

**REVIEW ARTICLE\***

*Julius Stone: An Intellectual Life* by LEONIE STAR (Melbourne: Oxford University Press, Sydney University Press, 1992), pp i-xii + 1-300. Hardcover recommended retail price \$49.95. (ISBN 0 424 00174 8)

Julius Stone, although he was born in England and spent only slightly more than half his life in Australia, can lay claim to being one of this country's greatest writers, teachers and public figures in the law. He is an individual whose achievements, both intellectual and practical, prompt humbleness and humility in others. From an academic standpoint alone, one is often staggered by the quality and sheer physical enormity of his output; a feeling summed up by the comment of a leading contemporary legal philosopher, Neil MacCormick, that Stone's jurisprudential books are "works of massive scholarship. They'll not be done again".<sup>1</sup>

One of the benefits of this, the first full-length examination of Stone's life and writings, is that now the entire breadth of Stone's intellectual oeuvre can be conveniently and readily appreciated. Leonie Star has done the general reading public and, in particular, the scholars and students interested in legal theory and international law, a great service in accurately, objectively and, at times, not uncritically, synthesising and summarising a body of work that runs to some fifty or so books and hundreds of scholarly articles. Moreover, being an intellectual

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\* Robert Shelly, Lecturer in Law, University of New South Wales.

1 Cited by L. Star *Julius Stone: An Intellectual Life* (1992) p 242.

biography informed by the techniques of the 'history of ideas', these writings are often skilfully placed against a backdrop of biographical factors on the one hand, combined with other influential thinkers, writings and ideas, on the other. Thus, for example, the influence of the religious Jewish milieu into which he was born and always fervently identified with, in conjunction with his enduring experience of anti-Semitism on a personal and collective level, are used to flesh out his views on international law and, in particular, his reasoned yet passionate defences of the legitimacy of Israel's actions and its right to exist. And on a more subtle level, the influence of Judaism on the very structure of his thinking - ie the almost Talmudic method of exegesis evinced in his jurisprudential works - as well as his introduction of Jewish thinkers and ethical postulates into secular legal theory, is persuasively brought out.

In all, Star presents a very objective and non-committal catalogue raisonné of Stone's intellectual output. I say 'non-committal', because although it is clear that the author greatly admires her subject, she, throughout the book, never commits herself to any judgments about the enduring quality of any of Stone's works and his place in the scholar's pantheon. Of course, she catalogues the many awards and honours that he accumulated throughout his life. But, from the Spinozan point of view of *sub specie aeternitatis* that Stone often adopts in his theoretical writings, such things can, in the end only be mere blandishments (even if Stone himself in his vanity wouldn't have seen it this way). The most the author will commit herself to is that his theories were "important and revolutionary...at the time he expounded them".<sup>2</sup>

This non-committal attitude is, I believe, apposite in the type of biography here under consideration. Yet, I also think that in view of Julius Stone's aims, aspirations and achievements the question as to his true intellectual greatness - his pantheonic status - must eventually and unavoidably be canvassed. Particularly so, since as the spheres are aligned in the academic firmament today, Julius Stone's star is not burning particularly brightly.

Limiting ourselves to a consideration of his legal theoretical writings, there is no identifiable Julius Stone school of jurisprudence, nor in fact are any of his ideas at the centre, or even the periphery, of contemporary debates in this area. Compared to main stream legal philosophers such as Kelsen, Hart and Dworkin, his work is rarely treated in its own right. And when we consider that these latter three thinkers are themselves often perceived to be outmoded in the light of the plethora of new movements in legal theory stemming from structuralism, post-structuralism, hermeneutics, critical theory and autopoiesis, Stone's work looks to be almost irrelevant.

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2 *Ibid* p vii.

What's more, if we take his magnum opus, the trilogy of books *Lawyers and Legal Reasoning*, *Human Law and Human Justice* and the *Social Dimensions of Law and Justice*, as Leonie Star correctly remarks, it looked dated at the moment of its publication. In terms of style, its encyclopaedic breadth and textbookish thoroughness and turgidity was immediately out-of-sync with HLA Hart's almost misleadingly simple and approachable prose. And by the late 1970s it would look positively demodé against Dworkin's literary flourishes, and, *a fortiori*, Duncan Kennedy and company's ironic to the point of anarchic playfulness. While in terms of content, his heavy reliance on hundreds of insights from theories of logic, grammar and linguistics, pragmatics and argumentation theory, epistemology, theories of justice, micro and macro sociology, and political science, to name but a few, meant the hypotheses and conclusions derived therefrom depended for their efficacy largely on the fate of these theories. Thus, as one of Stone's critics points out, the narrow focus of his linguistic theory in *Lawyers and Legal Reasoning* and his failure to consider the ideas of Wittgenstein, Ryle and Husserl (not to mention Saussure and his school) greatly relativised the findings of this book.<sup>3</sup> Or even more damaging, his compendious treatment of theories of justice in *Human Law and Human Justice* became to a significant degree relegated to being purely of historical interest upon the publication John Rawls' *Theory of Justice* three years later in 1971. For, the effect (albeit not the intention) of Rawls' epochal work, was to shift the justice debate into domains not even contemplated by Stone: in particular, the liberalism versus communitarianism dispute that still rages today in many disciplines including that of legal theory. In short, his striving for comprehensiveness condemned this work to the fate of all encyclopaedias: they get very quickly outdated.

Of course, this is not to say that all or even any of the insights derived from the "new legal theory" will stand the test of time. Nor that Julius Stone's encyclopaedic project, and many of the insights formulated within it, are completely outdated or irrecoverable. But if there is an enduring kernel to Stone's jurisprudence and we are to recover it, someone has got to do for Stone what the Italian philosopher Benedetto Croce attempted to do for Hegel in the self-explanatory title of his book *What is Living and What is Dead in Hegel*. Perhaps the greatest value of Leonie Star's biography will be if it inspires a renewed interest in Stone sufficient for someone to feel warranted to undertake this important archaeological task.

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3 Robert Summers' review of *Lawyers and Legal Reasoning* cited by L Star; *ibid* p 175.