

Myres Smith McDougal:

A Life of and About Human Dignity

Andrew R. Willard[†]

Myres Smith McDougal, founder of the Policy-Oriented School of Jurisprudence, was the eldest of three sons born to Lula Bell (Smith) and Luther Love McDougal. He was born on November 23, 1906, in the farming community of Burton, in the hill country of northern Mississippi. His brother, Luther, was close to three years younger than he and the youngest of the three boys, Bolivar Smith, known simply as Smith, was seven years younger than Myres. Although he had contact with many of his relatives, Myres and his parents and brothers spent a great deal of time with his maternal grandparents at their farm in New Hope. It was here that young Myres learned to hunt and fish and farm. His grandfather even made a miniature plough for him to use. It was also in this extended family context where Myres began to understand the importance of stable relationships and the power of human agency. His keen sense of family and identity and of interpersonal dynamics and of place was developed here as well. It was his maternal grandmother who impressed on him that he was not only a Mississippian and a native of the United States, but a member of the world.

When Myres was roughly of school age, his parents settled in Booneville, a fifteen-mile journey from New Hope. His father's medical practice had grown and stabilized, and Booneville was picked, presumably, for its central location. Myres attended public school in Booneville and was a leading student. He delivered his high school graduation valedictory speech on the subject of thrift. It was also in high school where Myres was introduced to the study of international law.

Of course, life was not all studies. As the oldest son, Myres was given responsibility for taking care of the family cows. He enjoyed this work, and it may have helped to shape his future success as a contestant in livestock judging contests. Myres also participated in some of childhood's more mischievous activities. He and his best friend, Glenn Bolton, were skilled with slingshots and apparently caused no small amount of trouble for local

[†] Associate Research Scholar in Law, Yale Law School; President, The Policy Sciences Center, Inc. and the Society for the Policy Sciences.

bullies. Mac recalled once when the two of them held off the whole town from the barn overlooking the railroad.

A major event in Myres's life occurred when he was twelve. He came down with acute nephritis. His father gathered the best doctors in town around his bed and they agreed that there was nothing to be done. His father would not accept this, and Mac remembered his father saying, "This is not going to be." He took young Myres to Hot Springs, Arkansas and after three weeks of bathing in the hot springs, the illness subsided and the two of them returned to Booneville. Another constitutive event in Myres's early years took place when he was fifteen or so. He would spend much of each summer on his parents' and grandparents' farms, working on various activities. On this particular afternoon, the foreman of his parents' farm was teasing Myres, as was his style. However, for reasons that Mac could not recall, he decided that he had had enough and challenged the man. To everyone's surprise, Mac won the fight. On more than one occasion, Mac explained how important this event was in building his confidence and respect.

In 1922, Myres enrolled at the University of Mississippi in Oxford. He had an uncle living in Oxford, so he had visited many times before starting school. His years at Ole Miss were filled with hard work and play. I suspect that it was during his college years that he began to refer to himself as Mac. To his family and extended family, he was and always would be known as Myres. (Although Mac never knew why, he was named "Myres" for one of his father's favorite teachers in medical school in Louisville, Kentucky.)

In college, Mac excelled in classics, and by his senior year was teaching Latin and Greek. He also became the editor of the school newspaper, *The Mississippian*. The highlight of his tenure as editor was his defense of the University Chancellor's decision to permit the teaching of evolutionary theory. Mac wrote the article defending the Chancellor and distributed copies of it in Jackson, the state capitol. Later, the Chancellor would reciprocate by supporting Mac in his application for a Rhodes Scholarship. In 1927, at the age of twenty, Mac graduated from the University of Mississippi with a B.A. and an M.A. and later received his LL.B. He had won the Rhodes Scholarship and was on his way to England.

Mac spent three wonderful years at Oxford. He had a spacious and beautiful suite at St. John's College and the good fortune to have Sir William Holdsworth, the great legal historian, as his tutor. This was not the case at first. Apparently there was a new tutor in law at St. John's to whom Mac had been assigned. Mac was unimpressed with his knowledge of law and refused to see him. This caused a bit of a stir and Holdsworth intervened, offering to become Mac's tutor. Holdsworth was quite influential in teaching, mentoring, and, in some measure, serving as a father

figure to Mac. It was Holdsworth who supported Mac's desire to become a scholar and directed him to Yale.

Holdsworth was not the only important scholar and teacher in Mac's Oxford experience. Mac attended James L. Brierly's lectures on international law and took down in longhand the text to the original edition of *The Law of Nations*. Brierly, like Holdsworth, invited Mac to his home on a regular basis. This personal style suited Mac, and, as is well known, Mac developed and practiced such a style with generations of his own students. The culminating event in Mac's Oxford experience was his performance on his exams. He achieved "double firsts," rare even for an Englishman, let alone for an American. Of all of his life's achievements, this was the one that Mac was most proud of.

After receiving his B.A. and B.C.L., Mac returned to the United States. He entertained the idea of working at a New York law firm, and contacted four firms. He received four offers but decided instead to pursue his interest in legal scholarship at Yale. When Mac arrived in New Haven, it was a thriving northern industrial city. Elm trees grew everywhere and trolleys were available for long rides out to Spring Glen on Whitney Avenue or to Westville on Whalley Avenue. Riding stables were in East Rock Park. It was also the time of the Great Depression, and Mac remembered seeing men in suits trying to sell apples on York Street. At Yale, the new Sterling Law Building and the Payne Whitney Gymnasium would soon open.

The new approach to the study of law, known as American Legal Realism, was flowering at Yale when Mac arrived. At first, Mac was antagonistic toward this approach to law, for it challenged head-on the understanding of law he had cultivated in England. However, after about six months of fighting with Yale Law Professor Wesley Sturges, Mac finally woke up one day and admitted to himself, "the son of a bitch is right." In class that day, when Sturges called on him, Mac shocked him with his response. From that day on, Mac's sense of himself was that he was a committed member of the Realist school. When Mac graduated in 1931 with his J.S.D., Dean Charles Clark told him that he was going to "farm" him out to the University of Illinois Law School in Urbana. If, after a few years, Mac had proved that he was truly a Realist, Clark would invite him back to be on the Yale faculty.

It was during his year at Yale as a graduate student that Mac met his future wife, Frances Lee. She was a graduate student in economics at Yale, and the two of them met at a dance at the YMCA in New Haven. She was a member of the Lee family of Virginia, which put her in a special class for a southerner like Mac. They were married in Washington, D.C., on the twenty-seventh of December, 1933. They had one son, John Lee McDougal, who was born in 1940.

Mac enjoyed Urbana, and when the invitation to return to Yale came from Dean Clark, he hesitated before accepting. He also had accepted a visiting post at the University of Chicago Law School, so he arranged to be in Chicago in 1935 even though his appointment at Yale began in 1934. It was during this brief stay in Chicago that Mac met Harold Lasswell. Mac had read in *The New York Times* a review of Lasswell's new book, *World Politics and Personal Insecurity*.¹ The reviewer had concluded that it was a great book and that there would be people who would understand it even if he did not. When Mac had finished teaching his course one morning after reading the review, he noticed that Lasswell's name was on the door opposite the room where he had just finished teaching. Since there were noises still coming from this room, Mac decided to slip in and listen. Lasswell was applying psychoanalytic techniques to the autobiography of H.G. Wells. At this time, Wells's autobiography was a Book of the Month Club selection and many people were reading it, including Mac. After listening to Lasswell, Mac felt that he could hear Wells tick. He never read another word of H.G. Wells after that morning. After the class, Mac introduced himself to Lasswell and thus began a lifelong friendship and collaboration that is unparalleled in the annals of higher education.

When Mac returned to Yale, he taught property law, though he also specialized in what were called credit transactions and debtors' estates. In the late 1930s, he was asked to teach a course on jurisprudence, and he used this opportunity to invite Lasswell, who was in New York, to teach the course with him. They called the course "Property in a Crisis Society," and over the years it was transformed into the familiar course on "Law, Science and Policy."

During World War II, Mac commuted between Washington and New Haven. He was Assistant General Counsel in the Lend-Lease Administration and General Counsel in the Office of Foreign Relief and Rehabilitation Operations. In both contexts, Mac learned how to operate effectively in a hierarchical organization. Although there was less time for scholarship, it was during the war that Mac wrote with Lasswell their best-known article, *Legal Education and Public Policy: Professional Training in the Public Interest*.² The article, which was written in the Blackstone Hotel in Washington, was and still is a call to transform legal education so that all who practice law would be better equipped to carry out their tasks as servants and statesmen of the public interest.

1. HAROLD D. LASSWELL, *WORLD POLITICS AND PERSONAL INSECURITY* (1935), reprinted with new introduction (1965).

2. Harold D. Lasswell & Myres S. McDougal, *Legal Education and Public Policy: Professional Training in the Public Interest*, 52 *YALE L.J.* 203 (1943), most recently reprinted in HAROLD D. LASSWELL & MYRES S. MCDUGAL, *JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* (1992).

After the war, Lasswell joined Mac as a permanent member of the Yale Law School faculty and they began in earnest their project, which became an enterprise to transform legal education. One of the primary vehicles for carrying out this work was the graduate program at the Yale Law School. Mac ran this program for students from all over the world for twenty-five years. Like his teachers at Oxford, Mac always took an interest in his students' entire lives. He was interested in helping them to develop not only their intellectual capability but also their ability to achieve their goals in reference to any value, from power and wealth to affection and rectitude. This is not to say that Mac did not teach and promote his conception of law, which included the tasks that teachers, lawyers, and other decisionmakers must carry out in order to perform adequately the varied roles they play. Mac felt strongly that the intellectual procedures he recommended could be used individually for greater self-realization as well as collectively to further the cause of human dignity.

In addition to building and guiding the graduate program, Mac turned his attention back to international law after the close of World War II. There were many reasons for this change in his focus of attention. The experience of the war itself and of the newly perceived responsibility facing the United States were among the conditioning factors. Lasswell also encouraged him to turn in this direction. As a result, it was in the field of international law that Mac developed his general approach to law. To this day, many people do not realize that Mac's jurisprudence is a theory of and about all law in all contexts and is in no way limited to being only a jurisprudence for international law.

During the late 1940s and early 1950s, Mac and Lasswell developed and refined their teaching materials for the "Law, Science and Policy" seminar. They also began teaching a course called "The World Community and Law: A Contemporary International Law," which developed subsequently into "The Public Order of the World Community." Although Mac wrote and published a great deal in the ten years following his return to Yale, it wasn't until after his eye trouble began in 1955 that he embarked on the sustained and focused research and publication program for which he became so well known. Detailed and comprehensive demonstrations of the jurisprudence he was developing were published in reference to the international law of war,³ the international law of the sea,⁴ the international

3. MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, *LAW AND MINIMUM WORLD PUBLIC ORDER: THE LEGAL REGULATION OF INTERNATIONAL COERCION* (1961), *reprinted with new introduction and new title as MYRES S. MCDUGAL & FLORENTINO P. FELICIANO, THE INTERNATIONAL LAW OF WAR: TRANSNATIONAL COERCION AND WORLD PUBLIC ORDER* (1994).

4. MYRES S. MCDUGAL & WILLIAM T. BURKE, *THE PUBLIC ORDER OF THE OCEANS: A CONTEMPORARY INTERNATIONAL LAW OF THE SEA* (1962), *reprinted with new introduction* (1987).

law of outer space,⁵ and the interpretation of international agreements.⁶ Later, in 1980, his equally remarkable treatment of human rights was published.⁷ In 1992, the jurisprudence that Mac and Lasswell created was published in a two-volume work entitled, *Jurisprudence for a Free Society: Studies in Law, Science and Policy*.⁸

Mac was not only a great scholar and teacher and friend. He was also active and effective in every organization in which he participated. These included professional associations and various forms of government service. He served as president of both the American Society of International Law and the Association of American Law Schools and was Chairman of the Board of the Policy Sciences Center. He was also a member of the *Institut de Droit International* and, as with his participation elsewhere, he was a stimulating presence in this specialized institution. Mac enjoyed controversy, and, regardless of venue, he would tackle every challenge with gusto. But his enthusiasm never undermined the quality of his work, which was characterized by its thoroughness, insight, and precision.

But the essential core of Mac's magnetism, what made him so special, was ultimately his character. He was at once a classic and brilliant scholar and a southern farm boy, and apt, sometimes hilarious sayings peppered his teaching and conversation. He was a big, handsome man, with a wonderfully infectious laugh, who was generous, warm, open, honest, and loyal. Perhaps it was Mac's utter authenticity that was so distinctive. He embraced "his People"—and this was a vast legion from all walks of life—and was loved in return. Quite simply, Mac put into daily practice his teaching of *and* about human dignity. He will be missed more than he ever could have imagined.

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A good biography is no different than a good natural history. The author should be able to identify and track trends in the formation of the subject's character. Moreover, the factors that shaped or conditioned the trends need to be revealed and their interrelationships specified and understood. Hopefully, this very brief sketch provides a rough contour of

5. MYRES S. MCDUGAL ET AL., *LAW AND PUBLIC ORDER IN SPACE* (1963).

6. MYRES S. MCDUGAL ET AL., *THE INTERPRETATION OF AGREEMENTS AND WORLD PUBLIC ORDER: PRINCIPLES OF CONTENT AND PROCEDURE* (1967), *reprinted with new introduction and new title as* MYRES S. MCDUGAL ET AL., *THE INTERPRETATION OF INTERNATIONAL AGREEMENTS AND WORLD PUBLIC ORDER: PRINCIPLES OF CONTENT AND PROCEDURE* (1994).

7. MYRES S. MCDUGAL ET AL., *HUMAN RIGHTS AND WORLD PUBLIC ORDER: THE BASIC POLICIES OF AN INTERNATIONAL LAW OF HUMAN DIGNITY* (1980).

8. HAROLD D. LASSWELL & MYRES S. MCDUGAL, *1 & 2 JURISPRUDENCE FOR A FREE SOCIETY: STUDIES IN LAW, SCIENCE AND POLICY* (1992).

the life of Myres Smith McDougal. But there is more to a biography of Mac than simply trends and conditions. A complete presentation would involve the clarification of his values, projections of possible futures for the jurisprudence he developed, and the detailed specification of alternatives for making more likely the eventuation of a future that is compatible with the public order of human dignity that Mac preferred.

