

**UNIVERSITY OF MELBOURNE, FACULTY OF ARTS**  
**DEAN'S LECTURE: "THE HUMANITIES AND THE RULE OF LAW"**

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Ladies and gentlemen. I am grateful for the opportunity to give tonight's lecture as part of the Dean's Series of Lectures for 2013. Despite that gratitude an immediate confession is in order.

I was pressed to nominate my subject for tonight not long after a recent long flight from the United States. I temporarily forgot that excellent Chinese proverb: "He [in my case 'she'] who rides a tiger is afraid to dismount".

Having just returned from that land of great friendliness and an irrepressible willingness to treat the impossible as possible, *pace* the recent events in relation to public debt, I nominated as my topic "The humanities and the rule of law". Regrettably, I did not pause to think how many of my betters have chosen to speak publicly on one or the other, but not of both.

As the need to put pen to paper grew, so did my gloom at the prospect of failing to acquit the large task I had set myself. My spirits lifted when I came across a Renaissance scholar, Andrea Alciato, who lived from 1492 to 1550. As a humanist reformer of jurisprudence, he produced 12 books which he called "Asides from the law" devoted to the subject of explaining words and references

in legal texts by reference to works on language, literature and history<sup>1</sup>. How delightful, I thought; there will be some inspiration there. Then, I checked Chapter 24 in Book 5 of the 12 book set in which he was describing, by which I mean criticising, historians. He said<sup>2</sup>:

"it is nothing new for authors in the humanities to make mistakes, when they try to jump into other disciplines, especially legal ones; the proverbial verse is proved true which says 'Let everyone practise the craft that he knows.'"

In the less fastidious circumstances of the modern corporate world, the cognate injunction is to "stick to your knitting", an expression I have heard in courts on more than one occasion. I must tread carefully.

Things got worse when I recollected what the poet W H Auden said about the law in a poem written in New York in September 1939 entitled "Law Like Love". I will only read the section which reveals some of the tension with "the tiger" I am "riding" tonight:

"Law, says the judge as he looks down his nose,  
speaking clearly and most severely,  
Law is as I've told you before,  
Law is as you know, I suppose,  
Law is but let me explain it once more,  
Law is The Law."

This is part of a much longer poem which concludes that love, like law, defies succinct description and that, despite its fugitive qualities, it is indispensable.

Doubtless the shadows were long when Auden was writing in September 1939. General Franco had triumphed with the fall of Madrid, Mussolini had invaded Albania and Hitler had invaded Poland on the first of the month. World War II commenced. At some point James Joyce published *Finnegans Wake* and Henry Miller published *The Tropic of Cancer*. W B Yeats had died in January, as Auden recalled in a poem, and Sigmund Freud died in September. Auden again responded with a poem.

Auden wrote one of his most famous poems, indeed the first poem of World War II, on the first of September that year<sup>3</sup>:

"I sit in one of the dives  
On Fifty-Second Street

Uncertain and afraid  
As the clever hopes expire  
Of a low dishonest decade."

While Auden came to deprecate the poem, the Russian (later American) poet Joseph Brodsky wrote a critique defending the all too human compound of shame and stoicism.

As the American critic Harold Bloom has observed, poets write to each other across the decades and even centuries<sup>4</sup>. So do philosophers: Aristotle to Plato, Locke to Descartes, and certainly Foucault to Nietzsche. In his "Lament for the Makers", the 15th century Scots poet William Dunbar contemplates his mortality by remembering fellow poets who have gone before him. This technique is used by the Melbourne poet Vincent Buckley in his

poem of the same name, in which, after listing each poet's frailties and triumphs, there comes the refrain:

"Ah, in the white noon.  
Who stood so firm as they?"

When Auden caricatured the judge in the poem "Law Like Love", he was writing in a sturdy and long tradition of poets and other writers caricaturing or criticising lawyers — think of Dante and the canon lawyers in the *Paradiso* or Shakespeare's *Hamlet* and the speech about "the whips and scorns of time" or John Donne's contempt for the figure Cocus in "Satyre II". Cocus had become a lawyer after being "a scarce poet" after which:

"... he throwes,  
Like nets, or lime-twigs, wheresoever he goes,  
His title of Barrister, on every wench,  
and woos in language of Pleas, and Bench:"

Shades of the Rake. Or, nearer to us in time, think of Dickens' depiction of the Chancery lawyers in *Bleak House*.

Leave Auden for a moment and compare his imagined judge's description of the law with a description of the work of the courts by an actual judge, a person of great subtlety, who incidentally was taught Classics at this great University. Before I read the judge's description of the work of the courts, I need to refer to a Latin maxim. The maxim is about courts of law: *res iudicata pro veritate accipitur*. It can be translated as: a thing adjudged is accepted for the truth.

In a famous Australian case, colloquially called the *Bank Nationalisation Case*, the judge whom I mention, Sir Owen Dixon, referred to that maxim. He said<sup>5</sup>:

"There are few, if any, questions of fact that courts cannot undertake to inquire into. In fact it may be said that under the maxim *res iudicata pro veritate accipitur* courts have an advantage over other seekers after truth. For by their judgment they can reduce to legal certainty questions to which no other conclusive answer can be given."

If, before I read that passage, I had been asked to nominate something that Sir Owen Dixon, a Chief Justice of the High Court born in 1886, and Michel Foucault, the famed French philosopher born in 1926, have in common, I would have been stumped for an answer. However, they both meditated upon the meaning of truth at a not dissimilar time in human history, about which I will say more later.

With the words of a poet and a judge ringing in my ears, and treating Foucault and thinkers like him as a kind of Greek chorus in the background, where should I take a speech tonight about humanities and the rule of law?

I could repeat and build upon what the 19th century figure Cardinal John Henry Newman said in "The Idea of a University". He sought to reinvigorate an earlier idea that a liberal education pursued for its own sake was the best thing for young minds. He was reacting to a utilitarian *zeitgeist* when he contended, not without irony, that a liberal education developed particularly useful qualities of mind. But the curriculum which attracted his nostalgia

— which might have included rhetoric and theology as essential — no longer exists. For that reason, Cardinal Newman's voice is a voice from a long way off. It is none the worse for that, but I think you will be more than familiar with the idea that, in today's context, a liberal education has a distinct value. So I will continue on the footing that we share that basic premise and that it requires no repetition or reinforcement from me.

Also, I do not want to speak in a minatory or plangent way about what is sometimes referred to as the canon of Western civilization, and I have no desire to engage in elegiac ruminations about how the humanities were taught "in my day" as it were. Let me hastily add, I regularly consult "The Great Books Scheme" in the epilogue to van Doren's work, *Reforming Education: The Opening of the American Mind*, which is conveniently to be found in Norman Davies' *Europe: A History* on page 1230<sup>6</sup>. However, the project stops in 1977 — so there is no mention of David Foster Wallace's *Infinite Jest* and many other examples of the great books written in the lifetime of the students among us.

In truth, I am also avoiding those obvious strategies for a deeper reason, because too much is at stake and too much has happened in the humanities since the 1960s (some good, some bad). Broadly stated, too much managerialism, on the one hand, and self-referential excess on the other — both enemies of the mind, of truth and of harmony — have had a lamentable effect on the humanities and their prestige. In the American academy this has been referred to as the "politicizing" of the humanities and I will come back to that.

For this reason I endorse the efforts of the Dean, the Deputy Dean, and the Melbourne Humanities Foundation, chaired by Allan Myers, in fostering the renewal we need to have.

I now wish to touch on three matters, chosen because of the links between them and because of what I see as their contemporary importance: (1) the value of the humanities today; (2) the rule of law and its continuities; and (3) truth and justice.

Recently, the New York Times<sup>7</sup> reported that the authors of a study published by the journal *Science* had found that reading literary fiction — as opposed to popular fiction or serious non-fiction — leads people to perform better on tests which measure empathy and social perception. This seems a long way from the theories of the mind of Descartes, or Locke's idea of the mind as a *tabula rasa*, shaped by experience. In any event, the article was republished in *The Saturday Age*, accompanied by a lovely photograph of Marilyn Monroe reading. The caption below described her as "an avid reader of literary fiction". This was evident when Marilyn Monroe became engaged to Arthur Miller, the famous playwright and intellectual. The American public was transfixed. At a joint press conference, one impertinent young reporter jostled his way up to the front of the crowd. Pushing a microphone at Marilyn Monroe, he asked: "Miss Monroe, what do you think of sex?" She thought for a moment, then said: "I think it's here to stay."

With a similar degree of aplomb, Clive James entitled his review of Dan Brown's *The Da Vinci Code* "The heroic absurdity of

Dan Brown", with the subtitle "The less his talent, the more amazing his achievement"<sup>8</sup>. James opened the review with the words:

"As a believer in the enjoyably awful, I would recommend this book wholeheartedly if I could. But it is mainly just awful. Nevertheless it is still almost worth reading."

James adds a couple of priceless asides. The first aside: "If Dan Brown's all-time bestseller had been about the Duke of Edinburgh, it would have been called "The Of Edinburgh Code". The second aside is in relation to Brown's solecism "Pandora is out of her box". This provokes James' newsflash to Brown: "(Dan, she was never in it.)".

After the severity of the decline in the prestige of the humanities, it is somehow not enough just to speak of the humanities as allowing one to cultivate the mind to its fullest potential or to point to the value of applying reason to important questions. After all, the disciplines of the sciences and mathematics have unlocked much of tremendous interest about the Universe and our place in it, including the human genome, and have showed that the humanities have no monopoly on the enjoyment of paradox or on the creative powers of doubt.

The poet Seamus Heaney was the recipient of the Nobel Prize for Literature in 1995. In his earlier inaugural address as the Oxford Professor of Poetry in 1989, he spoke of "The Redress of Poetry"<sup>9</sup>. Like many words in English, the word "redress" is heavily freighted.



Heaney starts by explaining the common impulse to show how poetry's existence as art relates to our existence as citizens of society — that is the temptation to show how poetry (you can substitute any of the subjects of the humanities) is "of present use". He saw behind the common defences of poetry, at any number of removes, Plato's world of ideal forms and poetry's claim within the *polis*<sup>10</sup>.

That leads Heaney to the statement that "[the] poetic imagination seeks to redress whatever is wrong or exacerbating in the prevailing conditions."<sup>11</sup> He speaks of the "spiritual stamina" of poets working in difficult, even extreme conditions — he mentions, in the 20th century, poets from Wilfred Owen to Irina Ratushinskaya, and particularly includes Osip Mandelstam and Czeslaw Milosz<sup>12</sup>. One could add Anna Akhmatova and indeed Joseph Brodsky. When some Russian poets — Bulat Okudzhava and Andrei Voznesensky, as I recall — read their poetry in Melbourne in this same Public Lecture Theatre over 40 years ago, we students were sternly repelled from asking them a single question by their official translator. She launched herself into a southern Republican style of filibuster at the first sign of anti-Soviet rumblings in the audience, particularly when a question was asked in fluent Russian by one of our friends. You will therefore appreciate the joy of discovering, in a recently published memoir, a description of Susan Sontag and Joseph Brodsky, together with Sontag's son and his girlfriend, squeezing themselves into an open-topped Volkswagen, the better to talk and smoke as they drove around the streets of New York — a perfect image of

freedom. It was Auden who helped Brodsky settle in New York in the early 1970s.

In proclaiming and correcting injustices, Heaney says: "the redress of poetry comes to represent something like an exercise of the virtue of hope as it is understood by Václav Havel."<sup>13</sup> Indeed, Heaney would apply what Havel said about hope to poetry and you and I can, I think, apply what Havel said about hope to what is studied in the humanities generally. Havel said<sup>14</sup>:

"[Hope is] a state of mind, not a state of the world. Either we have hope within us or we don't; it is a dimension of the soul, and it's not essentially dependent on some particular observation of the world or estimate of the situation ... It is an orientation of the spirit, an orientation of the heart; it transcends the world that is immediately experienced, and is anchored somewhere beyond its horizons. I don't think you can explain it as a mere derivative of something here, of some movement, or of some favourable signs in the world. I feel that its deepest roots are in the transcendental, just as the roots of human responsibility are ... It is not the conviction that something will turn out well, but the certainty that something makes sense, regardless of how it turns out."

Heaney does not confine himself to considering poetry as "redress" in the sense of adjusting and correcting imbalances. He speaks of a poet's mastery, not only of actual conditions, but also of poetry's command of fictions, of glimpsed alternatives – this is the "redress of poetry" in the restorative sense. Poetry for Heaney is "a source of truth and at the same time a vehicle of harmony"<sup>15</sup>, the poet is "both socially responsible and creatively free"<sup>16</sup>. Whatever the language of the current curriculum, Classics, Literature, History, Art History and Philosophy and their progeny –

Creative Writing, Politics and International Studies — can be said to be "sources of truth" and "vehicles of harmony". We should leave those who do not accept this to the viewing of reality television.

I now turn to history. Let me take Foucault as a representative example of agents of change in the humanities from the 1960s onwards. Foucault was not interested in smooth evolutionary accounts of history. He was interested in what he termed discourses, which threw up ruptures and discontinuities. He spoke of the "episteme" of different historical periods and seemed to mean the structure of what underlay "received" historical understandings of a particular period. He said<sup>17</sup>:

"We want historians to confirm our belief that the present rests upon profound intentions and immutable necessities. But the true historical sense confirms our existence among countless lost events, without a landmark or point of reference."

Consistently with that view of history, he said of truth<sup>18</sup>:

"[e]ach society has its regime of truth, its 'general politics' of truth: that is, the types of discourse which it accepts and makes function as true; the mechanisms and instances which enable one to distinguish true and false statements, the means by which each is sanctioned; the techniques and procedures accorded value in the acquisition of truth; the status of those who are charged with saying what counts as true."

He emphasised that when referring to truth he was not referring to scientific facts to be discovered and accepted; rather

he said he was speaking about "truth" as a "system of ordered procedures for the production, regulation, distribution, circulation, and operation of statements."<sup>19</sup> He described his intellectual enterprise as being about "detaching the power of truth from the forms of hegemony, social, economic, and cultural, within which it operates at the present time."<sup>20</sup>

This difficult and true point is manifested by a consideration of the American Declaration of Independence signed on 4 July 1776. Following Locke and the Bible in its opening recital of what it held to be self-evident truths, it declared:

"that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness."

That enlightened democratic enthusiasm did not at the time include slaves. The movement for the abolition of slavery, with which the Quaker William Wilberforce is closely associated, had a long and difficult subsequent history over many decades and on both side of the Atlantic.

Foucault seemed to regard the law, at least in part, as an instrument of repressive social cohesion because he thought the law insufficiently tolerates ways of living — that is, expressions of human autonomy — which pose no genuine threat to civil peace or to the good of other members of the community.

Certainly Foucault was pointing to the way in which many people and groups who, as he magisterially demonstrated, are part

of history were excluded by what the Marxist historian E P Thompson trenchantly called "the enormous condescension of posterity"<sup>21</sup>.

This is a highly polemical way of practising history. It has forced liberal views into sharp focus. It has led to an opening up of the curriculum in the humanities, and welcome study of long overdue topics, including the place of women and indigenous Australians in our nation's narrative. Over time, it has also led to reshaping ideas of equality in the law.

The historian David Cannadine, a visitor to this University during the 2012 Festival of Ideas, sees the current practice of history as being much enlivened by the insights of those like Foucault who took a highly strategic and polemical approach to the practice of history, which, as mentioned, is sometimes referred to as the "politicizing" of the humanities in the academy in America<sup>22</sup>. In Cannadine's *Making History Now and Then*, published in 2008, he said<sup>23</sup>:

"[H]istory makes plain the complexity and contingency of human affairs and the range and variety of human experience; it enjoins suspicion of simplistic analysis, simplistic explanation, and simplistic prescription; it teaches proportion, perspective, reflectiveness, breadth of view, tolerance of differing opinions, and thus a greater sense of self-knowledge."

As with Havel's meditation on hope, you could apply those words to all the subject matter of the humanities.

Let me turn next to the rule of law and its continuities. This is a subject which has been written of frequently. I mention two cardinal aspects of our common law system. First, a great deal of our law and the rights we take for granted were developed in a constitutional framework where the judges stood between the individual and the State. The Civil Code of France was produced by a committee over which Napoleon presided.

Secondly, the common law has a broad family of sources, both in time and character. The *modus operandi* of the common law is incremental and gradual change made through the decisions of judges in the courts. A common law judge faced with a novel problem looks back. If there is no established legal principle applicable to a novel problem, there are well-understood techniques which might yield a solution. Overarching the application and development of principles is the precept that a judge should follow a standard of reasoning which is understood by all, including the other arms of government, and which does not reflect idiosyncratic or merely personal views of justice<sup>24</sup>.

In his last book, *The Rule of Law*, Lord Bingham, the senior British law lord of his day, remarked that the constitutional scholar Professor A V Dicey is generally given credit for coining the expression "the rule of law" in the late 19th century<sup>25</sup>. However, the expression, or at least the idea captured by the expression, has been traced back by at least one author to Aristotle<sup>26</sup>. Dicey explained that he broadly meant three things when referring to the rule of law: (1) no-one could be punished except for a breach of the law established in a court; (2) no-one was above the law; and

(3) a "spirit of legality" was a special and pervasive attribute of British institutions<sup>27</sup>.

Within that broad context, let me take, as an example of a continuity under the rule of law, one right which we take for granted, and say something of its history.

Let me suppose you have watched the Australian film "The Castle". Whether you have or you haven't, the gist is the stuff of a very good story — the little guy hero is being edged out of the modest home he shares with his family by a bigger, more powerful entity. A barrister saves the day in the High Court with a submission based on a value we all share: "Your Honours, this man's home is his castle". What is the provenance of that statement, that shared value?

In the early common law of Britain, search warrants of private property seemed to be unknown. They started life as warrants directed to searching for stolen property. Later, the Court of Star Chamber commenced a practice of issuing general search warrants to search for libellous material. Then, at a certain point in the constitutional struggles of the late 17th century and early 18th century, the Secretary of State took up the practice of issuing general search warrants for the purpose of ferretting out seditious material, or at least material revealing radical politics. However, the common law courts would not permit general warrants.

In *Bostock v Saunders*<sup>28</sup>, a case reported in 1773, the then Chief Justice identified the precautions the common law courts

insisted upon with search warrants. He commenced with the statement: "Every man's house is his castle."<sup>29</sup> In doing so, he was repeating the substance of what Prime Minister William Pitt, the First Earl of Chatham, had said in the House of Commons on the debate<sup>30</sup> following a trio of common law cases in which the common law judges had found general search warrants to be illegal<sup>31</sup>.

Often courts these days have occasion to consider the validity of search warrants, controlled now by statutory codes. Behind those codes lie the historical developments I describe, which exemplify one continuity in the rule of law with which we all identify: protection of the freedom from arbitrary search.

In the United Kingdom in 2004, the judges of the highest court considered another right we take for granted, the right to personal liberty<sup>32</sup>. That right, expressed in the negative, involves a freedom from arbitrary detention. In the course of describing that freedom, Lord Bingham referred to the trajectory of what he described as "the long libertarian tradition of English law, dating back to chapter 39 of Magna Carta 1215, given effect in the ancient remedy of habeas corpus, declared in the Petition of Right 1628, upheld in a series of landmark decisions down the centuries"<sup>33</sup> and now embodied in Art 5 of the European Convention on Human Rights, being the article containing the necessary guarantees<sup>34</sup>:

"for securing the right of individuals in a democracy to be free from arbitrary detention at the hands of the authorities".



Lord Bingham's account shows the extent to which a contemporary legal problem may be illuminated by a consideration of the past. An historian might say: "Where we are now is best understood by where we have been". Seamus Heaney has described the European Convention as laying down the "gold standard" in relation to human rights<sup>35</sup>.

It has been said that the Australian Constitution assumes, or rests on, the rule of law<sup>36</sup> and that Chapter III of our Constitution, which concerns judicial power, gives practical effect to that assumption<sup>37</sup>. So much has been demonstrated in many cases involving liberties which have a long history.

The third matter I touch upon is truth and justice. The rule of law is often spoken of as the guarantee of a just society. However, Seamus Heaney's point about poetry's place in the *polis* can be introduced here because the humanities are less directly, but just as potently, a guarantee in respect of a just society. The great novels of the 19th century, to which the backdrop is the three Great Reform Acts, are full of examples of justice and its effect on a life of authenticity.

Furthermore, an understanding and toleration of complexity in human affairs, Havel's appreciation of human responsibility, and Cannadine's remarks about a greater sense of self-knowledge, must all oil the smooth workings of a civil democratic society.

Under our political system an elected government can alter the law without a civil war erupting. Recent events in Egypt, Syria

and Hungary demonstrate that democracy is about more than popular elections. The personal skills which an exposure to the humanities inculcate feed into the smooth workings of our system of responsible and representative government. This is not a snobbish claim either that the humanities have a monopoly on virtue or that the Hellenic twinning of knowledge and virtue should rule all aspects of our lives. Obviously we live in a society dependent on specialist knowledge.

Justice is, however, also a form of truth. Courts command the authority which Auden's choleric judge did not bother to explain, only so long as the laws they administer reflect the polity and the polity's sense that punishments and restitutions, administered by the law, are just and fair. Sir Owen Dixon's realistic and severe account of the truth which can be achieved in a courtroom would, I suspect, have commanded Foucault's respect.

In a similar vein, many of you will know that, this September, Italy has been riveted by an exchange of views in *la Repubblica* between Dr Eugenio Scalfari, a former member of Parliament and currently a leading editor and avowed atheist, and Pope Francis. In the course of that exchange, in a "Letter" published in *la Repubblica*, His Holiness wrote<sup>38</sup>:

"To begin with, I would not speak about 'absolute' truths, even for believers, in the sense that absolute is that which is disconnected and bereft of all relationship ... Therefore, truth is a relationship. As such each one of us receives the truth and expresses it from within, that is to say, according to one's own circumstances, culture and situation in life".

The manifold views of truth which I have quoted tonight all show that the humanities are to be valued, not because they are uplifting, but because they reveal and encourage adequate, realistic and restorative responses to the conditions of life. The links between the humanities and the rule of law can best be demonstrated by examples.

Who could forget John Milton urging the government of his day not to censor the press, or dilute freedom of speech, even in time of civil war<sup>39</sup>:

"Lords and Commons of England, consider what Nation it is whereof ye are, and whereof ye are the governours".

Until recently, when an accused person was put on trial in Victoria, the jury was instructed about its task in the same cadences as Milton used.

Lighting next on one of my favourite, but less well-known, examples in the other direction, Justice Kitto of the High Court described the application of complicated legislation to an industrial design in the following words<sup>40</sup>:

"I cannot say that the present case is any exception to the rule that the eye, like the heart according to Pascal, has its reasons that reason does not know."

Speaking more generally, to exercise authority over human affairs (as do all separate branches of government) requires habits of mind which tolerate the competing conceptions of the ways in

which the present is illuminated by the past, and different ways of achieving fairness and equality. The achievement of these ends in the exercise of political and judicial power is a deep rooted, yet protean, human responsibility.

In all I have said about the value of the humanities, the rule of law and its continuities, and truth and justice, my intended emphasis has been on our culture and the values embedded in it. We must depend on those values and their transmission if we are to play a full part in whatever mysterious project of human renewal occurs on our watch.

As I began with a confession, I will finish with an apology. There has, perhaps, been a little too much free association in what I have said tonight. Certainly complicated topics have been oversimplified. My only plea in mitigation is that a defence of the values embedded in our culture is an individual as well as a collective effort, and we must all do the best we can in the time we have, whatever the forum in which we have a voice.

The novelist Jonathan Franzen recently complained about Twitter and social media more generally. He is reported as saying<sup>41</sup>:

"The flip side of this hegemonic crowd of the social media is that I think people who don't fit into it feel even more alienated".

Let me try to "fit in" with a conclusion particularly aimed at the students present. If I were attempting to state in just a few

characters what the humanities are truly concerned with, I would be drawn to Vergil's famous words — *Sunt lacrimae rerum* — often translated as "there are tears in things". In their way, the humanities seek to comprehend and, in some respects, to assuage these tears. The rule of law seeks an analogous end, but through justice.

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<sup>1</sup> See Drysdall, "Alciato and the Grammarians: The Law and the Humanities in the *Parergon iuris libri duodecim*", (2003) 56(3) *Renaissance Quarterly* 695 at 695.

<sup>2</sup> Quoted in Drysdall, "Alciato and the Grammarians: The Law and the Humanities in the *Parergon iuris libri duodecim*", (2003) 56(3) *Renaissance Quarterly* 695 at 712.

<sup>3</sup> Quoted in Davenport-Hines, *Auden*, (1995) at 199.

<sup>4</sup> See Bloom, *The Western Canon*, (1994) at 11-12.

<sup>5</sup> *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 340; [1948] HCA 7.

<sup>6</sup> Davies, *Europe: A History*, (1998) at 1230.

<sup>7</sup> Belluck, "For Better Social Skills, Scientists Recommend a Little Chekhov", *New York Times*, 3 October 2013.

<sup>8</sup> James, "The heroic absurdity of Dan Brown", *Prospect*, 11 July 2013.

<sup>9</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1.

<sup>10</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1 at 1.

<sup>11</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1 at 1.

<sup>12</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1 at 4.

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- <sup>13</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1 at 4.
- <sup>14</sup> Heaney, "The Redress of Poetry", in Heaney, *The Redress of Poetry*, (1996) 1 at 4-5.
- <sup>15</sup> Heaney, "Frontiers of Writing", in Heaney, *The Redress of Poetry*, (1996) 186 at 193.
- <sup>16</sup> Heaney, "Frontiers of Writing", in Heaney, *The Redress of Poetry*, (1996) 186 at 193.
- <sup>17</sup> Foucault, "Nietzsche, Genealogy, History", in Rabinow (ed), *The Foucault Reader*, (1984) 76 at 89.
- <sup>18</sup> Foucault, "Truth and Power", in Rabinow (ed), *The Foucault Reader*, (1984) 51 at 73.
- <sup>19</sup> Foucault, "Truth and Power", in Rabinow (ed), *The Foucault Reader*, (1984) 51 at 74.
- <sup>20</sup> Foucault, "Truth and Power", in Rabinow (ed), *The Foucault Reader*, (1984) 51 at 75.
- <sup>21</sup> Thompson, *The Making of the English Working Class*, (1964) at 12.
- <sup>22</sup> Levin, "The Questions That Matter", in Levin, *The Worth of the University*, (2013) at 61.
- <sup>23</sup> David Cannadine, *Making History Now and Then: Discoveries, Controversies and Explorations*, (2008) at 5.
- <sup>24</sup> *Zheng v Cai* (2009) 239 CLR 446 at 455 [28]; [2009] HCA 52; *Thomas v Mowbray* (2007) 233 CLR 307 at 481 [523]; [2007] HCA 33.
- <sup>25</sup> Bingham, *The Rule of Law*, (2011) at 3.
- <sup>26</sup> Tamanata, *On the Rule of Law*, (2004) at pp 8-9.
- <sup>27</sup> See Dicey, *An Introduction to the Study of the Law of the Constitution*, 9th ed (1885) at 188, 193, 195.
- <sup>28</sup> (1773) 2 Wm BI 912 [96 ER 539].

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29 (1773) 2 Wm BI 912 at 914 [96 ER 539 at 540] per De Grey CJ.

30 See Trone, Crawford and Smith, *Search and Seizure in Australia and New Zealand*, (1996), Ch 3.

31 *New South Wales v Corbett* (2007) 230 CLR 606 at 629 [94]; [2007] HCA 32.

32 *A v Secretary of State for the Home Department* [2005] 2 AC 68.

33 *A v Secretary of State for the Home Department* [2005] 2 AC 68 at 107 [36].

34 *Kurt v Turkey* (1998) 27 EHRR 373 at [122], quoted by Lord Bingham in *A v Secretary of State for the Home Department* [2005] 2 AC 68 at 107 [36].

35 See Brennan, "Maintaining the UN's moral gold standard", (2008) 18(25) *Eureka Street* (10 December 2008).

36 *Australian Communist Party v The Commonwealth* (1951) 83 CLR 1 at 193; [1951] HCA 5. See also *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at 492 [31]; [2003] HCA 2.

37 *Thomas v Mowbray* (2007) 233 CLR 307 at 342 [61].

38 Pope Francis, "Letter to a Non-Believer", The Vatican, 4 September 2013, available at: <[http://www.vatican.va/holy\\_father/francesco/letters/2013/documents/papa-francesco\\_20130911\\_eugenio-scalfari\\_en.html](http://www.vatican.va/holy_father/francesco/letters/2013/documents/papa-francesco_20130911_eugenio-scalfari_en.html)> .

39 Milton, "For the Liberty of unlicenc'd Printing", *Areopagitica; A Speech of Mr John Milton*, delivered to the Parliament of England (1644).

40 *Re Wolanski's Registered Design* (1953) 88 CLR 278 at 281; [1953] HCA 72.

41 Pavia, "Blindfolded, he can see clearly now", *The Australian*, 17 October 2013 at 15.