

BOOK REVIEWS

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LAW AND PUBLIC ORDER IN SPACE

by Myres S. McDougal, Harold D. Lasswell and Ivan A. Vlasic

New Haven: Yale University Press, 1963, pp. xxvi, 1147.
Indices. \$15.00.

This volume is the latest in a series of studies examining the concept of a world public order. Earlier books in the series include *Studies In World Public Order* (1960), *Law and Minimum World Public Order* (1961), and *The Public Order Of The Oceans* (1962). Each of the studies has had multiple authors; the common and dominant participant in all the works of the series is Myres S. McDougal, Sterling Professor of Law, Yale University.

Law and Public Order In Space is the work product of many more than the three named authors. The *Preface* shows that many lawyers, academicians, government officials, commentators of international repute, and "several generations" of Yale students have contributed, each in some measure, to the work. Financial support for the project was provided by the Rockefeller Foundation, the Ford Foundation, the Stimson Fund, and Yale University.

The principal purposes of this book are to outline a framework of inquiry for study of the law and public order of space in their larger context and to suggest certain preliminary clarifications, from the perspectives of a comprehensive public order of human dignity, of the common interests of all people in the prescription and application of general community policies with respect to some of the more important new problems. (p. v).

This statement concisely and accurately summarizes the content of the book. Its basic function is "to outline a framework of inquiry." The framework is not entirely new in this volume, having been substantially formulated and expressed in other parts of the public order series and in recent collateral articles and addresses.

The work is divided into four parts. In part one the entire problem is set in its context. Part two outlines the system of inquiry; this

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system is applied in part three to elements of the problem selected by the authors for analysis.

The initial chapter examines "The Processes of Interaction, Claim and Decision." The participants in space activities are identified, and their objectives, base values and probable outcomes are considered. The system of interaction is placed in its environmental situation; the probable patterns of claims to authority and a catalogue of specific claims is offered; the chapter concludes with an examination of decision-making machinery in "The Constitutive Process of Authoritative Decision."

The suggested "framework of inquiry" is set out substantially in chapter two, "The Comprehensive Public Order: Inclusive Interests and Exclusive Interests." Here the authors include careful statements of purpose and definitions of terminology.

It is the task of the present inquiry to clarify a framework within which realistic assessment can be carried out of the relevance of alternative policies for the science and policy of the earth-space community. (p. 145).

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We postulate a preferred pattern of value distribution and invite all who will to join in discovering and proposing policy principles and particular policies for the implementation of these objectives. We outline the consequences to be expected from recognizing common rather than special interests in space and draw implications for the structure of world public order. (p. 142).

Exhaustive definitions carefully clarify the language of the work. Any reader seeking to appreciate the import of the major propositions of the work must first devote close attention to these definitions (pp. 145-56).

In the opening chapter, and throughout the central, more factually expository portions of the book, the reader is not confronted by the "framework of inquiry"; he is adroitly conducted through evaluations of selected situations by means of the application of the framework. In chapter three the authors begin the "study of the law and public order of space in their larger context." Subsequent chapters of the work examine "some of the more important new problems" always "from the perspectives of a comprehensive public order." The application of the framework in Part III, entitled "Probable Trends in Decision and Conditioning Factors," analyzes claims to access and competence in space, ramifications of nationality of spacecraft, problems of jurisdiction or conflicts of claims, potential problems of space resources utilization, problems of enterprisory activities, and potential interactions with yet-to-be-discovered sentient societies.

The concluding portion, part four, contains an appraisal of the problem and recommendations by the authors of alternative methods for achieving the ultimate goal of a "comprehensive public order of human dignity." The authors summarize their conclusion as follows:

In the preceding sections of this book we have sought to identify the fundamental features of the system of public order that we recommend for the space age, and we have offered relatively specific recommendations about many specific problems. The task which remains is fourfold: to reaffirm the basic goals of an inclusive system of public order for all advanced forms of life; to outline the constitutive process appropriate to maintenance of the recommended system; to identify the principal factors likely to affect the establishment and maintenance of this constitutive process; and to specify the policies that we recommend under contingent conditions for promoting and securing the constitutive arrangements required. (p. 1025).

The fundamental argument of the work is that the destruction of mankind is in balance with a potential era of "undreamed-of abundance and benevolence." The fulcrum of this balance is the Damoclean sword-edge of nuclear stalemate. The alternatives open to man are few. In the view of these writers no alternative offers the hope and solidarity of resort to the proposed system of public order. The system is built upon basic principles including (1) territorial inclusivity, (2) plurality, and (3) equality of participants. Its procedural requirements include establishment of a fundamental constitutional document, disciplined problem-solving in a system of recorded courts, and developmental activities to assure the emergence of an elite capable of the phenomenal task of organizing the system. These are only introductory ideas relating to the "constitutive process appropriate to the recommended system." Without pursuing the details of the system, perhaps enough has been set forth to demonstrate the immense undertaking the authors suggest. It is submitted that universal participation in the formulation and achievement of desired goals for the entire community will continue to be an impossibility controlled by the dominance of private over public interests in emerging States. Obviously the substantive content of such a large and complex work cannot be evaluated in detail in a review of this nature. But we should consider some of the mechanical aspects of the work such as style, language and readability. In concluding we offer a few observations on its general utility.

The style of the book, generally consistent with other works in the series, is unnecessarily complex. Frequently recurring headings of subsections examining identical topics from slightly varying aspects, and frequent repetition of identical sentences and phrases contribute to the excess bulk of the volume, and create an impression of verbosity. Fluctuations in style and language occur throughout the work, frequently betraying clearly the point at which one author's contribu-

tion ceases and another's begins. In footnoting as well, the author of many portions of the text is determinable by noticing the frequency of citation to collateral works of each of the authors. The variations in style, while jarring to a carefully concentrating reader, may provide appreciated relief for the reader not accustomed to the rich and complex language of portions of the book. Overall, the book has a ponderous, overbearing style which challenges any reader's vocabulary, and requires the ability to follow complicated arguments through complex sentences at times one-half a page in length.

The language of the text is frequently technical and of varying quality. The elaborate language of the theoretical, socio-jurisprudential portions of the work contrasts sharply with the expository discussions of scientific fact and analysis of other commentators' views. Apparent editorial attempts to lessen these contrasts have resulted in an apatetic effect.

The observations relating to style and language are decisive in evaluating readability. Obviously no one will attempt to absorb the more than one thousand pages of this volume in a few sittings. Careful indexing has made it usable as a research tool; the name, case and subject indices comprise twenty-nine pages. When employed as a source book for commentary on specific topics, the work's limited readability should not impede its usefulness.

One shortcoming of the work is its lack of factual accuracy. There are two factors contributing to this lack. The first emerges from the rapidity with which our world technology moves forward. Progress in nuclear energy, electronics, propellants, vehicle designs, international cooperative programs, international agreements for regulating activities in space, and new project planning continues at an accelerating rate. This speed of the age has resulted in the unfortunate process which limits the value of many worthwhile manuscripts in the interim between original drafting and final publication. It is the phenomenon of *embryonic invalidation* — the process by which development in a field of human endeavor by-passes descriptive and analytical literature before the literature can take the form of a printed page. *Law and Public Order in Space* was more than three years in the making. Portions of its manuscript, while undergoing continual reading and critical editorial analysis, could not readily be kept current. In this work discussions of governmental programs, statistics and facts relating to international organizations, and views of commentators can be found which were valid when written, but which have since become outdated and obsolete. In one instance statistics nearly six years old at the time of the book's publication are included. (p. 267, nn. 222 and 223.)

The second factor compounding the problem of assuring accuracy in current literature discussing space legal problems is the plethora of secondary, tertiary and unofficial materials upon which the student is encouraged to rely for information in the absence of reliable, current official and prime sources. (It may be noted that these two factors affect much of the recent literature in the field of space law. Because of the contemporary evolutionary pace of world society, no factual publication can be completely current. However, the fact of accelerating change does not excuse manifest tardiness. Nor is there adequate explanation for frequent reliance upon low echelon sources when more dependable and official sources are available. Reliance upon newspapers, magazines and unofficial statements of organizational or governmental officials — citing the author's official rank or title and ignoring a declaration of the unofficial nature of the comments — are undesirable practices in any responsible publication.)

Coming then to the general utility of this work, it is necessary to recall its above-stated purposes. The authors have neither purported nor intended to include in this work a comprehensive and detailed examination of all the legal problems relevant to space activities. They have discussed several of the major problems in considerable depth; they have recognized and discussed others less clearly defined, and have surveyed the balance of issues with at least passing mention of most topics currently found in the literature. As a legal text the work has only limited scope, but on certain selected topics it provides both depth of analysis and valuable insight. Considered as one of a related series of studies of world public order the book comes into its proper perspective.

Realizing that this work is intended as an outline of a framework of inquiry, the reader should appreciate that the problems offered by the world's advancement into the space milieu may be examined under varying frameworks of inquiry. The most significant single contribution of this work is the extensiveness of the scope of inquiry it suggests as essential. The authors have taken an interdisciplinary approach to legal problems which is rarely equalled in legal literature. The book embraces a tremendous scope including considerations of astronomy and geophysics, engineering, biology, law, politics, economics, sociology, psychology and other factors in the interactions of the world community. It encourages consideration of legal problems as part of an immense complex of problems, and it places all participants in a relative status in the entire community. The authors point out that:

As scholars, our role in relation to official decision-makers is fundamentally the same as in regard to the whole body of citizens. We observe and propose; decision-makers dispose. Within the manifold of past, present, and prospec-

tive events the goals of public policy can be clarified as to timing and specificity, and the principal strategies of public policy brought into relationship to the whole. (p. 142).

If decision-makers comprehend the system proposed and employ any of the alternative policies recommended, the system's viability and feasibility can be tested. Until application of the principles and policies is attempted, the work will serve as a handbook for participants of suggested methods of attaining certain preferred goals.

The book is simultaneously optimistic, skeptical, pragmatic and visionary, but the authors may have undone themselves by putting forward their thesis in so complex and voluminous a work. To be effective this book would have to be read by many; in its present form that is not a very real probability.