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## Myres S. McDougal - Profound Scholar, Creative Innovator, Genial Humanist

### Keywords

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MYRES S. McDOUGAL  
PROFOUND SCHOLAR, CREATIVE INNOVATOR,  
GENIAL HUMANIST

HARDY C. DILLARD\*

The vigour of civilized societies is  
preserved by the widespread sense  
that high aims are worthwhile.

Whitehead, *The Adventure of Ideas* (1932) 286.

The launching of the *Denver Journal of International Law and Policy* is the occasion for rejoicing. As with older student sponsored journals it demonstrates first, that the modern American law student is keenly aware of the fact that many of the critically important problems which require analytical treatment transcend national frontiers, and second, that space limitations prevent orthodox law reviews from coping with the multifaceted theoretical and practical dilemmas which these problems generate. A third point should also be mentioned. Aware that our library shelves already groan with hundreds of journals, a skeptic may well ask, why add to the number? The answer, it is submitted, is not difficult. The subject of international law is so vast and the wealth of student research now devoted to it in seminars across the nations is so extensive that it is a pity to consign able student effort to some professor's file or dusty alcove. The prospect of publication not only heightens the incentive to do high quality work, it is likely also to produce results that add significantly to our store of knowledge.<sup>1</sup> It need hardly be added, of course, that the incentive is spurious and the accretion to knowledge is negligible unless the student effort is measured and screened by exacting standards of scholarly integrity.

The dedication of the "kick off" issue of this Journal to Myres McDougal is particularly appropriate. What scholar of

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<sup>1</sup> I have elaborated on this theme a little more extensively in the initial issue of the *Georgia Journal of International and Comparative Law*, which is, at this writing, in the process of being published. I recognize that student journals are not confined to student contributions. This suggests that another source of available material lies in the many regional meetings sponsored by the American Society of International Law such as that held at the University of Denver Law School in May, 1969. See, 64 *AM. J. INT'L L.* 158 (1970).

our time has done more to challenge conventional doctrine, stimulate probing controversy, and generate constructive thought? What man has done more as scholar, teacher, head of professional bodies and lively disputant in professional meetings, to energize an entire discipline? To me the answer is too clear to admit of doubt. And this seems true whether one agrees, either in gross or in detail, with the policy oriented approach, sometimes known as "the gospel according to Harold and Mac."<sup>2</sup>

It was to be expected that the policy oriented approach would arouse vigorous reactions, a consequence attending most pioneering intellectual efforts. Its novelty, its comprehensively syndetic quality, its insistence on the consistent use of many terms unfamiliar to orthodoxy, its employment of insights drawn from other disciplines (notably communication theories), its explicit introduction of "values," its de-emphasis of rules in favor of empirically revealed subjective expectations—these and many other features elicited reactions ranging all the way from dedicated espousal through restrained skepticism to active opposition. And naturally even those who did not merely "react" but who took the time to probe the assumptions underlying the approach and who might be considered sympathetic, yet registered and continue to register reservations on specific aspects.<sup>3</sup> This too was to be expected. The significant point lies elsewhere.

The novelist John Steinbeck, speaking of critics, is credited with the whimsical comment that the quality which best distinguishes a critic as a man of superior discernment and sincerity is his willingness to indulge in unqualified praise. But

<sup>2</sup> Need it be said that the reference is to Professor Harold Lasswell?

<sup>3</sup> Despite its formidable title, an able analysis and rebuttal of three prevalent criticisms is to be found in one of Professor Moore's well written and comprehensively documented articles. See, MOORE, PROLEGOMENON TO THE JURISPRUDENCE OF MYRES MCDUGAL AND HAROLD LASSWELL, 54 VA. L. REV. 662 (1968). The three criticisms deal with: (a) the special rhetoric employed by the approach, (b) its instrumental quality and value emphasis which may lead to chauvinistic manipulation of law and (c) its allegedly practical unwieldiness. My own reservations are located at a different level. They have to do with a too heavy emphasis on "decision making" as a focus of inquiry and a too heavy reliance on empirically derived data as a clue to meaning and significance. It has been well said that the significance of behavior is not exhausted by observing it. A too heavy emphasis on empirically derived data may tend to suggest that the manifestation of behavior tells its own story whereas the story may be distorted unless subtle mental operations are brought to bear upon it and unless the behavior is located in a frame of reference which may itself elude observation. The problem bothers the historian as well as the jurist. See PHILOSOPHICAL ANALYSIS AND HISTORY 265-96 (Dray ed. 1966). But all this takes us far afield and I am sure Professor McDugal would have a ready answer to any doubts of this kind. Several years ago I attempted to search out some of the assumptions underlying the approach. Dillard, *The Policy Oriented Approach to Law*, 40 VA. Q. REV. 626 (1964).

unqualified praise, however pleasant, rarely serves as a reliable index of influence. This is measured by, among other things, the extent to which the author's ideas command sustained attention, their capacity to help resolve complex problems and ultimately the degree to which they tend to set fresh thought in motion.

It is a tribute alike to the quality of Professor McDougal's thought and the respect he commands to suggest that his monumental contributions to our discipline are so well known (even when not altogether understood) that no one can claim to be sophisticated who is not aware of them. In this sense he may be bracketed with Williston or Corbin in the field of Contracts or Scott on Trusts or Powell on Property but, in effect, the comparison is not apt because Professor McDougal's contributions, as noted above, are in a more protean field and challenge accepted doctrine. Of how many 20th century legal scholars can this be said? Taking the sweep of our own history, Roscoe Pound comes to mind since early in the century he, too, challenged conventional notions about law and the legal and social order. Unfortunately he devoted little attention to international law. Suffice it to suggest, in short, that Professor McDougal has, indeed—to use a trite but nevertheless accurate phrase—become a legend in his own time.

Less well known than his books and articles are his qualities as an executive when called upon to act in that capacity. So far as I can ascertain he is one of only two men (the other being the late Professor Edwin Dickinson), in the long history of both the American Society of International Law and the Association of American Law Schools, to have been elected president of each. This, in itself, is a testimonial to the respect and regard held for him by his colleagues. More to the point, however, is the fact, known especially to those who were then in close association with him, that he brought to each office a quality of energetic and imaginative leadership that was pervasively felt. This was manifested in many ways including his ably articulated espousal of the needs of our discipline which ultimately led to sustained and systematically organized research efforts backed by substantial foundation support. In both his presidencies he exploded the myth that because renowned scholars do not seek executive power and may even disdain it, they are thereby incapable of wielding it.

Shifting our focus, it is soon appreciated by those who do intellectual battle with Professor McDougal, either in live dis-

course or in writing, that they are not opposing a man who takes lightly challenges to his ideas. Sometimes this may lead to the conclusion that he is too forthright in his denunciation of ideas with which he disagrees. But it is to be noted that his rebuttals are never *ad hominem* but always buttressed by reasoned argument and a host of authorities. His strongly held convictions about law as an instrument for human betterment and his disdain for all forms of "black letter" approaches to the solution of complex legal problems are not attended by any kind of petty, personal animus directed against those who may either ignore the true gospel or read it through distorted lenses.

This ushers in a final note which I shall sound even at the risk of appearing too personal. To all who happily have come within the more intimate circle of his influence it is well known that, at the human level, it would be difficult to find a warmer, more generous or more loyal friend. Genially coupled with this quality is still another. Despite his vast contributions to our literature and despite his forthright espousal of his own ideas, there is nothing about him that bespeaks the heavy handed pedant who may be best described as a man who fails to distinguish between taking his work seriously, which is always necessary and taking himself seriously, which is never required. As a non-Yale colleague who has shared with him many common experiences, such as lecturing in Egypt, at The Hague and at Oxford, and who has spent many hours with him not only in professional activities but also in friendly banter and pleasant revelry, I can vouch for the engaging fact that Professor McDougal never equates being serious with being solemn. Not only is he one of the great scholars of our time endowed with a superior mind; he is a very jolly companion graced with a light touch.

The University of Denver College of Law is to be saluted on venturing to publish a new journal. And it does itself honor by honoring Professor McDougal who has done so much to spread the sense that high aims are worthwhile and can be realized.