Beyond Rawls: The Principle of Transgenerational Equity

https://www.e-ir.info/2023/02/10/beyond-rawls-the-principle-of-transgenerational-equity/

TIZIANA ANDINA, FEB 10 2023

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Climate change poses complex problems of justice, which are particularly difficult to address because the relationship between the actors involved in the justice relationship is not always symmetrical. In other words, climate change imposes a reflection on the importance of time in justice issues and underline, better than in other contexts, how transgenerationality is in fact a crucial matter for justice. The article has three aims. Firstly, starting from an analysis of selected points in Rawlsian justice theory, it illustrates the reasons why classical theories of justice are unsuitable for dealing with transgenerational issues. Secondly, within the framework of a general theory of transgenerationality, it offers useful arguments for the formulation of a principle of transgenerational equity. Finally, it discusses how the transgenerational equity principle can be applied to climate change.

Introduction

The issue of climate change is a particularly interesting problem of justice because of its exemplary nature. It illustrates above all that problems of justice are complex issues that cannot be addressed easily without taking into account time and the asymmetry between the parties that temporality determines. In circumstances where two parties are in an asymmetrical relationship, it is impossible to understand justice as a form of compensation (Plato and Waterfield 1993, 331E-332B), not only because, as Socrates notes, pure compensation is not always just, but above all because diachronic relationships involve complex relationships. The factual impossibility of reciprocity is further complicated by the power that one party is able to exercise over the other. In the specific case of transgenerational relations, what is at issue is the power that present generations can exercise over future entities. Whereas, when we are harmed by a friend, we are generally in a position to claim some form of compensation, in the case of relations between parties living in different time periods, not only is such compensation impossible, but the substantive content of the unjust acts cannot be erased, i.e., it is not possible to rewind the tape of time.

Let us take, for example, a state that has been releasing a large quantity of CO2 into the environment for a certain period of time, and let us assume that it has done so for a noble purpose, namely to promote the development of its economic system and increase the wealth and improve the quality of life of its citizens. The side effect of this choice is a progressive and perhaps irreversible deterioration of both the environment and the climate in which future generations will live. In other words, the power of choice and action that certain generations have enjoyed and continue to enjoy in a certain historical time period may definitively compromise the power of choice and action of other generations in a subsequent time period. This situation, intuitively, seems unfair for at least two reasons. First, it appears unfair because, despite the data that scientists have amassed since the second half of the twentieth century, the exercise of power through the performance of utilitarian actions by some generations has not encountered limits to protect future generations. Second, it seems unfair because it seems plausible to believe that there are things – including the ecosystem – that represent the condition of possibility of life for everyone and that, for this very reason, they are not at the complete disposal of anyone.

Now, an imaginary reader, while agreeing with what we have argued, might not be willing to agree on two points. First, on the determination of this 'all'. He might, for example, be unwilling to consider future generations as an entity to be included among those we must consider as objects of justice, since they are in fact fictitious entities that do not yet exist in time and space. I have tried to respond to this objection elsewhere (Andina 2022). Here, however, I focus on the question of justice and develop both moral and political considerations. Assuming as valid the idea that utilitarianism is an ineffective theory for responding to climate justice and thus that it is an *a fortiori* unsuitable theory in a broader intergenerational perspective (Jamieson 2007), can we expect any help from neo-contractualist theories? That is, can we expect any significant help from the development of neo-contractualist positions that are not intended to be based on a maximization of individual profit? And if both utilitarianism and neo-contractualism prove to be ineffective theories for dealing with the challenges of transgenerationality, what other options do we have for promoting transgenerational equity? I argue that the neo-contractualist model is unsuitable for reasoning about transgenerational issues even independent of the assumption of a utilitarian alternative precisely because it excludes time from its modelling.

1. Justice is not enough: Rawlsian theory as the test of trans-generationality

The reflections of John Rawls in both *A Theory of Justice* (1971) and a series of subsequent writings (cf. Rawls 1999, 2005) concern themselves, among other things, with the problems of transgenerational justice, that is, with the form that justice between different generations takes. Before introducing Rawls's arguments, it is worth emphasising two aspects.

Firstly, although the American philosopher was among the first to realise the importance of the temporal relationship between the parties in a justice relationship, the issue of transgenerational justice remains rather marginal, perhaps also due to historical and contextual reasons. The second aspect concerns the tools available to a classical theory of justice, such as Rawls's theory, to deal with parties in an asymmetrical relationship. The asymmetrical relation is in fact one of the essential features of transgenerational relations. Rawlsian theory not only shows the inadequacy of cooperation-based theories of justice in the face of the problems raised by transgenerational relations in an exemplary way, but also how the concept of justice reveals its own inadequacy in dealing with transgenerational relations and their conditions of equity (see, at least, Pulcini 2020, Tronto 1993 and Held 2006). In other words, there are intrinsic limits to the concept of justice as it is treated by cooperation-based theories of justice that do not allow the main implications of transgenerational relationships to be addressed convincingly. Therefore, it seems reasonable to argue that if we want to talk about transgenerationality and its applications (including the issue of climate sustainability) we cannot limit ourselves to justice, but must refer to a broader set of principles, including the principle of transgenerational responsibility.

1. *Transgenerationality in 'A Theory of Justice'*

Rawls offers a normative theory of justice. This means that having started, as is the practice, from philosophical-anthropological considerations about human nature, Rawls describes relations of justice not as they are, but as they should be in an ideal society. In other words, *A Theory of Justice* intends to determine the principles of justice on which social relations should be based in order to give life to decent societies. The question is therefore, roughly, what can an ideal theory of justice tell us about asymmetrical relations? Not much, unfortunately.

The ideal social system described by Rawls (1999, 7–8, 216) displays certain characteristics. For one, it is closed, extended in time and isolated from other societies. A sort of bubble, in short. The bubble is populated by individuals that display certain characteristics. For example, they are willing to cooperate and are not subject to the pressures of basic needs, since the bubble enjoys a fairly favourable economic environment. In other words, resources are neither overabundant, nor equally available to all, nor they excessively scarce. This means that the inhabitants of the bubble do not struggle for survival. In addition, there is a neutral and plural value system. The inhabitants of Rawlsian society express different worldviews and beliefs, for example, regarding moral values. In this context, social and political equilibrium is roughly guaranteed by two elements. First, it is guaranteed by the characteristics of the individuals who inhabit the bubble: they are rational people that, in principle, make the most rationally advantageous choices available to them; and they are reasonable, i.e., they are willing, in certain circumstances, to give up their own

immediate profit as long as the other inhabitants share the same attitude. This means they are willing to forego maximising profit.

A second element that guarantees political and social stability is the willingness and ability of individuals to cooperate, ideally also between different generations: 'Thus, justice as fairness starts within a certain political tradition and takes as its fundamental idea that of society as a fair system of cooperation over time, from one generation to the next' (Rawls 2005, 14). In order for the bubble to survive over time, i.e., for its inhabitants to live a life in peace and well-being, cooperation must also be thought of diachronically, between different generations.

In the Rawlsian context, just as in the case of Kantian morality, future generations play an eminently instrumental and regulatory role. We know that one day they will exist, be part of society and contribute to the deliberative processes, so if a society accepts the principles of justice upon which it has deliberated and citizens agree to apply them rigorously, future generations will participate in a process of justice implementation in which they will be protected. Each inhabitant of the bubble, in other words, would collaborate in the making of justice, cooperating in an inclusive process in which all individuals – in the present and future – can aspire to live in (greater) equity. Commitment to the realization of justice would therefore guarantee not only the present generations, but also future ones. All well, then? Not really, because of certain conditions that Rawls postulates in his ideal theory. Let us first try to understand in more detail what function – if any – future generations fulfil in the Rawlsian bubble.

Each generation must not only preserve the gains of culture and civilisation and maintain intact those just institutions that have been established, but it must also put aside in each period of time a suitable amount of real capital accumulation. This saving may take various forms from net investment in machinery and other means of production to investment in learning and education (Rawls 1999, 252).

In *A Theory of Justice*, we read that each generation has two tasks, one – so to speak – conservative, the other expansive. The first task is primarily concerned with the past, the second with how the future is to be oriented. Future generations must preserve what has been gained in terms of cultural progress and civilisation, i.e., they must strive to stabilise what has been acquired by previous generations and keep intact the institutions that have been created. This part of the task takes the form of capitalisation and consists of stabilising what is already available to a community. The second task, on the other hand, has an expansive character, so it does not take the form of capitalisation but of investment and, perhaps, of gift-giving, since each generation must set aside an adequate amount of accumulated capital to invest in goods that are not necessarily of immediate use. This provision can take various forms. It can be, for example, an investment in production tools or it can be an investment in knowledge and education. What is certain is that it seems difficult to interpret it solely in terms of justice – i.e., what one generation must pass on or give back to another. It seems rather reasonable that it should be about the logic of gift, i.e., what one generation gives to others with the aim of improving their future.

Now, within the Humean framework of the conditions of justice that Rawls accepts without substantial modification, both the conservative and expansive tasks are indeed problematic (cf. Brandstedt 2015). According to Hume, three circumstances must be present for justice: a moderate scarcity of resources, a moderate selfishness of the parties and relative equality between the parties (Rawls 1999, 109–110). These three conditions, taken together, should be conducive to the creation of conditions of justice. Indeed, we can expect that a moderate scarcity of resources will drive cooperation to optimise production and distribution; that moderate selfishness will make possible the reconfiguration of certain personal goals to more general goals; and finally, that the relative equality of the parties will make possible the formulation of equitable principles of justice.

However, when applied to asymmetrical relations, the third condition – relative equality between the parties – is problematic since people living at different times encounter different historical, cultural and environmental conditions. Therefore, admitting the fact that these conditions are usually relatively or substantially different, the more general condition of equality between the parties seems impossible to achieve. Let us assume, for example, that a certain generation *G* precedes a generation *G1* in time. Obviously, *G* will be able to make choices that have a significant impact on the quality of life of *G1*, whereas the reverse situation does not arise, i.e., *G1* is not able to determine retroactively the quality of life of *G.* Thus, in many circumstances, there can be no reciprocity between generations,

and this constitutes a problem for any theory of justice, including the theory of justice as fairness (Gosseries and Meyer 2009, 119–146).

There is a second argument concerning the thought experiment used by Rawls to determine the principles of justice derived from the 'original position' (for a more detailed discussion of Rawls's original position, see Hinton 2015). In the original position, people are contemporaries, meaning they all live in the same period of time and are also unaware of the characteristics of the generation to which they belong: they do not know whether it is rich or poor, whether previous generations set aside money for its welfare and so on (Rawls 1999, 121).

This assumption is certainly not accidental. Rawls could, in fact, have assumed different conditions. For example, he could have imagined that the bubble contains representatives of all generations or, perhaps, to make it a little less crowded, one representative for each group of contiguous generations. And yet he does not choose this solution. His motivation is, after all, quite simple and appeals to common sense: a thought experiment involving the coexistence of individuals from totally different eras would be difficult to conceive and would require too much effort. Therefore, he opts to leave out the temporal property (Hart, Hacker and Raz 1977, 278 e ff). This decision has an important consequence. If we assume that the generations are contemporary, we deprive ourselves of the possibility of intervening in the savings rate. This is because all generations enter the bubble at the same point in time *x* at which certain conditions are given, which are the same for all. In such a context, it makes no sense for the inhabitants to commit themselves to investing or setting aside resources for future generations – the situation would be different if, having no idea of the moment in history into which they find themselves parachuted, the inhabitants of the bubble discovered that it is possible for someone to be born at a stage in which previous generations have pursued their maximum profit. Thus, if Rawls had defined his bubble with the idea of temporality, he would have determined a condition in which the inhabitants would be expected to think about the future because, hypothetically, they could not rely on the equivalence of material conditions at all stages of life within the bubble. In this context, each individual in the original condition reasonably ends up acting in service of his maximum profit. In other words, he rationally chooses to follow rules that benefit him, without necessarily caring what will happen to future generations. In order to avoid this paradox, which indicates the weakness of Rawlsian neo-contractualism in the face of the problems of transgenerationality or, perhaps indicates how the ideal theory only accords well with presentist metaphysics, Rawls introduces an element that is, in effect, rather foreign to the theory as a whole. He suggests considering individuals in the original position not only as rational agents, but also as representatives of specific family lines – real heads of families who, as such, will have precise interests in protecting their descendants.

In a nutshell, what Rawls is trying to do is provide a minimum safeguard for transgenerationality, that is, the protection of primary transgenerationality through the recognition of biological linkages. Parents have affective reasons for looking after their children's future, and it is a fact that the protection of primary transgenerationality is part of the make-up of many species, not just human beings. If this is true, one can also imagine that each generation implements practices to protect biological transgenerationality and parental bonds. As for the rest, Rawls assumes that interventions in the savings rate depend roughly on the level of wealth of a society: societies or population groups in a certain social context that are in situations of relative poverty will be called upon to set aside less, whereas those who can do more will be called upon to do so.

Now, this reasoning presents at least two types of criticality. With regard to primary transgenerationality, it is clear that there is an element of obscurity or indeterminacy in the link between parents and their offspring. In other words, although it seems reasonable to think that in most cases fathers (or mothers) take care to protect their children while also protecting, as far as possible, the environment in which they will live, we know that this is not always the case. It is evident that Rawls considers transgenerationality a less important aspect than the general normativity he constructs through his general theory. The Rawlsian approach presents at least two fundamental problems. First, it entrusts the protection of transgenerational ties to the good will of each person and the exercise of a kind of virtue ethics. Second, it assumes that all parents love their children more than themselves, which is not true in all cases. Thus, parent-child love is not expendable in a theory of rational choice because it undermines the assumption of self-interest (cf. the argument developed by English 1977).

Rawls' arguments do not provide enough support for transgenerationality to be protected on a large scale and, above

all, too little to think that this exercise works outside the parental circle. In other words, while it is possible – though certainly not inevitable – for parents to protect the life, health and future of their children, it is, on the other hand, quite utopian to think that a community will protect the life, health and future of the generations to come if there is no compulsion to act (or not act), that is, if there is no normative context to accompany and reinforce individual and institutional decisions. This is because primary transgenerationality generally has a spectrum of interest limited to children and grandchildren, rarely covering a longer time span. On the other hand, it must be stressed that the climate issue is a global problem that can only be tackled through global cooperation. Such cooperation can only extend beyond national interests. Thus, the motivation of parental or family ties can hardly justify fair savings on a transgenerational and cosmopolitan level. The most unexplored aspects of transgenerationality therefore concern the temporal dimension that belongs to those who will exist long after us.

In *Political Liberalism*, Rawls returns to the issue by proposing a different strategy. The idea remains that of preserving temporally undifferentiated access to the original position with the aim of strengthening the veil of ignorance. Therefore, he proposes that in the original position, an agreement is made to set aside, on the basis of a principle that can be followed by all generations, those that ideally preceded and those that will follow (Rawls 2005, 273-274). It is clear, however, that such a principle is extremely difficult to formulate precisely because the transgenerational question engages temporality not in an ahistorical sense, but as a historicised time in which human beings exercise their capacity for action.

2. The principle of transgenerational equity

If we believe there are good arguments for considering the Rawlsian approach ineffective and if, at the same time, we are of the opinion that transgenerationality raises urgent issues, then we should conclude at least three things. Firstly, there is an urgent need to think about the corrective measures to be applied to neo-contractualism, which, at least in the Rawlsian version, is unsuitable for dealing with transgenerational issues since it does not integrate temporality into its theoretical model. Secondly, utilitarianism is unsuitable for dealing with the problems raised by climate change, and this gives us good reason to believe that it is not the most suitable strategy for discussing transgenerational issues either.

Finally, we should also consider the possibility of reconfiguring political ontology in such a way that the categories of movement and deferral prevail over the more classical categories of permanence and substance. Secondary transgenerationality implies three things: the constant reference to a certain dimension of temporality, the future and the systematic recourse to a particular fictitious entity, namely future generations. Future generations are one of the entities that populate the ontology of future time; other entities could be mentioned, such as future climate or future biome. From an ontological point of view, and with regard to the question of temporality, rather than favouring the traditional division of time into distinct segments, such as present, past and future, it is a question of considering time as that which endures while understanding the future as that which exists despite not having a determined form. The future, therefore, exists in a different way than the past or the present.

Research and debate on climate change often focuses on the present and the past, i.e., on what is happening now and what has happened, roughly, during the last century, assuming that the actions that have damaged or are damaging the climate and the environment have been carried out by different agents over a fairly long period of time. This means that any analysis of the causes of climate change is *ipso facto* measured by the concept of responsibility over time.

This is why we speak of cumulative responsibilities in a twofold sense: both in the sense that these responsibilities must be ascribed to a multiplicity of public and private actors, and in the sense that they date back to different historical phases. This stratification needs to be taken into account by international institutions and policymakers to make the fairest possible decisions on climate change measures. Cumulative responsibilities generally relate to the past and have a good degree of complexity in themselves. However, the climate issue not only concerns that which has already been done, but also challenges us with regard to the future, i.e., with regard to the mitigation actions that need to be taken to halt the progressive deterioration of the climate and the environment.

The tool that international diplomacy has used most widely to reason about global actions and responsibilities is the principle of shared but differentiated responsibilities. This principle was explicitly formulated at the United Nations Conference on Environment and Development held in Rio in 1992 and known as the Earth Summit. It is based on four premises: historical responsibility, equity, capacity and vulnerability. Historical responsibility is aimed at reconstructing the past and determining responsibilities as precisely as possible; equity is the general criterion aimed, so to speak, at balancing the scales, i.e., at finalising equitable actions and decisions; capacity is aimed at considering scientific and technological skills, i.e., the tools of knowledge and technology that can be used to limit climate deterioration. Finally, vulnerability encompasses the difficulties facing countries in a particularly fragile state of economic and cultural development and which, because of this, would not be able to cope with the burden of the costs of energy transition.

Historical responsibility, equity, capacity and vulnerability constitute the different aspects of the principle of shared but differentiated responsibilities, the aim of which is to provide a theoretical tool to support policymaking. To this end, there are two strategies: firstly, the examination of the present situation on a global scale (equity, capacity and vulnerability) and secondly, the analysis of responsibilities formulated on a longer time scale (historical responsibility). Historical responsibility is primarily concerned with understanding the past to determine as precisely as possible who is responsible for what has happened. In this sense, it is possible to regard the determination of historical responsibility as a necessary but not sufficient tool for guiding the future – scholars theorise both the non-existence of the future and its indeterminacy: the former hold that only what is or what has been can be said to exist in the sphere of temporality (McTaggart 1908), the latter (for example the so-called Growing Block Theory) hold that the future, despite its indeterminacy, does exist (Paul 2010).

In this context, we think it would be very useful to think about possible ways of broadening the criterion of vulnerability. Not only are some countries more vulnerable than others, but there are likely to be generations that are more vulnerable than others. Scientific evidence suggests that if actions to combat climate change are not both decisive and targeted, then future generations will be more vulnerable to climate change than past or present generations. Thus, there are good reasons to conclude that the principle of vulnerability must be extended to future generations. However, a reformulation of the vulnerability principle is not sufficient.

The broadening of the criterion of vulnerability must provide for the parallel reformulation of the criterion of historical responsibility. We attribute to states the historical responsibility for institutional actions, public actions and the actions of private citizens that fall within the perimeter of what a legal system allows. While it is true that responsibility is primarily individual (see, for example, Gilbert 2006), it is also true that companies, states and composite administrations (meta-states) are the only entities that can be attributed the task of guaranteeing the exercise of equity over time, and thus of elaborating and providing the instruments for exercising justice and equity in a diachronic perspective. What entities other than states and composite administrations could perform the task of keeping track of and possibly guaranteeing a form of intergenerational rebalancing?

It is precisely because of the implementation of intergenerational justice that actions dating back 20, 30 or even 40 years cannot fail to concern us. However, it is also appropriate to think about transgenerational responsibility. A first remark concerns the direction of responsibility: it cannot be limited to the past. We must ask whether it makes sense to believe that humankind, through the political entity to which we have delegated the task of preserving societies over time, namely the state, should not commit itself to directing the future by taking responsibility for it. Moreover, also in accordance with the recognition of the personal character of responsibility, we would argue that responsibility for the future is more cogent than responsibility for the past. We know that responsibility is personal; that is why we are responsible for the actions of those who have gone before us insofar as they are attributable to, or carried out by, institutional subjects that form the diachronic structure of the community.

Objections to these arguments are generally of two kinds. The first type concerns what we may call opacity concerning the ‘consequences of action’ (cf. Singer 1972, 2009). In other words, not all consequences of actions are predictable and not everything is predictable in the same way. Moreover, predictions are, by definition, uncertain. If this is true, it is not very reasonable for people to choose to limit their freedoms or not maximize their profits; nor is it reasonable for states to choose to do so. To stay with the case of climate change, it is clear that in the last century,

the data available to the scientific community were qualitatively and quantitatively different from the data available to us today. Therefore, the issue of making reliable forecasts is not easy to solve because of the nature of scientific knowledge, which is in constant flux. However, it is important to emphasise that it is one thing to talk about forecasts, i.e., the possibility of predicting the future, and quite another to talk about steering the future in one direction or another. In the first case, it is a question of predicting what will happen; in the second, of orienting the present towards certain objectives that seem important to us and that, presumably, will only be realised at a certain temporal distance from us. In this sense, it is useful to emphasise that the consequences of an action or series of actions can only be understood at least with a sufficient degree of clarity by examining a fact or action 'from the future' (Danto 1965, 2007); that is, after a certain period of time has elapsed since the action was carried out, so that the most important consequences of that action can be considered. In certain matters, therefore, we must provide for the adoption of a principle of prudence that protects future generations with respect to worst-case scenarios.

The second objection generally involves a principle of prudence or, if we prefer, realism, and can be summed up as follows: how can we hope to interpret with any degree of certainty the tastes, expectations and wishes of those who will come after us (Zwarthoed 2015)? Above all, how can we do so in the case of those generations that will be at a considerable temporal distance from us? Supporters of this objection believe that the idea of more or less openly directing the future conceals an attempted exercise of power, since it imposes our vision of the world on those who will come after us. In reality, it is rather naive to believe that the most significant social actions (and sometimes even many of our individual actions) do not imply consequences in the long or short run. In other words, whether we take responsibility or not, the future is always conditioned by what we decide to do or not do. The central point, therefore, is to delimit the perimeter of responsibility and action, not to recognise that there is a responsibility for the orientation of the future.

If we assume that the future exists and is open, it is quite reasonable to assume that we should aim to steer it in some directions rather than others, such as, for example, towards actions that involve attention to sustainability and equity. In view of this, I suggest incorporating the principle of shared but differentiated responsibilities in such a way as to broaden the sphere of responsibility which, in the current formulation, primarily concerns the past. It seems desirable to broaden this to the future, first and foremost by considering the responsibility that present generations must assume towards future generations. This extension can be described by the principle of transgenerational responsibility, which can be articulated as follows:

1. Life, in most circumstances, is preferable to death;
2. Achieving a good quality of life is a goal that each generation legitimately sets for itself;
3. Transgenerational bonds bind generations across time, determining reciprocal rights and duties within the transgenerational chain;
4. Transgenerational actions have a particular structure that involves collaboration between generations in order for a specific action to be carried out (for a more on transgenerational action see Andina 2020); and,
5. Transgenerational social actions must respect transgenerational constraints and strive to orient the future in ways that do not undermine the right of future generations to have a good quality of life.

The principle of transgenerational responsibility recognises the existence of transgenerational bonds and, likewise, acknowledges the peculiar structure of transgenerational actions. Similarly, it contemplates the possibility of granting rights, as well as duties, to those abstract artefacts, future generations, which envisage a change of state, i.e., the passage from potency to act. The probable existence of future generations, together with the fact that these particular artefacts are called upon to make long-lasting and complex transgenerational actions practically feasible, leads to the conclusion that the principle of transgenerational responsibility must be extended to future entities with particular regard to future generations, also in view of the circumstance that preceding generations often derive a concrete advantage from postulating the existence of future generations.

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About the author:

Tiziana Andina is Full Professor of Philosophy at the University of Turin (Italy) and the director of Labont – Center for Ontology at the University of Turin. Previously, she has been a fellow at Columbia University (2008–2009) and Käte Hamburger Kolleg, University of Bonn (2015) – as well as Visiting Professor at ITMO University, Russia (2014), University of Nanjing and Wuhan, China (2018, 2019). She has published articles on social philosophy and the philosophy of art and her recent works concerns the definition of art and social ontology. Her publications include: *The Philosophy of Art: The Question of Definition. From Hegel to Post-Dantian Theories* (Bloomsbury Academy 2013), *An Ontology for Social Reality* (Palgrave Macmillan 2016), *What is Art? The Question of Definition Reloaded* (Brill 2017), *A Philosophy for Future Generations* (Bloomsbury Academic 2022) and the edited volumes *Post-Truth: Philosophy and Law* (Routledge 2019) and *Institutions in Actions: The Nature and Rule of the Institutions in the Real World* (Springer Nature 2020).