

Myres Smith McDougal, 91, Yale Law Professor

By WOLFGANG SAXON

Myres Smith McDougal, an authority on international law and co-founder of the New Haven school of jurisprudence, died on Thursday at the Evergreen Woods Health Center in North Branford, Conn. A longtime resident of New Haven, he was 91.

He died after a long illness, according to the Yale Law School, where he was Sterling Professor emeritus of Law.

He earned his doctor of laws degree at Yale in 1931 and joined the faculty there three years later, initially specializing in property law. He turned his attention to international law after a stint in Government service during World War II.

Over the decades, he trained generations of law students who later became politicians, diplomats, judges, academics and practicing lawyers. He attained emeritus status at Yale in 1975 but continued to teach and assist his students well into his 80's at Yale and also at New York Law School, where he was Distinguished Visiting Professor of Law.

Yale has endowed a chair in his name. Its first appointee was named last month.

His jurisprudence, known as the New Haven school, was "configura-

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tive" and "policy-oriented," as he himself put it. He established this approach in collaboration with Harold D. Lasswell, a political scientist at Yale and a frequent co-author with whom he brought a policy-science approach to the study of law.

They took law to be not simply a body of rules but a communal decision-making process. They first outlined the concept in "Legal Education and Public Policy," a basic and path-breaking article in its field that was published in the Yale Law Journal in 1943.

A native of Burton, Miss., Professor McDougal graduated from the University of Mississippi in 1926. Having studied the classics, he briefly taught Greek and Latin. He received his first law degree in 1929 at Oxford University, which invited him to teach, but he returned to the United States for his doctorate and briefly taught at the University of Illinois before joining the Yale faculty.

In Professor McDougal's view, the challenge was to find an approach to the study and practice of law that applies law in such a way that it contributes to the achievement of a public order that, as its founders put it, remains respectful of human dignity. But beyond the New Haven school, he made important contributions to international law.

Working with his students, he produced six major treatises on international issues. Among other things, they covered the law of the sea, the law of outer space, the law of war and the law of human rights.

One of his most recent works, with Dr. Lasswell, was "Jurisprudence For a Free Society: Studies in Law, Science and Policy" (Nijhoff, 1992).

Professor McDougal was a past president of the American Society of International Law (1958) and the Association of American Law Schools (1966).

He is survived by his wife of 64 years, Frances Lee McDougal, and their son, John L., also of New Haven.

More obituaries
appear on the next page.

Professor Myres McDougal

INTERNATIONAL law is not about neutral rules which states apply or ignore as power politics dictate. It is a particular form of authoritative decision-making, operating where power and authority coincide, and unashamedly directed towards the achievement of very precisely defined goals which necessarily are not value-free. This, in essence, is the policy science approach to international law, formulated by Myres McDougal in the 1950s and 1960s with the political scientist Harold Lasswell and elaborated and applied over the years with a variety of associates.

The ideas underlying the policy science, or "Yale Law School", approach to international law were of themselves challenging and controversial. They were made the more so by the powerful and combative style with which McDougal advanced them, whether orally or in writing. In the 1960s and 1970s it had only to be suggested that he would intervene at an international law meeting - whether at the Royal Institute of International Affairs in London, or the American Society of International Law in Washington - for the hall to be filled to overflowing by those who relished the battle that was bound to follow, as McDougal turned his guns on the opposition.

The opposition ranged from the "realpolitik" critics of international law (such as Hans Morgenthau and George Kennan), to those who insisted upon the traditional virtue of rules and neutrality (such as Sir Gerald Fitzmaurice), and to those who accepted the relevance of policy but rejected the need for a rigorous methodology for its application (such as Wolfgang Friedmann).

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to jurisprudence, the law of the seas, treaty law, space law, human rights, legal education and the use of force. *Law and Minimum World Public Order* (written with Florentino Feliciano, 1961) and "Theories About International Law: prologue to a configurative jurisprudence" (written with Lasswell and Michael Reisman, in the *Virginia Journal of International Law*, 1968) are two outstanding, and typical, examples.

In the 1980s he collaborated increasingly with Michael Reisman, who had succeeded him as Professor of International Law at Yale. Beyond the immediate circle of those with whom he wrote, there are today many international lawyers around the world whose approach to their discipline is broadly sympathetic to McDougal's legal philosophy.

He had an active practice in international law, often working together with Reisman. He appeared before the International Court of Justice on behalf of the United States in litigation brought by Nicaragua. But he was perhaps viewed as too much wedded to his own approach ever to be appointed to the International Law Commission or the international judiciary.

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ing of his analysis and ideas. For McDougal, the use of unfamiliar language, with its references to "decision makers" and "participants" and "community expectations", was precisely to express ideas about the international legal process that were indeed different from the ideas carried by the more traditional vocabulary.

It was necessary to find a vocabulary to express his perception of international law as a dynamic process available to a variety of international actors to achieve specified social goals. The old vocabulary wouldn't do, because the terms themselves often represented the expression of ideas that McDougal believed misconceived. In truth, his vocabulary was comprehensible with a minimum of effort.

What undoubtedly did make his work less accessible, from the stylistic point of view, was the heavily methodological suprastructure. People were keen to read his views on, for example, treaties or the high seas: they did not want to have to plough through pages on the process of authoritative decision, the various authority functions, strategies, etc. But McDougal believed that only adherence to the methodology would lead to the correct analysis.

Accessibility aside, the substance of his work generated enormous interest and considerable controversy. It was fiercely attacked by those who believed that the methodology on which it was based was so open textured that it would allow of any result at all, whereas "law" has to be determinate. His critics also contended that the policy science approach too often served to promote US interests, which were dignified as "community values" to which decision-making should be directed.

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McDougal, pugnacious

From Judge Higgins 9/5/98
"Independent" Saturday



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McDougal’s pugnacious style on matters legal was matched by Southern courtesy on matters personal. He was adored by his students and respected and liked even by those who profoundly disagreed with him. Knocking on the door of his office at Yale Law School one would hear the shouted command “Come!” (never “Come in”). When one had entered the room, an imposing figure wearing a green eye visor could eventually be discerned among the thousands of books which filled all available space. No student ever felt rushed. Indeed, the lucky ones might be invited to the Graduate Club to continue the discussion over dinner.

He was an inspired teacher whose deeply original ideas have irrevocably altered the way we think about international law. No international lawyer of the last 50 years has been so much written about by others. McDougal was also an intensely loyal man – those of whom he approved continued to receive his vigorous support over the years.

McDougal’s output was prodigious. He constantly battled against failing eyesight, but, with his eye visor, huge magnifying glass and carefully selected younger associates, kept the problem at bay. He began his legal writing in the field of property law, before turning to international law, and specifically

ever to be appointed to the International Law Commission or the international judiciary.

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McDougal: pugnacious

deed, felt intellectually bound to each other), were now in top teaching, diplomatic and public service positions all over the world. No fewer than three of his former students sit upon the Bench of the International Court of Justice (the judges from the United States, Japan and the United Kingdom). His 90th birthday celebration at Yale was a great incoming from all the continents of those who felt indebted to him.

His scholarship was widely acknowledged. The footnoting of his writings was a treasure trove of scholarly reference and acerbic comment. A classical scholar as a young man, he continued to find apposite Greek aphorisms with which to underline points made in his footnotes. If his footnoting represented traditional scholarship of the highest order, his texts were written in a unique style, with a novel vocabulary rooted in the social sciences.

Many international lawyers – and especially European lawyers – admired the scholarship but deplored the vocabulary McDougal employed, complaining that it represented a barrier to the understand-

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This perception was confirmed in their eyes by the robust support McDougal gave to the action of the US administration in such matters as the intervention in Grenada and support to the Contras in Nicaragua. But his objectives were far from traditionally conservative. Senator Eastland (Democrat, Mississippi) said in reference to McDougal’s views on the UN Charter: “Mr McDougal was a schoolmate of mine. He is a very distinguished professor at Yale University, and I think a very misguided liberal.” He campaigned for US ratification of human rights treaties; for the Ibo cause in Nigeria; for sanctions in Southern Rhodesia; for women’s rights; for pluralism.

He thought of himself as an unreconstructed Southerner; an American patriot; and an Oxford man. A Rhodes scholar as a young man, nothing gave him keener pleasure than his honorary fellowship in 1982 of his old college, St John’s.

Rosalyn Higgins

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Myres Smith McDougal, international lawyer, legal philosopher and educationalist: born Burtons, Mississippi 23 November 1906; Sterling Professor of International Law, Yale Law School 1958-75 (Emeritus); married 1933 Frances Lee (one son); died New Haven, Connecticut 7 May 1998.

Memorial for Myres Smith McDougal

October 4, 1998, Yale Law School, New Haven, Connecticut

Myres McDougal was an inspired teacher whose deeply original ideas have irrevocably altered the way we think about international law. No international lawyer of the last 50 years has been so much written about by others. His pugnacious style on matters legal was matched by Southern courtesy on matters personal. He was adored by his students and liked and respected even by those who profoundly disagreed with him.

Beyond any question at all, Myres McDougal has been the greatest teacher of international law in the post war world. This is not to denigrate other fine teachers, of whom, happily, there are many. I, like most of us, developed under and benefitted from several exceptional teachers, each with their particular skills.

But there is no denying that Mac was in a class of his own when it came to teaching. The revolutionary ideas, combined with the power of his oversize personality, left none of his students untouched. Today we speak of the "charisma" of certain leaders. But it is the wrong word to describe Mac, because the image is of someone whose deeply attractive personality moves an audience to follow where he leads. That was not at all the process with Mac. What we felt, rather, was that upon arrival at Yale we were simply blown down by a hurricane whose nature we did not yet comprehend, left for a period to dust ourselves down, and then invited to continue a journey together.

I came to Yale in 1959, after taking two degrees in law at Cambridge. For the first few weeks I was, quite simply, shell shocked. I thought I knew a lot of international law and probably, for a student, I did. But I had no idea whatever about what it was all for, nor that legal judgments were not necessarily "givens", but could be intellectually challenged by scholars - and indeed even by students. The language of the McDougal-Lasswell policy science approach was, quite simply, incomprehensible. Sir Robert Jennings, my Cambridge teacher and later British Judge at the International Court, has reminded me on more than one occasion that I wrote to him asking how he could have let me choose Yale over Harvard as the place to pursue my studies. I had totally lost my bearings, because the inadequacy of what I came equipped with was being demonstrated to me in ruthless fashion, before I really understood what the proffered alternative was.

Mac's pedagogical technique, then, was to throw you in the deep end and, if you survived at all, to show you how to make waves. The socratic teaching method (which also was quite unfamiliar to me, as I had been taught by lectures coupled with gentle, private, tutorial discussion) ensured that you made the journey yourself. That journey was to an international law that was not rules but process, and was not neutral but dedicated to the achievement of specified social ends. The journey was tumultuous, but for those of us who made it with Mac, the inner and intellectual rewards have been great. Those two great themes - process and social purpose - remain my lodestars today. And this is true of countless others around the world.

He was also a role model to generations of students. Today that phrase, "role model", has come to be associated with persons whose gender, race or religion is not that of the power structures in the society in question. Their achievements, often in the face of seemingly insurmountable obstacles, is thus the more impressive and inspirational for young people of the same sexual, religious or racial identity. They see from the role model what they, too, can do.

Myres McDougal was white, male and from a southern methodist background - hardly a minority icon and certainly not an endangered species. But he was undeniably a role model. He was a role model in the sense that the way he did things was imprinted on the students at Yale who were to be the next generation of teachers. A role model shows by example. Mac showed that you don't have to choose

between being an outstanding scholar and a caring teacher. All too often great scholars treat teaching as a chore to be endured, as an intrusion on what they really want to do. But those of us who were at Yale during the era of Myres McDougal learned by osmosis the deep truth that absorption of knowledge, the creation of ideas and their imparting to the next generation are a seamless unity. These are not alternatives to be selected among at will. There is a duty - a pleasing, fulfilling duty - to wear the mantles of scholar and teacher simultaneously.

And so it was that, during those very decades when Mac was at his most productive, writing path-breaking volumes of great importance, he was nonetheless always available to his students. Knocking on the door of his office at Yale Law School one would hear the shouted command "Come!" (*never* "Come in"). When one had entered the room, an imposing figure wearing a green eye visor could eventually be discerned among the thousands of books which filled all available space. No student ever felt rushed. Indeed, the lucky ones might be invited to the Graduate Club to continue the discussion over dinner.

Our theses were properly supervised - every word had been read, our teacher expected detailed discussion, and apparently relished it. He gave of his time willingly, with an 'open door' policy even at the height of his scholarly activity and legal consulting.

Mac's significance as a role model in international law has thus had its significance not just in his intellectual ideas but in the realm of teaching. The fact that today, all over the world, there are former students of Mac's, now caring for their students, listening to their concerns, encouraging their endeavours, is part of his inheritance to the international community.

Myres McDougal was our mentor, as well as our teacher. What is meant by this well-tryed phrase? It means that the teacher not only imparts his knowledge and ideas, but tries to assist his students in their careers, to take an interest in their development. In this sense, most good teachers are also mentors to their students. But - as with so much of his life - this element too was writ large so far as McDougal was concerned. By some magical process, you could over 12 or more months have metamorphosized from baffled newcomer to someone thought by McDougal to have promise. And then his support as mentor knew no bounds. It mattered not - as I have good reason to know - that you might by now be three thousand, or six thousand miles away. You had become part of the invisible reality of the Yale policy science school, which school did not depend upon physical geography. Mac would write references more generous than one could hope for, pen supportive letters on one's behalf, go to extraordinary trouble to advance one's cause. All of this often went on unseen and unsolicited. We had moved, without fanfare, from student to friend, and now benefitted from a friendship of the most intense warmth and generosity and loyalty.

There was another element that so many of us here today can attest to. Mac was zealous and active in supporting his students from this job or that honour. All of his formidable energies went into this. The addressee of his proposals was metaphorically backed against the wall and seized by the lapels. Mac did not hesitate to play the southern power-politician in support of his young colleagues, his former students.

His "former students" is, of course, an inept phrase altogether. He remained our teacher all of his life, even though we might have become professors, attorneys, government lawyers, judges. Of course, in the later years he inevitably became less familiar with the substance of the contemporary legal issues with which we might be exercised. He no longer followed, blow by blow, the ratification process of this or that treaty, the separate opinion of this or that judge, the text of this or that UN resolution. But his clarity of vision about what I will term "the McDougal-Lasswell" system remained undimmed, as did his ability to explain and expound and to relate it to legal problems that one might share with him. Above all, he never lost sight of the underlying value system. Notwithstanding age and increasing

infirmity, he remained the very best person - as teacher, mentor and friend - to whom to turn in the face of any deep problem of principle or ethics.

We shall miss him dreadfully. Myres McDougal has left us with his ideas, our personal memories and the strong bonds of mutual support felt by all those who think of themselves as belonging to the Yale policy science school. This is indeed a legacy to celebrate.

Judge Rosalyn Higgins, DBE, QC
