

Julius Stone: Balancing the Story

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The Shorter Oxford Dictionary defines inspiration as 'A breathing or fusion into the mind or soul'. In 1987 both my mind and my soul were inspired by the idea of writing the life of the late Professor Julius Stone. I had always seen him in the light of his reputation for fostering enthusiasm in others. To inspire members of the common herd, a person must have within himself a certain elevation of spirit, almost an exaltation for his chosen task. I became the biographer of a subject who epitomized these criteria. The focus of my appreciation, my personal pull towards this man, lay in an admiration for his lucid grasp of how our legal system really works, a reverence for his uncompromising ethical standards, and a shared religious heritage not diminished by a difference in attitude towards religious practice.

The story of a life can appear to be written from several perspectives. The subject can be eulogized, to the extent that all criticism is suspended. This is sometimes seen in authorized biographies. The subject can be vilified, as seems to be more and more common in unauthorized biographies written about famous, though not necessarily inspirational, figures in the United States. As in the occasional political biography, the subject can disappear into a welter of facts so that all interest is subsumed in itemisation.

What is perhaps more revealing is the attitude the biographer thinks he is adopting. This is not the same as the perspective on the subject as seen from outside. I attended a biography conference at the Australian National University in 1990. An eminent English biographer, well known for his meticulous research, stated emphatically that all he did was record the facts. Every biographer

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in the audience laughed. For we all know that there is no such thing as The Fact. Paradoxically, it is in the telling that The Fact takes on its particular significance: it is in the building up of a series of particular significances that A Truth—not The Truth—is revealed. But there is another paradox to be aware of. As Susan Sontag has said, ‘The truth is balance, but the opposite of truth, which is unbalance, may not be a lie’.

In contrast to the Man of Fact was the Woman of Perception. Might I be more like her? An American biographer disclosed intimate details of her own early history. She demonstrated that she was aware that her rendering of her subject’s life, which in aspects mirrored her own, might have been especially vividly coloured because of her own experiences.

Here I was with Stone. I come from a solid and safe middle-class background. No-one in my family has achieved a world-wide reputation. My forebears are uniformly undistinguished. My own ‘career’ has been a thing of threads and patches. Neither a mere recorder nor a person writing out her own life, how was I going to bring a shape to Stone’s life?

I opted, in Sontag’s words, for a truth which comes from balance. This led me to two important underlying propositions of which I was always conscious. The first rose out of my belief that a biographer must like his subject. Oscar Wilde claimed that every biography is written by a Judas; in working with the story of Stone’s life, it was the opposite angle I had to avoid. But I was always aware that there were strongly held opinions which were opposed to my own; the tension between hagiography and negativism brought some kind of balance to the work.

More importantly, as I wrote in the Preface,

Although I have attempted to bring to the life of Stone a strict sense of objectivity, there is obvious subjectivity involved in the selection of material. Any objectivity is only as strong as such selection permits ...

A desire for objectivity added to an acceptance of some degree of subjectivity equals balance. At least I hope it does—or did.

Where was balance needed? I had all the biographer’s usual tools of trade at my command. I conducted almost eighty interviews

and because of a generous Law Foundation grant was able to talk to people not only in Australia but also in England, Israel and the United States. I managed to worm my way to the very top. A favourite recollection is of an interview at Parliament House in Canberra in 1988, where a man no longer in the position he held then gallantly crawled under his desk twice, first to plug in, then to unplug, my tape recorder. And the interview was excellent.

I interviewed politicians, diplomats, especially Israeli ones, and lots and lots and lots of academics. I spoke to family members here and in England, to former students and research assistants, which involved speaking to many judges in different Australian courts, as well as to former secretaries and typists. Unfortunately I was refused an interview by one of Stone's persistent opponents, but the riches obtained from others made this a matter of dwindling significance.

Certainly I had no dearth of the dreaded Facts to work with. The authoritative record of Stone's life appears in his papers. And what papers they are. They had been sold to the National Library of Australia at a time when that institution was building up its collections relating to notable Australians. Its particular interest in the Stone papers arose because they comprized a record of the whole of his life—from the age of thirteen and his first senior school reports to, as he had promised, letters written just before his death. They recorded the personal, academic, intellectual and authorial aspects of his life.

The collection was housed—or so I was initially led to believe—in 226 boxes, roughly chronological but otherwise uncatalogued. I moved to Canberra for six months in 1988 in order to read the collection. A year later, and by accident, I found out that there were another hundred boxes not so far incorporated into that collection. One large nervous breakdown later, with the cooperation of the University of New South Wales and the National Library, I read the last hundred boxes in batches of fifteen in the Law Library at the University of New South Wales.

In addition I combed libraries and archives overseas. My most successful hunts disclosed Stone's early primary school history, student life at Exeter College, Oxford, during his time there, and details of one of his scholarships in the records of the British Foreign Office in the Public Records Office at Kew. Invaluable

correspondence was found in the files of the British Board of Jewish Deputies and in the papers of colleagues in the Treasure Room of the Harvard Law Library.

The third type of information about Stone was revealed through his writings. He wrote close to twenty major books on jurisprudence and international law, and well over a hundred learned articles. There is a wealth of legal material enclosed therein. I attempted no thorough legal critique—this was not to be an academic assessment of Stone's jurisprudence and international law. But from his writings emerged the man in another guise, the ultimate professional whose work was imbued with high intellect, commonsense and morality.

It would be foolish to assume that all the evidence gleaned from all these sources could be condensed within the covers of a single book. Could any such task be accomplished, the result would be overwhelmingly boring. Selection was vital; I could write a life based on any selection from the available evidence. It would have been easy for me to write a book based on facts drawn from what most interested me in Stone's life—his work in jurisprudence and his Jewish consciousness. But this man deserved the best. His life was of such a rich texture that some attempt to outline all aspects of it was required. So why was it necessary to balance the account, rather than just proportion the evidence derived from the sources mentioned?

Balance was needed to uncover the facts beneath the legend. Stone was the subject of so many legends that it was essential to draw out a consistently accurate picture of him. All the legends were biased to some degree. There were three main areas where it was necessary to balance the evidence against the myth. The first area, and the least in need of correction, was the legends that had grown up about Stone within his own family. The second, where seriously impaired views about Stone were held, was in academic perception of him. This area was so often, and deplorably, coloured by personal dislike that objectivity and balance often seemed totally lacking. The third was the rare one where my personal sense of balance did not accord with Stone's. I felt bound to present an alternative perspective to his views about Israel.

Part of the legend was the family history. What was disclosed to me through family interviews was based very closely on reality

although with slight embroidery. The embroidery made the record just that little bit better and the childhood suffering just that little bit worse. For instance, family history has it that Stone was the first pupil from his primary school, set in the slums of Leeds, to receive a scholarship to attend secondary school. Documentation proves otherwise. In the West Yorkshire Archives I was guided to a handwritten exercise book which forms the official record of that school in the years before the Second World War. The evidence was that secondary school scholarships had been awarded to students from this small school since 1916 and that Stone was among six who won the award in 1919. A small point, but a balancing one.

Similarly, Stone's own account of his negotiations about the position of Professor of Law at Queen's University, Belfast, in the early 1930s needed to be sorted out. The value of his papers lies in the fact that he kept almost everything. In this case he kept contradictory letters. These show that he informed the successful colleague that he had withdrawn some time previously, even though he was still demonstrating interest in the post at the time the final decision was being made. Another small point, demonstrating a harmless vanity which does not surface in the family history.

In the second area, imbalance about Stone's place within the university milieu needed correcting. There was little question about the brilliance of his writings and the penetration of his ideas. But as a man he caused differing reactions. Some academics stressed Stone's successive difficulties with university authorities. These began in America, included English and Irish universities and ended, unexpectedly, in Israel. The hottest and most sour of these battles was fought in Australia, over his appointment to the University of Sydney in 1941. Why was Stone always beleaguered? Surely, said his opponents, anyone who fought so many battles with and within universities, who raised the hackles of so many people, must have been himself the cause of the controversies. Unable to fault the scholarship, they were reduced to trying to fault the man.

That he was not the single cause of all the controversies emerges, I hope, from the biography. There are two issues which influence this important part of Stone's history. One is that while he was liked by some, especially his students, his personality did not appeal to all. He was sometimes seen as excessively conscious of the rightness

of his own positions, as over-zealous in collecting honours and awards, and as having little patience with those whom he considered to be less intelligent than himself. Many people condemned his constant struggles in the university environment because of these perceived aspects of his personality.

The second issue is anti-Semitism. People in positions of power disliked Stone because he was a Jew, or because he was the wrong kind of Jew. Sometimes the anti-Semitism was an undercurrent, sometimes it stained the process irreparably.

After a most promising start to his career in England and having won two scholarships, Stone went to Harvard in 1931. By 1936 he had obtained two doctorates in law, a *Scientia Juris Doctorum* from Harvard and a Doctorate of Civil Law from Oxford, to add to the three degrees he had already obtained in England. At Harvard he had moved from the grade of instructor in jurisprudence to assistant lecturer on an annually renewable basis. He was a professor at the newly formed and adjacent Fletcher School of Law and Diplomacy and had an impressive publication record. Nevertheless, his application for a tenured position at the Law School was thwarted.

This was due in part to a fight between two of the Harvard Law School giants. Stone was regarded at Harvard as a member of the 'camp' of Roscoe Pound, a great jurisprudential scholar. Opposing Pound on nearly every issue was the brilliant Felix Frankfurter, soon to be appointed to the Supreme Court of the United States. Pound favoured Stone's appointment; Frankfurter therefore opposed it. And in opposing it he presented evidence to the selection committee in a way that was so highly coloured, so adapted to his own purpose, that a letter from a colleague of Stone's pointing out the irregularities was circulated to the whole of the Law Faculty and to the president of the university. Too late, Frankfurter was forced into a weak justification of his point of view.

There is no question that Stone's religion was another factor in the refusal to grant him a tenured position. In a letter to the president, Pound stated that there had been objections to Stone because of his religion. Stone was innately proud of his Jewishness and neither hid it nor glossed over it. In fact, as a Zionist, he usually drew attention to it in an overtly political way. Frankfurter was from a European Jewish family with a long cultural tradition. As I have suggested, to

Frankfurter 'Stone may have appeared to be an upstart immigrant, with no background and no feeling for the subtleties then essential for a Jew to succeed at the professional level'.

Anti-Semitism had peaked at Harvard in 1923 when the then president wanted to restrict the number of Jewish students entering the university. A committee set up to consider the matter opposed it and the state legislature threatened to remove Harvard's tax exemption if the proposal were not dropped, which it then was. Attitudes die hard. Stone's personality became confused with opposition to him on the ground of religion; subjective antipathies began to taint the record. Supportively, Pound wrote to the president that Stone was not personally objectionable, was a man of culture, not a pusher, modest, considerate and 'not unduly ambitious'. Pound phrased his letter extremely carefully, in order to answer unspoken questions about Stone's religion as well as his personality. It was designed to answer the stereotypical objections to Jews as being pushy and overtly ambitious.

Yet Stone's own ambition did assist his critics. He was most eager to become a member of the Harvard faculty and in the over-refined and snobbish academic atmosphere of Boston, may have seemed to be pushing too hard. He himself realized this. To scotch what must have been persistent rumours, he wrote to the president that he understood that his temporary position did not give him any 'colour of title to permanent tenure'. In the Harvard context, the combination of what was perceived to be over-ambition with Stone's Jewishness led to the rejection of his application and to his search for an academic appointment in England.

Here the record is clear. The same two factors weighed in the balance against him. He was refused post after post, some going to people with academic achievements blatantly inferior to his because of opinions about his personality and because of overt anti-Semitism. During the lengthy saga of the appointment of a professor of Law to Queen's University, Belfast, the pro-vice-chancellor wrote to Frankfurter to clear up contradictory opinions that had been received about Stone's personality. The records show that Frankfurter damned him with faint praise. He said that while he did not like Stone personally, finding him self-assured and 'too careful about his own career', he was not 'impossible to get on with'. Once

again, a subjective negative judgment from a man who had openly confessed his dislike.

One of Stone's referees was H. A. Holland of Trinity College, Cambridge. In 1938 Holland told Stone that he had felt 'honourably bound', in his words, to disclose Stone's religion in every report that he had written. He had done this while accepting that he might have been misinformed, for he would not have guessed that Stone was a Jew from his appearance. The damage done by passing on this irrelevant information in an England where anti-Semitism and appeasement with Germany were growing was incalculable.

Much later in his career, when he had been established at the University of Sydney for almost twenty five years, Stone accepted the prestigious position of Foundation Academic Director of the Truman Center for the Advancement of Peace in Jerusalem. With his grasp of international law in both intellectual and practical terms and with his unwavering support of Israel and wish to work for its enhancement, he was an ideal choice. Within two years, however, relations with the Board of Trustees had become acrimonious. As an example, the Board insisted on inserting a disclaimer in one of Stone's publications for the Center. The Board said that the paper, in which he gave his views on the programmes which should be run, represented Stone's "personal statement on the range of choices facing the planning authorities of the Center and does not necessarily reflect policies to be officially adopted". Less power than this no effective director of an institute can have'.

Stone felt that running the Center according to the whims of the mainly American trustees was irritating. Used to total academic freedom, he saw the petty restrictions and the constant meetings with both the Board and with officials of the Hebrew University as a barrier to his accomplishing necessary work.

More important in the breakdown of relations, however, was the fact that the American trustees wanted a less academic institution than that envisaged by Stone and the Hebrew University authorities. The funds which had been guaranteed to the Hebrew University were diverted to a totally American institution, in a way that led one of the Israeli trustees, an eminent judge of the Supreme Court, to leave one meeting because he would not be party to such a breach of trust.

Stone was outspoken about problems Israel was then facing and possibly insensitive to the fact that many Israelis did not welcome what they saw as criticism from outsiders. Not having committed himself to living and working in Israel on a permanent basis, Stone would have been seen by some Israelis as an outsider even though he was a committed Jew and Zionist. His initial four year appointment at the Truman Center was not renewed.

Unfortunately, at least to me as a graduate of this university, it is in the fight over Stone's appointment as Professor of Jurisprudence and International Law at the University of Sydney that irrational prejudice of several kinds showed itself most strongly against Stone. Some people who were associated with the university during the 1941 appointment controversy have taken the view that because there was smoke there must have been fire. But the balanced view of this disgraceful episode is that there was no fire and the smoke resulted from unqualified prejudice.

There was prejudice against Stone because he was appointed during wartime. Applicants who were overseas did not have the advantage of being personally interviewed. But appointments to other chairs within the university had been made without comment since 1939.

There was prejudice against Stone because he had not joined the New Zealand army and was therefore seen as a man who was trying to further his own career while others were on active service. But his joining the United Kingdom Officers' Emergency Reserve in England in 1937 and his rejection from the New Zealand overseas forces on medical grounds are fully documented by letters from these institutions.

There was prejudice against Stone because the jurisprudence he favoured sprang from American rather than English roots. His preference for the sociological approach of Pound over traditional analytical jurisprudence had been signalled to members of the Sydney legal profession when Stone wrote from New Zealand on the fiftieth anniversary of the University of Sydney Faculty of Law. Stone's brand of jurisprudence was alien to those raised in the English tradition. Some even confused sociological jurisprudence with socialism. In a conservative society, this was yet another supposed black mark against Stone.

But more importantly, and more regrettably, there was prejudice against Stone because of his religion. I believe that this operated within the university, throughout the legal profession and in the general community. As I have said, this attitude was strong and insidious though hard to document. It gave me great pleasure to discover that hard evidence of anti-Semitism was provided by the then Warden of St Paul's College, Canon Arthur Garnsey. His horror of the attitude that he discovered among leading members of the legal profession is documented in the biography written by his son and is seen in a less sanitized form in his papers. Garnsey believed that the war service issue, of which much was made in university circles, was used as a cover for anti-Semitism.

Religious discrimination was also rife in the legal profession, which then exerted immense influence over the university Senate. Some lawyers could not countenance the fact that a professor of law at the University of Sydney could be a Jew. Newspaper reports of the crisis confirm the pervading anti-Semitism in the community. Stone's behaviour throughout the appointment controversy cannot be faulted. Nevertheless, some academics remained hostile to him for years. Now that documentary evidence of this list of prejudices has been made public, it is hoped that Stone will be judged in university circles on his academic merit alone.

The final area where the Stone story needed to be reassessed was in what I have called his Jewish consciousness, in particular his writings on Israel. This weighing up was necessary for my own sense of balance. As I said in the biography,

To an extent, [Stone's] life reflected the structure imposed by the Jewish religious calendar. He observed all the major Jewish holidays and attended orthodox synagogue services throughout his life. He found both beauty and comfort in the ancient rituals and in the wisdom of the Jewish sages.

For those who were not anti-Semitic, it was not the religious aspect of his consciousness as a Jew that was contentious—it was the political. Stone had been a committed Zionist from an early age. In 1927 he published a pamphlet about the *numerous clauses* (restricted number) imposed in several European countries after the First World War to restrict the entry of Jews to universities, professions or public

office. Even after writing many closely argued legal texts, he still remained proud that his first published work had been on a Jewish subject.

Within months of arriving in Australia, he had done the unthinkable and had elected to fight publicly with Sir Isaac Isaacs over the Zionist question. Isaacs, our first Australian-born governor-general, was a far more secular Jew than Stone. Isaacs believed that the position of Jews in countries such as Australia would be seriously threatened by any attention drawn to, or action taken on behalf of, Jewish refugees. Taking as his title a phrase of the eminent American Jewish judge Louis Brandeis, Stone published a short but incisive polemic called *Stand Up and Be Counted*. He exposed the weak reasoning behind Isaacs' sentiments, which he countered with sound legal arguments. His courage in taking this stand against the revered figure of Isaacs demonstrates that principle always came first.

Throughout his life, he was a champion of Zionism and, after 1948, of the cause of Israel in international affairs. Between 1943 and 1967, this position was mirrored in the non-Jewish world. International sympathy was drawn to Israel because of her response to Arab aggression at this time. Stone's writings were important and influential. He wrote legal opinions, for the Jewish Agency in 1947 and for the state of Israel in 1980, both submitted to the United Nations. He wrote books assessing the work of the United Nations, as in the superbly argued *Aggression and World Order: A Critique of United Nations Theories of Aggression*. Numerous articles supporting Israeli positions were published, both in legal journals and in journals of ideas.

International lawyers, aware of Stone's commitment to Israel, took either of two attitudes towards these writings. The first took for granted that because Stone was a committed Zionist, his writings in this area must show special pleading and therefore be unsound. As rational an Australian scholar as Geoffrey Sawer said, about one of Stone's papers, that it was to 'some extent ... an essay in special pleading by a man with a profound interest in the fortunes of Israel'. To his credit, Sawer then 'entered into vigorous debate on the merits of Stone's arguments'. Other adherents to this viewpoint did not.

The other attitude, prevalent particularly among those scholars who knew Stone personally, was that it was unwise to argue with

him about Israel. To me this is disappointing. Any legal viewpoint is open to challenge, and it is by challenge that the point is refined. Through taking one of his classes in jurisprudence, I can attest to the fact that Stone held this view. Arguments in his class, in which he took part with gusto, were the most stimulating of my law course.

Throughout the ignoring of his ideas by some and the refusal to debate them by others, Stone continued to write about Israel's role in international affairs without criticism. He always pictured the Israeli side as the legally correct side. He held this view into the 1980s, when the rights and wrongs of specific situations in which Israel was involved became arguably less clear than they had been in the early years.

In the biography, I attempted my own weighing of Stone's totally committed point of view. His arguments in support of Israel, which were legally faultless, were drawn exclusively from formal nineteenth-century-based international law. I wrote that:

One late twentieth-century manner of approaching international law is to see it as part of a moral stream of time, in which the present generation owes a responsibility to generations of the future. In only one of his writings, and one not generally regarded as an academic paper, did Stone allude to this theme ...

One alternative to basing Israel's position on its legal status is to look at the problems in the region as they now exist and try and bring justice to the aid of solving them. Stone was better equipped than most international lawyers to address questions of justice between peoples but chose not to deal with the question in these terms.

In a review of my biography in the *Australian Jewish News* of 5 February 1993, Bill Rubinstein, Professor of Social and Economic History at Deakin University, detected in my writing 'just a hint of impatience' with Stone's consistent defence of Israel. Professor Rubinstein thought, in part, that I may well have failed 'to understand the mood, pervasive among most of Jewry at this time, that Israel was being continually judged by invidious and malign double standards ...' Indeed, being conscious of my own Jewish heritage, I was far from unaware of this pervasive attitude. This does not mean that I agreed with it. My weighing of Stone's work for Israel consisted in assessing the worth of his legal contribution to the

debate but also in raising the issue of whether, in the later years, other approaches may not have led to more just and practical solutions.

There is a final balance to the history. Stone was the recipient of many awards, for his writings in jurisprudence and international law as well as for his contribution to the intellectual and legal life of this country. He took great pleasure in such outside recognition, feeling that it was the objective proof of the worth of his contribution. Stone perceived such awards as public matters: the medals for his Order of the British Empire and Order of Australia are housed among his papers in the National Library.

What he failed to understand was that his most fitting memorial lies in his education of generations of students and in their exposure to his character, principles and methods of legal reasoning. While the memories of other teachers became dim, the impression left by Stone never faded. Such recollections brought the real Stone to life. Professor Edward McWhinney remembered that Stone wore two-tone brown and white shoes and occasionally green suits, and Neville Wran Q.C. that it was dangerous to remark outside class on international affairs as Stone's reply could last up to forty five minutes. Justice Elizabeth Evatt learned her life-long commitment to the process of making books while standing at a long table in Stone's house at weekends cutting and pasting text and footnotes to fit the printed page of one of his legal works.

A former student's letter to the *Sydney Morning Herald* after Stone's death summed up his teaching method with a combination of exasperation and affection:

Julius believed in plunging students into dialogue with him. The difficulty was that most of us never understood the dialogue. Whenever a flicker of insight lit these exchanges up, we would discover ourselves squirming on the horns of some agonising dilemma as he tried to make us choose between equally impossible options or find some non-existent alternative. Vale, Julius Stone, your old students salute you.

But it was in his shaping of legal thought that his paramount influence persists. In one way it is hard to pinpoint his authority in the development of law in this country. This is because when he first put forward his revolutionary jurisprudential theses, in *The*

Province and Function of Law in 1946, his ideas were so iconoclastic that they were not taken seriously. However, since that time their permeation into the manner of legal thought in Australia has not ceased. His way of assessing appellate judicial decisions has crept into mainstream legal reasoning. The chain of his influence is strong indeed and of growing importance in Australia as former students achieve significant positions in the legal world.

A headline in the *University of Sydney News* of 11 May 1993 read 'Don't attempt to fix everything—Professor Stone'. Professor Jonathan Stone, Challis Professor of Anatomy at this university, said that it was difficult to accept that the sweeping reforms that would seem to right the wrongs of the world could not be implemented. An understanding attitude to the troubles of the world should be maintained, while accepting doubt and change. Professor Julius Stone had had as one of his mottos a phrase of similar meaning, drawn from the *Ethics of the Fathers*:

It is not for you to complete the task, but neither are you free to desist from it.

This, after all, expresses an ultimate balance of purpose.