

# DAVID F. CAVERS, CHAMPION OF LAW-RELATED SOCIAL RESEARCH

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My first impressions on becoming acquainted with David F. Cavers were of a gentle, unassuming person who spoke softly, listened intently, analyzed skillfully, and responded thoughtfully. In the thirty years of friendship that followed I had no reason to revise my assessment, merely to amplify it. Cavers was an immeasurably talented lawyer, a profoundly thoughtful scholar, and a man with a preference for principle. His range of law-related interests was practically unlimited, yet somehow he was able to attend to them faithfully. In 1973 I found myself writing to him:

Prodigious, thy name is Cavers. I can never quite prepare myself for the depth, breadth and volume of ideas that march in such orderly ranks from the end of your pencil—on any subject you put your mind to.<sup>1</sup>

My closest professional and personal contacts with him centered on our shared devotion to the mysteries of choice of law and to what he called “non-traditional research.” His insightful writing on choice of law, starting with his path-breaking article in 1933<sup>2</sup> and crowned by his Cooley Lectures at the University of Michigan Law School in 1964,<sup>3</sup> have made contributions second to none in the field. Some years ago I put it this way:

Professor Cavers has come to understand the policies that underlie the choice-of-law process in many areas of law. From that understanding he has shaped a number of preference principles—rules of broad sweep and sensitive flexibility—and has thereby provided the key to making court adjudication unnecessary in a large number of cases.<sup>4</sup>

His invention of a way to avoid protracted litigation over which state’s rule applies is a legacy of great value to those who cherish justice. Without some such rules as his, the parties often must dispute lengthily and expensively before finding out which rule is applicable; Cavers’ “principles of preference” are far better than the open-ended approaches they would supplant. However, it is to the second of our shared interests—non-traditional legal research—that I want to devote these pages.

In the spring of 1983 Professor Cavers read in the *Boston Globe* that President Derek Bok of Harvard University had devoted his 1981-82

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1. Letter from Maurice Rosenberg to David F. Cavers (Sept. 26, 1973).
2. Cavers, *A Critique of the Choice-of-Law Problem*, 47 HARV. L. REV. 173 (1933).
3. D. CAVERS, *THE CHOICE-OF-LAW PROCESS* (1965).
4. Rosenberg, *Symposium: Conflict of Laws Round Table, The Value of Principled Preferences*, 49 TEX. L. REV. 229, 230 (1971).

President's Report to "the state of law, the legal profession, legal education, and legal research."<sup>5</sup> Unlike most of his law school brethren, Cavers found himself surprised and "greatly stirred"<sup>6</sup> by Bok's ideas: "I can't think of any comparable Philippic from such a source since the early days of President Hutchins at Chicago . . . ."<sup>7</sup> He went on to explain that his excitement was generated by the feeling that President Bok had endorsed, albeit unwittingly, the *raison d'être* of the Walter E. Meyer Research Institute of Law and its successor, the Council on Law-Related Studies.<sup>8</sup> Cavers had been president of both entities, as will appear below.

Cavers' deep interest in non-library research was quickened by an experience in the mid-1940's. At a faculty dinner a noted Harvard social scientist nonplussed him by asking, "Why don't you and your colleagues do research?" With visions of law reviews, treatises, Restatements, and other works parading through his mind, Cavers protested that, of course, law teachers did research. This prompted the social scientist to remark: "I don't know any of you who have been gathering data." Cavers brooded about that exchange, eventually concluding that there are, indeed, facts in the form of data outside the West reports that would be profitable to gather.

For me, it was immensely reassuring to learn in my early days as a law teacher that however eccentric my taste for law-related empirical research might be, David Cavers, a brilliant and highly-respected legal scholar, was likewise an aficionado. His steadfast devotion to law-in-action research was nourished by a conviction he shared with Bok that research is a key element "in any effort to redirect and revitalize the American legal system." He also believed that "law schools had made surprisingly little effort to seek the knowledge that the legal system requires. Even the most rudimentary facts about the legal system are unknown or misunderstood."<sup>9</sup>

The creation of the Walter E. Meyer Research Institute of Law in 1957 gave him a fifteen-year-long opportunity to spur law schools and law professors to greater efforts to do research and gather data outside the law books. Under a testamentary bequest of the man for whom the Meyer Institute was named, securities ultimately worth several million dollars were set aside to create a "Research Institute of Law" with an ambitious mission:

It shall be the purpose of the . . . corporation through investigation, research and study and through the publication of the results of such investigation, research, and study to throw light on matters which will be of aid in securing to humanity a greater degree of justice whether through the law as administered by the courts, through legislation, through government local, national or international, or through a better understanding only of human relations.<sup>10</sup>

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5. Letter from David F. Cavers to Ralph S. Brown, Jr., and Maurice Rosenberg (May 16, 1983). See also Bok, *The President's Report to the Board of Overseers of Harvard University, 1981-82*.

6. Letter of May 16, 1983, *supra* note 5, at 3-4.

7. *Id.* at 4.

8. *Id.*

9. Bok, *supra* note 5, at 17.

10. WALTER E. MEYER RESEARCH INSTITUTE OF LAW, REPORT FOR 1957-60, at 5 (1960)

Cavers served as the president of the Institute and of its successor, the Council on Law-Related Studies, throughout the years they existed. He worked tirelessly to shape these organizations' grant-making policy in a manner that would attract law professors to undertake non-traditional research to discover facts essential for law improvement.

His own words in the biennial reports he wrote as president of the Institute convey his views and values regarding law-in-action research. He was less interested in the technical improvement of the law than in the advancement of justice. Early in the Institute's life he conceived that a comprehensive study of the state of legal research in major fields would provide a valuable baseline. He persuaded the Meyer trustees to fund a three-year study of American legal research. This was the first in-depth inquiry into the objectives, methods, and products of American legal scholarship. He hoped the results of the study might stimulate discussion in law schools on the state of research endeavors and might suggest fruitful lines of further research.<sup>11</sup>

The Institute's efforts to stimulate law-related empirical research met with only moderate success quantitatively. Cavers was disappointed in the response of American law teachers to the opportunities that the Institute had created.<sup>12</sup> It was particularly important from his perspective that law teachers not cede responsibility for law-related empirical research to the social scientists. Rather, legal scholars ought to learn how to apply evolving methods of social scientific research:

If we in the law are to move ahead in the new directions that have begun to beckon, we shall have to develop a greater awareness of our own limitations as investigators. Even though we do not accept all the limitations which, in the name of science, many behavioral scientists impose on their inquiries, we must recognize that they have acquired much valid experience and useful know-how from which we can benefit . . . .<sup>13</sup>

By 1968 he had come to the conclusion that task-force research rather than individual research offered the best chance of making progress on exploring law in action:

[O]ur observation [has been] that, where several studies were directed to a single problem area, in such fashion as to assure some cumulation in their contributions to its understanding, the impact of the research findings was significantly enhanced. The most striking example of the values derived from multiple studies in a single area is that provided by the studies directed to the automobile accident problem described in the Director's Report and, with some exceptions, brought together in the Institute-sponsored volume, *Dollars, Delay and the Automobile Victim*[: *Studies in Reparation for Highway Injuries and Related Court Problems*(1968)]<sup>14</sup>

Disappointed in the sluggish rate of growth of significant empirical research activity by legal scholars, Cavers and the other Meyer trustees decided on a change of direction. In 1968 they determined to prepare the

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11. *Id.* at 8-9.

12. *Id.*

13. WALTER E. MEYER RESEARCH INSTITUTE OF LAW, REPORT FOR 1962-64, at 10 (1964).

14. WALTER E. MEYER RESEARCH INSTITUTE OF LAW, REPORT FOR 1966-68, at 8 (1968).

way for the creation of task forces of highly qualified scholars who would work in areas where well-targeted, carefully designed research was likely to “aid in securing to humanity a greater degree of justice,”<sup>15</sup> thereby advancing the Institute’s goals. A new entity, the Council on Law-Related Studies (“CLRS”), roughly patterned on the Social Science Research Council, was created to carry forward the Institute’s work. The Council’s board of trustees numbered sixteen members of whom seven were law professors and four were social scientists, thus giving representation to more than twice as many universities as the Meyer board, with its four law professors. Professor Cavers became the Council’s president when it was launched in 1969.

It was obvious that the Council’s capital resources would last only a few years under any reasonable grant-giving program. Cavers’ prolific mind produced a plan for a follow-on body that he hoped would continue to stimulate and encourage non-traditional legal research by law teachers after the money was gone. The new entity, to be called the Office for Law-Related Research (“OLRR”), would be linked to the Association of American Law Schools. By ingenious lawyering and skillful diplomacy, Cavers managed to overcome formidable tax obstacles and to obtain the assent of the four funding or operating institutions concerned with OLRR’s creation. Nevertheless, OLRR could not be activated because there was no qualified law teacher who was prepared to direct the operation. In the end, the OLRR plan was scuttled.

Looking back at the efforts of CLRS to perpetuate the faith in non-traditional research about law, Cavers commented: “The instruction provided by experience is not always welcome, but it can be illuminating.”<sup>16</sup> It was typical of his resilient character and upbeat approach to life to find illumination in a disappointed hope. It was my good fortune that he shared such enlightenment with me. During the years when I was the Meyer Institute’s executive director,<sup>17</sup> he often phoned late in the evening. The length of these chats must have gladdened the heart of Ma Bell. Years later, after an extended hiatus in these long-distance conversations, he phoned again one Sunday evening. We found much to discuss. His follow-up letter was typically wry: “It was like old times to be shortening your night’s sleep by long long-distance.”<sup>18</sup>

David F. Cavers was a brilliant legal scholar and lawyer who had a vision of affording greater justice to humanity by research that ventured beyond the law books. His vision survives, not yet realized, but certainly closer at hand for his work. Of him could be said what the late Carl McGowan wrote of his departed friend and colleague, Harold Leventhal:

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15. WALTER E. MEYER RESEARCH INSTITUTE OF LAW, *supra* note 10, at 5.

16. Cavers, *Report on CLRS* 5 (1976).

17. Ralph S. Brown, Jr., of Yale was executive director of Meyer from 1958-65. I served from 1965 until the Institute’s dissolution in 1969.

18. Letter from David F. Cavers to Maurice Rosenberg (Sept. 20, 1973).

His labors in the legal vineyard continue as reminders that the strongly flowing springs of reason in the liberally endowed and highly trained human mind can and do create the climate in which justice flourishes and civility prevails.<sup>19</sup>

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19. McGowan, *Judge Harold Leventhal*, 80 COLUM. L. REV. 884, 891 (1980).