rigor and sensitivity. These traits continued to characterize her later research, but her horizons grew substantially. Over the past two decades, she explored with skill questions involving criminal sentencing, judicial administration, and decision making, among many others. Still, I have little hesitation suggesting that her most important contributions came in the areas of public opinion and women on the bench.¹⁶

Do courts consider or mirror the views of the public in rendering judgments? This simple question has generated immense scholarly interest, not to mention debate. For, despite decades of work, analysts have resolved neither the question of why federal judges—who do not require electoral support to retain their jobs—would consider public opinion in their decisions nor the question of whether they do, in fact.¹⁷

What is beyond debate, however, is that Cook’s work provides the starting point for virtually all important analytic discussion on public opinion and trial

courts.¹⁸ As Gregory A. Caldeira noted in his review of the field, "Some dispute the findings and interpretations, but Beverly Cook has done important research on this topic and, without doubt, has drawn scholarly interest."¹⁹

Cook's article in the *American Journal of Political Science* well illustrates Caldeira's point. In this work, she invokes a "representational" model to explain the sentences issued by federal district court judges in cases involving draft offenders. Her primary argument is that, for a variety of reasons, we might expect to find a relationship between public opinion and judicial decisions. First, socializing experiences teach judges that public opinion is a legitimate consideration in their sentencing. Second, the recruitment process virtually guarantees that nominees will share the attitudes and values of the local community in which they will serve. Or, to put it another way, the selection system for federal judges embeds them in the political culture of their districts. Finally, the fact that judges watch television and read newspapers means that they will have some knowledge of the prevailing public mood.

In the remaining part of the article, Cook tests her representational approach, as well as rival explanations—the legal, bureaucratic, and sociopsychological models—against data carefully assembled from court records. The results indicate that public opinion correlates highly with judicial sentences.

Cook's work is not without its critics. Herbert Kritzer, for example, questioned whether it was public opinion to which the judges were actually responding or to their "own doubts about the war, or their opinions concerning the degree of governmental commitment to the war."²⁰ Still, Cook's findings have withstood the test of time: They are always cited in influential accounts of public opinion and the courts.²¹

And, yet, what sometimes goes neglected in treatments of Cook's work on public opinion was her research strategy. At the time she was writing (the 1970s), judicial specialists avoided competitive model testing. That is to say, they would select a particular theoretical approach to decision making and test its predictions, and only these predictions, against data. Today, many researchers claim that this tack was probably unwise since we can best explain judicial decisions by invoking models that integrate many different kinds of theories.²² But, of course, it was Cook who first had this important intuition and adopted it in her work. Seen in this way, she truly was a pioneer of the judicial process, a researcher two decades ahead of her time.²³

Cook's contribution to legal scholarship also extended to the area of women in law. Under what circumstances are women selected to serve as jurists? Do women jurists bring a different voice to the bench? In recent years, these questions have captured the imagination of a slew of political scientists—as well they should. With two women now on the Supreme Court of the United States and with their numbers growing on the lower federal courts and state supreme courts, it seems only natural that this question move to the fore of social scientific research on the judicial process. But even before Sandra Day O'Connor* took her seat on the Court, Cook had undertaken what would become an exten-

sive and fruitful research program on women jurists. Indeed, virtually all contemporary writings on the selection of women judges and their impact owe their origin to her studies.

Cook's research began in 1977, when she traversed the country interviewing women judges and collecting other relevant information.²⁴ She later created a seminal database, containing information on all state and federal women judges, which she used to explore issues concerning the ascension of women to the bench.²⁵ Among her more important findings is that women will become more than mere tokens in the courts only if three conditions are obtained: increases in (1) the number of judgeships, (2) the number of eligible women, and (3) the number of "gatekeepers" (those who select judicial candidates) who will give serious consideration to women.²⁶

Another of her important contributions was brought to light by Sheldon Goldman, one of the nation's leading authorities on judicial selection. In his review of Cook's work, Goldman made particular note of an article she had written on Florence Allen,* the first woman federal judge and a candidate for "at least 10 of 12 vacancies on the Supreme Court that occurred during the Roosevelt and Truman administrations."²⁷ But, of course, Allen never received an appointment, even though, as Cook demonstrated in her article, her background (except for her sex) was comparable to others who had served on the Court.

Why did Florence Allen fail and Sandra Day O'Connor succeed? Cook takes up this question in yet another intriguing study published in *Judicature*.²⁸ There she derives several answers, the most significant of which is this: President Franklin D. Roosevelt did not perceive that Allen would help his political fortunes. Public opinion polls showed that, in 1938, only 37 percent of Americans favored the appointment of a woman to the Court and groups representing women's interests were not seen as central to passage of FDR's programs. As Cook demonstrates, the political environment had turned significantly by the late 1970s, enabling Ronald Reagan to do what Roosevelt found politically untenable: elevate a woman to the Court.

Still, Cook's work on Allen does more than answer an important research question. It also shows the importance of archival research. While many scholars toiling in the field rely exclusively on published reports or records, Cook draws extensively on judicial papers available in the Library of Congress, various presidential libraries, and the National Archives, to name just a few. The value of such data is evident in Cook's publications on Allen (and on several other women judges²⁹): They enable scholars to capture nuances of political phenomena—nuances that may be lost in the often-sterile world of statistics and that may have some bearing on the hypotheses under investigation.

Cook's archival-based research on judicial selection continues,³⁰ as does her work on the equally significant question of whether women bring a distinct voice to the bench. This issue, as Sue Davis notes, is now central to the study of constitutional interpretation, feminist jurisprudence, and judicial behavior. But it was Cook who set the agenda for this entire line of inquiry.³¹ She was the

first to predict that women judges would be more likely than their male counterparts to advance pro-women positions in cases centering directly on the status of women.³² She was also one of the first to suggest that they would adopt positions that would conform to those of their male colleagues in other kinds of disputes.³³ As researchers have demonstrated, both predictions tend to hold, regardless of the particular judicial body under investigation.³⁴

Cook's contributions to political science do not end with her research, for over the past 30 years she has been, as Lynn Mather noted, a "distinguished leader in the profession."³⁵ Her list of professional activities is long indeed, and includes the following: stints as vice president of the American Political Science Association (1986–1987) and of the Midwest Political Science Association (1982–1984) and chair of the APSA's section on Law and Courts (1981). She has also served on the Editorial Board of the *Western Political Quarterly* and on the Program Committees of the American (1982), the Midwest (1972), and the Western Political Science Associations (1981). Finally, Cook made a major contribution to the field in her capacity as a member of the Board of Overseers of the National Science Foundation's project on the U.S. Supreme Court. Since 1984, that Board has guided the collection of a staggering amount of data on the Supreme Court, with the first release now in wide use.³⁶

Among all these accomplishments, however, it is probably fair to say that Cook is proudest of her role in the founding of the National Association of Women Judges (NAWJ).³⁷ Her association with the NAWJ began in 1977–1978, when she was interviewing women state court judges. As she traveled around the country, she "discovered that the women had no knowledge of women judges in other states and cities." Based on the work she had been conducting on early women lawyers, Cook "recognized the similarity of the women judges' situation to that of women lawyers one hundred years earlier and thought that it was time for them to form an organization."

Cook brought the idea to two of the judges she had interviewed. One of them, Joan Klein, ran with it planning a "constitutional convention" of women judges. At that meeting, Cook gave the keynote address in which she suggested that women judges ought to create their own "sisterhood," just as the first women lawyers did.

As the Association began to take shape, Cook continued her involvement. In fact, it was through the NAWJ that she played a major role in bringing the organizational strength of women to the attention of the (pre-Sandra Day O'Connor) Supreme Court.³⁸ As she tells the story,

[I arranged] to have women judges attending the 1980 NAWJ convention in Washington, D.C. march together into the Supreme Court building for the special tour and to impress the justices with [their] number. . . . I developed this strategy because of the report that Truman consulted with Chief Justice Vinson about the possibility of appointing Florence Allen; Vinson consulted with the brethren, and they expressed their discomfort at the idea of a woman in their private conferences.

Heeding this historical lesson, Cook thought it strategically sensible to confront Chief Justice Burger with the fact that a large number of women would soon be eligible for service on the Court. "If they entered the building en masse," as Cook put it, "then all the justices as well as the other (overwhelmingly male) personnel in the building would also understand that the day would soon come when a woman would join their conferences."

Cook's message was delivered and, apparently, received. Chief Justice Burger was amazed "when he walked into the huge assembly room and saw the standing room only crowd," composed exclusively of women. Just a one month later, the justices dropped the term "Mr." from courtroom courtesy and the official reports. And exactly a year later, O'Connor ascended to the bench.

Upon reflecting on her involvement with the women judges' visit to the Court and the NAWJ more generally, Cook acknowledged that it was "unusual" for social scientists and lawyers to engage in this sort of cooperation. Perhaps that would be true for most of us but certainly not for Beverly Blair Cook, whom we have come to know as a leader and role model for a generation of scholars—men and women—of the judicial process.

NOTES

1. The roundtable was held at the 1992 meeting of the American Political Science Association. Cook's remarks were published; see Beverly B. Cook, "Ghosts and Giants in Judicial Politics," 27 *PS: Political Science and Politics* (1994): 78–84.
2. *Ibid.*
3. Beverly B. Cook, "Measuring the Significance of U.S. Supreme Court Decisions," 55 *Journal of Politics* (1993): 1125–37.
4. Beverly B. Cook, "A Critique of the Supreme Court's 1982 Agenda: Alternatives and the NYU Legal Model," 17 *Justice System Journal* (1994): 135–51.
5. Beverly B. Cook, "Testing a Model of Opinion Assignment: The Burger Court," unpublished manuscript (1995).
6. I have adopted this discussion from Thomas G. Walker, "The Development of the Field," paper presented at the Columbus Conference, Ohio State University, Columbus, Ohio (1994).
7. Herman C. Pritchett, "Divisions of Opinion Among Justices of the U.S. Supreme Court, 1939–1941," 35 *American Political Science Review* (1941): 890–98; and Pritchett, *The Roosevelt Court* (New York: Macmillan, 1948).
8. See, for example, Fred Kort, "Comment on the Untroubled World of Jurimetrics," 26 *Journal of Politics* (1964): 923–26; Wallace Mendelson, "Response," 26 *Journal of Politics* (1964): 927; Mendelson, "An Open Letter to Professor Spaeth and His Jurimetric Colleagues," 28 *Journal of Politics* (1966): 429–32; and Harold J. Spaeth, "Jurimetrics and Professor Mendelson: A Troubled Relationship," 27 *Journal of Politics* (1965): 875–80.
9. Glendon Schubert, "Academic Ideology and the Study of Adjudication," 61 *American Political Science Review* (1967): 106–29.
10. Walker (1994).
11. *Ibid.*

12. Walter F. Murphy, *Elements of Judicial Strategy* (Chicago: University of Chicago Press, 1964) and Schubert, 106–29.
13. Beverly B. Cook, “The Socialization of New Federal Judges: Impact on District Court Business,” *Washington University Law Quarterly* (1971): 253.
14. *Ibid.*
15. As I describe soon, Cook’s interest in judicial socialization remains unabated, although her later work focuses more heavily on the effect of life experiences on judicial decisions rather than those occurring on the bench. Lawrence Baum made this point when he described Cook’s research on Sandra Day O’Connor, which he deemed a “sensitive treatment of [her] life experiences and how those experiences affected her values on the bench.” Quoted in Lynn Mather, “Introducing a Feminist Pioneer in Judicial Politics: Beverly Blair Cook,” *27 PS: Political Science and Politics* (1994): 77.
16. It also bears noting that Cook was one of the first to conduct systematic research on black judges. For an early example, see Beverly B. Cook, “Black Representation in the Third Branch,” *1 Black Law Journal* (1971): 260–81.
17. A recent example of the debate is Helmut Norpoth and Jeffrey A. Segal, “Comment: Popular Influence on Supreme Court Decisions,” *88 American Political Science Review* (1994): 711–16; and William Mishler and Reginald S. Sheehan, “Response,” *88 American Political Science Review* (1994): 716–23.
18. Beverly B. Cook, “Sentencing Behavior of Federal Judges: Draft Cases—1972,” *42 University of Cincinnati Law Review* (1973): 597–633; Cook, “Public Opinion and Federal Judicial Policy,” *21 American Journal of Political Science* (1977): 567–600; and Cook, “Judicial Policy: Change over Time,” *23 American Journal of Political Science* (1979): 208–14.
19. Gregory A. Caldeira, “Courts and Public Opinion,” in John B. Gates and Charles A. Johnson, *The American Courts: A Critical Assessment* (Washington, DC: CQ Press, 1991), 317.
20. Herbert M. Kritzer, “Federal Judges and Their Political Environments: The Influence of Public Opinion,” *23 American Journal of Political Science* (1979): 198.
21. Caldeira, 317; and Thomas Marshall, *Public Opinion and the Supreme Court* (Boston: Unwin Hyman, 1989).
22. Tracey E. George and Lee Epstein, “On the Nature of Supreme Court Decision Making,” *86 American Political Science Review* (1992): 323–37; and Melinda Gann Hall and Paul Brace, “Integrated Models of Judicial Dissent,” *55 Journal of Politics* (1993): 914–35.
23. Baum makes this point, though in a somewhat different way. As he put it, “although multivariate models are now common in the field, Cook was among those who first showed how this kind of analysis could be done and how much we could learn from it.” Quoted in Mather, 77.
24. A Florence E. Eagleton grant (from the Center for the American Woman and Politics, Eagleton Institute) supported this research. In addition to the Eagleton grant, Cook has received support from the National Endowment for the Humanities, the Ford Foundation, and the Social Science Research Council.
25. See Mather, 77.
26. Beverly B. Cook, “Women Judges: A Preface to Their History,” *14 Golden Gate University Law Review* (1984): 573–74.
27. Beverly B. Cook, “The First Woman Candidate for the Supreme Court,” *Supreme Court Historical Society Yearbook* (1981): 19–35, quoted in Mather, 77.

28. Beverly B. Cook, “Women as Supreme Court Candidates: From Florence Allen to Sandra Day O’Connor,” *65 Judicature* (1982): 314–26.
29. See, for example, Beverly B. Cook, “Moral Authority and Gender Difference: Georgia Bullock and the Los Angeles Women’s Court,” *77 Judicature* (1993): 144–55.
30. See, for example, Beverly B. Cook, “Marion Harron,” in *American National Biography* (New York: Oxford University Press, 1996).
31. See Mather, 78.
32. Beverly B. Cook, “The Impact of Women Judges upon Women’s Legal Rights: A Prediction from Attitudes and Simulated Behavior,” in Margherita Rendel, (ed.), *Women, Power and Political Systems* (New York: St. Martin’s Press, 1981).
33. Beverly B. Cook, “Women Judges: The End of Tokenism,” in *Women in the Courts* (Williamsburg, Va.: National Center for State Courts, 1978). For a review, see David W. Allen and Diane E. Wall, “Role Orientations and Women State Supreme Court Justices,” *77 Judicature* (1993): 156–65.
34. For example, Allen and Wall, 156–65; and Sue Davis, Susan Haire and Donald R. Songer, “Voting Behavior and Gender on the U.S. Courts of Appeals,” *77 Judicature* (1993): 129–33.
35. Mather, 77.
36. Harold Spaeth, *United States Supreme Court Judicial Database* (Ann Arbor, Mich.: Inter-University Consortium for Political and Social Research, #9422, 1995 [updated annually]).
37. Cook relayed the information that follows to Elaine Martin (letter from Cook to Martin, May 31, 1993). Cook was kind enough to supply me with a copy of the letter.
38. The information in this paragraph was relayed to me by Cook (letter from Cook to Epstein, January 23, 1994).

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