

**JULIUS STONE — HUMANIST, JURIST AND
INTERNATIONALIST INAUGURAL JULIUS AND
RECA STONE MEMORIAL LECTURE**

THE HON. R.J.L. HAWKE*

Reca Stone, Members of the Stone Family, Distinguished Guests, Ladies and Gentlemen,

I am deeply moved and honoured to present this, The Inaugural Julius and Reca Stone Memorial Lecture.

Julius Stone, with the aid and assistance of his beloved wife Reca, did more than contribute to the development of Australian intellectual life. He brought to this country and to the world an appreciation of the nature of human endeavour, the realisation that the interests on which we base law and justice must be those of all people.

His great contribution was to see both law and justice as developing ideals, forges in concrete historical circumstances, admitting of struggle, internal conflict, differing social perceptions and human interests from one generation to the other.

Given that this is the first of the Julius and Reca Stone Memorial Lectures, I would like to say something on his life and work before focussing on three aspects of Julius' writings and activities which have impressed me particularly. In this way, I shall endeavour to provide insights into Julius Stone the man, his ideas and the continuing relevance of his work.

I first became aware of Julius Stone when, as a law student at the University of Western Australia, I was introduced to his *Province and Function of Law*. At the time I knew nothing of the man and little of the circumstances which had moulded him. I was less than fully aware of the European Jewish intellectual tradition which not only was to shape the development of socialism, but which was also to nurture the rights of individuals within groups and groups within a society.

In later years I was to come to admire and love Julius, and I was honoured when he wrote the introduction to *Hawke on Israel*. I treasure the memory of

his conversations. Through him, and through others, I was to understand and admire the tenacity displayed by the Jewish people in the establishment and development of the State of Israel.

Julius Stone took to the law after his Oxford tutor had despaired of him as a historian. At Oxford in 1925, Julius Stone, product of working-class Leeds and one of the few students (like Reca) to win a State University scholarship to a major University, was confronted by his history tutor with the words, "Stone, you realise that your ideas of history and mine have nothing in common". The tutor suggested that Stone take his talents — and his talents were recognised as considerable even then — somewhere else. To dentistry, or chemistry, or even to the law. So Julius Stone crossed the quadrangle at his Oxford College, Exeter, and G.S. Cheshire, father of Leonard Cheshire V.C., accepted him as a student. In this rather off-hand, unguarded way began a lifelong association with the law which, in the course of the ensuing sixty years, firmly established Julius Stone as one of the leading legal philosophers of his day. The study of law has been, ever since, the richer for that decision.

There are two elements of the early story that seem important to me. First, Julius Stone clashed with his history tutor because he, Julius, saw history in terms of its sociological and economic impact on ordinary people, while his more conventional tutor — an expert, incidentally, on Napoleon Bonaparte — saw it as principally a record of the deeds of kings and princes.

In his emphasis on the importance of ordinary people in the scheme of things, I believe one can see the seeds of one of Julius Stone's lifelong preoccupations: A preoccupation with the right of individuals in a world too long dominated by kings and princes.

The other important aspect of the story is that it demonstrates Stone's totally honest and uncompromising approach to his learning. Many a lesser mortal, once warned how the wind blew with his tutor, would have trimmed his sails to the prevailing weather. Not so Julius Stone, and it is a revealing sidelight on his inherent modesty that in relating these events in later years he seemed completely oblivious to the tremendous courage it must have taken not to succumb easily to the pressures upon him.

At Oxford, the young Julius Stone had to contend with the British class system and the strong elements of anti-Semitism within it. It was not a happy time for him and he found, as did others, that to survive he had to do a lot of pretending. But he hated "the guts of the place" and continued to do so until the end of his life, apart from his law tutor, whom he learned to love. In particular, he despised the distorted class-value system of Oxford — an opinion which I, with my Australian egalitarian background, could readily understand.

Julius' academic life, from the beginning, was marked by courage and uncompromising loyalty to his beliefs and a self-imposed discipline for hard work. And he needed all these attributes to succeed in Leeds, at Oxford, in America and in Australia. Julius Stone was fortunate in that he was raised in a tradition which endowed him with immense faith in the human spirit. His

difficult physical existence in Leeds sharpened his resolve to succeed and gave him an immense capacity for work.

It was from a poor, humble background that Julius won his way to Oxford and gained a brilliant first in the B.A. (Jurisprudence) examination. Unable to remain at Oxford for lack of funds, Julius took his B.C.L. part-time and supplicated the same day as Anthony Eden. Keen to obtain his D.C.L., Julius was informed it would take 10 years. But while working in Leeds, he wrote *Regional Guarantees of Minority Rights* and *International Guarantees of Minority Rights* and submitted them for the D.C.L. The Oxford fellows and examiners were, as Reka says, not “enthusiastic” about awarding the degree so early — and to a Jew — but their decision was “unanimous”. Julius carried the postcard containing the news with him for many, many years.

In 1931 Julius accepted the position of Rockefeller Fellow in Social Sciences at Harvard, where he worked with one of the pioneers of the Sociological School of Jurisprudence, Roscoe Pound. He stayed on at Harvard as an Assistant Professor of Law and eventually returned to England where there was the promise of a university position. This, however, did not eventuate because, he was told, he was a Jew. Disgusted, Julius accepted a position at Auckland University in New Zealand and, as Reka has recalled, they “scattered and lived”. While in New Zealand, a Chair in International Law and Jurisprudence at the University of Sydney was advertised and Julius was appointed. A few weeks later, his appointment was rescinded by the University Senate.

His eventual appointment as Challis Professor of Law and Jurisprudence at Sydney University was surrounded by controversy and prejudice — an indictment of Australian society and the legal profession at that time. He was suspected by the conservative Establishment of the day both because he was a Jew and because of the emphasis he put on the sociological implications of law. As he himself put it — with undue charity, I think — “the legal profession and the Legislative Assembly in good faith mistook ‘sociology’ for socialism”. Even though they did not say it, there was, underlying the Stone affair, a horror of the possibility of this closed profession suddenly being invaded and inspired by a supposed Bolshevik. Australian society has changed significantly since the 1940s and it is very difficult to imagine a similar incident occurring today. Nevertheless, as Tony Horwitz has pointed out in a recent article in the Sydney Morning Herald, informal anti-Jewish discrimination continues to exist in Australia, particularly in circles that no doubt see themselves as the pinnacle of our society. As Horwitz wrote, it is “easier for a Jew to become a Knight of the Realm than to penetrate the inner sanctum of the social Establishment”. Julius Stone would, like me, have a lofty disdain for that sort of prejudice.

Julius Stone was no Bolshevik, though he led the resistance to the Communist Party Dissolution Act when Sir Robert Menzies tried to outlaw the Communist Party in the 1950s. He took on other unpopular causes. He spoke up for academic freedom during what has come to be known as the McCarthy period. He was a pioneer of the South African Defence League

which fought apartheid in South Africa and the immigration reform movement in New South Wales, which fought against discriminatory immigration policies. He worked for Amnesty International and fought for the rights of Soviet Jewry and political prisoners everywhere. In such activities, Julius' essential humanism and internationalism stood out.

It was at Sydney University that Julius established his great international standing. During his thirty year tenure of the Chair, Julius — as Sir Zelman Cowan wrote — “securely established a great reputation as a scholar, publicist and teacher, and his main work in the Anglo-American legal world was done from this Australian base”.

The Province and Function of Law, the three drafts of which were typed by Reca, first appeared in 1946 and attracted wide and highly favourable attention. The period since has fully validated the contemporary conclusion of Mr Justice Else Mitchell (as he now is) that the book “is one of the outstanding juristic works of the present century”. In 1964 it received the Swiney Prize for Jurisprudence of the Royal Society of Arts, England's highest award in this field. From it have come *Legal System and Lawyers' Reasonings* (1964), *Human Law and Human Justice* (1965) and *Social Dimensions of Law and Justice* (1966), described as the most comprehensive account yet written of modern Jurisprudential thought.

It is impossible to speak of Julius and his work without reference to his beloved wife, Reca, who is with us this evening. She was his boon companion and intellectual support from the time they met in a resource library for poor students in Leeds and Julius carried her books home. This act of kindness was the beginning of a lifelong partnership between two individuals of great intellectual and spiritual strength. Like her husband, Reca grew up in the desperately underprivileged slums of Leeds. Like him, Reca earned success in life through academic ability and sheer hard work. She also won one of Britain's rare and hard-fought-for state scholarships, and could also have gone up to one of the major universities; instead she chose to do a degree in chemistry and zoology at Leeds, and then dentistry.

During World War II, she became involved in the Youth Aliyah movement concerned with sending Jewish children to Israel. Her “Revolt in the Ghetto”, which raised funds for Youth Aliyah, is a moving account of the story of the Jews of the Warsaw Ghetto.

From the earliest days, Reca participated fully in her husband's work, discussing the content of his projected writings, editing the manuscripts as they saw the light of day, and generally providing the strong intellectual, moral and emotional support he needed.

Tonight, it is impossible to do justice to Julius' scholarly activities, his writings, his degrees, the awards and accolades he received and his activities — they are too numerous and too diverse. I do want, however, in the remainder of my address, to focus on those three aspects of his work which have impressed me particularly:

- his defence of human rights and his hostility to any form of prejudice and discrimination;

- his belief in dialogue and discussion in the resolution of conflict; and
- his concern for the peaceful management of relations between states.

Julius' beliefs recognised the rights of all men and women to be treated equally before the law. Throughout his life, Julius consistently worked for something which is easy to say in words — equality for all — but immensely hard to achieve in practice. As a specialist in International Law, Julius was tormented by the magnitude of institutionalised, State-sanctioned cruelty, injustice and savagery. He fought against what he called 'this jungle' in his publications, and in his work with the International Commission of Jurists.

Julius Stone saw International Law as a concept of justice shared by the whole human community, a system whereby people and nations reach agreements on what is unjust. In this regard, he was noted for his refusal to accept facile, optimistic assessments of the efficacy of International Law which cannot be supported in the light of the facts; and, on the other hand, for his concern for the protection of human rights across state frontiers. This latter theme was developed in his first published work on International Law in 1932, *International Guarantees of Minority Rights*, dealing mainly with the then existing system for the protection of minorities, and received further illustration in his later book, *The Legal Controls of International Conflict*. As I mentioned before, Julius Stone was a pioneer in the fight against Apartheid. Today, the international community is becoming more closely concerned with the continuing disregard and abuse of people's rights by the Government of South Africa. Unlike this country, which has long recognized internationally agreed human rights standards in guiding legislation and public opinion on the rights of groups within our society, the Government of South Africa has not. As was recently demonstrated at the Commonwealth Heads of Government Meeting in the Bahamas, and in the United Nations, the Australian Government shares with an influential proportion of the world community the belief that international pressure must be brought to bear on South Africa to recognise the rights and interests on *all* its people. We believe we must together seek a solution which takes into account the interests of all parties in South Africa, which ends racial discrimination and which establishes a just and democratic society. At the same time, we recognise, in Julius' terms, the limits of the feasible and the need to preserve the country's economic achievements and infrastructure.

Julius' writings and life work were underpinned by a passionate commitment to dialogue, to discussion and to debate. He believed in people getting together to resolve their differences and he had a marvellous capacity to understand other viewpoints. It was Julius' desire for discussion and for dialogue which led to his establishing the Harvard Club to promote the meeting of minds; he was one of a group who founded the Social Science Research Council, which later became the Australian Academy of Social Sciences; he created the Australasian Universities Law Schools Association

and he played a key role in the Sydney Law Review and the Australian Society of Legal Philosophy.

Julius was also conscious of the need to promote dialogue not only in the academic community but also in the wider community and from 1945 he was a regular A.B.C. broadcaster on international affairs. He was also a strong proponent of dialogue between East and West. Of particular interest is the fact that the first published suggestion for the 'hot line' between Washington and Moscow was made by Julius in a series of lectures delivered in late 1960 over the national radio network of the Australian Broadcasting Commission. Later that year, when his lectures were made into a book, *Quest for Survival: The Role of Law and Foreign Policy*, the idea was first presented in the United States. Twenty-five sets of page proofs of this book were requisitioned in advance by the Carnegie Foundation of International Peace and sent by the Foundation to key members of the then incoming Kennedy Administration. A top level communications link for use in times of crisis was actually established in 1963. Its worth has been evident on a number of occasions.

Until the end of his life Julius Stone constantly addressed the question of relations between states, particularly relations between the superpowers. His book, *Visions of World Order, Between State Power and Human Justice*, published earlier this year, exemplified a key preoccupation of his professional life: The question of how order can be maintained between states. He was always vigilant against political and technological threats to such order.

Throughout his life, he continued to maintain a lively interest in a concern for major developments in international relations. In August this year, he wrote to me privately concerning the United States strategic defence initiative, expressing disquiet at its long-term ramifications and forwarding some thoughts he had previously penned on strategic defence initiative (SDI) research. Julius' article was characteristic in its rationality and in its purpose and I found it a breath of fresh air. Julius' misgivings about the problems inherent in SDI were essentially the same as those which have led the government, while recognising the integrity of the US administration's position, to decline to endorse the initiative.

Julius' suggested solution to the difficulties to SDI was that the research should be undertaken jointly by the two superpowers. In his words:

What is urgently required is an unrelenting campaign pressing on both Washington and Moscow the absolute necessity of making the attempt to perfect the strategic defense initiative as a joint Soviet-United States project. ... The absolute necessity for such co-operation should now become a central platform of all groups and individuals who wish to check (and ultimately render obsolete) the monstrosity of nuclear weapons.

I note in this connection that President Reagan has on a number of occasions, including at the recent Geneva Summit, talked of the possibility of sharing the SDI technology. Julius' approach to the SDI dilemma echoed in many ways his earlier suggestion, to which I have already referred, namely the establishment of a "hot line" between Moscow and Washington.

In all his scholarship Julius always remembered the essential humanity which binds nations to each other. This often neglected element of diplomacy

has been reinforced by the Reagan/Gorbachev Summit. At least a dialogue between ideological adversaries means that hope exists that those things they have in common will outweigh their irrevocable differences and allow us all to build a more stable world. Were Julius with us today, I feel sure he would take heart from the prospects for improved dialogue between the United States and the Soviet Union.

His concern with the practical issues of arms control and disarmament and the reduction of the tensions between east and west is shared by my Government. Our policies place a heavy emphasis on peace, disarmament and arms control.

These policies are now well established. We have appointed an Ambassador for disarmament to ensure that our voice for peace is heard in international forums. We played a leading role in the establishment of a South Pacific Nuclear Free Zone at the August meeting of the South Pacific Forum. Our stringent safeguard agreements strengthen the regime of the Nuclear Non-proliferation Treaty. We have joined our neighbours in strongly opposing French nuclear testing in the South Pacific. We are at the forefront of international efforts aimed at achieving a comprehensive test ban treaty and we will give active support to the UN's International Year of Peace in 1986.

These and other policies have given Australia an unprecedented voice for peace in world forums. They have strengthened our right to a role in advocating balanced and verifiable nuclear disarmament and arms control. Our very close relations with the United States give us an effective basis on which to develop this role. At the same time, this Government has sought to establish a dialogue with the USSR on these issues, notwithstanding the fundamental differences of principle between us.

Humanity and vision are perhaps Julius' greatest bequests to us all. Despite the dangerous jungle which he could all too clearly see, Julius was at heart an optimist. He saw humanity as slowly, hesitatingly, beating paths to create small, precious enclaves of justice and peace. He exhorted us not to lose hope but to fight on to enlarge these enclaves, to broaden what he called "pockets of hope".

His vision was essentially a product of his Jewish tradition. After the night must come the day.

And his work can be summed up by another of his favourite sayings — this one from the Rabbinical ethics of *The Father*: "It is not for you to complete the task, but neither are you free to desist from it."

Julius' task endures despite his death last September. It endures in the effect which his writings will surely have on future generations of scholars. It endures in the work of the institutions which he inspired or was instrumental in founding, such as the prestigious International Commission of Jurists. Perhaps it endures most fruitfully of all in the students whom he taught and inspired particularly at Sydney University, where Jurisprudence became known as "Jules Prudence". One of his former students, Mr Justice Kirby,

said of Stone's influence: "Some angry spirit constantly urged Julius Stone on to more and more endeavour. It was an infectious spirit."

Julius' spirit inspired many of his students who have shaped, and continue to shape, our society. They include High Court Judges, Supreme Court Judges, prominent Queen's Counsel and such prominent lawyers as NSW's Chief Justice Sir Lawrence Street, Justice Elizabeth Evatt and Justice Michael McHugh. Neville Wran, Frank Walker and Australia's present Ambassador to UNESCO, Gough Whitlam, were acolytes of Professor Stone who have, in their way, attempted to translate the Stone philosophy into political reality.

Ladies and Gentlemen.

Australia, and the world, are immeasurably the better for the contribution of people like Julius and Reka. Their ideals and their contribution to humanity, will continue to be a treasured resource and inspiration of us all.

Reka, your husband's great contribution lives on. It lives on in his work and in the many who were touched by his writings, his teaching, his examples of intellectual vigour, his breadth of interests, his concern for current issues and, as in my own fortunate case, his friendship.

Like the Hanukkah [Hah-Nu-Kah] flame the world will continue to be lit by his works.

* The Prime Minister, The Hon. R.J.L. Hawke, A.C., M.P. delivered this address, at the Science Theatre, University of N.S.W. on December 8, 1985, to inaugurate the Julius and Reka Stone Oration, an initiative of the N.S.W. Jewish Board of Studies.