

# The Normativity of the Will

## *Normative Powers and the Realist Accommodation of Constructivism*

The Anglophone tradition of legal philosophy, from Bentham through Hohfeld to Hart, has developed the important concept of a *legal power*: a power to affect persons' legal situation by affecting (e.g., creating, changing, or interpreting) the legal norms that apply to them. N. MacCormick and J. Raz have proposed a generalization of this concept, and have suggested analyzing various types of actions – for example, promises, decisions, and authoritative commands – as exercises of *normative powers*, powers to intentionally affect the obligations of persons (whether one's own or others').

In my paper, I argue that the concept of a normative power has been insufficiently utilized in meta-ethical theorizing, and more specifically, that it has a useful and indeed indispensable role to play in resolving the theoretical stalemate between realist and constructivist approaches concerning morality, values, and reasons for action. While C. Korsgaard's constructivist project of founding the normativity of practical reason in the self-reflexive structure of the will has been subjected to powerful and cogent critiques by defenders of various brands of moral and normative realism, my paper claims that the realist critics can and should learn an important lesson from Korsgaard. The Korsgaardian – and, on a certain reading, Kantian – insight that realists should appreciate, I argue, is that any theory of practical reason needs to account for the irreducible normative role of exercises of the will. Failing this, realism risks exposing itself to charges of an objectionable Platonism that would conceive of the landscape of values as inalterably “given”. It thus risks depriving itself of the ability to appeal to human agency in accounting for the contingent historical emergence of values and reasons, and consequently for the plurality and heterogeneity of values that many realists are eager to acknowledge.

My paper seeks to show that the concept of normative powers is well suited for accommodating legitimate constructivist concerns within a realist meta-ethical framework. Normative powers invest agents with the ability to intervene in and shape their own and others' normative situation, and thus the landscape of reasons and values, in a *direct* manner: that is to say, through exercises and declarations of the will (in the shape of decisions, promises, orders, etc.), rather than merely indirectly and contingently (i.e., by way of changing one's own or others' empirical or psychological situation). To the extent that they are exercises of normative powers, exercises of the will can thus play a limited normatively constructive – one might say, a normatively creative – role. This role is *limited* insofar as it is itself normatively circumscribed: whether and to what extent some agent possesses some specific normative power – the power to affect certain obligations of certain persons – is itself a first-order normative question. In contrast with full-scale normative constructivism, the normatively constructive or creative role of the will is not conceived of as foundational; the will is not the “source” of normativity as such. At the same time, the role of the will in its exercise of normative powers is *constructive* because such exercises contain an essential element of choice or discretion (what H.L.A. Hart described as “small-scale sovereignty”); the reasons that agents can voluntarily bring into existence through exercising their normative powers are not derivable from any antecedent balance of reasons.

In conclusion, I argue that my proposal offers a way for normative realism to preserve the fundamental Kantian insight that the will plays a “legislative” (i.e., normatively constructive) role that is not reducible to its executive function. Attending to the phenomenon of normative powers allows one to retain what J. Wallace has called a “volitionalist” as opposed to an implausibly normativist (or even moralist) conception of the will, without therefore embracing constructivism's suspiciously reductionist attempt to trace the will's legislative capacity back to its allegedly antecedent self-reflexive structure. Exercises of the will cannot be normatively creative unless they, and thus the will itself, are already located in an existing normative landscape. Like any other type of legislation, Kantian self-legislation, and thus the self-determination of autonomous agents, does indeed involve the creative generation of new binding reasons, but only to the extent that the agents in question have the requisite competence or normative power.