

## REMARKS BY DAVID F. CAVERS TO DUKE STUDENTS CONCERNING THE ORIGIN OF AND VISION FOR *LAW AND CONTEMPORARY PROBLEMS*\*

Making the remarks to an unseen audience three days before it has been assembled poses an immediate question. Who is presiding over the auspicious occasion to whom I should pay my respects? Has the Dean or the General Editor or some other member of the editorial board assumed this grave responsibility? Whoever this person may be, I pay him or her my respects. I express my regrets that I should be many hundreds of miles away at this time. I recall with pleasure my previous appearance at this annual function and I look forward to another one. Unfortunately, I must soon drop into the Massachusetts General for repairs. I send my congratulations to all of you who have earned the opportunity to join in editing this now venerable quarterly, *Law and Contemporary Problems*, a title proposed for it by a very capable and colorful member of the Duke Law faculty, Douglas Maggs.

Some of you will have read my memorandum in Appendix II to Number 2 of the Spring issue (1977) of Volume 41, a copy of my memorandum to Dean Miller with reference to a proposed law review for Duke. That 1977 volume was the symposium which three of my colleagues at Harvard Law School edited, secretly prepared, and dedicated to me. I had no knowledge of what they were up to until my 75th birthday, when they dropped into my office and revealed the fact that the issue on Contemporary Perspectives in Conflict of Laws was well underway. Needless to say, I was delighted. The enterprise led me to recall the memo I had written to Dean Miller proposing that Duke depart from the conventional law review pattern and publish a quarterly presenting symposia in the problems of concern to law. In my mind this was patterned after the *Annals* of the Academy of Political and Social Science. I had come to know and admire the *Annals* as an undergraduate at the University of Pennsylvania where it was published. It had been devoted to the use of the symposium form that I proposed we adopt.

I had long felt that there was a need for such a periodical in the field of law. As we all know, legal, social, economic, political, and administrative problems are closely, often inexplicably, interrelated in life. Their understanding requires that we do not attempt to seal them off into separate disciplinary compartments. On the verge of the New Deal, the time seemed right to approach society's problems on an interdisciplinary basis.

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\* The address was delivered on April 4, 1986, by dictation onto audio cassette tape, because illness prevented Cavers' physical presence at the annual *L&CP* banquet.

Convinced though I was of the validity of this thesis, I had another motive: self-defense. I knew that Dean Miller would finger me for the role of a new law review editor thanks to my experience as president of the *Harvard Law Review* seven years before. The prospect looked grim. Our faculty, though able, was small, and confronted by the building of a new school and a new curriculum. Moreover, the student body was at that time tiny, especially after the first year. Its nucleus of very able students could hardly be expected to carry a heavy load that all the larger law reviews placed on their student editors. I foresaw a period during which our teachers would exhaust both themselves and the generosity of their friends in recruiting contributors to a few promising volumes of a new quarterly that would then begin a slow slide towards mediocrity.

We needed a new concept. Although the production of each and every early issue of *L&CP* was touch-and-go, we managed to recruit capable contributors who were attracted by the concept. The quality in each issue was uneven, of course, but I did not feel apologetic about any. In the first ten volumes I actually had hoped to convince colleagues to take over the editing of symposia. Professor Lon Fuller brought out an excellent symposium on "The Wage-Earner's Life Insurance" in Volume 2. Then Volume 4, Number 4, attacked the problems of the new securities legislation in two issues. A great boom. Then Paul Sanders became an assistant professor and he added an issue on the "Unauthorized Practice of Law" controversy to Volume 5. Paul also undertook to assist me in many incidental activities which an editor and business manager of a new periodical must undertake. In Volume 6, John Bradway of the clinic brought out an issue on "Alimony," and Paul Sanders came on again in Volume 7 on "Alcoholic Beverage Control."

In 1940-41, I went as a visiting professor to the University of Chicago, and Professor Frank Strong of Ohio State took over my labors for three issues in Volume 8. Frank, as you may know, is now a member of the University of North Carolina Law faculty, I suspect in the happy estate of Professor Emeritus. Paul Sanders came back again in Volume 9, and then we encountered World War II. I edited an issue on war-time tax problems, and then Professor Latty took over and carried the periodical until I had departed to Harvard and Professor Currie came on to be the periodical's editor. Professor Sanders is now Professor Emeritus at Vanderbilt where he has had a distinguished career in labor law and as an arbitrator.

The need for a vehicle for student writing led to the creation of that small semi-annual periodical, the *Duke Bar Association Journal*. It sought to publish the student writings emerging from a seminar of mine entitled "Current Decisions." The students were also members of the *Bar Journal's* board. It provided a useful training vehicle and published some very respectable notes and comments. And as you may know, an editor of the *Journal* was called on to contribute a note or an article to nearly each of the issues of *Law and Contemporary Problems*. One of these student contributors liked his product so well that he cited it for many years in his biographical note in *Who's Who*.

I could reminisce at length on experiences, not only in editing *L&CP*, but in publicizing it. Begging free mailing lists from other periodicals and societies dealing with the problems of particular issues was an important tactic in getting the quarterly known and in boosting single copy sales to reinforce our slender budget. Some issues were quite productive and the effort also helped to make *L&CP* known well beyond the law school world.

We also bear testimony to the importance of approaching the problems of law in our society in terms extending beyond legal doctrine. I think in the conception of *L&CP* we emphasized the social role of it all in ways that have been coming to the floor of the law schools only within the past fifteen or twenty years. Vehicles expressing this concern are organized in the Law and Society Association, in what has come to be known as the Chicago School of Economics, and most recently and most controversially in Critical Legal Studies. The Law and Society Association tends to attract sociologists; the Chicago School tends to entice economists, especially a particular breed of economist, and CLS draws on a diversity of critics of all doctrines and institutions, including some critics who lean on Marxist philosophy. Of the three, it seems to me that the Law and Society Association may come closer to the approach reflected in the issues of *L&CP* than do the others, whose range is far more specialized.

The nature of the task which *L&CP* has undertaken requires a degree of diversification in its approach to problems that it tackles. Does this mean that it lacks a philosophy? Perhaps someone has undertaken to articulate its philosophy. Perhaps I did, though I cannot now supply citations. However, looking back over my experience in editing the first ten or so volumes and surveying the subjects on that extraordinary list of topics that one finds in the closing index pages of an *L&CP* issue today, I move to venture some observations that are reinforced from my experience for over fifteen years as president of the Meyer Research Institute of Law and then of the Council on Law-Related Studies, both making grants for research that reach beyond the doctrinal. It seems to me that we are coming increasingly to recognize that we must approach our fields of concern as legal scholars or scholarly lawyers. This recognition signals that we are dealing with far more than a body of doctrine and its adaptation to a changing society. That doctrine is not self-executing, but is part of a vast and intricate system on which we rely for the realization of our doctrine's objectives. As scholars we have tended too long to concentrate on the formulation of the doctrines and their judicial application, and the neglect of imperfections and inadequacies in the implementing system. When, as virtually every issue of *L&CP* demonstrates, one looks at the doctrinal problems in the light of the system problems, the problems of implementation, we are challenged by shortcomings that are social, economic, political, and philosophical, all of them relevant to law, but all too often neglected in law reports, legal schools, and law reviews. Many of the discontents that we confront in law today have their roots in neglect of the system problems. Our compelling attention needs to be drawn to the defects

in the system and opportunities for their correction, thereby often requiring a reexamination of doctrines. A periodical with a range of concerns exemplified in *Law and Contemporary Problems* may therefore achieve more in time than can the scholars who focus their attention on doctrine without regard to the operation of the system on which it depends. Here are to be found the roots of many of our contemporary problems. Despite its accomplishments, *L&CP* has not had rivals adopting its format. But as I run through the pages of our library's weekly reproductions that total the contents of virtually every legal publication in English, I am impressed by the number that every few years publish symposia in the *L&CP* manner. *L&CP* enjoys many compliments of imitation. It and you deserve them.