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Charles Girard

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## On Norman Wilde's "The Meaning of Rights"<sup>1</sup>

Charles Girard

In "The Meaning of Rights," Norman Wilde offers an original account of rights, still of interest. Rights, he contends, are possessed by an individual by virtue of the social function she fulfills. It is because individuals belong to a common social order, in which each has her part to play, that they are "entitled to the conditions necessary for playing it" [288]. This approach allows for a nuanced view, according to which rights are neither absolutely inherent to the individual nor entirely dependent on social conventions. But is such a function-based justification of rights plausible?

A right is a claim to exemption from interference (or to aid) in the exercise of a power to do. As such, it presupposes the existence of a social order giving significance to the claim: the exemption (or the aid) must be demanded *of someone*. Rights only have meaning, therefore, "within the sphere of social relations" [288]. Human beings form associations to pursue shared purposes, and their organization gradually creates permanent social structures, such as schools, churches, or unions. These institutions operate as programs of work, assigning a function to each of their members and defining what they can do. To belong to an institution is "to have committed one's self to a scheme of life involving specific duties and specific rights" [285]. What makes a right not only meaningful, but justified, then, is that the exemption (or the aid)

being demanded is a necessary condition for the performance of one's duty within such a social order.

Wilde's account stands out as original when contrasted with standard justifications of rights. It is neither a status-based nor a contractual account: it does not rest on the recognition of certain attributes of the individual human being that would make it fitting to ascribe her certain rights, or on the determination of principles that would be chosen by properly situated and motivated individuals agreeing on the basic terms of their association. It rather is an instrumental account: rights are possessed by the individual to the extent that they are needed for her to "fulfill [her] function" [292]. Nonetheless, Wilde does not define rights simply as means for achieving a desired distribution of interests. They are rather preconditions that make it possible for individuals to act as members of a social whole, thus contributing to the pursuit of a common good. They are not determined directly on the basis of social goals, but on the basis of the functions assigned by institutions to their members. While individuals may or may not use their rights to pursue the institution's purpose, their possession of them is, however, a "negative condition" [290] for its achievement.

This account might be accused of making rights entirely dependent upon contingent social arrangements. Wilde, however, rejects such a conclusion, since he denies that they "are created by the grant of society" [293]. Although their existence is conditioned by the existence of social institutions, rights are not *created*, but only *recognized* and *enforced* by social conventions and laws. The individual fighting for her emancipation, for instance, does not ask society to bestow upon her a new right to freedom, but to acknowledge that she already has one *by virtue* of her place in the social order. In a slaveholding society, the slave's right to be free pre-exists its recognition by the slave-owner. Admittedly, individuals need to *see* themselves as members of

the same social order for rights to be recognized, since it is only when they can invoke a “common program” that they can successfully claim the protections necessary to its realization. But it is enough that individuals *belong* to the same social order, even unwittingly, for rights to exist. The reason appears to be that the common purpose embodied in an institution can only be “real” and “common” [296], if it is possible for its members to endorse it *freely*. Accordingly, they must have extended freedoms. To adequately perform one’s function, one needs to be able to adopt freely the common purpose from which it derives.

A mirror-objection could now be advanced: rights grounded on social functions might appear to be as indifferent to social circumstances as “absolute” rights, since their existence does not depend on their social recognition. However, Wilde also rejects this view, since rights are not “possessions of the individual irrespective of conditions” [295]. While certain freedoms are necessary conditions of the intelligent interest of the individuals in the institution’s purpose, the extent of rights also varies with circumstances. It depends on what is consistent with, or conducive to, this purpose in concrete situations. We should thus distinguish between the *ideal rights* individuals would have if society were constituted “as it should be,” with each member dedicated to the common good, and the *concrete rights* that “can be safely acted upon at a given stage of society” [296].

This function-based account of rights ultimately rests on a functionalist view of institutions. Two premises allow Wilde to claim that rights are neither absolute individual attributes, indifferent to circumstances, nor social conventions, entirely dependent on them. Firstly, institutions must be functionally organized towards the realization of a shared purpose. Society itself, as a network of institutions, must in fact be seen as functionally organized around common purposes. Secondly, the functionality of an institution must rest on the possibility for its members to endorse its

purpose freely. Only under this assumption can membership alone create extended freedoms. If institutions could adequately accomplish their purposes even when their members were not free to endorse them, a view assigning differentiated functions to individuals could invoke a function-based account to justify allocating deeply unequal rights, for instance, to slaves and slave owners.

Unfortunately, neither “The Meaning of rights” nor Wilde’s 1924 book, *The Ethical Basis of the State*<sup>2</sup>, fully substantiate these premises, which would make plausible a view in which “my rights belong, not to myself in my private capacity, but to the part I have to play in the human drama” [289].

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<sup>1</sup> A retrospective essay on Norman Wilde, “The Meaning of Rights,” *Ethics* 34 (1924): 283-297.

<sup>2</sup> Norman Wilde, *The Ethical Basis of the State* (Princeton: Princeton University Press, 1924).