

A distinctive and moral legal mind

Obituary Few Australians have transformed both private and public law in such depth and breadth as Paul Finn, writes Tim Bonyhady.

1946–2023

Paul Finn was one of the stellar figures of Australian law – a person not just of local but also international consequence who shaped the law in many countries. His impact was immense, both as an academic and judge of the Federal Court.

Few Australians have explored – and transformed – the law in such depth and breadth, ranging across private and public law. Few have had such a sharp and prescient eye for what matters – whether integrity of government, fair dealing in commercial matters or enhancing the scope of native title. Few have been such inspiring teachers.

There are many individuals of great capacity who do good while thinking in

more or less conventional fashion. Finn was not one of them. How he thought, wrote and talked was utterly distinctive.

An early mark of his unusual approach to the law came when he was an undergraduate at the University of Queensland in the late 1960s. One summer holiday, he set himself the task of reading all the company and partnership cases in the *English Reports*, a series of 17th- and 18th-century cases. He did so not out of antiquarianism but because judges back then “enunciated moral and political principles”. That search for morality was fundamental to Finn’s approach to law, along with his ambition to Australianise our fundamental concepts and institutions.

Finn initially made his mark as one of the world’s great equity lawyers with his 1977 book *Fiduciary Obligations*,



A sharp and prescient eye: Paul Finn outside the UK Privy Council in 2015.

exploring our duty to act in the best interests of others. It is now a cliché that this book is field-defining.

Sarah Worthington, until recently Cambridge’s Downing Professor of the Laws of England, has provided a distinctive measure of how much this book was wanted and needed. While she was studying in Brisbane and Cambridge, she wanted to read *Fiduciary Obligations* but the book was not in the

university libraries. The librarians revealed that it “disappeared” every year and every year it was replaced.

Yet even as *Fiduciary Obligations* appeared, and disappeared, Finn was making a mark in public law with articles on official misconduct and the liability of public officials – issues that attracted ever more of his attention while a professor at the ANU.

In 1995, the Keating government

appointed him to the Federal Court where, over 17 years, he delivered landmark judgments about trusts, fiduciary duties, directors’ duties, government contracting, the public service, freedom of political communication, the detaining of refugees, native title and much else.

One mark of how Finn treated those whose came before him is the comment of an Iranian incarcerated in the Baxter Detention Centre in Port Augusta: “It does not matter to me if I win or lose, as I sense that the judge is a spiritual man who treated me with such respect that he will do what is right.”

I first encountered Finn in 1979 as a student. I was four years into my degree at the ANU. Many of my law teachers were capable. Some were models of clarity. Finn, who did not so much lecture as declaim, perhaps shaped by the Shakespeare Society he was part of in Cambridge, was the first, and one of just two, who was out of the box. I think I recognised then that Finn had one of the most exceptional, prodigious intelligences I would encounter.

Other students also found him inspirational. Joshua Getzler, now a professor in Oxford, has written of how “at all hours of the working day his study door looking over the main faculty staircase would be open and he could be observed pouring over legal texts, study lamp positioned low to illuminate the page, preparing to illuminate the law with his own thoughts and reactions”.

So too at the University of Queensland did Gary Sturgess, who went on to become the NSW cabinet secretary under Nick Greiner. When Sturgess was in Finn's equity class, Finn devoted part of a lecture to public trust, corruption and conflict of interest. That bore extraordinary fruit a decade later when Sturgess became the architect of ICAC.

Richard Ackland has observed: "You can see Finn's presence in one of the essential provisions of the ICAC legislation, section 8 dealing with what con-

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Iranian asylum seeker on Paul Finn

stitutes 'corrupt conduct': any conduct of a public official that 'constitutes or involves a breach of public trust'."

Finn ran, he kayaked, above all he walked. He walked to think, to sharpen his ideas about the law. He liked company on these walks but he talked most of the time, preparing to write with an awkward left hand. He needed a fountain-pen to think too. His desk was free of a keyboard.

Finn was a joy to be with. Michael Barker, one of Finn's colleagues at the

ANU, who became a fellow justice of the Federal Court, recalls: "Paul was always a wonderful dinner host, an excellent lunch companion, a good person to do a winery crawl with, and possibly the consummate end-of-the-day, let's-share-a-scotch-and-yarn-about-who-has-done-what-lately friend. We avoided calumny, mostly. Sport figured. Water and forests too. Sicily - especially Cefalu - was often remembered.

"But if I really wanted to see Finn in vintage action I would simply ask him, again, where he stood on compulsory voting. (Actually, over the decades I think he became more accepting of the Australian rule.)"

Finn looked up to Sir Anthony Mason, long chief justice of Australia's High Court. Among his contemporaries, he particularly admired the doyen of British property lawyers, Kevin Gray of Cambridge, and Ross Cranston, a fellow Queenslander, who became solicitor-general for England and Wales, then a judge of its High Court, and is Finn's biographer. Finn's pre-eminent student is Australia's next chief justice, Stephen Gageler.

Finn sometimes invoked Robert Frost's line about a road less travelled. That was his life, an extraordinary one in which his brilliance, generosity and moral compass made Australia a better place. ■■■

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Emeritus Professor Tim Bonyhady edited the 2016 book Finn's Law: An Australian Justice.