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In Affectionate Memory of Professor Myres McDougal: Champion for an International Law of Human Dignity

Lung-chu Chen[†]

“Lung-chu, we have come a long way together.” Those are the last words Mac said to me when I returned from Taiwan and visited with him last March, holding his hand at his bedside. Yes, Mac, we have come a long way together since 1960 when I first met you in Taiwan as a young law school graduate. For the past thirty-eight years, from Taiwan to the United States, to Yale, to New York Law School, and to all points in between, Professor Myres McDougal has been a great mentor, teacher, and counselor.

First and foremost, Mac has been a wonderful personal and family friend. When my wife Judy and I were married in 1967, Mac, together with Harold Lasswell, gave us a wedding reception at the New Haven Lawn Club and wished us, in his words, “an optimum shaping and sharing of affection and all other values in pursuit of both public and civic order.” I am also proud to say that there is a McDougal in my family, Eleanor McDougal Chen, Mac’s goddaughter, who takes pride in her middle name. In the good old days, it was customary for the Chens to pay the McDougals an annual visit during the Christmas holiday season, and those visits were among my family’s happiest moments. Mac, Mrs. McDougal, and John were the most gracious of hosts. My family and I will miss Mac dearly.

I had the distinct privilege to be invited by Mac and Harold Lasswell to co-author the treatise on *Human Rights and World Public Order*.¹ As I had been their student and co-author with Harold of a previous book, *Formosa, China, and the United Nations*,² I was conversant with their policy science approach, otherwise known as the Yale School or New Haven School of

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

2. LUNG-CHU CHEN & HAROLD D. LASSWELL, *FORMOSA, CHINA, AND THE UNITED NATIONS* (1967).

International Law. Writing the human rights book with them has been a central part of my professional life. It was an experience that transformed me.

I would like to describe briefly the state of the art at the time we began the human rights project nearly three decades ago: how Myres McDougal conceived the project, his goals, the method he employed, and the impact it has had on subsequent scholarship and on the international protection of human rights.

When we began to survey the field at that time, we were struck by the inadequacies that were plainly apparent in the existing human rights literature. Mac characterized it as “simple intellectual confusion.” The concept of human rights was often left obscure or simply taken for granted without any discussion at all. Little effort had been made to create a comprehensive map of the totality of human rights, and there had been little discussion of the detailed content of particular rights. Some of the writings were highly anecdotal and emotive. The principal focus of this vast and confused literature had been what was called the problem of implementation. Even with this problem, however, the range of alternatives considered had been highly partial and fragmented. Most recommendations for improvement in implementation had been upon isolated features of rule and procedure. They ignored the processes of authoritative decision and effective power which impacted all changes in rules and procedures. In addition, there was a conspicuous lack of a systematic problem-solving approach that would employ all relevant intellectual skills. And finally, the subject of human rights was particularly challenging because of multiculturalism and profound philosophical, religious, and political cleavages in the world community.

To confront this challenge, McDougal wanted to provide a comprehensive intellectual framework of inquiry that simply could not be achieved by the arbitrary groupings of subject topics in the traditional fashion, or by anecdotal, emotive approaches. He wanted to undertake a systematic, philosophical reconsideration of the goals of human dignity. He wanted to specify human rights by identifying empirically referential claims for the protection and fulfillment of values. Values are preferred events—what people cherish. The content of human rights is, in essence, the shaping and sharing of all values—respect, power, enlightenment, well-being, wealth, skill, affection, and rectitude.

For each claim, in his customary fashion, Mac wanted to clarify community goals, to survey trends of past decision and practice, to analyze conditioning factors, to project likely patterns of future development, and to invent and recommend alternatives for improvement. Mac conceived human rights broadly. He underscored the interdependence of all human rights. He systematically spelled out the preferred community policy for

each claim. He devised the principles of content and procedure as guides for resolving conflicting claims for protection and fulfillment of values. He related the measures of implementation to the world constitutive process of authoritative decision and to effective global power process. And he emphasized the dynamic interplay of international law and politics.

The volume that I had the privilege of working on, and which Mac has bequeathed to us, stands as the most systematic and intellectually rigorous treatment of international human rights law. The first half of the volume, as described above, sets forth a general framework for dealing systematically with all human rights, and the second half is concerned with the *respect* value.

Mac believed that respect was the core value of human rights. This core value concerns the honoring of “each other’s freedom of choice about participation in other value processes.” Thus respect entails the freedom of choice that is inherent in the dignity and worth of every human being, equality in both the positive and negative sense, and recognition for contributing to the common interest. Claims about participation in different value processes, asserted with varying degrees of intensity, occupy a central place in the defense and fulfillment of human rights.

In keeping with his grand vision and design, Mac had hoped to produce eight volumes on human rights, elaborating in detail each of the eight values: respect, power, enlightenment, well-being, wealth, skill, affection, and rectitude. I only wish I had eight lives!

Mac practiced what he preached. The human rights book meant so much to him because it afforded him the opportunity to develop the overriding concept of human dignity that was central to his commitment and jurisprudence for a free society. He worked on the treatise day and night: We met at his office almost daily—weekends included. There was a time he and I called each other “the slave driver.” We discontinued that affectionate indulgence after completing the section on the eradication of slavery and its equivalent practices. Mac always worked with passion, especially in connection with the topic of age-based discrimination. He was emphatic in his conviction that mandatory retirement based on the calendar year was simply barbaric. The chapter on “The Protection of the Aged from Discrimination” is the eloquent testimony to this conviction.³

This year humankind is commemorating the fiftieth anniversary of the Universal Declaration of Human Rights.⁴ Fifty years ago, the adoption of the Universal Declaration by the United Nations General Assembly set off within the United States a violent reaction led by the then-President of the American Bar Association. Myres McDougal, as an early human rights

3. See MCDUGAL, *supra* note 1, at 779-96.

4. G.A. Res. 217 A (111), U.N. GAOR 3d Sess., U.N. Doc. A/810 (1948).

activist, rose to the occasion and defended the Universal Declaration by publishing a powerful monograph in *The Yale Law Journal*.⁵ And long before Jimmy Carter's human rights diplomacy, Mac had introduced the subject of international protection of human rights to law school curricula and helped to place it on the intellectual landscape through his writings and speeches.

Today, human rights have emerged as the spinal column of the United Nations era: We judge the legitimacy of a government by whether it lives up to the international standards of human rights. In the meantime, the human rights industry—academic, activist, or otherwise—has flourished. Nation-states, international governmental organizations, nongovernmental organizations and private associations, and individual persons all have important roles to play in the defense and fulfillment of human rights.

Professor Frank Turner, a former provost of Yale, once asked me: "Is it true that Myres McDougal is the greatest international lawyer since Hugo Grotius, the founding father of international law?" Of course, he was. It was a rare honor and privilege and a constant source of inspiration to work with the greatest international lawyer of all time. Mac, you are and will be dearly missed.

5. Myres S. McDougal & Gertrude C.K. Leighton, *The Rights of Man in the World Community: Constitutional Illusions Versus Rational Action*, 59 YALE L.J. 60 (1949).