

JULIUS STONE

MR JUSTICE SAMUELS

All of us here knew Julius Stone, but, I suppose in different capacities; perhaps as a teacher, or as a colleague, or as a personal friend — and in many cases, as all three. Each of us will remember him most clearly in the character we knew best; but all of us will cherish the memory of a good and brave man. In his early life he had to struggle hard to maintain his purpose without the advantages of money or connections. In the maturity of his extraordinary career, honours and the tributes of other scholars came thick upon him. He was one of the great legal philosophers of our time. His influence has been profound. His monument is to be seen not only in his books and published papers but, as Sir Bernard Sugerman once said, in the impress of his mind upon the generations of his pupils, many of whom gathered to honour him by their contributions to the collection of essays published in 1983 in tribute to his 50 years of teaching and research.

During that time he produced a prodigious quantity of books and papers upon an immense range of subject matter. But I do not want to run the risk of submerging Jules' humanity beneath the statistics of achievement, however rich and unique. It is better to reduce the scale — for a moment at least — to the context of personal exchange in which all of us, perhaps, can place our own separate recollections.

Soon after I went to the bar, in 1952, the Sydney University Law School advertised the part-time post of Teaching Fellow in Jurisprudence, and I applied for it. I had never met Professor Stone, but I had heard of him a good deal and of the *Province & Function of Law*, a book which had not, however, penetrated as far as Oxford (at least not as far as my tutor) when I went down in 1947. I borrowed a copy from another member of the bar, a recent pupil of Julius'. He was a good student, but since his interests did not run particularly in this direction I was intrigued to see the mass of marginal notes which the text and the author's lectures had evidently stimulated. I found the book a revelation but its effect depressing, since it convinced me of my lack of credentials for the teaching of jurisprudence of that kind, a disability which I

was sure Professor Stone would readily detect. I was interviewed by Julius and Professor Kenneth Shatwell, then the Dean. I had sent in my references which included evidence that I had achieved some dubious distinction in jurisprudence: but in Oxford Jurisprudence which was unlikely, I felt, to be much of a recommendation. I thought it best to confess these forebodings, adding that although I had not yet completed the *Province & Function*, I felt well on my way towards conversion. Well, said the Dean, if you don't get that far the Jurisprudence Department permits some dissent I am sure. Yes, said Julius, but informed dissent: we'll take you but you had better finish the book first. I did: and became Jules' teaching fellow, and occasional substitute lecturer, for the next three years.

Alike with many others before and since I was both junior colleague and willing pupil, a fluid status which Julius controlled with great dexterity, treating me with far more respect than my participation in the operation deserved. As I remember he was then completing *Legal Controls of International Conflict* and all of us who worked with him marshalled, of course, by the wonderful and invaluable Zena Sachs, strove to make some contribution.

During those years I was deeply impressed by his scholarship, the far horizons of his knowledge and the extent of his reading: and staggered by his energy and his application to the tasks at hand. I was warmed by his humanity, and his, and Reza's many kindnesses to me and later to Jackie, my wife; and by the easy friendship which he was able to establish with his pupils. I never saw him lecture at the law school, but I heard him many times at conferences and meetings of learned societies. He was quite the best lecturer I have ever seen. He combined complete mastery of his material with a felicity of style and clarity of expression which I have never heard equalled. I did attend some of his seminars, and have done so since, in which the power of his mind and his ability to construct an argument which drew you inexorably to his conclusion provided deeply satisfying experiences.

He was both a rigorous and a merciful judge of students. He did not compromise his standards of excellence. Those whom he commended deserved their accolades. But at the other end of the spectrum he was ready to salvage those who swayed upon the brink of failure. There are some esteemed practitioners who owe their academic lives to Julius Stone's capacity to find that half mark which had evaded this teaching fellow's less practised and certainly less benevolent scrutiny.

I left him with great regret but I was beginning to put together a practice and one cannot teach jurisprudence properly part time. But in 1964 I returned to the Law School to enjoy the bounty of the good Mr. Challis as Lecturer in Pleading; and for 6 years Jules and I were colleagues again. The early part of this period coincided with the publication of the great trilogy, perhaps the most concentrated period of Julius' contribution to legal scholarship. There was little in the art of pleading to interest him, although much in 'the *Province & Function*' to interest, and guide, a pleader. We saw one another

and talked together, and I would receive a note from time to time if a case I had been in had achieved some mention, and he sent me copies of articles he had written. I was not the only one, of course, to receive this attention. And all, I am sure, found it as pleasant and as rewarding as I did. It was a token of intellectual fellowship, a mode of encouragement, an earnest of continuing friendship, and stimulated meeting and discussion. No doubt it took up time which Julius could ill spare from his own more pressing work, but which he did not grudge in maintaining links of this sort.

In 1973 Julius, having retired from Sydney in the previous year, was elected visiting Professor at the University of New South Wales. It was, happily, a long visit, which has only just ended. I told him once, paraphrasing the words of a song in an American musical play, that he was the oldest established permanent floating visiting professor in legal history: and when he was not visiting us he was visiting Hastings College of the Law.

He made a splendid contribution to our young law school, whose good fortune it was to capture an international scholar of such great wisdom and charm. In addition to maintaining the flow and high quality of his writing (he produced forty four major articles and other contributions in his first ten years at New South Wales) he taught for four hours a week until last year. Despite his writing he appeared to feel that if he was not teaching he was not pulling his weight. For him, of course, the concerns of a scholar and the responsibilities of a teacher were inseparable. As he said in a major book review, published in the *Hastings Law Journal* in 1975 "the limitations of a scholar are also the limitations of his teaching."

In 1976 I was elected Chancellor of the University and thus became Julius' Chancellor, an event in which he took, I think, some degree of pleasure. I had not been, of course, his first disciple. But the devil of analytical jurisprudence was hot and urgent within me when we met, and he exorcised it, drew it forth and replaced it with better doctrine; and he was glad to see me getting on. And he derived an amused satisfaction from the circumstance that he now had to yield to the titular supremacy of his former protege.

He will always, certainly, be linked to the University of Sydney where he wrote and taught for 30 years, and to which he was fiercely loyal. But New South Wales became in turn his university, or, more particularly perhaps, the Law School became his, not at all in the sense of dominion, but in that of concern and relationship. I wrote to congratulate him recently upon the award of the American Society of International Law's Certificate of Merit for 1985 to his book *Visions of World Order*, deemed unanimously by the Society to be the most scholarly book of the year in the field of international law. He responded in a typically graceful note that he was glad that this had garlanded "our own law School". His presence there, as Professor Don Harding has observed, was invaluable as a counsellor of younger colleagues; I trust they followed his intellectual leadership more readily than they needed his meticulous example of attending every one of the Faculty's graduation ceremonies.

I have tried to say something, inadequately I fear, and largely of my own perception, of Julius Stone as a legal scholar, as a teacher, and as a man. It is not the occasion to attempt, even if I were equipped for the task, any close analysis of the contributions he has made in the fields of international law and jurisprudence. But I can venture, I think, to say this. On Tuesday a letter from Julius appeared in the *Sydney Morning Herald*. It was curious but appropriate that on the day he died there should be public confirmation of his concern about the formidable issues of our time. The letter dealt with the United States Strategic Defence Initiative, and advocated that its development be made a joint Soviet-United States project, a proposal, Julius said, "dictated by human reason, as well as the human heart".

That statement must remind us that much of his work has been designed to identify the delicate relationship between the imperatives of reason and the pressure of human aspirations. He wrestled mightily with the problems of reconciling law and human justice, and nowhere is this more clearly seen than in his treatment of conflict and aggression in the international field. In *Visions of World Order* he recognises how much is yet to be done, but affirms the need to continue:

We do not need to deceive ourselves concerning the indecisiveness thus far of the search for the ultimate criteria of justice in order to insist that it ought to go on. For there is good reason why the normative tasks of ethical and political philosophy, and the philosophy of justice that is an integral part of them, can never be finished as long as human society itself persists.

Julius was, as all of us know, profoundly influenced by his perception of his Jewishness and deeply involved in the plight of European Jewry and the struggle for the State of Israel. After independence he put his learning to vigorous use in defence of the new State, in support of its right to survive and in rebuttal of the calumnies charged against it. In a series of books and pamphlets he deployed the compelling power of objective argument sharpened but not disorted by the impulses of his own heart; and he has rightly earned Israel's gratitude.

Much of Julius Stone's work has been designed to reveal how, in truth, judges decide cases; how judicial decision making really proceeds. In the process he has extirpated myths and discredited what Lord Reid called 'fairy stories'; and has applied some needed restraints to the larger excesses of the so-called realist jurisprudents. In doing so he has, of course, forced the judges to look, without flinching, at themselves. And yet his critical analysis has recognised with perceptive accuracy the nature of the judicial role, and, for that matter the role of the practising lawyer. His appointment as Queen's Counsel — the first academic in Australia to receive that distinction — was an acknowledgment not merely of his eminence as scholar and teacher, but of his understanding of those whose task it is, to use his own words, "to act to interpret or apply the law".

Through most of his long journey of achievement from the undergraduate days at Oxford to the pinnacle of legal scholarship, Julius was sustained by the devoted support of Reca, who was a partner in the fullest sense and in all

aspects of their life together, and to whom loving tribute may be found in every book. To her, and to the children and grandchildren who meant so much, we offer our affection to add to their own pride in the life we remember today. Against that long journey may be set a shorter one travelled centuries ago; and amongst the company was another Oxford scholar described in terms most fitting to be applied to Julius Stone:

A Clerk there was of Oxford also

The thought of moral virtue filled his speech

And he would gladly learn, and gladly teach.

THE HONOURABLE MR. JUSTICE GORDON J. SAMUELS, JUDGE OF
APPEAL, SUPREME COURT OF NEW SOUTH WALES;
CHANCELLOR OF THE UNIVERSITY OF NEW SOUTH WALES.

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