

IN MEMORY OF JULIUS STONE AO, QC

Julius Stone, one of the most eminent lawyers this country has ever seen, was born in Leeds, Yorkshire, on 7th July 1907, the son of poor Jewish refugees from what was then the Russian Empire. Despite the social, ethnic and financial discrimination which was prevalent in England before the Second World War, his outstanding qualities gained him scholarships, first at Oxford and subsequently at Harvard University. His first teaching position was as assistant Professor of Law at Harvard University from 1933 until 1936. In 1938 he accepted the position of Dean of the Law School at Auckland, from whence he came to occupy the Challis Chair in International Law and Jurisprudence at the University of Sydney in 1942, a position he continued to hold until his retirement in 1972.

It was during this period that he established his enormous international reputation as a scholar in the fields of International Law and Jurisprudence. His first major work: *The Province and Function of Law*, was published in 1946. This was rightly described by its author as "an act of revolt" for it took the student of that period beyond the then predominant Austinian theory and the various attempts made in the early Twentieth Century to modify or up-date that theory. His work highlighted the uncertainties of the post-war world, away from the abstract analysis of legal rights and duties to the relationship between power and submission to the law as it operates in modern society. To some critics this led to a lack of clarity, but they failed to appreciate that the law is not an abstract entity divorced from reality.

His jurisprudential work was subsequently expanded into the trilogy consisting of: *Legal System and Lawyers Reasonings*; *Human Law and Human Justice*, and *Social Dimensions of Law and Justice*. All of these works struggled with the dilemma which faced jurisprudence since Hitler and Stalin: Is there a middle way between the moral absolutism of medieval natural law theories and the legal amorality of the Nineteenth Century? Are there some values implicit in our liberal democratic society which the law must protect and maintain?

Nowhere has that dilemma been more clearly faced than in International Law where, unlike domestic law, there is little consensus on basic values. What consensus had developed in the Nineteenth Century when a small group of nations sharing the same Romano-Judaic background dominated the world, rapidly disappeared after 1945 when not only the "Western" nations split between different ideologies, but the Third World came to prominence without any special regard for a system of which it had largely been the victim. Above all this looms the terrible knowledge that since the 1950's mankind, for the first time, has the potential to destroy itself.

These problems were addressed by Professor Stone in his magisterial work on: Legal Controls of International Conflict, which was published in 1954. At a time when many still saw the United Nations as the saviour of mankind, he coldly pointed out its obvious deficiencies. At the same time, he did not denigrate that institution: even if it was powerless to avoid conflict between the super powers, it was useful as an instrument of international co-operation when and if that was seen as desirable between them. A strong defender of the State of Israel since before its foundation, Professor Stone had an immediate interest in the many conflicts of the Middle East. Those events raised the question of the definition of "aggression" and "self-defence", in particular whether a pre-emptive attack could be classified as self-defence and, if so, in what circumstances. Professor Stone dealt with this enormously difficult problem in his work on: Aggression and World Order, published in 1958.

Those publications were followed by many other works, amongst which are prominent: Quest for Survival, 1961; No Peace - No War in the Middle East, 1969; Approaches to the Notion of International Justice, 1969; Of Law and Nations, 1974; Conflict Through Consensus, 1977; and his last great work which sought to combine both strands of International Law and Jurisprudence: Visions of World Order - Between State Power and human Justice, 1984.