

Vanderbilt Law Review

Volume 18
Issue 2 *Issue 2 - March 1965*

Article 15

3-1965

Book Review

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Recommended Citation

Allison L. Scafuri, Book Review, 18 *Vanderbilt Law Review* 863 (1965)
Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol18/iss2/15>

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BOOK REVIEW

LAW AND PUBLIC ORDER IN SPACE. By Myres S. McDougal, Harold D. Lasswell & Ivan A. Vlasic. New Haven and London: Yale University Press, 1963. Pp. 1147. \$15.00.

Law and Public Order in Space is a monumental, and perhaps worthwhile, effort to characterize the myriad legal problems inherent in extraterrestrial activities within a unified juridical framework. It must be noted, however, that the authors have needlessly dissipated their energies by casting their rather simple propositions into cumbersome, pseudo-scientific jargon.

Elsewhere I have alluded, by example, to the authors' semantic machinations.¹ Paradoxically, while attempting to create order with their terminology, they create a form of chaos. The failure of the authors' system can be illustrated by their attempt to establish and define "the Maximization Postulate" as follows: "The maximization postulate . . . asserts that people adopt any given response (R^1) rather than (R^2) when they expect to be better off in terms of all their values by adopting (R^1)."² This proposition might have been simply stated as: "People tend to act in their own best interest." It is peculiar that though the authors reduce their postulate to symbols, they neither create equations nor do anything else with the symbols, *i.e.*, they create symbols for no purpose. It is not possible to reduce propositions to common denominators by inventing jargon; this can only be achieved, to a degree of perfection, through the medium of mathematics.

It is not expected that a legal treatise must have literary merit to be worthwhile, though Holmes, Cardozo and Hand achieved this admirable duality. The turgid style of the instant authors, however, is a standard one lamentably handed down through the ages by social scientists. An exact parallel can be noted, for example, in the important work of Thorstein Veblen.³ H. L. Mencken, who once reviewed Veblen, dissected a characteristically ponderous paragraph in a manner that might well be emulated in the instant case, *i.e.*,

Well, what have we here? What does this appalling salvo of rhetorical artillery signify? What was the sweating professor trying to say? Simply that in the course of time the worship of God is commonly corrupted by

1. 1964 Report of the Special Committee on Space Law, Mich. S.B.J., Sept. 1964, pp. 68, 70.

2. MCDUGAL, LAW AND PUBLIC ORDER IN SPACE 173 (1963).

3. VEBLIN, THE THEORY OF THE LEISURE CLASS (1918).

other enterprises, and that the church, ceasing to be a mere temple of adoration, becomes the headquarters of these other enterprises. More simply still, that men sometimes vary serving God by serving other men, which means, of course, serving themselves. This bold platitude, which must be obvious to any child who has ever been to a church bazaar, was here tortured, worried and run through the rollers until it spread out to 241 words, of which fully 200 were unnecessary.⁴

The analogy to the 1,147 pages of McDougal, Lasswell and Vlasic is too obvious to require further comment. They have preserved the Veblen tradition like a mastadon in ice. For what purpose? Consider the applicability of these further words of Mencken on Veblen: "In brief, he stated his hollow nothings in such high, astounding terms that inevitably arrested and blistered the right-thinking mind. He made them mysterious. He made them shocking. He made them portentous. And so, flinging them at naive and believing souls, he made them stick and burn."⁵

In order to know what the authors attempt in *Law and Public Order in Space* we need only wrestle with their own statement:

The basic design of our book is the modality of policy-oriented jurisprudence: we first seek to identify the major recurring types of problems—that is, types of contraposed claims to authoritative decision which raise common issues in policy and which are affected by common conditioning factors—and to locate these problems in their most comprehensive context of community process; we then proceed to explore each major type of problem by employing the various relevant intellectual techniques of policy-oriented inquiry, including the detailed clarification and recommendation of general community policies, the description of past trends in decision on

4. MENCKEN, A MENCKEN CHRESTOMATHY 271 (1956). Here is the Veblen paragraph from *The Theory of the Leisure Class* referred to by Mencken: "In an increasing proportion as time goes on, the anthropomorphic cult, with its code of devout observances, suffers a progressive disintegration through the stress of economic exigencies and the decay of the system of status. As this disintegration proceeds, there come to be associated and blended with the devout attitude certain other motives and impulses that are not always of an anthropomorphic origin, nor traceable to the habit of personal subservience. Not all of these subsidiary impulses that blend with the habit of devoutness in the later devotional life are altogether congruous with the devout attitude or with the anthropomorphic apprehension of the sequence of phenomena. Their origin being not the same, their action upon the scheme of devout life is also not in the same direction. In many ways they traverse the underlying norm of subservience or vicarious life to which the code of devout observances and the ecclesiastical and sacerdotal institutions are to be traced as their substantial basis. Through the presence of these alien motives the social and industrial régime of status gradually disintegrates, and the canon of personal subservience loses the support derived from an unbroken tradition. Extraneous habits and proclivities encroach upon the field of action occupied by this canon, and it presently comes about that the ecclesiastical and sacerdotal structures are partially converted to other uses, in some measure alien to the purposes of the scheme of devout life as it stood in the days of the most vigorous and characteristic development of the priesthood." *Id.* at 270-71, quoting from VEBLEN, *op. cit. supra* note 3, at 332-33.

5. *Id.* at 270.

comparable problems, appraisal of the factors which appear to have affected past decision, the projection of probable future conditioning factors and decisions, and the recommendation of alternatives in policy content and procedures more appropriately designed to secure overriding community goals.⁶

What the authors are trying to tell us is that: (1) they will define jurisprudence as a policy regime; (2) they will characterize problems accordingly; and (3) they will analyze these problems with a view to ascertaining whether or not policy should override precedent.

At one point in their immense work, the distinguished authors raise a valid point relative to space law. It is when they quote two British scientists, Gatland and Dempster, as stating: "Man has no alternative than to re-examine the whole basis of his culture and learn to think again from the beginning. There is no easy solution and many beloved conventions must fall by the wayside as the Old World gives way to the New."⁷

The authors then wisely state that rapport is necessary between scientists ("skill-elite groups") and lawyers in attacking space law problems.⁸ They do not, however, recognize the basic premise, *i.e.*, that the lawyers themselves must be grounded in the sciences to make the rapport fruitful and to break the bonds of traditional thinking that can carry them beyond the bounds of beloved convention to the new intellectual frontier. This myopia on the part of the authors leads them to betray, in their own book, the very call to battle of Gatland and Dempster that they quote. It leads them, incredibly, to label science as mere "esoteric knowledge,"⁹ and to rely upon *Life Magazine's* picture book studies of elementary scientific propositions.¹⁰ It leads them ultimately, I think, back to the old, easy solutions and beloved conventions. Intellectually it imprisons them in the very old world of ideas from which they presume to lead us.

The intellectual force in this scientifically and technologically oriented century, as Gatland and Dempster indicate, resides with men who have renaissance minds that can ably embrace scientific as well as societal propositions, reason anew and reach unique and far-reaching conclusions beyond the realm of current thought. To date, the intellectual strength of the lawyer has been his pervading

6. McDOUGAL, *op. cit. supra* note 2, at v.

7. *Id.* at 30, quoting GATLAND & DEMPSTER, *THE INHABITED UNIVERSE* 198 (Premier ed. 1959).

8. *Id.* at 98. Scientists are, hopefully, included within the authors' definition of "skill-elite groups."

9. *Id.* at 143.

10. *Id.* at, for example, inside the front and back covers.

understanding of problems from every societal view. This test can remain valid; however, the province of the legal "skill-elite group" must range far beyond his traditional social science touchstones into decidedly esoteric scientific subjects. The horizon of jurisprudence now embraces the mechanical universe of Newton, the relativistic universe of Einstein, and perhaps even the "levels of energy" universe of Helmut Hoepfner.¹¹

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11. Scafuri, *Space Law: A Plea for the Technolegal Approach*, Mich. S.B.J., March, 1962, pp. 42, 46-47.

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