Durham University

Insights

Institute *of* Advanced Study

Two Conceptions of Constitutional Rights

Peter Cane

Volume 8 **2015** **Number 3**

ISSN 1756-2074

About Insights

Insights captures the ideas and work-in-progress of the Fellows of the Institute of Advanced Study at Durham University. Up to twenty distinguished and 'fast-track' Fellows reside at the IAS in any academic year. They are world-class scholars who come to Durham to participate in a variety of events around a core inter-disciplinary theme, which changes from year to year. Each theme inspires a new series of *Insights*, and these are listed in the inside back cover of each issue. These short papers take the form of thought experiments, summaries of research findings, theoretical statements, original reviews, and occasionally more fully worked treatises. Every fellow who visits the IAS is asked to write for this series. The Directors of the IAS – Veronica Strang, Rob Barton, Barbara Graziosi and Martin Ward – also invite submissions from others involved in the themes, events and activities of the IAS. *Insights* is edited for the IAS by Barbara Graziosi. Previous editors of *Insights* were Professor Susan Smith (2006–2009) and Professor Michael O'Neill (2009–2012).

About the Institute of Advanced Study

The Institute of Advanced Study, launched in October 2006 to commemorate Durham University's 175th Anniversary, is a flagship project reaffirming the value of ideas and the public role of universities. The Institute aims to cultivate new thinking on ideas that might change the world, through unconstrained dialogue between the disciplines as well as interaction between scholars, intellectuals and public figures of world standing from a variety of backgrounds and countries. The Durham IAS is one of only a handful of comparable institutions in the world that incorporates the Sciences, Social Sciences, the Arts and the Humanities.

The focal point of the IAS is a programme of work associated with, but not exclusive to, an annual research theme. At the core of this work lies a prestigious Fellowship programme. This programme gathers together scholars, intellectuals and public figures of world standing or world-promise to address topics of major academic or public interest. Their mission is to anticipate the new and re-interpret the old, communicating across and working between disciplinary boundaries.

Every year, the Institute invites as many as twenty highly creative individuals to spend up to three months in Durham. They are located in Cosin's Hall, a magnificent and spacious 18th century mansion which, together with Durham Cathedral and Durham Castle, forms part of Palace Green, dominating the World Heritage Site of Durham Peninsula. During their stay, Fellows engage with departments and colleges, deliver public lectures and seminars, and, above all, join an international community of researchers to address the theme selected for that year. Further details of the IAS and its Fellowship programme can be found at www.durham.ac.uk/ias/fellows

Copyright

TWO CONCEPTIONS OF CONSTITUTIONAL RIGHTS

In this paper I argue that we can usefully distinguish between two conceptions of constitutional rights, such as the right to freedom of speech and the right not to be tortured, namely an 'offensive' and a 'defensive' conception. The argument will be that historically, and to a lesser extent contemporaneously, the American conception of rights is offensive, while what I shall call the Euro-British conception is defensive. I also say something about the position in Australia by way of contrast to both of these.

The United States Constitution came into effect in 1789. Article V establishes a mechanism for amending the Constitution. To date, a total of 27 amendments have been ratified, the most recent in 1992. The first ten amendments, all of which were ratified in 1791, are collectively known as 'the Bill of Rights'. These amendments had been variously proposed in the course of the ratification process, which required the consent of the states that were coming together to form the new commonwealth of the United States. The champions of the proposed draft of the Constitution – the Federalists – thought that a Bill of Rights was unnecessary to protect citizens from the sort of government (of separate institutions sharing power) that they had designed. They also feared that if amendments could be formally proposed during the ratification phase, ratification of the Constitution would be indefinitely delayed and might never happen. So the Federalists promised their antagonists – the anti-Federalists – that a selection of the very many proposed amendments would be introduced into the First Congress and presented for ratification as a group… which is what happened.

Some parts of the Bill of Rights are very well known around the world. The First Amendment, for instance, limits the power of Congress to pass laws that infringe freedom of speech and religion. The Second Amendment protects the right of the people to bear arms. The Fourth Amendment prohibits violation of the people's right to security from unreasonable search and seizure. Notice two things about these famous provisions: first, what they say they are doing is limiting the powers of Congress to pass laws; and second, when they speak of rights (which not all of them do), they typically refer to them as rights of 'the people', not 'human' or 'individual' rights. The Fifth Amendment does use the word 'person' in the singular, for example in the famous phrase: 'no person shall be deprived of life, liberty or property without due process of law'. But even the Fifth Amendment is framed as a limitation on power rather than in terms of an individual's 'right'. Only the Sixth Amendment expressly confers 'rights' on individuals – in that case, those accused of crimes.

Less well known than these parts of the Bill of Rights (outside the US, at least) is the Tenth Amendment, which provides that 'powers not delegated to the United States by the Constitution […] are reserved to the States […] or to the people'. This provision spells out explicitly that federal Congress has only certain specific legislative powers and that the residue of legislative power remains in the States. It also implies that the people are sovereign and that government bodies (whether federal or state) have only such powers as are delegated to them by the people. This implication is spelled out more clearly in the Ninth Amendment, which provides that, 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people'. On this view, even before government comes into existence, the people have a set of 'natural' rights – all are *born* free and equal. Creating a government involves

the transfer of some, but only some, of those rights to the governors. The rest remain with the people.

Read together, the first ten amendments are much more concerned with 'protecting' or 'guaranteeing' assumed, pre-existing civil and political rights of the people as a whole from encroachment by an over-strong government than they are with creating what we would now call 'human rights' and conferring such rights on individual members of society, or even with giving rights legal status and force. The Bill of Rights originally applied only to the federal government, and did not limit the power of state legislatures. The Fourteenth Amendment, which effectively applies the Bill of Rights to the States, was proposed in the wake of the Civil War and not ratified until 1868. The US Bill of Rights is in the tradition of the Magna Carta and the English Bill of Rights of 1689. First and foremost, it is concerned with the distribution of power between the citizenry and the state, between the spheres of the private and the public, between the social and the political. In the words of Chris Thornhill in his marvellous book, *A Sociology of Constitutions*, 'The [Bill of Rights][…] played a core role in constructing statehood in the early American republic […] and it removed crucial social issues from the centre of political intensity' (Thornhill, 2011, p. 195).

In summary, in what I am calling the American conception of rights, rights are thought of primarily as limitations on government power or, put differently, as a technique for diffusing power between the government and the sovereign people, and between various layers of government. Diffusion of power is a technique for making government more difficult by sharing power out between various institutions that must then bargain and cooperate to get things done. The Bill of Rights was designed, first and foremost, to hobble the federal government by banning encroachment on pre-existing 'natural' rights of 'the people'.

Contrast this American conception of rights with what I am calling the 'Euro-British' conception. The Euro-British conception is embodied in post-Second World War multilateral treaties such as the various international rights conventions sponsored by the United Nations, and in the European Convention on Human Rights – the ECHR. The history of such treaties is complex. However, it is clear that one of the major victorious nations – Britain – played a leading role in the development of the ECHR, and that the other – the US – took a leading role in the development of the international conventions. Each, it seems, sought to export its own formula for freedom to other nations as part of a project of guarding against a repeat of the totalitarian horrors of the 1930s and 1940s.

These international documents focus, first and foremost, on the entitlements of individuals, not on the powers of government. They construct rights as properties that everyone has by virtue of being 'human'. There is a significant difference between the underpinning sensibility of an instrument such as the ECHR, which is concerned primarily with human dignity, and the foundational ideology of the US Bill of Rights, which is concerned primarily with diffusing governmental power and weakening the state. The circumstances in which these post-Second World War rights documents were conceived and drafted were very different from those surrounding the ratification of the US Bill of Rights. The twentieth-century rights movement can be understood as a reaction to totalitarianism, which is the pathology of systems of government in which large amounts of governmental power are concentrated in one or a very few institutions rather than diffused amongst various institutions, which must necessarily bargain and cooperate to get things done. In a system of concentrated power, such as the British, a single powerful institution, or a small set of such institutions, can exercise great power more or less unilaterally without the need to gain the cooperation of other powerful institutions. In the medieval period in England, that powerful institution was the monarchy. After the English Revolution of 1688,

what we call 'sovereignty' (which is the technical name used to refer to the concentration of power at the centre of government) passed from the monarch to Parliament. Then, in the course of the nineteenth and twentieth centuries, as a result of various changes including the development of political parties, effective sovereignty passed to executive government (even though formal sovereignty remained in Parliament). In the past 50 years, British governments have begun to share some of their sovereign power with the European Union and the European Court of Human Rights.

Whereas the pathology of concentrated power is totalitarianism, the pathology of diffused power is gridlock and inertia, one of the most dramatic manifestations of which in modern America is the dreaded 'fiscal cliff', which results from the sharing of power over public finances between Congress and the president (coupled with polarised party-politics). Whereas the American conception of rights grew out of a desire to *prevent* concentration of governmental power and to promote bargaining and cooperation between quasi-autonomous policy-makers, the Euro-British conception was a reaction to *misuse and abuse* of concentrated power. Of course, in one sense, under both conceptions, rights are limits on government power as well as remedies for abuse of power. The difference lies in the way that citizens are protected and power is limited. In the American model, government is restrained and citizens' rights are indirectly protected, primarily by weakening government. By contrast, in the Euro-British model, government is allowed to be strong, and citizens are protected by being enabled to challenge government action after the event. Put differently, in the American model the emphasis is on prospective prevention of undue interference by the government with the interests of citizens; by contrast, in the Euro-British model, government has much more freedom to act but citizens are provided, retrospectively, with avenues of redress and reparation for governmental interferences with their interests. In the American model, rights check government power prospectively; in the Euro-British model they provide retrospective redress for interference by the government.

Now I want to argue that the distinction between these two conceptions of rights – the American and the Euro-British – may help to solve several puzzles. One is that in the modern era, the US has been very keen to impose constitutional rights on other states via multilateral treaties, while at the same time often refusing to sign up to such treaties itself or derogating from them – what Michael Ignatieff calls a 'combination of leadership and resistance' (Ignatieff, 2005, p. 1). On reflection, this may not be so puzzling after all: under a conception of rights that views them as limitations on power, it is perhaps not surprising that the world's strongest power is likely both to promote the application of rights to other governments and to resist their application to itself.

The distinction between the two conceptions of rights might also help to explain the fact that many of the rights under the Euro-British ECHR are heavily qualified whereas American rights are typically expressed in unqualified language. For instance, compare the US First Amendment with Article 10 of the ECHR. The First Amendment baldly states that 'Congress shall make no law [...] abridging the freedom of speech'. Now consider the equivalent part of Article 10 of the ECHR. It starts: 'Everyone has the right to freedom of expression'. So far so good; but wait – Article 10 then continues:

> Since it carries with it duties and responsibilities, [this right] may be subject to such formalities, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

How are we to understand this dramatic difference of formulation? Here is a suggestion: under the Euro-British conception, rights are understood primarily as protections for the individual against abuse of power. Within that framework it is understandable that in constructing rights, the interests of the individual are balanced against the interests of 'society', where 'the interests of society' are understood as distinct from the interests of elected government. By contrast, when rights perform the structural function of dividing up power, it makes sense to draw the boundaries of power quite sharply. Here is an analogy: when powers are divided up between federal and sub-federal polities within a federation (such as the US or Australia) this is done in an unqualified rather than a qualified way, concisely rather than at length, to give an appearance of maximum clarity about where power lies. Similarly, when the function of rights is understood to be to allocate power as between the people and the government, or between government at various levels, clarity and conciseness are at a premium. This is not to say that freedom of speech in America is unqualified. But it is very much less qualified than in Europe, partly because the starting point is such a bold, straightforward declaration.

I suggest that the distinction between the two conceptions of rights also helps to explain why debates about the 'horizontal' application of human rights as between citizen and citizen have been much livelier in Europe than in the US. The issue here is whether human rights are owed only by the government to citizens or whether, in addition, one citizen can owe these rights to other citizens. In the US it is quite clear (in principle anyway) that the Bill of Rights applies only to governments and their delegates, to what the Americans call 'state action'. No surprise there: after all, rights in the American conception are machinery for limiting government power. In the Euro-British model, by contrast, rights are basic properties of human beings. Under this conception, it is much less obvious that these basic properties should be protected only against governments. Why not also against powerful corporations, for instance? Why, we might ask, should a multinational commercial giant be permitted to gag my speech any more than a government can?

Now, if you are still with me, the next obvious question is: what effect, if any, has the post-Second World War rights revolution had on the older American conception of rights? Has the American conception of rights changed under the influence of more recent thinking about rights? Writing in 1991, a leading US constitutional lawyer, Akhil Amar, said that '[t]oday, the very phrase "Bill of Rights" is virtually synonymous with a compilation of counter-majoritarian personal rights' (Amar, 1991, p. 1203) as opposed to a set of provisions limiting the powers of the legislature, executive and judiciary. He argues that the Fourteenth Amendment, which effectively made the States subject to the Bill of Rights, was pivotal in initiating this change of understanding. By applying the Bill of Rights to the States, it undercut the Bill's original anti-federalist rationale. There have also been major shifts over the past two centuries in understandings of what rights the Constitution and the Bill of Rights protect. For instance, from the late nineteenth century until the New Deal in the 1930s, the Supreme Court used the Constitution much more to protect economic rights of contract and property than civil and political rights, such as freedom of speech. This changed in the 1950s and 1960s when the Supreme Court, under the banner of protecting the democratic process from abuse, achieved major advances for blacks and criminal defendants, for instance, and a flowering of the right of free speech.

Still, the focus of such developments was more on social groups than on individuals. It was not really until the latter part of the twentieth century that the ideas of individual autonomy as a constitutionally-protected interest gained a foothold and led the US Supreme Court to impose rights-based limitations on state regulation of abortion, and to invalidate legislation that banned interracial marriage, criminalised homosexual activity and defined marriage

exclusively in heterosexual terms. To some extent, even these new rights were fitted into the older understanding of rights. However, autonomy-promoting rights are less straightforwardly justified as limitations on power than are civil and political rights. As a result, protection for newer, autonomy-based rights tends to be conceptualised in a Euro-British way.

Even so, there remain important differences between the American approach to rights and that in the rest of the common law world. Take, for instance, the concept of positive rights – which require government to act rather than refrain from action – and the idea of social and economic rights (such as rights to education and housing), which impose on government positive obligations rather than negative constraints. These are much more easily accommodated in the Euro-British model of rights than in the American model, even the twenty-first-century version of the American model. For instance, Article 2 of the ECHR, prohibiting inhuman and degrading treatment, requires governments not only to refrain from such action but also to take various steps to prevent its occurrence. The reason why the American approach is uncongenial to social and economic rights seems to me quite obvious: if rights are understood primarily as a mechanism for limiting the power of government, they are unlikely to be used to require a government to assume responsibilities that it might otherwise be inclined to leave to the private sector and the market.

Now, we can turn to Australia. Australia is a particularly interesting subject for study alongside the US and British systems because the Australian federal legal-and-governmental system is a hybrid, having inherited many characteristics from the British system but also incorporating some significant features from the US. The Australian Constitution contains no bill of rights and there is, currently, no very active movement in favour of inserting one. Because there was no significant or organised opposition to federation in Australia, the conditions that produced the US Bill of Rights did not exist there. As well, the broad idea of a right to 'equal protection of the laws' – in other words, a right not to be discriminated against – which is embodied in the Fourteenth Amendment of the US Constitution, gained no support amongst the drafters of the Australian Constitution in the late nineteenth century. On the contrary, the Constitution, as originally enacted, gave the parliament power to make laws with respect to 'the people of any race, other than the Aboriginal people in any State, for whom it is necessary to make special laws'. In 1967 this already highly discriminatory provision (which did not prohibit discrimination in relation to Aboriginal people but merely left that power to the states) was amended by removing the words 'other than the Aboriginal people in any State'. As a result, Parliament was given, and still has, power to discriminate against (or in favour of) any and every racial group in Australia. At the same time in 1967, another provision of the Constitution was removed so that, *for the first time*, indigenous Australians could be counted in reckoning the population of Australia.

While the eighteenth and nineteenth-century US experience of slavery, civil war and reconstruction provided the drafters of the Australian Constitution with no inspiration in relation to rights, the post-Second World War 'rights revolution' was still half a century away. The prevailing English theory at the end of the nineteenth century, when the Australian Constitution was being drafted, was that of the famous theorist of the English constitution, Albert Venn Dicey. In his view (expounded in his *Introduction to the Study of the Law of the Constitution* (Dicey, 1959), first published in 1885), one of the great strengths of the English constitution was that rights were protected by what he called the 'ordinary law' and the 'ordinary courts' and not by a formal, constitutional bill of rights or a special constitutional court. For Dicey, rights were an integral aspect of laws that told people what they could and could not do, not a product of special laws or special protections. In his scheme, citizens were free to do anything and everything not prohibited by 'ordinary' law. This helps to explain why there are only a few express rights-protecting provisions in the Australian Constitution. In the 1990s the High

Court of Australia accepted that certain democracy-protecting civil rights – and in particular, a right of political communication – could be read out of (or, perhaps, into) the institutional structure of Australian representative government established by the Constitution. However, in the words of a leading Australian constitutional lawyer, Cheryl Saunders, such rights 'provide only a minimum constitutionally guaranteed default position', leaving the legislature and the executive 'very considerable latitude in the exercise of their powers' (Saunders, 2010, pp. 274–5). Indeed, the Court 'prefers not to characterise them as rights at all, equating them instead with limits on power' (p. 275). In recent years, too, the Court has gone distinctly cold on the idea of implied constitutional rights. Here, then, we find a potent mixture of an English suspicion of constitutional rights coupled with an American power-limiting understanding of such rights as the Court is prepared to recognise and enforce.

Like implied constitutional 'rights', the few explicit rights-protecting provisions of the Constitution seem also to have been understood by its drafters primarily as imposing limits on power. However, whereas the American approach was profoundly affected first by the Civil War and later by the twentieth-century human-rights movement, the drafters of the Australian Constitution appear to have rejected the lessons of the Civil War (or, perhaps, considered them irrelevant), and since then the High Court has vigorously resisted the pull of the developments in international human-rights protection. Dicey's very English understanding of rights is still alive and well in Australia.

As a result of the High Court's general and ongoing aversion to constitutional rights, rights-protection in Australia is largely the province of the executive and parliament. The Australian Human Rights Commission is an independent statutory body with a broad remit to promote compliance with international human rights conventions, to which Australia is a party, through education, complaint-handling, policy development and so on. The Parliamentary Joint Committee on Human Rights was established by statute in 2011 to scrutinise legislation for compliance with Australia's human rights obligations. But none of these mechanisms has the bite of a decision of the US Supreme Court invalidating an act of Congress on the grounds that it infringes constitutional rights.

In 1998 the UK Human Rights Act (HRA) gave UK courts the power to enforce the ECHR against the British government at the behest of British citizens. Prior to that, only the European Court of Human Rights in Strasbourg had this power. However, unlike the US Supreme Court, the UK Supreme Court cannot invalidate an Act of Parliament on the grounds that it infringes 'Convention rights'. All it can do is make a statement (technically, a 'declaration') that the act is incompatible with the ECHR. This leaves the government free to decide whether or not to amend the legislation to make it compliant with the Convention; although in practice it has almost always done so – except, curiously, in relation to prisoners' right to vote. (In Australia, meanwhile, the High Court has held that even this power to make a 'declaration of incompatibility' is inconsistent with the Australian Constitution because it allows courts to exercise non-judicial (quasi-legislative) power contrary to constitutional separation of powers.)

As is well known, the HRA and, indeed, Britain's adherence to the ECHR have always been matters of political disagreement in Britain, and things have now got to the point where Conservative governments seriously contemplate withdrawing from the Convention and, it seems, enacting a home-grown bill of rights. British governments have increasingly come to see human rights in the way Americans do – as limits on their power. Brian Simpson argues that the ECHR was the last gasp of the British Empire (Simpson, 2004). Like the US, British diplomats after the Second World War saw the human-rights project in terms of exporting the thriving English rights culture to the rest of the world. The US has been successful in resisting re-importation of rights.

It simply refuses to sign up to treaties it does not like including, for instance, the treaty that establishes the International Criminal Court. As the world's police force, the US does not want its citizens subject to the international rule of law – a stance it is able to take precisely because of its unchallenged world supremacy. For Britain, by contrast, the past 65 years have been ones of spectacular decline. By a process too complex to trace here, it has been forced, and to some extent has chosen, to re-import the rights regime it was instrumental in establishing for others. Unfortunately, in the meantime, that regime has become much less congenial and much more powerful than the Diceyan version that the British diplomats seem to have thought they were transplanting – but that is too long a story to tell now.

Australia has always been a small and insignificant nation in global terms. Even so, Australian governments continue to resist importation of a strong rights culture. They have been successful in this partly because there is no regional human rights treaty or court in the Asia-Pacific region to apply the sort of pressure that Britain feels as a result of its proximity to and involvement in Europe. The High Court has also powerfully resisted change. Not only, as we have seen, has it refused to exploit the rights-protecting potential of the Constitution. It has also (as already noted) thrown cold water on the idea of legislation like the HRA by deciding that statements of incompatibility of the sort the UK Supreme Court can make are banned by the Australian Constitution. Nor have Australian judges shown much enthusiasm for using *international* human rights conventions as a tool to make Australian law more rights friendly.

To conclude: in this short essay I have attempted to show that significant local variety and conceptual complexity underlie the deceptively simple idea of 'constitutional rights'. Apparently similar legal systems, even systems that share a common source, may be based on very different assumptions and may follow very different historical trajectories. To be effective, advocates who aspire to develop trans-national and international understanding and action to promote human rights need such 'local knowledge'.

Reference List

Amar, A. R. (1991) The Bill of Rights as a Constitution. 100 *Yale Law Journal* 1131.

Dicey, A. V. (1959) *An Introduction to the Study of the Law of the Constitution*, 10th edition (with an introduction by Wade, E. C. S.). London: Macmillan.

Ignatieff, M. (ed.) (2005) *American Exceptionalism and Human Rights*. Princeton: Princeton University Press.

Saunders, C. (2010) *The Constitution of Australia: A Contextual Analysis*. Oxford: Hart Publishing.

Simpson, A. W. B. (2004) *Human Rights and the End of Empire: Britain and the Genesis of the European Convention*. Oxford: Oxford University Press.

Thornhill, C. (2011) *A Sociology of Constitutions*. Cambridge: Cambridge University Press.

Backlist of Papers Published in Insights

No.	Author	Title	Series
2008 Volume 1			
1	Boris Wiseman	Lévi-Strauss, Caduveo Body Painting and the Readymade: Thinking Borderlines	General
2	John Hedley Brooke	Can Scientific Discovery be a Religious Experience?	Darwin's Legacy
3	Bryan R. Cullen	Rapid and Ongoing Darwinian Selection of the Human Genome	Darwin's Legacy
4	Penelope Deutscher	Women, Animality, Immunity – and the Slave of the Slave	Darwin's Legacy
5	Martin Harwit	The Growth of Astrophysical Understanding	Modelling
6	Donald MacKenzie	Making Things the Same: Gases, Emission Rights and the Politics of Carbon Markets	Modelling
7	Lorraine Code	Thinking Ecologically about Biology	Darwin's Legacy
8	Eric Winsberg	A Function for Fictions: Expanding the Scope of Science	Modelling
9	Willard Bohn	Visual Poetry in France after Apollinaire	Modelling
10	Robert A. Skipper Jr	R. A. Fisher and the Origins of Random Drift	Darwin's Legacy
11	Nancy Cartwright	Models: Parables v Fables	Modelling
12	Atholl Anderson	Problems of the 'Traditionalist' Model of Long-Distance Polynesian Voyaging	Modelling
2009 Volume 2			
1	Robert A. Walker	Where Species Begin: Structure, Organization and Stability in Biological Membranes and Model Membrane Systems	Darwin's Legacy
2	Michael Pryke	'What is Going On?' Seeking Visual Cues Amongst the Flows of Global Finance	Modelling
3	Ronaldo I. Borja	Landslides and Debris Flow Induced by Rainfall	Modelling
4	Roland Fletcher	Low-Density, Agrarian-Based Urbanism: A Comparitive View	Modelling
5	Paul Ormerod	21st Century Economics	Modelling
6	Peter C. Matthews	Guiding the Engineering Process: Path of Least Resistance versus Creative Fiction	Modelling
7	Bernd Goebel	Anselm's Theory of Universals Reconsidered	Modelling
8	Roger Smith	Locating History in the Human Sciences	Being Human
9	Sonia Kruks	Why Do We Humans Seek Revenge and Should We?	Being Human
10	Mark Turner	Thinking With Feeling	Being Human
11	Christa Davis Acampora	Agonistic Politics and the War on Terror	Being Human
12	Arun Saldanha	So What *Is* Race?	Being Human
13	Daniel Beunza and David Stark	Devices For Doubt: Models and Reflexivity in Merger Arbitage	Modelling
14	Robert Hariman	Democratic Stupidity	Being Human
2010 Volume 3			
1	John Haslett and Peter Challenor	Palaeoclimate Histories	Modelling
2	Zoltán Kövecses	Metaphorical Creativity in Discourse	Modelling
3	Maxine Sheets-Johnstone	Strangers, Trust, and Religion: On the Vulnerability of Being Alive	Darwin's Legacy

No.	Author	Title	Series
4	Jill Gordon	On Being Human in Medicine	Being Human
5	Eduardo Mendieta	Political Bestiary: On the Uses of Violence	Being Human
6	Charles Fernyhough	What is it Like to Be a Small Child?	Being Human
7	Maren Stange	Photography and the End of Segregation	Being Human
8	Andy Baker	Water Colour: Processes Affecting Riverine Organic Carbon Concentration	Water
9	Iain Chambers	Maritime Criticism and Lessons from the Sea	Water
10	Christer Bruun	Imperial Power, Legislation, and Water Management in the Roman Empire	Water
11	Chris Brooks	Being Human, Human Rights and Modernity	Being Human
12	Ingo Gildenhard and Andrew Zissos	Metamorphosis - Angles of Approach	Being Human
13	Ezio Todini	A Model for Developing Integrated and Sustainable Energy and Water Resources Strategies	Water
14	Veronica Strang	Water, Culture and Power: Anthropological Perspectives from 'Down Under'	Water
15	Richard Arculus	Water and Volcanism	Water
16	Marilyn Strathern	A Tale of Two Letters: Reflections on Knowledge Conversions	Water
17	Paul Langley	Cause, Condition, Cure: Liquidity in the Global Financial Crisis, 2007–8	Water
18	Stefan Helmreich	Waves	Water
19	Jennifer Terry	The Work of Cultural Memory: Imagining Atlantic Passages in the Literature of the Black Diaspora	Water
20	Monica M. Grady	Does Life on Earth Imply Life on Mars?	Water
21	Ian Wright	Water Worlds	Water
22	Shlomi Dinar, Olivia Odom, Amy McNally, Brian Blankespoor and Pradeep Kurukulasuriya	Climate Change and State Grievances: The Water Resiliency of International River Treaties to Increased Water Variability	Water
23	Robin Findlay Hendry	Science and Everyday Life: Water vs H_2O	Water

2011 Volume 4

1	Stewart Clegg	The Futures of Bureaucracy?	Futures
2	Henrietta Mondry	Genetic Wars: The Future in Eurasianist Fiction of Aleksandr Prokhanov	Futures
3	Barbara Graziosi	The Iliad: Configurations of the Future	Futures
4	Jonathon Porritt	Scarcity and Sustainability in Utopia	Futures
5	Andrew Crumey	Can Novelists Predict the Future?	Futures
6	Russell Jacoby	The Future of Utopia	Futures
7	Frances Bartkowski	All That is Plastic... Patricia Piccinini's Kinship Network	Being Human
8	Mary Carruthers	The Mosque That Wasn't: A Study in Social Memory Making	Futures
9	Andrew Pickering	Ontological Politics: Realism and Agency in Science, Technology and Art	Futures
10	Kathryn Banks	Prophecy and Literature	Futures
11	Barbara Adam	Towards a Twenty-First-Century Sociological Engagement with the Future	Futures
12	Andrew Crumey and Mikhail Epstein	A Dialogue on Creative Thinking and the Future of the Humanities	Futures
13	Mikhail Epstein	On the Future of the Humanities	Futures

No.	Author	Title	Series
2012 Volume 5			
1	Elizabeth Archibald	Bathing, Beauty and Christianity in the Middle Ages	Futures II
2	Fabio Zampieri	The Holistic Approach of Evolutionary Medicine: An Epistemological Analysis	Futures II
3	Lynnette Leidy Sievert	Choosing the Gold Standard: Subjective Report vs Physiological Measure	Futures II
4	Elizabeth Edwards	Photography, Survey and the Desire for 'History'	Futures II
5	Ben Anderson	Emergency Futures	Futures
6	Pier Paolo Saviotti	Are There Discontinuities in Economic Development?	Futures II
7	Sander L. Gilman	'Stand Up Straight': Notes Toward a History of Posture	Futures II
8	Meredith Lloyd-Evans	Limitations and Liberations	Futures II
2013 Volume 6			
1	David Martin-Jones	The Cinematic Temporalities of Modernity: Deleuze, Quijano and *How Tasty was my Little Frenchman*	Time
2	Robert Levine	Time Use, Happiness and Implications for Social Policy: A Report to the United Nations	Time
3	Andy Wood	Popular Senses of Time and Place in Tudor and Stuart England	Time
4	Robert Hannah	From Here to the Hereafter: 'Genesis' and 'Apogenesis' in Ancient Philosophy and Architecture	Time
5	Alia Al-Saji	Too Late: Racialized Time and the Closure of the Past	Time
6	Simon Prosser	Is there a 'Specious Present'?	Time
2014 Volume 7			
1	Robert Fosbury	Colours from Earth	Light
2	Mary Manjikian	Thinking about Crisis, Thinking about Emergency	Time
3	Tim Edensor	The Potentialities of Light Festivals	Light
4	Angharad Closs Stephens	National and Urban Ways of Seeing	Light
5	Robert de Mello Koch	From Field Theory to Spacetime Using Permutations	Time
6	Jonathan Ben-Dov	What's In a Year? An Incomplete Study on the Notion of Completeness	Time
7	Lesley Chamberlain	Clarifying the Enlightenment	Light
8	Fokko Jan Dijksterhuis	Matters of Light. Ways of Knowing in Enlightened Optics	Light
2015 Volume 8			
1	Valerie M. Jones	Mobile Health Systems and Emergence	Emergence
2	Stéphanie Portet	Studying the Cytoskeleton: Case of Intermediate Filaments	Modelling

Insights

Insights is edited by Barbara Graziosi, IAS Director and Professor of Classics.
Correspondence should be directed to Pauline Edmondson (pauline.edmondson@durham.ac.uk)