

INTERVIEW WITH MYRES S. MCDOUGAL
STERLING PROFESSOR OF INTERNATIONAL LAW EMERITUS
YALE LAW SCHOOL

Interviewed by Kathleen E. Fisher

in New Haven, Connecticut,

May 11, 1994

Fisher: I am collecting material for a book on Percy Elwood Corbett. Judge Macdonald urged me to try to meet with you and I would like to start by thanking you for granting me an interview. When did you first hear about Percy Corbett?

McDougal: I first heard about Percy Corbett at Oxford. I was a Rhodes scholar at Oxford and Percy Corbett was a former Rhodes scholar who was held up for emulation by the Secretary of the Rhodes Trust. Percy Corbett had taken high degrees at Oxford and we were urged to do likewise; we were urged to emulate Percy Corbett. So we weren't quite sure we liked him at that time. But I later came to know him here at Yale and found him a very likable person.

Fisher: Did you have good relations with the Canadians at Oxford?

McDougal: Canadians and Americans were good friends, they saw a great deal of each other. In my college, there were two Canadians. I was rooming with a boy from North Dakota, sharing digs with him, and the four of us took first class in the B.A. at Oxford: two in medicine and two of us in law; it was the first time St. John's got more firsts than Balliol. The Canadians and Americans were close friends in athletics and sports, in all kinds of activities.

Fisher: What was your sport for the Rhodes Scholarship?

McDougal: I rowed for two terms and then quit because the river was very damp and cold. I preferred to concentrate on scholarship.

Fisher: When did you first meet Corbett?

McDougal: It had to be here at Yale. It could have been at meetings of the American Society of International Law or it could have been at McGill. McGill was very close to American scholars at one time. I made many visits to McGill and I think some of those visits took place when Percy Corbett was Dean there. Certainly when Maxwell Cohen became Dean I was often there and I think I was there when Percy was Dean. Somehow or other he was one of those people I felt I had known all my life; we acted as friends who'd known each other all their lives. He was here at Yale for many years and we used to walk home together; we were very good friends.

Fisher: What was your initial impression when you met him?

McDougal: That he was a very stern, hard man, that he was a hard worker who expected his friends to be hard workers. He was interested in world affairs and he expected his friends to be interested in world affairs. He was a bit of a forbidding personality if the truth be told. A very stern, hard-working, learned man.

Fisher: When he arrived at Yale, was there an impression of him as a Canadian fitting into an American situation? Was he seen or did he see himself as Canadian?

McDougal: I don't know how he saw himself. But we never regarded him as an outsider. He seemed to be just one of us from the time I first remember. Canadian or no Canadian didn't make any difference to us; he was simply one of us. He seemed to fit very easily into the Yale tradition at least.

Fisher: What was the tradition of public international law at Yale during those years? Percy came in 1943. What was going on at Yale in the 1940s?

McDougal: In 1943 there wasn't as much interest in international law in the law school as one would have expected. Edwin Borchard, a very conservative man, was the professor of international law and he never had more than 8 or 10 students. There were not many students in Yale Law School as of that time who were interested in international law. There may have been more over in the political science department but I would be surprised if there were. International law was not a favourite study at that time.

Fisher: But they set up an Institute of International Relations in the Department of Political Science.

McDougal: A man named Spykman, Nicholas Spykman, set up an Institute of International Relations. And I think Percy was involved in that.

Fisher: Yes, he got involved early on.

McDougal: And I think that was the cause of the trouble. I think Whit Griswald was in this group. Whit later became President of Yale but he felt that he had been discriminated against by the people in international relations -- this Spykman group -- and, as I said, I think Percy was in that group and that that may have been the origin of some later difficulty between Percy Corbett and President Griswald. I don't vouch for this but I think that both Whit Griswald and Percy Corbett were members of the Spykman group and didn't get along too well in that group for some reason. Griswald felt he was being discriminated against by the group and I think that when he became President he may have taken some of this out on Percy. That is the vague memory I have, though, as I said, you should check this before you quote it as fact.

Fisher: So the conflicts were not ideological?

McDougal: There were no controversies of an ideological nature about international law or anything of that kind or even over economics. I don't remember any fundamental differences on matters of substance. The differences were all political or personal. By that time I had become a reasonable power in the law school and people had to take me into account.

Fisher: That's very interesting. Now, how would you say Corbett's background affected his outlook and influence? He was Oxford trained, as were you.

McDougal: He was just a very powerful man. He would have had influence in any group of which he was a member, which he had any interest in. But I think his whole training, his whole personality, came to bear on his relations with other people. As I said, we walked home together on occasion and I don't ever remember any frivolous conversation. He was always serious -- something important, something of substance, something about world affairs; he was just a serious-minded man. The French have a word for these people, they describe men and women as serious or not serious. Corbett was what the French would have called a serious man. He was interested in the world, not simply in himself.

Fisher: Did he ever indicate to you why he came to the United States as opposed to staying in Canada or going somewhere else in the British Commonwealth? The question as to why he left the country is of interest in Canada.

McDougal: Well, I don't think that at that time that would have been a question with any able person. People moved back and forth, Americans went to Canada and Canadians came to the United States. I had several opportunities to go to Canada and I took them seriously. Americans, Canadians, even Australians were moving about fairly freely. We had an Australian here for two or three years and never never was any question ever raised as to why he was interested in coming here. Maybe this was an English-speaking group -- I've never thought of it in those terms -- but it could have been: former colonies of Britain or British people. They were all English. The French and Germans at that time didn't travel much -- the French still don't go abroad much, the Germans do go abroad now but at that time it was the English-speaking people who moved around freely.

Fisher: It seems that Corbett was one of the few Canadians in his particular group who made it to the Ivy League. Most of them stayed in Canada and did their work there.

McDougal: But many Canadians came to this country.

Fisher: What influence would you say Corbett had on teaching and research?
What was his gift as a teacher?

McDougal: I would simply stress his insistence on high quality. You had to have high quality in teaching, high quality in writing in those days. I don't know whether he was ever an editor of the American Journal of International Law or not but he could have been. You might want to find out. His insistence was on high standards. All his life. That goes back to his experience and training at All Souls. He was in Balliol, that's the great college.

Fisher: And he was a double first.

McDougal: I think he was. He was held up to me by the Rhodes Secretary as a double first.

Fisher: Did Corbett measure up to your ideas on the role of the scholar in the twentieth century?

McDougal: Well, he was a very superior scholar; he wasn't the ordinary scholar; he was much better than most.

Fisher: How would you describe his view of international law in light of your own theory? He followed a natural law tradition initially but he was influenced by the realists.

McDougal: That is a very difficult question. I would phrase some what you said a little differently. James Brierly was my teacher. I was Brierly's student the first year Brierly taught international law at Oxford. Brierly is the author of the most popular little book in the field of international law; he was a great writer and a great mind -- I don't think the English ever did him justice; he was a greater man than Lauterpacht or McNair and the English never quite recognized that. He was my teacher. And he was a natural lawyer. I think Corbett was there a little too early to have studied with Brierly but he must have studied with Brierly's predecessor. I confess I can't now remember who that was. Brierly was an overshadowing scholar and personality. I can't quite remember who preceeded him but it's obvious there was an influence there that affected both Corbett and me.

The same influence that created Brierly affected Corbett and me.

Now about James Brierly: the English are regarded as a somewhat cold and difficult people to get to know, but I got to know Brierly in a very unusual way. I was holding up my papers in class one day and he was teaching -- lecturing to a group of about a hundred

students; in England the lecturers just lecture; there are no questions and answers as we have in Canada and in this country. Brierly was strutting down the aisle when I was holding up my notebooks; he stopped and said "You're an American, aren't you?" And I said, "Yes, sir, I'm an American", and he said "Would you like to have lunch?" So we had lunch, and though I was not writing any papers for my own tutor, he asked me if I wouldn't like to write him some papers in international law. And that was the real beginning of my interest in international law; that's probably why I am here today -- because I did work with Brierly for three years in the field of international law, just as friends, and I am sure Corbett came under the same kind of influence: whoever trained Brierly must have trained Corbett or trained people like him.

Corbett and I never quarrelled or argued about any question of substance in international law. We were always pretty much on the same side; even in our talks when we walked home and discussed things together we very seldom had to argue with each other. But Oxford was a very lively place in those days. I gather it's not quite so lively today, but it's still pretty lively. My colleague Michael Reisman sent his oldest daughter to Oxford for a year -- I persuaded him to let her go. And she came back a scholar. She had been a very indifferent scholar in this country but she got some tutor at Oxford who made her love books. And she's been a great person every since. So Oxford still affects people.

I had a better record at Oxford, England, than I had in Oxford, Mississippi. I had been a big man on campus at Oxford, Mississippi. I taught Latin and Greek there, which gave me a very good preparation for Oxford, England. And when I got to Oxford I was a much better scholar from the very beginning. The Harvard and Michigan and so forth boys took some of us from the poorer states and tried to train us; they trained us until the first trial examinations and the boy from North Dakota and I beat the whole bunch. We couldn't get any more training. Oxford has a way of affecting people. There is no question that I became a different person as a result of meeting this fellow Brierly and from working with Holdsworth who was my real tutor at Oxford. So I think Oxford somehow has a way of working with young people. As I said, this recent visit by Michael Reisman's daughter made a different person out of her.

Fisher: Was there a sense of the importance of international law and international relations at Oxford when you were there? Was it in the air, so to speak?

McDougal: Oh yes. It was one of the exam subjects for both the B.A. and the B.C.L.; it was taken very importantly; the students took it importantly; and it was one of the more important things because of Brierly's teaching. He was a superb teacher. I have seldom known his equal.

Fisher: You said that you and Corbett didn't argue over matters of substance but there must have been some differences.

McDougal: At the moment I can't think of any. I suppose we could have had arguments about the nature of law, about American legal realism. Realism had its origin largely at Yale and Columbia. It was an attack on Austinianism and the Harvard approach. John Austin was a great English scholar of jurisprudence in the previous century and he dominated education in this country for many years, through the Harvard Law School. Most of the law teachers were graduates of Harvard. I came back here from Oxford -- I thought the people at Yale were crazy. I walked out of the first class, I said, "That's the craziest man I have ever heard", and my roommate said, "You're in for a hard year." And I was. But I became a convert to legal realism and I now can see the difference between the very conservative approach to the nature of law and a very radical approach to the nature of law. The difference is that the realists regard law as an instrument of social policy and the Harvard people don't. For them law is autonomous, unique, it's different from policy. That's the way the theme goes. There's probably a little truth to on both sides depending on who the audience is, but there are some very fundamental differences. However, Corbett and I never argued or quarrelled about any of this. He seemed to me to

fit very nicely into the legal realist approach. He wanted to use law as an instrument for social change on the international level.

Fisher: Was Corbett successful in any way in introducing European ideas about international law into the American discourse? We need to remember that he was trained in the civil law in Quebec and in Roman Law at Oxford and his time in Geneva must have influenced him.

McDougal: I don't think so. The Americans have never paid much attention to Europe. The French, for example, were very self-centered and stayed at home; they were selfish and other people didn't incorporate them. They were very arrogant and self-centered; they were very exclusive; the French won't take you to their bosoms very easily. The Germans, beginning with the Nazis, were outlaws. They made no important contribution to international law. So Europe has not had much influence on international law in the United States until relatively recent times. There is much more mixture these days. Some of the French do go to Canada now. Madame Bastide taught in Canada, I think, two or three times, but the United States has been somewhat isolated from Europe in international law for a very long time.

Fisher: What I am speaking to is the European tradition in legal education, especially the links to Roman law which I understand created an approach to international law that differs somewhat to the dominant approaches in North America.

McDougal: Now I think that's a bunch of nonsense. I am a member of this Institute of International Law, which is largely European; they take in a few Americans and a few Canadians, just for window dressing, but they're extraordinarily conservative. They're more like the Harvard approach. They're like the Austinians. The French have really run the Institute for a long time. I think what you refer to is a false dichotomy. The real dichotomy is your attitude to the content of policy, whether you're more socialistic or less socialistic, that is the briefest way to put it.

Fisher: Okay, that's informative; I find that a useful way to put it. Now I have a quote that Percy gave me in 1983 when he was assessing himself. I'll just read it to you. It's not very long. I would like your comments. Here it is.

Somewhere you asked me about what I think ought to be done now in the matter of international organization. Look, I would have to confess that I see very little positive result of any work that I've ever done in the international field now. I think that all my ideas and proposals for international organizations and the jurisdiction of international organizations, all of that has gone by the board. It is lost. Nations individually have taken over, taken back in reality, the powers that they once assigned to these international organizations. So we're in a

world in which a great part of the educated population understands the failure of their governments to subordinate themselves in any way to international authority. The emphasis in world politics now is not at all on institutions like the International Labour Organization and the United Nations. The great emphasis is on alliances, particularly limited alliances, which are in conflict with each other. Such as the Soviet Union, with all its allies and subordinates and the United States with all its allies and subordinates.

McDougal: Well, I am a little surprised. I think that is a complete misconception of the world.

Fisher: I think it underestimates his contribution.

McDougal: Yes. The guts of the U.N. are the things that he stood for when he was young. I think that quote is the old man looking back on his success with bad eyesight. I do that myself sometimes. It does sound like an old man looking back, pitying himself a little.

Fisher: Well, he was indeed old at the time. He seems to me to be his own harshest critic. Frankly I am surprised that he would say something like that. What other contacts did Percy have with the realists when he was here at Yale?

McDougal: Well, Llewellyn was at Columbia and Llewellyn came up here on weekends but Llewellyn was not a very stable personality and I doubt that Corbett would have had much contact with him. He

wouldn't have had contact very long. He'd quit in disgust, I think. The first time I met Llewellyn he was lying flat on the floor in the house of a friend, singing 'The Bastard King of England' at the top of his voice, and that's not the kind of person Corbett would have liked.

Fisher: The son of the Minister would have asserted himself. What would you consider his more influential writings?

McDougal: Well, he had a little book on international law, wasn't it just called International Law? It was a great book and, again, bore many of the marks of his Oxford training. I used it. I read it when I first began. He wrote this thing in the Encyclopedia of Social Sciences in which he was very friendly to Laswell and me. And Laswell of course believed in law as an instrument of policy and Laswell wouldn't have fooled with him if Percy hadn't been a compatible friend. Laswell is one of the greatest political scientists the world has ever known. I think he's just beginning to come into his own. There are books beginning to be written about him. Oh, but the book by Laswell and me has just been published, published in 1992; it's called Jurisprudence for a Free Society. Studies in Law, Science and Policy. It will give you a better history, a better background. The first few pages will give you a better background to legal thinking in this country and what American legal realism is than I think you'd find anywhere else. I

don't think Percy would differ very much with anything said in the first two or three hundred pages of that book. I think it represents his kind of thinking. I wrote the first two or three hundred pages. Laswell wrote the rest of it. But I think Percy would have agreed with almost everything that I said there about the nature of law. You might want to take a quick look at that before you start writing.

Fisher: Of course I will. On another point: he was a significant thinker in international law and some of his books are still referred to and cited, for example, The Social Basis the Law of Nations, but he has not been referred to frequently in recent years. What happens?

McDougal: Well, it happens to everybody. It's not unique to Percy. The field sort of moves on. The new writers may not change their fundamental ideas very much but they may change the sources to which they refer. But no, I know of no reason why he shouldn't be cited. When I first began to teach international law I used that little book of his. I still don't remember the exact title of it but I've got a copy of it out at my house and it's pretty well thumbed and marked up. It's very useful. I didn't move into international law until relatively late in life. I couldn't get into the field here. This man Borchard, a very conservative man, had it here. I wanted to teach it but I knew there was no point. Borchard didn't get many students either. I was teaching property

law. I'd grown up on the land and I knew land law so I didn't protest too much about getting into the field. But international law has become a very popular course. We have from 60 to 100 students. Sometimes 200 students in the course in international law here now. It's a very different attitude from what it was at one time.

Fisher: Do you think the subject should be mandatory?

McDougal: I would like to see it mandatory but I don't think it will be. That again is a very curious thing. As I told you, I taught land law for some 25 or 30 years and put a casebook out in the field. But I made much more money out of international law though I moved in late in life, than I could ever have made out of land law. International law is a much more remunerative subject. An international lawyer can charge almost anything he wants for his time, because there are not many who can do it, who know the subject well enough to use it in practice. Students are under a misconception. Many of them now are beginning to sense that with the present world getting so small the trained international lawyer will have a better outlet than he once had. I'd be a poor man if I had stayed in land law.

Fisher: Now, didn't your training in history and in Roman law help you conceptually when you turned to international law and the jurisprudence of international law?

McDougal: Yes. A great deal. Very fundamentally. There are not many basic concepts in a legal system or in the jurisprudence about a legal system. Roman law has them all. Roman law was the great subject at Oxford. One-third of the B.A. and jurisprudence was Roman law, a third of the B.C.L. was Roman law, and I think the Oxford-trained lawyer was a much better lawyer than many people in this country realized. I think that a good course in Roman law would be very useful to American lawyers though that's not a popular view today. When a course in Roman law is offered very few people sign up for it. But I think they are making a big mistake; Roman law has all the basic ideas; its concepts are expressed very economically. The Romans were good lawyers. And there are not too many concepts in Roman Law. If you understand Roman law, you are already a pretty good lawyer.

Fisher: Did you also study canon law?

McDougal: That I have never done. I was never much interested in religion, which I now see was a mistake. If I had a life to live over again I would try to get at the core of the basic religions. I think that the core of the basic religions would probably be very much

alike, if one sat down and studied them for the purpose of seeing what the content was.

Fisher: It seems that the English tradition in international law comes through canon law.

McDougal: Well, the English didn't fool much with canon law when I was there.

Fisher: They also had Scots law, which has a Roman law element.

McDougal: Well, the Scots were doing a lot of fighting. My family is Scottish and there was too much fighting for there to be much interest in ideas. The word origins is a very ambiguous word. Law is something people use in settling disputes; and its origin is more in practice and behaviour than it is in books. If I were searching for origins, I'd look for disputes and the settlement of disputes.

Fisher: There was a rise of internationalism prior to and during the Second World War in the United States. In Britain internationalism as a movement or whatever seemed to take off around the time of the First World War. A lot of the books on nationalism and internationalism in Britain were printed in the middle of the First World War and then a lot of the American books on that topic began coming out in the late 1930s, 1940s and 1950s.

McDougal: I was in the government, the Department of Justice and Department of State, and the Lendlease Administration during World War II and the law that we applied was this inherited stuff, which again was very practical application. Could we arm icebergs?, and could we do this do that? There wasn't much difficulty in answering the kind of questions we had. Of course we did anything we had to do to win the war. Necessity was the prime concept there. I have often thought Congress would have fun if it ever went through the papers of the Lendlease Administration and found all the opinions justifying anything that was necessary to save Britain and France. We drew heavily upon practice and the needs of practice. Most of us had had this background, and we were able to make the concepts behave anyway that they had to behave. We had no doubt that we could arm icebergs. We could do anything that might help Britain and France.

Fisher: Let me come back to the literature on international law and organization for a moment. It is interesting to see that in a lot of the earlier books there was a twinning with religion. I would say that the content of many of the books was half religion, half law; religious ideas were important to the early international lawyers.

McDougal: I was remembering, as you were talking, that the first thing I ever wrote on international law was a 250 page article on the constitutionality of executive agreements, that is, agreements made by the President. And the subject was the development of the St. Lawrence Seaway. My predecessor here, Borchard, had said it was unconstitutional for the United States to contribute money to the development of the St. Lawrence Seaway. I was asked by the State Department to answer him and it took a very long answer but we found that Borchard was completely wrong on the constitution of course. I said that international law had no meaning if you couldn't defend yourself in time of war and that economics were extraordinarily important to defence. He just couldn't see that law could be used for the defence of Canada and the United States. This is absurd on the face of it if you just think of it. It took 250 pages to prove it but I think we did prove it. The end result is now taken for granted.

Fisher: Were you involved with organizations like the R.I.I.A., The Royal Institute of International Affairs?

McDougal: No, but one of my students was their lawyer for a time. You know Rosalyn Higgins? She is the professor of International Law at the University of London. She was the lawyer for this Institute for some years. Incidentally she is one of the best international

lawyers in the world. She is regarded as one of the world's great international lawyers.

Fisher: Were you involved with the American Society of International?

McDougal: I was President.

Fisher:: The International Law Association?

McDougal: Yes.

Fisher: The Grotius Society?

McDougal: I was once a member. It was a very productive Society. The International Law Assocation probably did more than it ever did in the early years. The American Society of course was a much more powerful institution at one time than it is today. It has a larger membership today but it doesn't have anything like the national influence it once had. Elihu Root was one of the founders of the American Society. It had important government officials playing an active role at one time but it doesn't anymore.

Fisher: Were you involved with the Institute of Pacific Relations?

McDougal: No, happily I escaped that one.

Fisher: Corbett was involved with all those organizations. Sorry, I interrupted you; you were referring to a trip you took to Indonesia.

McDougal: I was trying to remember the name of the organization that sponsored me. It was a well-known public organization. I had no doubts about going when I was asked to represent them. I was asked when I got to Indonesia to deliver a little box to a lady in a black gown who would side up to me at a cocktail party. I was told where the cocktail party would be, who would give it, and what time it would be even before I left here. I foolishly agreed to do it. And when I got there I put the box in my pocket and went to this party. The lady in black slid up to me, I handed her the box, she took it, and slid away. To this day, I don't know what in the hell was going on. I was thinking that this was a risk that a sane man wouldn't have taken. But I didn't go out there to visit. They had one of their former Presidents under house arrest and I'd been asked by my friend Lasswell to go out and say hello to him. He'd been a friend of Lasswell so I went out to say hello to this man. They made him sit on the front porch and two men stood in hearing distance the entire time I talked to him. That shows you how things are perceived in some part of the world.

Fisher: Were you aware of Percy Corbett's involvement during the Second World War? He did some intelligence work through the Institute for Pacific Relations. That was his cover.

McDougal: I don't know what Percy was involved in.

Fisher: His contact was Adam von Trott, who ended up being killed for the plot to assassinate Hitler, the second plot. Corbett was meeting these Europeans in New York City.

McDougal: He was a very courageous man. He didn't back off of anything.

Fisher: If you were to describe him in three adjectives, the strongest adjectives, what would they be?

McDougal: Intelligent, courageous, and devoted to the public interest. I think would be most characteristic.

Fisher: Were you friends with Margaret, his wife, as well?

McDougal: I think I met her but the wives didn't play an active role in university life in some time here and I don't think I knew her well; I'd see her at cocktail parties or things of that kind. I don't think I was ever a guest in his home though we ate over here at a place called Moray's on occasion. This fellow, whose name I

gave you earlier could -- might be able to tell you little more about his social life than I can.

Fisher: Well, I'm just curious because Percy's wife played an active role when they went to Moscow and New Delhi. She would engage on the social and cultural side. And he would be engaged on the intellectual side. Coming back to Percy's time at Yale: I expected to find that he was controversial in terms of his personality. But what I have taken from our conversation is that in fact he was accepted here at Yale without difficulty..

McDougal: Oh, very much. He was not a subject of controversy at all, as far as I know.

Fisher: Except for that incident at the end, perhaps.

McDougal: Yes, if they confirm that incident.

Fisher: Was there, is there, a difference between Yale and Princeton as far as the teaching and research of international law and international relations is concerned? Princeton has no law school but it had a department and an institute. Percy went to Princeton.

McDougal: When did he go to Princeton?

Fisher: He went to Princeton from here, so it must have been 1951. Yes, he was at Princeton from 1951 to 1958.

McDougal: Well, the principal international lawyer at Princeton is one of my boys, Richard Falk. He was my research assistant here. The same role that Willard plays today. And Richard Falk is prominent there. In fact, he is the boss of the outfit and he would have very much the same notion of international law that Percy had. There was another man, Black, I forget his first name, at Princeton who would have been very active in the same group. This was one of the quarrels between Griswald and Percy. Griswald didn't believe in Institutes. And he didn't want any institutes, you see, and Princeton did believe in institutes. I was handicapped by Griswald's attitude about institutes. As I said, I was Griswald's man here in the law school; I knew him well over the years.

Fisher: How were you handicapped?

McDougal: Well, I couldn't hire people, you see. I couldn't go out and get money in the name of an institute. I had to do everything as an individual. Sometimes it's easier to get money and to operate as an institute than it is as a single individual. And if you have an institute you can get different kinds of people who have different skills.

Fisher: An institute can be a tool for developing social policy.

McDougal: That's the only function of an institute but you can have different views on that, different ideas of what that means. If you've got an "institute" you can have very different kinds of people. If you've got just one individual it's a little hard to change character every 15 minutes. Incidentally, do you have the place where Percy lived yet? I am curious why we were able to walk home together. Do you know where he lived?

Fisher: No, not yet, but I will find out and let you know.

McDougal: There is a street here called St. Roman's, a long street of a couple of miles. I live on it. And somehow or other my memory is of walking at the beginning of this street with Percy. So it had to be somewhere close to St. Roman's Street.

Fisher: I will find out. What would you say his greatest contribution was during his years at Yale?

McDougal: Well, he was just an active, effective member of the community.

Fisher: And his greatest weakness, if there was one?

McDougal: That I wouldn't know well enough to to be able to say. I suppose the fact his books are not read now indicates there is something there. I don't know why his books are not read now. They should be.

Fisher: My understanding is that they are read at Oxford more than they are in the United States and Canada.

McDougal: Actually that is interesting. Oxford of course does go back to historical origins.

Fisher: And he was one of their own. The professor who encouraged me to initiate this project came back from Oxford recently and said, "Kathy, Corbett's relevant there today."

McDougal: Interesting. Well, I myself am going to get an introduction to Oxford for the first time, even though I'm one of theirs. This Australian I mentioned to you (who was here) has written a book on John Austin, and he's devoted some thirty pages to the policy oriented approach. I'm identified with the policy-oriented approach. And so for the first time, I'll get some space in an Oxford book. Going back to Roman law, as I said to you earlier, if you studied Roman law, you have a lot going for you. There are not many fundamental ideas in law; there is not a large scope for fundamental ideas about the law; and if you studied Roman Law you

have most of those ideas. Anyway, you oughta have a happy life. I have never been bored a moment since I began the study of law. It's a fascinating study.

Fisher: I was torn between studying folklore and going to law school. So I ended up doing both. I think law is folklore.

McDougal: You're taste is very consistent.

Fisher: I don't have much more to ask you at the present time. However, there is one point that has baffled a lot of us in Canada. When Percy came down to the United States it was as though he vanished from the Canadian scene. He disappeared from the Canadian consciousness in large measure. Somehow he got lost in that no man's land between countries. He wasn't quite Canadian enough in Canada though he had been born and bred there.

McDougal: And he wasn't quite American enough.

Fisher: Right, though he did become a very proud American citizen. In fact, he became something of a hawk. He supported the Vietnam War. He spent his early life in Canada; then he went off to Oxford and Geneva; then he returned to Canada and had a very active professional life at McGill; then later in life he started again in the United States and had another career here.

McDougal: Well, that gives you a theme for your book. Try to find out what this was. And you may end up finding that there is no explanation.

Fisher: It seems to me that since he was involved in international law and relations the place to be at the time had to have been the United States. That's where the action was. There had been a shift of power from Europe to America.

McDougal: Well, you see, we're in a similar situation now. There's been a tremendous change in world power in the last two or three years and whoever is able to anticipate the future and to write it up will be doing a great public service. That's the job for you. If you learn enough from this study then take on a bigger one. What's the nature of the present change and what's gonna happen? That's the question.

Fisher: Yes, I agree with you. As far as Corbett was concerned, he fought in the First World War and was very much a proponent of Canada's struggle to become a separate country and to have its own voice in the League of Nations and so on. He worked hard for that. And then what played out? Well, despite all his years in Canada, all his labour and the work that he did, nobody really cared. A lot of people weren't as interested in international affairs between the wars as he wanted them to be. He and these other fellows I mentioned at lunch, who struggled for Canada to have her own place,

were dedicated internationalists. But Canadians really didn't seem to care. We didn't even have our own flag until the 1960s and so on. Our identity has been kind of curious. Some writers have said it's a negative identity; we identify ourselves by being not Americans. So Corbett decided to go where he could be and do something.

McDougal: To indicate my bias, I've been a proponent for years of a North American community, of closer ties between Canada, the United States, and Mexico. And I think this free trade treaty we just had is a movement in that direction. I think I was a prophet. That treaty is just the beginning of the kind of cooperation that we'll have to engage in.

Fisher: Well, what's your position on aboriginal issues? Native peoples, Indians?

McDougal: I have never had to take much of a position on that. My position on that has been very selfish. I own land. It's never belonged to anybody except me and the Chickasaw Indians. It's been in my family for seven generations. We ran the Chickasaws out. I'm afraid the Chickasaws will come back. And to give you the joke of it. I had a student a few years ago who was Chickasaw. Her mother had been born in the same area where my land is. And I told her

not to claim the land but she's a professor now in New Mexico. I'm not sure, she may claim it. But we treated the Indians very badly. No question. We just expropriated them, ran them out. I thought it very funny that I ended up with a student who was a descendant of the people we ran out.

Fisher: Is there anything more that we should touch on as regards Corbett's contribution to international law? He came to the United States and he had certain ideas when he came. And there were certain things going on here. Was he changed? Was he changed by what was going on here? Was he influential in bringing about any changes intellectually?

McDougal: I don't think he was changed very much. I think his role was to play a part in the transmission of what I would call the Oxford inheritance, which was a role that most Rhodes scholars have played in some way or another. We learned a great tradition there, about public service and the role of a university in society. And certainly those of us who went into teaching, even those in public life, have had a hand in transmitting that role to other people. And I think it is a good role. It is a role about the nature of law, that law does serve a policy function and can be made to serve a very explicit purpose. Policy purposes. If you believe in democracy or a free society, in the fundamental values that this country and Canada are supposed to stand for then you want to

improve that role and pass it on and I think Corbett's contribution was in both ways. He was trying to improve the role, or at least outline it, delineate it and pass it on. I think he performed a very good role. I don't think many of us can aspire to a much greater role. I said that I'd just had a hand in writing sort of the history of American legal realism. I have been a little surprised at how few people see that this was what the book is about; but I'm not worried because I think the basic ideas about law are sound and sooner or later somebody will come along and be even more articulate than Laswell and I were. I think Percy was not a disappointed man. He was reasonably happy with his life at least as far as he'd talk to me. And I think he knew he was making an important contribution.

Fisher: I think we can wind up. As far as I am aware, Percy's express purpose in coming to the United States -- this is what he told me -- was to have a bigger platform for his ideas, because he felt blocked in Canada. And it sounds as though in some measure he succeeded.

McDougal: What is funny about that to me is that I would have thought McGill was a hell of a good platform.

Fisher: Well it was but it wasn't for him at that time.

McDougal: Well, of course, Maxwell Cohen used it as nothing but a platform.

Fisher: That is the irony because as long as Chancellor Beatty was there -- he was there for two decades -- Percy couldn't do anything. And that's when he first went into other departments of the university, the Arts department and so on.

McDougal: I guess I knew he was Canadian by birth. Where was it you said he came from?

Fisher: Prince Edward Island. Well, thank you very very much for your time.

McDougal: I've enjoyed it.

Fisher: And for your leads also. I am going to look up Mr. Westerfield and Mr. Willard. The other thing I was curious about: would you know anybody at Princeton?

McDougal: Richard Falk. He is a very fine man and he would appreciate Percy. Falk is regarded as radical.

Fisher: We read a lot of Falk in Ivan Vlastic's class at McGill.

McDougal: That shows that Vlasic is still a little open-minded. I am glad Vlasic is keeping an open mind. If you see Vlasic give him my very warm regards. And you also tell him he owes me an introduction to this book on space law. I've got a republication of our book on space law. But he's got to write a new introduction and at the age of 87 I can't write an introduction to a book on space law. But Vlasic can. I know he can. He's written articles that do exactly what we need to have done. Go by and tell him that you saw me. And I said that I've got my hands out waiting for that introduction.

Fisher: It would give me no end of pleasure.

McDougal: And if he doesn't do it, we're not gonna get the book republished. And I think it is the best book on space law that's been written, and it oughta be circulated.

Fisher: I had him as a professor and I enjoyed his class because he was colourful. One never knew where he was gonna come from. He came from the very personal to the very theoretical. Well, that's it. There are a lot of things I would like to discuss with you but I think we had better call it a day. Ronald Macdonald said you were pivotal and now I know why.

McDougal: Well, you give both Ronald and Valasic my very warm regards when you see them.

Fisher: I will. Thank You.