Chapter 6

Personality and Capacity: Lessons from Legal History

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What good fortune it was to be taught trusts and fiduciary law by Paul Finn, some 30 years ago at the Australian National University Law School. Paul was a charismatic and exacting lecturer, delivering big ideas and filigree detail with a resonant voice and a gift for phrase. He was an extraordinary role model for us budding lawyers trying to make sense of the Australian and English equity traditions. We could see for ourselves how it was that he knew so much, for at all hours of the working day his study door looking over the main faculty staircase would be open and he could be observed poring over legal texts, study lamp positioned low to illuminate the page, a picture *in chiaroscuro*, preparing to illuminate the law with his own thoughts and reactions. All of us who learned with Paul will want to thank him for his sterling teaching and intellectual companionship across the years.

One significant conversation passed between us at the end of my final year when Paul was my thesis supervisor. Paul was reflecting on unfinished business left over from his work on law and government in colonial Australia that had recently been published.[1] Much of the activity of colonial governments in the 19th century, he had discovered, involved administering land grants for both public infrastructure and private settlement. Then he added a reflection: since control of water gives command over the land, we need to know more about the legal definition of water rights and the

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1 PD Finn, *Law and Government in Colonial Australia* (Oxford University Press, 1987).