

Tributes

The Center of the Circle

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I want to welcome you to this afternoon of remembrances celebrating the extraordinary life of our friend and teacher Myres McDougal. The number of people who have gathered here—and even more, the distance that many of you have traveled—speaks volumes about the breadth of Mac’s circle of friends, a circle that literally encompasses the globe. Mac stood at the center of a web of allegiances and scholarly collaborations that stretched from New Haven to Tokyo to Bangkok to Delhi to Frankfurt to London and back to New Haven again. During my deanship, I have done a fair bit of traveling, and wherever I go I am always asked two questions: How is the School doing? And how is my friend Mac? I now know that Mac has friends in every great city on earth, and you who are here today are the representatives of that larger assembly.

The life at the center of this global web of friendships had its own center in work. Mac had a gigantic passion for work. He derived visible pleasure from it and managed as effectively as anyone who has ever taught at the School to convey his excitement and enthusiasm for work to the students who were lucky enough to study with him. Not too long before Mac died, he was in and out of the hospital several times. His long-time assistant and dear friend Cheryl DeFilippo would accompany Mac to the hospital and then back again to Evergreen Woods. I spoke with Cheryl after one of these hospital stays—six weeks before Mac’s death—and asked how he was doing. She said, “Well, Mac is physically weak but his spirits are strong. When they told him he was about to be released from the hospital, he said that was good news because he had a great deal of work to do and needed to get back to it.” The gospelist John wrote, “Let us work, for soon

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it will be night and then no work can be done.”¹ No one understood that sentiment more profoundly than Myres McDougal.

Yet Mac’s passion for his work and the work itself—the magnificence of all those books on the library shelf—does not by itself explain why so many have made the trip to be here in New Haven today. As great and brilliant a teacher and scholar as Mac was, he was also a remarkable human being. This is something that everyone who came into his radiant circle understood and grew to appreciate.

In the months since Mac’s death, I have received countless letters from former students and friends around the world, and they all have one characteristic in common. Each of these letters expresses immense admiration and respect for Mac’s intellectual achievements, but each then goes on to recount an incident of one kind or another that touched the writer in a personal way. I could spend the rest of the afternoon sharing with you the anecdotes recounted in these letters. Let me share just a few.

When Winston Nagan arrived in New Haven in 1975, he had heard a fair bit about Mac and Mac’s jurisprudence. He was eager to meet the great man and enrolled in Mac’s international law class. Winston describes his experience as follows.

When I came to Yale, I signed up for Mac’s class on international law. I had not yet settled on an advisor or what program I was going to do. In the first class Mac was doing everything possible to get a rise out of his students. Near the end of class, he stated a proposition about the prospects for peace in the Middle East that was clearly not tenable for anyone who had actually visited the region as I had done quite recently. To break the silence I challenged him and we went back and forth. At the end of the class, without any display of emotion he said, “I’d like to see Mr. Nagan in my office.” All the Yalies came over to me and said, “He’s going to throw you out of the Law School. How could you challenge him like that? He’s a famous authority.” Having thus been reminded of my tenuous status at Yale, I trundled up to Mac’s office. As I entered the office I saw a little sign that said, “non illegitimus carborundum” which roughly translated means, “don’t let the bastards grind you down.” I thought, “I hope he doesn’t think I am a bastard with any capacity to grind him down.” I sat down, noticing the broad smile on his face. He said, “Who is your advisor?” I responded, “I’d hoped you would be my advisor.” “You’ve got me,” Mac replied.

Sophie Tierong Zhu today lives in Changsha, China. After Mac’s death, she wrote a beautiful letter recalling her time here in New Haven in the late

1. *John* 9:4.

1940s with her husband Ifon, who was a J.S.D. student at the time and was later driven to suicide during the cultural revolution when he stood up for the idea that government means the rule of law, not men—an idea that Sophie says Ifon always associated with his great teacher Myres McDougal. In her letter, Sophie describes the evenings she and Ifon spent at the McDougal home with Mac's young son John playing with his electric trains and operating a home movie camera. She remembers her time in New Haven as being lit up by Mac's warmth and welcome. "Mac made us feel at home," Sophie writes, "and gave the Graduate Program life."

Then there is the letter I received recently from Cecil Olmstead who, in addition to remarking on Mac's greatness as an intellect, goes on to say that he and Mac shared more than a common passion for ideas. They also shared an upbringing in the rural south and Cecil recounts the many long hours he and Mac spent reminiscing about fishing in cool streams and listening to great Southern politicians like Bilbow and others on the stump in their small home towns.

Each of these letters remarks on Mac's remarkable courtesy—his *Southern* courtesy, as it is characterized over and over again. In this increasingly barbaric age Mac's courtesy was indeed a rarity and pleasure. It was refreshing. But Mac's humanity went well beyond being well-mannered and polite in the superficial sense. Mac had a talent for friendship that very few people possess. He was a virtuoso of friendship. He was able almost instantly to take a deep interest in the young person who had just stepped into his office for the first time, and to put himself at the center of that person's life. Within minutes, a friendship had formed, and when Mac made a friend, the friendship lasted forever. Mac's friendships were not relations of a day or a week or a year. They endured for a lifetime, and if you were Mac's friend, he would follow you wherever you went. These weren't passive friendships either. They were very active friendships. Mac sought at every turn to be of help to his friends and to do whatever was within his power to assist them in their careers—and I might add that it was often within Mac's power to do quite a bit.

I might also add that Mac's famous capacity for friendship never to my knowledge compromised his formidable critical powers or deterred him from speaking with anything less than perfect bluntness, if the occasion required. I remember many lunches with Mac in the Faculty Dining Room. Mac would come in with a hearty laugh, join the table discussion, and ask what we were talking about. He would listen quietly for a minute or two, and then would turn to some learned colleague who had just made a very large statement of some sort and say, "that's the most damn ridiculous thing I've ever heard in my life." At that point you knew that lunch had begun.

Mac's good manners, as I say, never caused him to conceal his true views. One 1970 graduate of the Law School—a man named Rob Brown who now practices law in Rochester—wrote some years ago in his Class Notes for the *Yale Law Report* that his most vivid memory from law school was of a paper he wrote for Mac's course on Law, Science, and Policy. "I worked hard on it," Rob said, "But I didn't think I had done a terribly good job. I turned it in and much to my surprise it got a very high mark with a note at the bottom of the page that said, 'A fine job Mr. Brown. I didn't think you had it in you.'"

This might seem like a paradox: the well-mannered Southern gentleman who is also an uncompromising man of science. But it isn't really a paradox at all. Good manners for Mac meant treating you with respect, and treating you with respect meant drawing you into the conversation, into the inquiry, into the search for truth. Mac was a tremendous friend, but friendship in all its forms is a kind of sharing. What Mac wanted most of all was to share his own intellectual vitality and passion for his work with his friends, and he knew that the very best way of doing this is always to speak honestly and to keep the truth in view.

I have been talking about Mac the man. I'd like now to say a word or two about his work. Others can speak at greater length about Mac's scholarship; they know it far better than I do. But I would like to make two basic points about Mac's intellectual achievement.

First, the formidable architecture of Mac's jurisprudence and the imposing vocabulary which goes with it has caused many to view his theory of law as something exotic, pursued by a few devoted students, but on the whole enjoying only a limited influence within the larger field of American academic legal studies. I think this view is deeply mistaken. Mac's policy science, as he called it, combines two basic ideas that are at the very core of legal studies in the United States today and which in fact define the reigning orthodoxy in American legal education. One is that the law is not a system of closed norms whose meaning is self-evident. A simple inspection of these norms shows that they do not contain within themselves an answer to the question of what ends they should be used to promote. We must begin our study of law, Mac argued, by acknowledging that law should be used for the advancement of shared goals and ideals, as an instrument of policy. Unless we put the law in this larger perspective, Mac said, we will never know how to ask, let alone to answer, the key questions that every legal theorist must address. Mac's other basic idea was that these questions of policy can themselves be approached in a rigorous and disciplined way—not in an ad hoc, slipshod fashion, moving from one question to the next without any guiding principles to structure the inquiry, but in a comprehensive and scientific manner. Mac's own version of policy science may not be the one that most law teachers in America employ today. But

the *idea* of a policy science—the idea that one must approach legal studies from a policy perspective and attempt to answer the questions that are posed from this point of view in a disciplined and scientific way—that is now an accepted idea, not only in this Law School but in every law school in America. Mac was the first to formulate this ideal, and whether or not his own distinctive jurisprudence has captured the field, the program he defined surely has.

Second, I would emphasize the durability of Mac's guiding ideals, the ideals of democracy and dignity. These are the two words that carry the greatest moral weight in Mac's jurisprudential lexicon. In recent years, we have seen a measure of progress toward the realization of both ideals. The collapse of the Soviet Union and the surprising resurgence of democratic life in Eastern Europe and Latin America make the cause of democracy seem brighter today than it has ever been before. And the international human rights movement now has a vigor and influence it never possessed in the past. Our progress toward the ideals of democracy and dignity makes it easy to think their defense is a simple matter. What could be less debatable than the need to support democracy and dignity against their enemies? But this is an anachronistic view. It confuses the present with the past. We need to remember how difficult it has been, in the past, to stand up for these ideals in the way Mac did from the start. Mac was always clear about their importance, and he had the courage to say what needed to be said. No one on this faculty, indeed no law teacher in America, has done more in his lifetime to advance these two ideals. Mac did this through the great intellectual force of his writing. But he also did it through the example of his own commitment and the steady accumulation of a network of friends who themselves have contributed importantly to the advancement of democracy and dignity for people everywhere—a magnificent and lasting achievement.

Let me close by saying a word about Mac's relationship to the Yale Law School. When I became Dean, I said that it was my ambition to broaden the horizons of the Yale Law School and to make it a school for the whole world. I said that the Yale Law School had become a great national institution, but that it needed now to look beyond our national borders, to take students from every corner of the world and to take an interest in the legal problems of their countries. Every law school dean in America today has the word "globalization" on his or her lips. I am no longer sure I know what this word means, but it has certainly become a fashionable term. Long before it was fashionable, however—long before it was even a term—Mac understood what globalization meant, and everything I have accomplished in the way of giving the program here at the Yale Law School a more global perspective builds on Mac's great accomplishments and would have been absolutely impossible without them.

The legacy of internationalism that Mac bequeathed to the Yale Law School is one of his greatest and most enduring gifts to the School.

I have sometimes wondered what so fascinated Mac about the great empty spaces of the world—Antarctica, the floor of the sea, outer space. The Law School's portrait of Mac shows him holding a copy of his great treatise on the law of outer space. What drew Mac to these empty places? In one sense the answer is obvious. These are the places that have not yet been inscribed by the law. These are the empty places that John Locke called the state of nature (by which he mainly meant North America). Here, all the foundational questions of law remain to be addressed. A great mind, looking for some elbow room, will inevitably be drawn to these places.

But there is another empty place to which Mac was drawn. The emptiest place of all is the future. It is that great blank sheet on which every scholar wants to inscribe his own thoughts so that, as Justice Holmes remarked, unborn listeners can hear the music of the scholar's ideas and dance to them long after their maker is gone. Mac understood the passion Holmes describes. He wrote for the ages. He planted more than a few flags in the country of the future, and I assure you that in years to come we will see his claim to that kingdom expand.