

Moral powers and the moral community: Comment on Richardson

Rowan Cruft

University of Stirling

Correspondence

Rowan Cruft, University of Stirling.

Email: rowan.cruft@stir.ac.uk

1 | RICHARDSON'S PICTURE

Morality is clearly in some sense a human creation. The difficulty is: in what sense? Richardson's *Articulating the Moral Community* offers a partial answer to this question. He argues that the moral community can exercise a power to create moral changes: refinements of current moral principles can be generated through this power. Richardson uses the term 'articulation' in the engineer's sense, referring to a body that 'has parts that move with some partial independence from each other, allowing greater overall flexibility in movement' (p. 13). His book focuses on explaining how the moral community can build new parts for morality when needed.

One of Richardson's examples concerns the emergence of new moral norms in medical ethics, prohibiting 'the use of placebo-control [groups] unless [the aim is to] test whether a relatively cheap and affordable treatment would be better for [those] in the host community than no treatment at all' (p. 10). Another example concerns the emergence of new moral norms on grandparents' obligations to their grandchildren (p. 12). Richardson claims the moral community can *create* such new moral norms, thereby making determinate what was – prior to the creation – morally indeterminate due to moral gaps or conflicts. Much of the book focuses on the three-step details of the relevant power to create new moral norms: starting with two individuals together working out creatively how to respect a given but indeterminate right (held by one of them, entailing a duty for the other); moving through wider social acceptance of the particular 'working out' done by those two; resulting eventually in ratification by the moral community as a whole.

Richardson's motivation is partly pragmatist. His account of how morality can be articulated plays an important role in his broader constructive ethical pragmatism:

“Constructive Ethical Pragmatism is, roughly, the view that (a) which actions are right in a given circumstance is a function of the valid moral norms legitimately

This is an open access article under the terms of the [Creative Commons Attribution](https://creativecommons.org/licenses/by/4.0/) License, which permits use, distribution and reproduction in any medium, provided the original work is properly cited.

© 2023 The Authors. *Philosophy and Phenomenological Research* published by Wiley Periodicals LLC on behalf of Philosophy and Phenomenological Research Inc.

in place, where which ones are legitimately in place is partly a result of the moral community's tacit reflective efforts to work out a well-integrated and coherent understanding of the right and the good; and (b) where the valid moral norms legitimately in place generate a practical indeterminacy, which actions are right may further be determined by additional efforts in that direction" (p. 39).

Even a non-pragmatist can see attractions in this view. The extent to which the position is pragmatist depends on how much of morality can be traced to creation (rather than discovery) by 'the moral community's tacit reflective efforts', and on how far such creation is functionally governed by pragmatist goals (such as truth, conceived procedurally).¹ Richardson himself thinks that there could be a substantial *uncreated* a priori moral core, with the moral community's powers working out its articulated parts.

One reason to endorse Richardson's position independently of any commitment to pragmatism is that there are obvious examples of everyday practices of moral creation that are similar to what Richardson has in mind: powers to promise, consent, forgive, and powers to create legitimate positive law through democratic authoritative processes. The latter are all powers to change what someone is morally required to do through willing such a change. In the case of promising, consent, and forgiveness, the change is 'particular', altering the moral duties or permissions of a single person (promisor, consentee) or of two people (forgiver and forgivee). In the case of positive legislation, the power alters the duties of all those within a jurisdiction; but its moral effect is indirect, working via our moral reason to respect legitimate law.² Despite these differences, the familiar powers just mentioned strike me as examples extrapolation from which should lead us to be receptive to the possibility of Richardson's kind of power: a power possessed by the moral community as a whole, directly to create new moral norms binding on all.

2 | POWERS AND STANDING DUTIES

My comment will assess Richardson's proposal by comparing the power on which he focuses with the familiar ones just outlined. Beforehand, it is worth pausing on a difficulty faced equally by Richardson and those working on promising, consent, legislation, etc. How do we distinguish (a) someone's exercising a power from (b) their simply triggering some standing norm? When I trip and injure myself in front of you, there is a sense in which I alter the duties you are under: you now have to help me out by calling an ambulance. But here it seems natural to say that my tripping simply triggered your standing duty to help those in front of you who are in need. It is very different to a legitimate legislature's introduction of a new law legally requiring you to call an ambulance in order to test the emergency services, and equally different to your promising to make the call even if my need does not require it. Why do the second two cases of normative change involve exercise of a power, while the first does not? Richardson writes:

"Empowering norms [...] are a special case of second-order norms that take a conditional form, $q \supset O(p)$, wherein the antecedent refers to the historical and contingent fact that a particular person has exercised some moral power to put in place a new norm" (p. 151 – also p. 90).

¹ For Richardson's pragmatism, see Misak's contribution to this symposium.

² For Richardson's own work on a democratic populace's moral power, see his *Democratic Autonomy* (OUP 2002).

What is the ‘exercise [of a] moral power’? Chang glosses it thus:

“Robust normative powers are capacities to reflexively will that some consideration be a reason, where that willing is that in virtue of which the consideration is a reason. The thus and so willed is *normative*; it is that something be a reason”.³

In cases of promising or legislating, a new reason – or duty, permission, etc. – is created by an exercise of will in which *creating a new reason (or duty etc.) by one’s will* is part of the content of what one wills: I will to “create a new reason by this very act of willing.” And in standard cases, the new reason, duty or permission would not be created if one’s will did not have this content. In non-standard cases, such as deliberate self-injury as a cry for help, the new reason would be created by the relevant action (i.e., self-injury), even without the reflexive willing to create it.⁴ But such reflexive willing seems essential to any case involving an exercise of power in sense (b) above, even non-standard cases. I return to this in §5 below.

3 | RICHARDSON’S ARTICULATION POWER AND MORE FAMILIAR POWERS

It will be helpful to lay out schematically the differences between the familiar moral powers – promising, consenting, forgiving, positive legislating – and Richardson’s power to create new moral norms:

1. Richardson’s articulation power eventually creates norms with general jurisdiction across all persons (unlike promising, consenting, forgiving, legislating) – even though the first stage involves changes only to one person or two people’s duties.
2. Richardson’s articulation power creates moral norms in a more ‘direct’ way than positive law legislation, which alters a jurisdiction’s moral duties only via the moral duty to respect legitimate law.
3. Richardson’s articulation power begins with specifying *rights*. The first stage in exercising this power involves ‘an individual who is the specific addressee of a moral right’ (p. 105); this individual faces an ‘unavoidable discretion’ concerning how to fulfil the right, exercise of which ‘amounts to exercising a moral power to specify the duty in question’ (p. 105). This power to specify is central to the correlativity of right and duty, and is also the starting point for what – if accepted and ratified widely – will become the moral community’s articulation.
4. Richardson’s specification power, and the articulation power that it becomes, *fill a gap* in morality created either by indeterminacy or conflict. The power does not involve overturning an established moral principle – in the way that consent or waiver annuls a prior moral duty. Instead, it is a power to introduce a new norm that determines what was previously indeterminate.
5. The agent exercising Richardson’s articulation power is ultimately *the moral community*, even though this community’s work starts with individuals specifying particular rights.

³ Chang, ‘Do We Have Normative Powers?’, *Aristotelian Society Supplementary Volume XCIV* (2020), p. 292.

⁴ Waldron, *The Right To Private Property* (OUP 1988), p. 269.

6. Richardson's articulation power has to be exercised unintentionally or unknowingly, at least initially: the parties specifying a right-duty pair 'must not believe that [...] it is morally indeterminate how they ought to choose [even though it is so indeterminate]' (p. 109).

4 | RIGHTS AND INDETERMINACIES

I briefly discuss points 3 and 4, before spending more time on points 5 and 6 in the next section. In relation to point 3, it is uncertain to me why *rights-correlative* duties are the only duties Richardson picks out as needing imaginative specification involving moral creation. In my view, there are some moral duties that do not correlate with rights: duties whose violation is wrong but wrongs no specific party. Examples might include a duty not to destroy an uninhabited planet; more familiar (but controversial) examples in the literature include duties of beneficence and of respect for nature. Such rights-independent duties seem as likely to need constructive specification as those correlating with rights. Why does Richardson think moral construction starts from rights?

One reason is his Specificatory Theory of dyadic moral rights and duties:

"For individuals A and B, A has a moral duty to B to PHI and, equivalently, B has a moral right against A that A PHI, just in case (i) B has a monadic moral right that implies in the circumstances that A has a moral duty to PHI and (ii) on account of (i), A has a moral power to specify A's moral duty that a PHI" (p. 261).

Richardson presents his Specificatory Theory as an account of dyadic rights: rights held by one party against another. On Richardson's innovative account, a dyadic right exists when a monadic right calls both for action, and for specification of the action called for, from a duty-bearer.⁵ I have doubts about aspects of this account, but partly for reasons that do not speak to my main point. For example, I am suspicious of the idea of a 'monadic' right: in my view, something only merits the title 'a right' if it already entails some duty; a right correlating with no duty is indistinguishable from something's being valuable.⁶ But my main point for current purposes is simply that sometimes a person might be subject to a duty uncorrelated with any right, and yet still be morally required to specify that duty. It is unclear to me why a duty that requires specification by its bearer must always correlate with a right. Richardson makes the need for specification emerge from the indeterminacy of moral considerations as applied to real cases (pp. 102–3). This could be evident in non-rights cases, such as the duty not to destroy an uninhabited planet. I do not think that acknowledging this would require a major change to Richardson's theory. It would simply allow both rights-correlative and 'undirected' duties to function as starting points for the small-scale specification that can eventually become a moral articulation effected by the moral community.

Another question concerns whether the moral articulation power can ever be used to reject established moral principles. Richardson largely suggests that it cannot – that its function is to fill indeterminacies, rather than overturn already-determinate conclusions (p. 263). One reason to understand it this way is that once the articulation power has been exercised, an issue will no longer be morally indeterminate. Consider Richardson's initial examples: principles of medical

⁵ In Richardson's view, every time a monadic right calls for some PHI, and this is addressed to a specific duty-bearer, it is possible that the duty-bearer will have to do some specificatory work (pp. 113–4).

⁶ Cruft, *Human Rights, Ownership, and the Individual* (OUP 2019), pp. 6–7.

ethics and grandparental obligations. Once we have made these into moral principles, the issues that they determine will no longer be indeterminate. But on p. 186, Richardson allows that ‘future generations could undo any new moral norm.’ At this point, Richardson seems to be considering the idea that there is a ‘timeless core of objective moral principles,’ and that anything not in this core is revisable – not just specifiable, but with earlier relevant specifications rejectable as well. Let us call this the ‘two-way power over non-core’ view. The difference between the latter conception of our moral articulation power, and the former unidirectional conception (call it the ‘one-way power over indeterminacies’ view) seems important. We get different pragmatist positions depending on which view we adopt. The two-way view makes the moral articulation power closer to waiver, consent and positive-law legislation than to promising; the two-way view also seems to make the relevant power exist not simply in indeterminate cases, but in any case, that is not a matter of morality’s objective core. I suspect the most satisfying view is the one-way view: this avoids a sharp distinction between morality’s ‘timeless core’ and everything else; it also fits better with Richardson’s plausible claim that indeterminacies – caused by incommensurable values, and by conflicts – are the site for moral innovation; but it opens the concern that the past moral community can bind the present and future ‘for all time’ (p. 186) because once an indeterminacy has been resolved through moral innovation, it will not, on this view, be open to revision.

5 | A POWER FOR THE MORAL COMMUNITY?

The matters of detail above do not seem to me to threaten Richardson’s overall position. By contrast, I see bigger concerns about points 5 and 6 from §3’s list. On 5: many will question the idea of the moral community as an agent.⁷ Richardson does a good job of explaining how this community can act in appropriately power-exercising ways without having to come together through organised structures. As noted earlier, the initial stage of exercising this power involves the working out by two individuals (right-holder and duty-bearer) of the specification of a particular duty in context. At the second stage, others notice this specification, copy it, and it eventually becomes an object of social convergence. At the third stage, the norm converged on is ratified through broad, inclusive recognition (by all except ‘disqualified groups’ (p. 181)) that the norm is a ‘reasonable response to a moral problem’ (p. 188). The moral community’s exercise of its power therefore involves actions on several levels without requiring *everyone* to act in a given way, and without requiring some *structured leadership*.

I like this relaxed picture of how the moral community can act. It illustrates the wider point that the way to exercise a power (in morality, law or some other normative system) need not always involve just one or two people – as the examples of promising or consent suggest. It seems perfectly possible for a power to be exercised in a disaggregated way, requiring different sorts of actions by different people across time in different roles which together connect to constitute exercise of the power, even without the formal structures of positive-law legislating.⁸ Richardson’s picture also marks a welcome change from the common philosophical assumption that group agency – especially that of unstructured groups – is *prima facie* problematic in a way that individual agency is not. It seems to me that often an individual human’s status as a unified agent is rather unclear, with uncoordinated components and no determinate control structure. On this basis,

⁷ See e.g., Collins, *Group Duties* (OUP 2019) on different conceptions of the agency necessary for a group to bear duties.

⁸ I would even say that failure of imagination about disaggregated exercise of power underlies pro-Brexit and similar prejudices against multi-lateral institutions.

I am attracted to the thought that many groups, even including humanity, can act in almost as unified a way as an individual human can.

But these claims make point 6 press hard: if, as Chang suggests, exercise of a power really has to involve a *reflexive will* to create or alter reasons, duties, or obligations *through this very will*, how is this possible for an unstructured enormous group like the moral community? Further, Richardson denies that such explicit willing is involved, at least at the initial specificatory stage:

“In exercising their discretion, the addressees [bearers of a duty correlating with a right] [...] must not believe that, with regard to any significant [...] question, it is morally indeterminate how they ought to choose. Believing this would almost surely undercut any effort to proceed conscientiously. In this respect, they are called upon not to believe that the theory of indeterminacy-reducing moral progress propounded in this book applies to the case before them. They are not, however, called upon to disbelieve the theory altogether” (p. 109).

It is hard to see how parties proceeding like this could take their will – to proceed on the basis of a particular specification – to include the content that ‘the reason (or duty, or principle) to proceed on this basis is created by this very will.’ Without that content, the parties might simply have no view about what they are doing; or they might *think* (erroneously) that they are in a ‘triggering’ case (see §2 above): that their task is simply the epistemic one of finding out what is implied, in this new context, by standing principles that already make determinate what to do.

Why does Richardson disallow the addressees of an indeterminate right to realise that they are exercising a moral power to determine what is indeterminate? It is not as though realising this will lead the addressees to throw up their hands and conclude that ‘anything goes’. As Richardson shows, indeterminacy arises from the conflicts and incommensurabilities generated by recognised principles applied to the case in question. So the addressees’ specificatory work will be limited by these principles. Richardson thinks that ‘because of the importance of attending seriously to the relevant moral considerations, the requirements of sincere and conscientious judgement rules out the frank embrace of constitutive authority [i.e., the power or authority to *make* a new moral principle]’ (p. 109). But I am not sure this is correct. It seems possible both to recognise that one is faced with a genuine indeterminacy in which one’s decision will – if within the limits of the principles applying – *make* what one chooses into what morality requires in this context, while also recognising the requirement to attend seriously, sincerely and conscientiously to all the considerations that have generated the indeterminacy. It even seems possible to embrace one’s constitutive authority while thinking that it can be used in better or worse ways: relevant external standards of ‘betterness’ include non-moral practical standards (is this better for me or us, taken prudentially?).⁹ They also include epistemic standards: very often it will be unclear whether one is in an already-determinate-but-obscure case, or instead is faced with genuine indeterminacy. Here, one can do well by thinking something like this: ‘This might be a case in which my specificatory work creates a new moral duty – but it might rather be one in which I discover what was already my duty. In this context of uncertainty, I will proceed cautiously but recognise that I might be doing some moral creation here.’ This careful, self-aware approach strikes me as better than having no belief that the case could be indeterminate, or falsely believing it to be determinate. There is

⁹ This is often relevant in political contexts: which among the many morally acceptable policies is best for our particular society?

intrinsic demerit in failing to grasp one's true position as power-holder; it also risks parties proceeding insufficiently cautiously. Better that they be aware of their own power.

But is it really a power? If we lift Richardson's requirement that it be exercised unknowingly – and if we also promulgate the general view developed in Richardson's book, so most people are aware of this power – then it seems to be able to fit Chang's reflexive picture: we can then, I think, argue that the moral community's will is to *create a new moral principle through this very act of willing*. The relevant 'act of will' is complex, as outlined by Richardson's three stage process, but I do not see this as an impediment.

But if we stick with Richardson's requirement that it be exercised unknowingly, by agents who are barred from a 'frank embrace of [their] constitutive authority', then its status as a genuine power seems less certain. Compare the following three principles (each defeasible):

If someone is in need near you, and you can help them with ease, then you should do so.

If legitimate positive law requires you to do something, then you should do it.

If Richardson's three stages of moral articulation are performed, resulting in a principle requiring you to do something, then you should do it.

The first is clearly a standing principle, that can be triggered in particular circumstances, that requires you to act (as in the tripping-over case from §2). The second can also look like a standing principle that can be triggered. What distinguishes it as involving exercise of power, where the first does not, is I think Chang's reflexivity point: fulfilment of the antecedent (legitimate positive law's requiring something) necessarily involves an exercise of will (by the legislature, in this case) whose content is that there be a reason to do something in virtue of this very will. The same point would distinguish promising, forgiving and so on. What about the third principle above? Suppose, as Richardson requires, that the initial parties doing the specificatory work *do not believe* that they are engaging in moral creation by making it the case that some action PHI is to be done, where beforehand this was indeterminate. And suppose the later convergence and ratification stages are similar. In such a case it is unclear how the parties could be willing reflexively that PHI is to be done precisely in virtue of this very willing. Should the third principle above therefore be understood as a trigger-able standing principle like the first? A principle that we might gloss as 'when things are indeterminate (although unrecognised as such), what addressees conscientiously think should be done should indeed be done'? Should we still see this as a principle that involves the exercise of power, because addressees' *thinking that something is morally required* is necessary to fulfilment of the antecedent, even if their *reflexively willing it* is not? Someone might argue that the distinction between thinking and willing is a fairly unimportant one in this context, and that *thinking that PHI is required* can do the necessary power-exercising work. But I worry about going down this route. Sometimes people's simply thinking that PHI should be done does indeed give me a reason to do it: perhaps their thinking this (independently of any reflexive willing) constitutes PHI-ing as a local solution to a coordination problem, or constitutes not-PHI-ing as disrespectful in this community.¹⁰ But in these cases, the thinkers' belief in PHI-ing does not look to me like exercise of a power. It is, rather, like the triggering case in §2: *given* that these local beliefs have developed, general moral principles requiring coordination and respect have come to require PHI-ing in this context. By contrast for proper exercise of creative moral powers, reflexive willing seems necessary. That appears incompatible with Richardson's requirement that addressees cannot 'frank[ly] embrace [their] constitutive authority.'

¹⁰ See Radzik's commentary for further discussion of local conventions.

6 | CONCLUSION

Richardson has written a compelling account of our powers of moral creation, encompassing: a persuasive theory of how the moral community can act despite its disaggregated, unstructured form; an innovative new theory of rights; and many insights on the nature of moral objectivity. I have outlined one primary concern: how to fit Richardson's approach within a picture of powers as involving reflexive willing. I am optimistic that his approach can be made to fit with this. The book is compulsory reading for anyone working in ethics, moral philosophy or other normative fields.

How to cite this article: Cruft, R. (2023). Moral powers and the moral community: Comment on Richardson. *Philosophy and Phenomenological Research*, 106, 237–244.
<https://doi.org/10.1111/phpr.12958>