

**Charges against self-ownership:**  
*Why Nozick's self-ownership thesis is incoherent and immoral*

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“Property is intended to serve life, and no matter how much we surround it with rights and respect, it has no personal being. It is part of the earth man walks on. It is not man”

**Martin Luther King, Jr. (1929-1968)**



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## A Discussion

In our modern world the existence of private property is taken for granted. Especially in societies, where there is little government interference and the extent of the welfare state is limited, like the United States of America, the notion of private property plays a central role.

The emphasis on property sometimes results in policies, in which the protection of the private property of some groups and individuals bears a greater weight than the institution of public programs, such as education or healthcare for all. The discussion about Obama's healthcare program, that will be a major determinant in the upcoming elections this year, is a prime example of the significance given to private property by the opponents of this program. There is a general tendency to emphasize the right to holdings and welfare states are crumbling all over Europe.

Those who are against redistribution of wealth, by which welfare states operate, find the notion of private property of fundamental value. According to this view, private property is a fundamental right. For example, the right I have to my possessions is more important than your right to a basic income or healthcare, because those, who fundamentally value private property, disapprove of taxation of my wealth in order to secure your standard of living.

The question: 'what ought to be the relative position of the right to property among other rights?' is one that, lately, is being asked rarely. In this thesis this inquiry will be put forward and I will attempt to answer it by the examination of one the classic arguments in favor of the fundamental right to property in modern political philosophy; the self-ownership argument, brought forward by the well-known philosopher, Robert Nozick.

## B Introduction

Robert Nozick's *Anarchy, State, and Utopia* (1974) is a classic of modern political philosophy<sup>1</sup> and has been written as an answer to *A Theory of Justice* (1971) by John Rawls. *Anarchy, State, and Utopia*, or *ASU*, consists of three parts; the first part describes the hypothetical emergence of the state, the second part pleads for a state with minimal functions, and the third part provides an exploration of a utopic society. This thesis will focus on the second part of *ASU*, in which the minimal state is defended by means of a theory that describes justice in holdings. This theory about justice in holdings is supported by the classical liberal notion of self-ownership, which entails the property right that the individual has over himself and thus the power of the individual to decide what he is to do and what purposes his work are to serve<sup>2</sup>.

Many writers have employed the concept of self-ownership, but I will restrict the scope of this thesis to Nozick's version of the self-ownership thesis, because his description reflects the most common interpretation of self-ownership and, also, I will limit the scope for reasons of conciseness. From this point onwards I will speak of *the* self-ownership thesis, or the SOT, by which I refer to Nozick's interpretation of this concept.

As mentioned, I will attempt to determine the correct relative position of the right to property among other rights. I believe the right to property should be located below the rights to life and liberty in a suppositional pecking order of rights. The right to property is, in my opinion, not fundamental.

However, the SOT substantiates the claim that the right to property is in fact fundamental. Therefore, to validate my statement that the right to property is not fundamental, I will attempt to prove that the SOT cannot be maintained and that it is neither coherent, nor moral.

The analysis of coherence is a rather straightforward matter and requires an examination of Nozick's logic of assumptions and conclusions concerning the SOT. Yet, the notion of morality is more complicated, for it is a multi-interpretable concept. Although Nozick does not explicitly state that he considers

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<sup>1</sup> Bader & Maedowcroft (2011): 1

<sup>2</sup> Nozick (2010): 172

self-ownership as moral, I will assume that he does. Nonetheless, my interpretation of morality differs from Nozick's understanding of this concept, as I will explicate in the second part of this thesis.

In this thesis I will attempt to answer the following questions: **Is Nozick's version of the self-ownership thesis, which justifies the fundamental character of the right to property as the highest priority right, coherent? And is it moral?**

These are significant questions, because they not only evaluate a small part of modern political philosophy, but they also affect some important ethical and distributional issues in today's societies. Should people be allowed to sell their organs? (How) should we redistribute goods in society? And should we be able to trade our freedom in return for property? These are some of the questions that are explicated within this thesis.

To answer these questions and the main questions about the coherence and morality of the SOT, this thesis will start off with a reconstruction of Nozick's SOT and his related concepts of entitlement and rights in the first part. Various authors have pleaded against the SOT, but I will limit my overview of the existing critiques in response to the SOT to the work of Cohen and Freeman in section 1.2. I have chosen these two thinkers because of their significance within the debate on Nozick's SOT and because of their link to my own argumentation against the concept of self-ownership.

In the second part of this thesis I will attempt to affix a new perspective on these existing evaluations of the SOT and provide a supplement to them, by claiming that the SOT is not coherent and not moral. In section 2.1 I will examine the coherence of Nozick's self-ownership concept and I will argue against it by demonstrating that individual self-ownership cannot be reflexive. Moreover, in section 2.2 an assessment of the moral aspects of self-ownership will be made on the basis of my claim for a pecking order of rights.

I would like to press charges against Nozick's self-ownership thesis, because I find its arguments in favor of a fundamental, all-encompassing right to property, which overrides the primary right to life and the important right to freedom, to be incoherent and immoral.

# PART 1

## 1.1 Reconstruction of Nozick's self-ownership thesis

In part two of *ASU*, Nozick declares that a minimal state is the most extensive state that can be justified, because states with further reaching functions violate people's rights<sup>3</sup>. To support this claim, Nozick lays out his view on justice in holdings, the entitlement theory, which is substantiated by his self-ownership argument, the topic of this thesis. However, before moving to the self-ownership argument itself, it is important to clarify the entitlement theory, since one needs an understanding of the latter to comprehend Nozick's self-ownership thesis. Furthermore, for the purpose of my claim against the self-ownership argument, I will explicate the role of rights within Nozick's theory, because different interpretations of the concept of rights have different effects on the moral value of self-ownership. Hence, in the following sections I will clarify Nozick's entitlement theory, his self-ownership argument, and his view on rights.

### 1.1.a *The entitlement theory*

Nozick's view on justice regarding property and the distribution of property is illustrated by his entitlement theory. In this theory Nozick employs three principles to substantiate the fundamentals of just ownership of particular entities: first, the principle of justice in initial acquisition; second, the principle of justice in transfer; and third, the principle of rectification of past injustices<sup>4</sup>.

The principle of justice in acquisition is the most complex of these three and describes the just appropriation process of previously un-owned matters. This principle is based on Locke's theory of acquisition, in which property is initially attained through the fusion of someone's labor with un-owned objects<sup>5</sup>. Imagine yourself cutting a tree, carving the wood and fabricating a chair, for example. After this process, the claim that this chair is your property does seem justified. Nevertheless, the mere process of mixing labor into external resources

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<sup>3</sup> Nozick (2010): 149

<sup>4</sup> Nozick (2010): 150-151

<sup>5</sup> Locke (2008): §27

is not enough to establish a property right over external resources because, if it were enough, this would mean that one could come to own large parts of the planet by the performance of relatively small proceedings, which would not result in a very convincing theory of property. Nozick exemplifies this with the following thought experiment<sup>6</sup>: if I own a bottle of tomato juice, pour it into the ocean, and thereby blend the juice molecules with the water molecules, I would own the entire ocean and maybe even more, because most waters are connected.

My seizure of the ocean, by which I appropriate the power to determine what shall be done with the ocean<sup>7</sup>, would worsen the situation of others in two ways; first, other people hereby no longer would have the opportunity to improve their situation by use of the ocean, and second, others would lose the ability to freely use what they previously could use freely. My acquisition of the ocean thus deprives others of opportunities and restricts them in their freedom. To overcome these problems, Locke added a condition to his theory of property, which states that the acquisition of external resources is justified, if there are enough resources and resources of the same quality left for others to take<sup>8</sup>.

Nozick favors this Lockean proviso but acknowledges that it might not hold in today's complex society, in which the world population is constantly growing and natural external resources become more and more scarce. Therefore, Nozick adjusts the Lockean theory of property and its proviso into the principle of justice in acquisition. This principle establishes that the initial attainment of a previously un-held thing is just if the appropriation of such thing by one person does not worsen the position of others<sup>9</sup>. The worsening of positions is determined by a baseline<sup>10</sup>, which is set at the hypothetical circumstances, in which the goods would not have been appropriated by anyone. Imagine two situations: in the first situation, the baseline situation, a certain plot of land has not been attained by anyone and the fruits of the land may be acquired by everyone, which will result in a depletion of the land. In the second situation, a farmer appropriates the same plot of land and thereby the

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<sup>6</sup> Nozick (2010): 175

<sup>7</sup> Nozick (2010): 171

<sup>8</sup> Locke (2008): 288

<sup>9</sup> Nozick (2010): 178

<sup>10</sup> Nozick (2010): 181

opportunities and freedom of other people are restricted. However, in this second situation the farmer properly cultivates the land and produces more and better fruits that can now be bought by the others. In the first situation all people will retain their opportunities and freedom but most of them will be hungry, since the depleted land will exhaust its production; in the first situation there is a collective action problem. In the second situation there will be enough to fruit for everyone, but people will have to render their opportunities and freedom concerning the plot of land. According to Nozick, the second situation does not provide deterioration compared to the baseline, and the appropriation of the land by the farmer is therefore justified.

The second principle of the entitlement theory, the principle of justice in transfer describes the legitimate process of transformation from one distribution of goods into another distribution of goods. According to Nozick, such transfer action is just if, and only if both parties voluntarily<sup>11</sup> undertake it. This second principle preserves justice whenever initially just distributions change in accordance with the principle of justice in transfer. Nozick's view on justice in property is therefore historical; whether a certain distribution is just depends on what actually happened.<sup>12</sup>

The final principle covers the rectification of past injustice, caused by a failure to comply with the first two principles. Such rectification is allowed if it does not violate the first two principles in its process and if it aims for the distribution that would have occurred, if no injustices would have taken place in the past.<sup>13</sup>

When all three principles are honored - if the initial acquisition of resources was just, if all subsequent transfers were just, and if, even so, injustices that have taken place were rectified - the derivative distribution of resources is justified. Any manipulation of this distribution, such as taxation at the benefit of public healthcare, public education, the construction of infrastructure, or the protection of nature for example, is non-justifiable. Therefore, Nozick argues, the minimal state, which only protects its inhabitants against force, theft, fraud, and

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<sup>11</sup> A real voluntary transaction includes both parties being informed.

<sup>12</sup> Nozick (2010): 150-152

<sup>13</sup> Nozick (2010): 152-153

breaches of contracts, is the most extensive state that can be justified<sup>14</sup>. Any state with further reaching functions violates individuals' self-ownership.

### 1.1.b *The self-ownership thesis*

“Seizing the result of someone’s labour is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you”<sup>15</sup>.

In this paraphrase Nozick makes use of, what he calls, “the classical liberal notion of self-ownership”<sup>16</sup>. Cohen defines the self-ownership thesis (SOT) as follows: “each person is the morally rightful owner of his own person and powers, and, *consequently*, (...) each is free (morally speaking) to use those powers as he wishes, provided that he does not deploy them aggressively against others”<sup>17</sup>. This definition is derived from Nozick’s understanding of property rights:

“The central core of the notion of a property right in X, relative to which other parts of the notion are to be explained, is the right to determine what shall be done with X; the right to choose which of the constrained set of options concerning X shall be realized or attempted. The constraints are set by other principles or laws operating in society; in our theory, by the Lockean rights people possess”<sup>18</sup>

However, Nozick’s version of the SOT constitutes more than ‘control rights’, the rights to *use* one’s own body and powers within the constraints; Nozick’s SOT also embodies transfer rights, the rights of the individual to *hand over* his body and powers to others. This notion of transfer rights within self-ownership is consistent with the entitlement theory. Nozick’s interpretation of the SOT is one of full self-ownership<sup>19</sup>, which consists of the property rights in oneself, comparable to the property rights human beings may have in inanimate things.

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<sup>14</sup> Nozick (2010): ix

<sup>15</sup> Nozick (2010): 172

<sup>16</sup> Nozick (2010): 172

<sup>17</sup> Cohen (2001): 67

<sup>18</sup> Nozick (2010): 171

<sup>19</sup> Pateman (2002): 28

Like the entitlement theory, the SOT finds its origins in the work of John Locke and his claim that “Man has a *Property* in his own *Person*. This no Body has any Right to but himself. The *Labour* of his Body, and the *Work* of his Hands, we may say, are properly his”<sup>20</sup>.

The SOT thus implies that, if I am the owner of myself, my powers and my body, then I am owner of the results produced by me, my powers and my body, and these products are my possessions. This invokes questions about my power to breathe, or to make decisions freely and to act as I please for example. Are these powers property rights also? Are the rights to life and liberty forms of property rights?

They are, according to Nozick. “The particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition”<sup>21</sup>. Property rights are the only kind of rights there are. The SOT thus leads to a *fundamental* right to property because the ownership relation you have towards yourself makes your ability to act or even to live a part or component of the possession you have over yourself. Life and liberty therefore become special kinds of property rights.

### 1.1.c Nozick on rights

“Individuals have rights, and there are things no person or group may do to them (without violating their rights)”<sup>22</sup>, this is the opening sentence of *ASU*. Subsequently it is clear that Nozick accepts a notion of individual rights. In a later chapter he further clarifies this notion:

“No one has a right to something whose realization requires certain uses of things and activities that other people have rights and entitlements over. Other people’s rights and entitlements to *particular things* (*that pencil, their body, and so on*) and how they choose to exercise these rights and entitlements fix the external environment of any given individual and the means that will be available to him. If his goal requires the use of means which others have rights over, he must enlist their voluntary cooperation. (...) No rights exist in conflict with this substructure of particular rights. Since no

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<sup>20</sup> Locke (2008): §27

<sup>21</sup> Nozick (2010): 238

<sup>22</sup> Nozick (2010): ix

neatly contoured right to achieve a goal will avoid incompatibility with this substructure, no such rights exist. The particular rights over things fill the space of rights, leaving no room for general rights to be in a certain material condition”<sup>23</sup>

Within Nozick’s interpretation of property rights we can discern a number of important features: first, property rights are particular; they establish a right to property over specific objects (*that pencil, or this body*).

Furthermore, Nozick’s property rights are de jure absolute; ownership of X should entail an absolute control over X within the set constraints<sup>24</sup>. However, the property over particular things is rarely or never de facto absolute, because it is difficult to secure absolute control over your possessions in practice and because of the set constraints, which might dictate that I am prohibited from poking *your* body with *my* pencil for example. At a generic level property rights are also absolute, because they may only be limited by other peoples’ property rights; there are no different kinds of rights or matters that restrict one’s property rights, other than equivalent property rights<sup>25</sup>.

The third feature of these rights is the importance of consent; no one may interfere with X without the consent of X’s owner. On the other hand, whatever consent is generated through negotiation is just because “An entitlement theorist would find acceptable whatever distribution resulted from the party’s voluntary exchanges”<sup>26</sup>. In other words, the price for the use of X that is agreed upon between parties is the rightful price for the use of X.

Additionally, it is important to note that consent means explicit consent; tacit consent is not enough to justify transactions, according to Nozick<sup>27</sup>.

Moreover, the concept of natural rights has an exceptional position within Nozick’s theory. “A line (or hyper-plane) circumscribes an area in moral space around an individual. Locke holds that this line is determined by an individual’s

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<sup>23</sup> Nozick (2010): 238

<sup>24</sup> The constraints are determined by the property rights of other people, as we have seen in section 1.1.b.

<sup>25</sup> Although Nozick leaves room for violation of property rights to reach a desirable society or in case of ‘catastrophic moral horror’ – Nozick (2010): 28 & 30(fn)

<sup>26</sup> Nozick (2010): 188

<sup>27</sup> Nozick (2010): 287

natural rights, which limit the action of others”<sup>28</sup>. Nozick states that the dividing line in his theory is in fact based upon Locke’s theory of natural rights<sup>29</sup>: “Man (...) hath by nature a power (...) to preserve his property—that is, his life, liberty, and estate—against the injuries and attempts of other men”<sup>30</sup>.

However, natural rights are universal and inalienable; they are derived from God (in Locke’s theory), nature or from another form of higher power, and therefore man, who is by definition subordinate to this higher power, cannot override natural rights. Man can neither decide to differentiate natural rights and give some people more rights than others, nor alienate natural rights and take them from others or abandon them voluntarily.

In Nozick’s theory, rights over particular objects (including an individual’s own body or powers) are in fact alienable through consent. And, because property rights fill the space of rights and because transfer rights are a vital part of these property rights, rights are alienable. One may even transfer his self-ownership right to someone else and consent to lifetime enslavement<sup>31</sup>.

The question whether Nozick envisions a more general (property) right, which might be a natural and inalienable right after all, besides the property rights to particular things, is more difficult to answer. His frequent references to Locke and his explicit reference to Locke’s natural rights<sup>32</sup> would suggest that he does, but given the fact that Locke assumes the existence of God and that Nozick does not confirm His existence or the existence of any other higher power<sup>33</sup>, I would say that Nozick does not wield the concept of natural rights. This contradictory trend in Nozick’s *ASU* shows, in my opinion, Nozick’s misinterpretation of Locke, on which I will elaborate further in section 2.1.

The final feature of Nozick’s view on rights is the absence of overlap between different ‘areas in moral space’; individual rights are non-overlapping and thus compatible or “co-possible”<sup>34</sup>. If we look at ownership over particular objects as a state of affairs, then different ownership relations are in fact

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<sup>28</sup> Nozick (2010): 57

<sup>29</sup> Nozick (2010): 57 & 171

<sup>30</sup> Locke (2008): §87

<sup>31</sup> Nozick (2012): 331

<sup>32</sup> Nozick (2010): 57 & 171

<sup>33</sup> For more information see fn. 81

<sup>34</sup> Nozick (2010): 166

compatible: me being the owner of *that* pencil, does not contradict you being the owner of *your* body. However, if we look at ownership as the exercise of control, then contradictions might exist between different 'areas of moral space': because my ownership over *that* pencil gives me the power to poke *your* body with it, which would contradict your ownership over *your* body, which should give you right not to be poked. To avoid such contradictions, Nozick has established constraints, which are based on the Lockean rights, as described above in section 1.1.b.

It is important to note that, because property rights fill the space of rights<sup>35</sup> and because the SOT establishes an individual's property right over himself, the features named above are all applicable to a person's property right over himself.

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<sup>35</sup> Nozick (2010): 238

## 1.2 Mainstream critique on Nozick's self-ownership thesis

In this chapter I will give an overview of the most important criticism against Nozick's SOT by presenting the arguments of some of his most influential opponents: Gerald Allan Cohen and Samuel Freeman<sup>36</sup>. After laying out the position of both writers on the SOT, I will review their critiques to determine what other arguments are required to substantiate my claim of inconsistency on Nozick's SOT.

### 1.2.a *G.A. Cohen*

One of the most prominent critiques of Nozick and the SOT in general, has been put forward by G.A. Cohen, in his book *Self-Ownership, Freedom and Equality* (1995). Cohen, an analytical Marxist, is presenting an argument in favor of socialism in this work and delivers an extensive assessment of the SOT<sup>37</sup>. In this thesis on self-ownership, Cohen's view must be explicated because of its significance within the debate about Nozick's work.

Cohen does not criticize the SOT in an ordinary fashion because he does not think the SOT can be refuted<sup>38</sup>. Instead, Cohen attempts to weaken or expunge the attractiveness of the SOT, by disproving three claims that are often linked, by the proponents of the SOT, to the rejection of self-ownership. In the next sections I will examine Cohen's arguments against these claims that the rejection of self-ownership induces slavery, diminishes autonomy and supports the treatment of people as means.

1. *The causation of slavery*: Nozick and other believers in self-ownership state that rejection of the SOT induces slavery, because such rejection enables non-contractual obligations, whereas acceptance of the SOT makes these

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<sup>36</sup> There are of course other critiques as well, such as the criticism of Dworkin, Gauthier and Rawls, but they are less relevant to my argument and therefore, and for reasons of conciseness, I will not elaborate on other critiques.

<sup>37</sup> Cohen distinguishes the self-ownership thesis from the concept of self-ownership – Cohen (2001): 209-210. This distinction is not relevant for my argument and therefore I will not elaborate on it.

<sup>38</sup> Cohen (2001): 230

interpersonal non-contractual obligations impossible<sup>39</sup>. Non-contractual obligations are the duties of person X towards person Y, to which X has not necessarily explicitly consented (by means of a contract). Redistributive taxations are an example of such non-contractual obligations, because, in a redistributive system, the state might oblige person X to pay for person Y's minimal income; person X has the obligation to make payments, while he never contractually consented to do so. As we have seen in section 1.1, acceptance of the SOT prevents such non-contractual obligations, because taxation or the transfer of holdings from one person to another in general should only take place if both parties explicitly consent (by means of a contract) to such transfer.

Cohen confirms that non-contractual obligations exist<sup>40</sup>, but he disagrees with the statement that rejection of the SOT induces slavery and he provides two justifications to substantiate his argument.

First, to portray all non-contractual obligations as slavery is an exaggeration, according to Cohen. There is a normative difference between a limited dose of 'forced labor', as Nozick labels the portion of labor of which the results are taxed, which provides social welfare, such as public education and healthcare on the one hand, and life-long forced labor on the other hand.<sup>41</sup>

Although I agree with this normative difference, I think this argumentation is weak, because it is directed against Nozick's formulation and his choice of the word 'slavery', instead of the underlying rejection of non-contractual interpersonal rights and obligations, the core of this defensive argument in favor of the SOT. I do believe that Nozick responds to the emotions of his readers by the use of the word 'slavery' and I agree with Cohen that the use of such formulation is confusing or even misleading. However, although formulation is an important feature of philosophy, attacking Nozick's choice of words will not suffice to counter his argument, because Cohen does acknowledge

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<sup>39</sup> Accepting the SOT discards non-contractual obligations from one person to another because, if X is the absolute owner of himself and of his powers, then no other person is entitled to X or X's powers without a contract, which is reached with X's consent.

<sup>40</sup> Cohen (2001): 234

<sup>41</sup> Cohen (2001): 231

the existence of non-contractual obligations, he only refuses to label such obligations as 'slavery'.

In his second argument against the causation of slavery by rejection the SOT, Cohen does attempt to attack the core of Nozick's defense that the rejection of SOT leads to non-contractual interpersonal rights and obligations. Cohen states that rights are not necessarily intertwined with obligations. The non-contractual obligation of person X towards person Y, does not necessarily entail the right of person Y over the duty of person X. For example, if a son has a non-contractual obligation towards his sick mother to take care of her, then the mother does not necessarily has the right to claim her son's caretaking, nor does she have the right to release the son of his caretaking-obligations. The existence of the son's non-contractual obligation towards his sick mother and, therefore, the absence of his self-ownership (because non-contractual obligations and self-ownership are mutually exclusive, according to Nozick), do not necessary entail the presence of the mother's (part)ownership of her son, according to Cohen.<sup>42</sup>

According to Nozick's theory, the son would never have a non-contractual obligation towards his mother, because the son has ownership over himself. And the explicit consent of the son is required in order for him to have an obligation towards his sick mother. However, I do not believe that Nozick would deny that the son might *feel* or *perceive* a duty towards his sick mother. Furthermore, according to Nozick, the son is free to take care of his mother because, of course, he may choose to help her.

I do not agree with the argument presented by Cohen that rejection of the SOT does not lead to non-contractual obligations, because, in his opinion, rights and duties are not necessarily linked. This argument only demonstrates the difference between Nozick's and Cohen's interpretation of the concept of rights, and does not prove the superiority of Cohen's version. Cohen should explicitly state that his understanding of the concept of rights differs from Nozick's, and Cohen should explain why his interpretation is more accurate, but he does not.

Nozick interprets rights as *de jure* absolute<sup>43</sup> and therefore linked to (enforceable) duties: "For you to *owe someone a duty* is for that person to have a

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<sup>42</sup> Cohen (2001): 232-235

<sup>43</sup> See section 1.1.c

*claim-right* against you that you perform, or not perform, some action”<sup>44</sup>. As we have seen in section 1.1.c Nozick states that my (property) right over X, implies your obligation to not to use X without my consent.

At the same time Cohen, as is clarified by his argumentation, interprets rights separately from duties or obligations. I believe this is merely a matter of different assumptions. Hence, Cohen should not focus on the different outcome of these assumptions, but on a defense of his assumption as the superior one, if he wants to stand a chance at contradicting Nozick’s SOT.

2. *The restriction of autonomy*: Rejecting self-ownership does not lead to a restriction of autonomy; indeed, self-ownership is hostile to autonomy maximization, according to Cohen. I will assume, like Cohen, that autonomy is a matter of having both quantitative and qualitative options, and autonomy is a matter of degree. A person is autonomous if he is able to make choices; the more and the better his options are, the more autonomous he is.

Although the SOT might secure some quantity of options<sup>45</sup>, because the SOT places emphasis on consent and is in favor of choice, redistribution might be needed to maximize the quality of options for everyone<sup>46</sup>, since certain levels of material possessions might be needed to actually be able to make certain choices. The SOT refutes redistribution and is therefore hostile to the safeguarding of qualitative options and thus to autonomy maximization.<sup>47</sup>

Simply put, accepting the SOT gives the richer members of society the choice whether or not to contribute to a redistributive scheme, but leaves the poorer members of society unable to make certain choices. Rejecting the SOT and accepting a redistributive scheme gives the poorer members of society the actual ability to make choices about what they will eat for dinner tonight, for example, while restricting the freedom of choice of the richer members of society.

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<sup>44</sup> Vallentyne in Bader & Meadowcroft (2011): 145

<sup>45</sup> The SOT holds that every individual may deal with his properties (including his own body, powers, et cetera) in whatever way he sees fit, within the limits of other people’s Lockean rights.

<sup>46</sup> Redistribution is aimed at providing people that might not have enough means with the means, needed to actually make use of their options.

<sup>47</sup> Cohen (2001): 236-238

Both Nozick's and Cohen's theories promote as well as restrict autonomy. Therefore, Cohen's argument that rejection of the SOT does not restrict autonomy is not entirely true. Rejection of the SOT does not necessarily restrict the qualitative options of everyone in society, but it might restrict the quantitative options.

For this reason, Cohen's attempt to counter the second claim that the rejection of self-ownership restricts autonomy is not very successful.

*3. Using people as means:* Cohen states that the rejection of self-ownership does not necessarily imply the treatment of people as means. Nozick claims that the Kantian principle of treating people as an end and not merely as a means, necessarily leads to the notion of self-ownership<sup>48</sup>. According to Cohen, however, there is no necessary relationship between Kant's principle and the self-ownership thesis; self-ownership may be honored while Kant's principle is rejected, or the other way around<sup>49</sup>. Kant's principle states that you should "Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply<sup>50</sup> as a means, but always at the same time as an end"<sup>51</sup>. According to Cohen's interpretation of Kant, people thus may be used as a means, as long as they are simultaneously treated as an end.

Therefore, Cohen states that redistributive taxes should be justifiable, because such taxes treat the taxpayers as means to provide for people who cannot provide for themselves, while, at the same time, treating the taxpayers also as ends in themselves, because the taxpayers are never required to pay such an amount of taxes that they are prevented from providing for themselves. Rejection of the SOT thus does not entail rejection of the Kantian principle.

Also, according to Cohen, one could reject the Kantian principle, but continue to sustain the SOT. Self-ownership tolerates treating people as means, as long as they themselves consent with such treatment. According to the SOT I might use you for typing up my entire thesis, if you would consent to do so;

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<sup>48</sup> Nozick (2010): 30

<sup>49</sup> Cohen (2001): 240

<sup>50</sup> In the original text Kant uses the word 'bloß', which is multi-translatable. 'Simply' might therefore not be the correct translation.

<sup>51</sup> Kant in Nozick (2010): 32

consequently I am not obliged to treat you as an end at the same time, if you do not require such treatment from me.

Hence, Nozick's consent principle seems to differ from Kant's requirement for treating people as means. Nozick holds *actual* consent as the requirement for the use of another person as a means, while, according to Cohen's interpretation, Kant's principle wields a *normative* aspect: the treatment of that person as an end as well.<sup>52</sup>

However, it should be noted that Kant's principle of treating people as an end and not as a means, has been interpreted in many ways. Again, Nozick's understanding of Kant differs from Cohen's interpretation. For the purpose of this thesis I will not examine which of both interpretations is most accurate, but it is important to point out that they diverge. Therefore, the substantiality of Cohen's third claim that the rejection of SOT does not promote the treatment of people as a means depends on one's interpretation of Kant and it is thus not necessarily an evincive claim.

Cohen attempts to reduce the attractiveness of the SOT, by disproving three claims - the causation of slavery, the restriction of autonomy and the reinforcement of treating people as means - that are linked to the rejection of self-ownership. My main objection to this attempt is the aim of diminishing attractiveness only. Why doesn't Cohen take a chance on refuting the SOT? Stating the impossibility of such refute in advance, weakens Cohen's claims against the SOT.

And, although I agree with some of Cohen's arguments, I think that even though these critiques decrease the argumentative force of the SOT, they are not able to fully defeat it, because of the lack of substance within these arguments; these arguments argue with the consequences of the rejection of self-ownership instead of with the foundation of the SOT. Cohen only argues against arguments that tell us why we should not reject the SOT, he does not argue against SOT directly. If we should not agree, as Cohen does, to the claims made by the proponents of the SOT, which state that it should not be rejected, does this mean that we should in fact reject self-ownership? Should not non-rejection be equal

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<sup>52</sup> Cohen (2001): 241

to rejection? And are the reasons against the non-rejection of self-ownership equal to the reasons for the rejection of the SOT?

Cohen's argumentative strategy is dodging the actual issue at hand; whether self-ownership is maintainable, whether the SOT is coherent and moral. Cohen's critique to self-ownership is not fundamental, it is only consequential; it attacks the alleged results of the rejection of the SOT instead of self-ownership itself. My aim will be to find a more essential criticism on Nozick's SOT, which demonstrates that self-ownership is neither coherent, nor moral.

### 1.2.b *S. Freeman*

Another, in my view, somewhat more substantive critique on the SOT comes from Samuel Freeman. In his article *Illiberal Libertarians: Why Libertarianism Is Not a Liberal View* (2001), Freeman criticizes libertarianism in general by his claim that libertarians do not respect all liberties<sup>53</sup>.

I have chosen to display Freeman's critique in this thesis, because his claims against libertarianism and the SOT are in accordance with the second part of my own argumentation. In part 2.2 of this thesis I will attempt to consolidate Freeman's rather incomplete morality argument against Nozick's self-ownership. Before moving on to this, I will explicate Freeman's argumentation.

Freeman questions the institutional and moral aspects of the SOT, to conclude that, among other libertarian principles, self-ownership is incompatible with the liberal institution of basic rights<sup>54</sup>. The notion of (basic) rights takes a central role within Freeman's critique, because he believes that libertarians such as Nozick have an inappropriate conception of rights;

"Libertarians define peoples' rights so as to take the view outside the boundaries of a liberal conception. For it is not as if libertarians simply accept all the usual basic rights liberals do, then go liberals one better by adding additional liberties, namely, freedom of contract and freedom to do with one's possessions as one pleases. Liberals already recognize that these rights, suitably construed, are important to exercise other basic liberties. But given the absolute terms in which libertarians define these additional liberties, they

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<sup>53</sup> Freeman (2001) 134-135

<sup>54</sup> Freeman (2001): 134 & 150

come to occupy a predominant position and in effect eliminate any need (in libertarians' minds) for basic rights"<sup>55</sup>

It is remarkable that Freeman uses the words 'right' and 'liberty' as exchangeable. He seems to use the word 'right', when he refers to the liberal standpoint and switches to the word 'liberty', when he talks about the libertarian view, as we can see in the paragraph above. Freeman thus confuses the concepts of right and liberty; the question is whether he does genuinely confuse these concepts, or whether he exchanges them on purpose. I reckon the latter is the case, because he systematically attributes the word 'right' to the liberal view and the word 'liberty' to the libertarian standpoint.

This interchange of concepts impairs Freeman's argumentation in two ways; first, it invokes the suspicion that Freeman attempts to mislead his readers with an unsubstantiated bias towards the liberal perspective, because the word 'right' might be interpreted as more valuable than 'liberty', especially since Freeman assigns the adjective 'basic' to the word 'right' and labels 'liberties' as 'additional'<sup>56</sup>. And second, the use of the concepts of right and liberty as synonyms is not consistent, because Freeman later speaks of 'having rights to liberties'<sup>57</sup>, which implies that rights and liberties are non-exchangeable entities. If rights and liberties were synonymous, then having the right to liberties would be like having the right to have rights, or having the liberty to have liberties. However, the right to a certain entity X should differ from that entity X. If a person has a right to certain liberties, this right should logically differ from the liberties that this right entitles him to.

Nozick is more accurate in his choice of words and generally uses the word 'right'. His conception of rights is explicated in section 1.1.c, but his notion of liberty is less clear-cut. According to Freeman, Nozick's conception of liberty is restricted to the liberty involving property rights, "the unrestricted liberty to

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<sup>55</sup> Freeman (2001): 123

<sup>56</sup> Further down in the article he also uses the adjective 'basic' to the concept of liberties, but in this case he refers to the liberal standpoint – Freeman (2010): 131.

<sup>57</sup> Freeman (2010): 131

accumulate and to transfer to whomever one pleases full property rights”<sup>58</sup>, to be more precise.

As we have seen in section 1.1.b, Nozick indeed has a focus on property, which originates in the SOT. Through self-ownership, Nozick extends the ownership relation a person conventionally has with things, to a person’s own person and capacities<sup>59</sup>. Self-ownership thus entails having property over oneself, as comparable to having property over this pencil or that shoe.

Property over this pencil and that shoe are arranged by institution; our laws determine when and to what extent I may call myself the owner of pencils, shoes and other things. These laws and institutions differ per system, time and place. However, according to the SOT, property exceeds its institutional characterization, because the SOT establishes a sort of universal property law, in which every individual has a fundamental property right over himself. Nozick’s entitlement theory and SOT are independent from institutions; they are applicable within every system, time and place. Accepting the SOT entails the acceptance of a form of property, which exceeds the usual institutional character of property.

This leads to Freeman’s twofold critique on the SOT. His first minor, moral criticism states that, because of the acceptance of the SOT, “a person has the moral capacity to make of himself a fungible thing”<sup>60</sup>. Freeman implicitly assesses that such capacity is undesirable. This critique appears attractive, but requires more substantiation to be a considerable counterforce to the SOT. Freeman needs to explain to his readers why men should not be treated or treat themselves as fungible things.

Freeman’s second, more explicit critique is about the relative position of basic rights, such as the right to liberty, within libertarian theory<sup>61</sup>. Liberty becomes a form of property<sup>62</sup> and, as a consequence, basic rights are not valued at their worth.

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<sup>58</sup> Freeman (2001): 127

<sup>59</sup> Freeman (2001): 128 & 130

<sup>60</sup> Freeman (2001): 131

<sup>61</sup> I interpreted liberty as a basic right. Freeman is, as mentioned, not distinctive about the confines and substance of basic rights and liberties.

<sup>62</sup> Freeman (2001): 128

“Libertarians would have us to believe that they accept all the basic rights that liberals do and simply add more liberties, namely, absolute freedom of contract and property. (...) The problem is these added liberties, when combined with the libertarian account of self-ownership, undermine the idea of basic liberties. (...) All rights are conceived as property rights. Rights to liberties then become just one among several kinds of rights that persons own and have at their disposal. Basic liberties are of no greater moral or political significance than any other kind of property right. But given the crucial role of absolute freedom of contract – that all contractual agreements are to be publicly recognized and enforced – it follows that all liberties can be alienated, just like economic goods”<sup>63</sup>.

I agree with the first part of this statement, that the importance placed on the right to property and thus acceptance of the SOT undermines the moral significance of (other) basic rights, and I will return to this topic at the end of this section. However, I think that Freeman’s argumentation in the second part of this paragraph is not necessarily correct: “given the crucial role of absolute freedom of contract (...) it follows that all liberties can be alienated, just like economic goods”<sup>64</sup>.

In libertarian theory, the absolute freedom of contract only leads to a situation, in which all rights or liberties may be alienated if such alienation is explicitly approved upon by the specific author of that theory. Not *all* libertarians, who concur with freedom of contract, agree on the alienability of rights<sup>65</sup>. Therefore, the causal relationship between freedom of contract and alienable rights that Freeman delineates does not necessarily exist within the whole libertarian theoretical spectrum.

However, the link between freedom of contract and alienable rights does seem to exist within Nozick’s theory. Nozick explicitly states that people may dispose of their life and their liberty<sup>66</sup> just like they may dispose of their material holdings, if they wish: “My nonpaternalistic position holds that someone may

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<sup>63</sup> Freeman (2001): 131

<sup>64</sup> Freeman (2001): 131

<sup>65</sup> Not all libertarians support the alienation of rights through suicide or voluntary enslavement. Some authors, like Locke, Rothbard (1982) and Grunebaum (1987) restrict the transferability of rights in such a way that voluntary enslavement and suicide are impermissible.

<sup>66</sup> Nozick (2010): 331

choose (or permit another) to do to himself *anything*, unless he has acquired an obligation to some third party not to do or allow it”<sup>67</sup>.

Nonetheless, there is a difference between a right to X and X itself. The right to life may be inalienable, so no one, including yourself, may take this right from you. But this does not mean that life itself is inalienable and that suicide for example is impermissible<sup>68</sup>. Furthermore, although people may undeniably alienate economic goods, according to libertarian theory, they may not necessarily alienate the right to acquire or hold these goods as well. Individuals may dispose of X, while retaining the right to own X, because the right to X does not entail the obligation to actually make use of X.

Imagine me having a right to water, for example. My right to water does not obligate me to actually drink or use the water; I may pour the water on the ground or refuse to accept it at all. Do I hereby alienate my right to water? Or do I just alienate myself from *that* specific bottle or unit of water? By refusing a particular supply of water, I do not alienate my overall right to water or my chances to make use of this right in the future.

In the cases of the right to freedom and especially the right to life, this issue is more complicated. If I refuse to make use of my right to life and commit suicide, I impede my future chances to make use of my right to life, if this right would even continue to exist without my own (material) existence. I am, probably like most people alive, not in the position to make suppositions about the afterlife, and I will therefore assume that after my death and the end of my existence, my rights cease to exist as well. There no longer is a right-bearing entity; hence there no longer are rights. Thus, although the right to life might be an inalienable right, quitting life entails an abandonment of the right to life as well. Whether the right to life is alienable or not, as long as one morally permits suicide, which both Nozick and I do, the right to life will cease to exist along with life and the right-bearing entity itself. Consequently, Nozick’s moral allowance of suicide does still not prove a causal relationship between freedom of contract and alienable rights within Nozick’s theory.

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<sup>67</sup> Nozick (2010): 58

<sup>68</sup> Locke states that suicide is impermissible – Locke (2008): ii §5. I will return to this topic in section 2.2.a.

The voluntary abandonment of liberty is a different case. If I could and would surrender myself to lifetime enslavement and thus give up my freedom, I might impede my future chances to make use of my right to freedom, because I am shackled for life. Since Nozick morally accepts voluntary enslavement<sup>69</sup>, I would say he indeed concurs to the alienation of rights. If voluntary slavery would be morally permissible, rights could not be inalienable; if rights were inalienable and the slave would remain a right-bearing entity after his enslavement, he would thus not actually be a slave, because his rights would prevail over the ownership rights of the slaveholder.

Imagine me consenting to be your slave. However, my right to freedom is inalienable and after my enslavement I would retain this right and hence I should be able to claim my freedom back. This is not genuine slavery. On the other hand, if my right to freedom were alienable, actual slavery could take place because I could permanently distance myself from my right to freedom.

Because Nozick agrees to actual voluntary enslavement, he indeed accepts the alienability of rights, such as the right to freedom. As mentioned, not all libertarians do accept the alienability of rights; therefore, even if one accepts the freedom of contract, there may be limitations to such freedom.

In the first part of the cited paragraph above, Freeman puts emphasis on the wrongful trivialization of basic rights by the elevation of property rights: "All rights are conceived as property rights. Rights to liberties then become just one among several kinds of rights that persons may own and have at their disposal. Basic liberties are of no greater moral or political significance than any other kind of property right"<sup>70</sup>.

According to Freeman, the acceptance of self-ownership may lead to a situation, in which the world and every person in this world except one are the property of that one person. The possibility of this scenario indicates a lack of concern for basic rights<sup>71</sup>.

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<sup>69</sup> Nozick (2010): 331

<sup>70</sup> Freeman (2001): 131

<sup>71</sup> Freeman (2001): 133-134

I agree that there is not much room for basic rights in such a world, but Freeman does not supply us with answers to the important questions, whether and why there *should* be room for basic rights. According to Freeman rights are basic, fundamental and inalienable. This means that rights cannot be debilitated by anyone's desires, not even by the aggregate of desires of a large majority, and that rights are secured against the (temporary) wants of individuals to dispose their own rights<sup>72</sup>. However, this explanation of rights does not justify the priority of basic rights over property rights, which Freeman obviously aims for.

“The issue between liberalism and libertarianism then becomes whether all permissible liberties are on par and are equally important, or whether some liberties are more significant than others”<sup>73</sup>. This is one of the issues I would like to examine in this thesis, but Freeman does not answer the question he poses: (Why) are some rights more important than others?

Therefore, I will try to answer this question myself in section 2.2 below.

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<sup>72</sup> Freeman (2001): 134

<sup>73</sup> Freeman (2001): 134

## PART 2

The existing critiques to the SOT are not satisfying; Cohen does not provide us with a substantial refutation of self-ownership and, although Freeman has attempted to put forward a more considerable critique, he has failed to answer the most important question about the fundamental right to property.

Therefore, I will seek to provide a somewhat different argumentation against the SOT in the following section. I will make two claims: first, that the SOT is not coherent, and second, that the SOT is not moral.

In section 2.1 I will examine the coherence of Nozick's self-ownership concept, against which I will argue by demonstrating that individual self-ownership cannot be reflexive. And in section 2.2 an assessment of the moral aspects of self-ownership will be made on the basis of my claim for a pecking order of rights, which I have made before in earlier papers<sup>74</sup>.

### 2.1 The incoherence of Nozick's self-ownership thesis

Nozick's self-ownership thesis is not coherent.

#### 2.1.a *Ownership as a relation*

Nozick claims that the SOT finds its origins in Locke's theory of property<sup>75</sup> <sup>76</sup>. Locke, however, could not have advocated the SOT because his theory is based upon conviction that God created the world and the people in it. Locke's theory of the acquisition of property, which states that mixing labor with nature creates

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<sup>74</sup> Meer, van der (2011): 12-13 & (2012): 10-12

<sup>75</sup> Nozick (2010): 150-178

<sup>76</sup> Nozick also claims that the SOT originates in the Kantian principle that people are ends instead of means - Nozick (2010): 30. According to Cohen there is no relationship between Kant's principle and the self-ownership thesis; self-ownership may be honored while Kant's principle is rejected, or the other way around - Cohen (2001): 240. I will not elaborate on this debate for reasons of conciseness.

private property<sup>77</sup>, logically leads to the conclusion that you do not own yourself, but God does<sup>78</sup>. Therefore, Locke's famous claim that "Man has a *Property* in his own *Person*"<sup>79</sup> does not entail that people stand in the same relation to themselves as they stand towards things, but it could mean that no one is born as a political subject of others<sup>80</sup>.

Nozick dismisses the existence of a God as a fundament for his argument<sup>81</sup>, but he does appear to acknowledge another metaphysical entity, namely the soul or any other entity within the individual, which could be separated from the individual. The concept of ownership is a relational concept; it describes a relation between X and Y (X is property of Y, Y is the owner of X). Therefore, self-ownership seems to imply there is a part (Y) of the individual, the soul for example, that has ownership over another part (X) of the individual, the body<sup>82</sup> for example.

However, Nozick's main unit of analysis, the individual, contradicts such a separation within a person, because the word 'individual' comes from the Latin word *individuus* and means indivisible. I will assume, like Nozick implicitly does, that the individual is indivisible, since claiming the opposite would be very difficult or even impossible to substantiate. Furthermore, the specifics of such a division, like the confines of each part, would be even more difficult to

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<sup>77</sup> Locke (2008): §27

<sup>78</sup> Because God is the creator of mankind, according to Locke.

<sup>79</sup> Locke (2008): §27

<sup>80</sup> Freeman (2001): 130

<sup>81</sup> "...once a person exists, not everything compatible with his overall existence being a net plus can be done, even against those who created him" (Nozick (2010): 38), Nozick speaks of creators, a plurality, and refers to the individual's parents. This phrasing seems to exclude the existence of God as the creator of human beings or His existence in general.

Furthermore, in a speech on October 14<sup>th</sup> 1988 at Hillel House's weekly Sabbath "table talk", Nozick said that although God might exist, there is no way for Him to prove it to humanity (<http://www.thecrimson.com/article/1988/10/15/nozick-god-cannot-prove-his-existence/>, viewed on April 12, 2012), therefore the possible existence of God cannot convincingly substantiate any argument.

<sup>82</sup> The body is sometimes mentioned as the owned entity in the self-ownership relation. But *your body* is an incomplete concept because the self-ownership relation supposedly gives *you* not only power over your body but over your mind and your other powers as well. In some types of work, writing a book or solving a mathematical formula for example, most of the labor is done by the mind instead of the body.

determine. Hence, I will assume the individual is one, indivisible entity. I will elaborate more on this assumption in section 2.1.c.

From the assumption of the indivisible individual and the fact that the ownership is a relational concept, it follows that self-ownership would constitute a reflexive relation, in which the owner and the owned are one and the same (X is property of X, X is the owner of X).

This implication is problematic. I do not think that Nozick's SOT can constitute a reflexive relationship. However, Cohen rightly points out that such anti-reflexivity-claim must be substantiated: "I see nothing in the concept of ownership which (like fatherhood) excludes a reflexive instance of it. Anyone who purports to see in the concept something that excludes its reflexive use must say what that is"<sup>83</sup>.

#### 2.1.b *Men and things*

Kant tried to demonstrate the impossibility of reflexive self-ownership:

"Man cannot dispose over himself because he is not a thing; he is not his own property; to say that he is would be self-contradictory; for insofar as he is a person he is a Subject in whom the ownership of things can be vested, and if he were his own property, he would be a thing over which he could have ownership. But a person cannot be a property and so cannot be a thing which can be owned, for it is impossible to be a person and a thing, the proprietor and the property"<sup>84</sup>.

Cohen defeated this argument by pointing out that Kant confuses the normative statement that men should not be treated, or should not treat themselves as things, with the conceptual statements that men are not things and, more importantly, that things are the only entities that can be owned<sup>85</sup>. Not only does Kant confuse two types of arguments (normative and conceptual), he also does not corroborate these statements with answers to the underlying questions: why should men not be treated as things? And why are thing the only entities that can be owned?

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<sup>83</sup> Cohen (1995): 211

<sup>84</sup> Kant (1997): 165

<sup>85</sup> Cohen (1995): 212

I do agree with Kant that there is a normative aspect beside the conceptual aspect of the SOT, but those two must not be confused. I will return to normative objections to SOT in section 2.2, in the remainder of this section I will attempt to demonstrate why Nozick's SOT cannot constitute a reflexive relation, and thus why his SOT is incoherent.

### 2.1.c *Ownership cannot be reflexive*

According to Nozick, ownership entails control: "The central core of the notion of a property right in X (...) is the right to determine what shall be done with X"<sup>86</sup>. Therefore, Y's ownership over X should cause Y's control over X. Y's de jure control over X entails a hierarchical relation between Y and X, in which  $Y > X$ . In ownership relations, the controlling party has power over the controlled party and is therefore hierarchically superior.

There are reflexive relations and there are hierarchical relations, however, there is no such thing as a reflexive hierarchical relation. The assumption that the individual (Z) is indivisible contradicts the possibility of a hierarchical ownership relation of the individual to itself. If  $Z = Z$ , then Z cannot be  $> Z$ . At most, there may be ownership of Z1 over Z2 (the soul over the body or the other way around, for example), in which  $Z1 > Z2$ , but such relation is ruled out by the assumption of the indivisible individual.

Nozick's SOT is based on property rights, and thus control, which is hierarchical. But Nozick's SOT is also based on the concept of the indivisible individual and reflexivity. Therefore the SOT is incoherent.

**Table 1: The incoherence of self-ownership**

Premise 1:	Ownership constitutes a relation between X and Y
Premise 2:	If X owns Y, then $X > Y$
Premise 3:	An individual is indivisible
Conclusion:	Therefore, an individual cannot own itself

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<sup>86</sup> Nozick (2010): 171

The only way to counter this incoherence is to prove the divisibility of the individual, which seems a rather challenging assignment. One may suggest, however, that proving the contrary is challenging as well. I do not propose to provide such proof, but I will attempt to demonstrate the difficulty of the use of the divisible individual within the SOT debate.

Imagine a person X. X consists of two parts: X1 and X2, let us for the moment suppose that X1 represents X's soul and X2 represents his body. X enlists himself into voluntary slavery through his transfer rights, to become the property of person Y. During such transaction, X1 transfers his property, namely X2, to Y. X1 is the rights bearing entity in this example; X1 has a property right over X2, which he uses to transfer his actual property over X2 to Y. However, after the transaction took place, Y is the new and rightful<sup>87</sup> owner of X2, the body in this example. From this point on Y does not only has the actual property of X2, but also the property right over X2, because Y obtained the right to use and dispose of X2 as he wishes, through his transaction with X1. X1 on the other hand, no longer has the actual property over X2 and also no longer possesses the property rights over X2; hence he has alienated this right.

**Table 2: The transfer of self-ownership**

<i>Before transfer</i>	<i>During transfer</i>	<i>After transfer</i>
<b>X1 owns:</b> Property right over X2 Actual property over X2	<b>X1 owns:</b> Property right over X2, which he uses to perform the rightful transfer	<b>X1 owns:</b> -
<b>Y owns:</b> -	<b>Y owns:</b> Actual property over X2	<b>Y owns:</b> Property right over X2 Actual property over X2

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<sup>87</sup> Assuming the transaction is in accordance with Nozick's conditions of rightful transactions, such as information.

Because of the alleged existence of X1, the soul, the transaction described above was possible; if there were no division between X1 and X2, X1 could not have been > X2 and there would neither have been any actual property, nor any property right to transfer. However, it is confusing what happens with this division after the transfer, since X's entire tangible existence, X2 or the part I labeled 'body' in this example, now belongs to someone else. If there would remain an intangible part of X, namely X1, the part I named 'soul' in this example, this part would no longer have a vehicle to function with, because X2 is now Y's property. This is problematic because, according to Nozick's entitlement theory and its principle of rectification of past injustices<sup>88</sup>, if injustices occur during the process of transfer, the injured party must be reimbursed. But in this example, there no longer is an identifiable injured party, for the soul cannot express or reveal itself.

Imagine the following unjust situation has come to pass: X enlisted himself to voluntary slavery, but X1 (the soul) transferred X2 (the body) without sufficient information to make such a decision. According to Nozick, such an injustice must be rectified. However, X1 can no longer express itself, because his means of expression are no longer his possession. Therefore, X1 might not be able to lay the claims needed to prove the past injustice.

Consequently, even if the individual were divisible, the SOT would bring about practical problems, such as the identification of the entity of rectification. But theoretical problems arise as well, such as the precise location of the divisional line<sup>89</sup> between within the individual. What defines the part that has ownership, and what defines the part of the individual that is owned? What exactly is a soul and why should it have the decision making power over the transference of the body to a third party? These questions are almost impossible to answer satisfyingly.

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<sup>88</sup> Nozick (2010): 152

<sup>89</sup> This is not necessarily a physical line, but might be more of a metaphysical division.

## 2.2 The immorality of Nozick's self-ownership thesis

In the following section I will try to demonstrate that, even if the SOT were coherent, it would not be morally permissible. In my opinion, the right to property should not be fundamental and it should not be placed above the rights to life and liberty. I will defend this statement by putting forward my suggestion of a pecking order of rights, which I have made before in earlier papers<sup>90</sup>, by demonstrating the consequences of the fundamental character of property rights proposed by Nozick, and, finally, by the explication of a few thought experiments.

### 2.2.a *Morality*

Before moving on to this, it is important to clarify the notion of morality. Morality comes from the latin word 'moralitas', which means 'customs' or 'manners', and it is used to describe the principles attached to right and wrong behavior or theorizing. Morality has many faces and it is therefore meaningless to state that my theory is more moral than Nozick's theory, or that mine is moral and Nozick's one is not, without stating a conception of morality first. According to Nozick, his theory is moral. Nevertheless, his notion of morality differs from mine.

The most important difference between Nozick's and my conception of morality is the position of individual rights within our perspectives on morality. I envision rights as moral goals in themselves, while Nozick sees rights as side constraints, which determine the range of morally permissible ways to pursue one's ends. In other words, according to Nozick, the rights of one person might limit the actions of another, or at least the morally permissible actions of the other<sup>91</sup>.

In my opinion, individual rights, such as the rights to life, liberty and property, have intrinsic value; rights bear value in themselves, rights are good for the sake of being rights. I believe that Nozick envisions rights as instrumentally good; rights are valuable, because, like items of property, they can be used (or traded) to reach goals. Nozick is not clear about the goals that

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<sup>90</sup> Meer, van der (2011): 12-13 & (2012): 10-12

<sup>91</sup> If I have a right to life, you *can* kill me, but that would not be moral. My right to life means that you *should* not kill me.

should be reached through the use of rights. According to Nozick's theory, rights are indeed linked to the notion of property; not only is the space of rights filled by property rights<sup>92</sup>, all rights are, like property, matters that can be transferred. By approving voluntary slavery, as described in part 1.2.b, Nozick agrees to the transferability and thus alienability of rights.

If rights are indeed intrinsically good, as I would like to believe, then the transfer of rights, which occurs through enslavement for example, would not be morally permissible. Because such transfer treats the right in question, for example the right to liberty, as an item of property. Hereby the right in question is used as if it would carry instrumental value instead of intrinsic value and as if the right in question were alienable.

To summarize, Nozick's conception of morality differs from mine. In the following sections I will explicate why Nozick's theory is not in accordance with my notion of morality.

### 2.2.b *The pecking order of rights theory*<sup>93</sup>

I believe that the SOT is morally questionable because the notion of self-ownership leads to a degrading of important rights, such as the rights to life and liberty, to alienable items of property. I will further elaborate on this below in section 2.2.c and 2.2.d. I would like to complement my objections to the SOT with an alternative perspective, in order to answer some of the moral questions that are left unanswered or are answered unsatisfyingly by the SOT. In this section I will attempt to provide such alternative with my pecking order of rights-theory.

This conceptual pecking order is based upon two assumptions that I have already made in earlier papers; there are three basic<sup>94</sup> rights: the right to life, the

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<sup>92</sup> Nozick (2010): 238

<sup>93</sup> This section is based on two of my earlier papers – Van der Meer (2011): 12-13 & (2012): 10-12. I used existing text parts, combined with additions that are relevant for this thesis. Furthermore, my earlier theory underwent a development in this thesis, in which I have tried to create more contrast between X and the right to X and in which I based the order of rights to the intrinsic value of the entities that the rights provide a de jure protection over.

<sup>94</sup> With basic rights I refer to universal and inalienable rights.

right to liberty and the right to possessions<sup>95</sup>, and these rights are ordered in such a way that the right to life occupies the highest rank, the right to liberty the middle rank and the right to property the lowest rank<sup>96</sup>.

These ranks are determined by the intrinsic value of the entities, over which these rights provide protection. I assume that life is intrinsically more valuable than liberty and possessions and therefore the right to life is on top of the pecking order. Property has the least intrinsic value of the three entities named above and hence the right to property is at the bottom of the pecking order. Before I will elaborate on the link between X and the right to X, I will discuss the intrinsic values of life, liberty and property.

Although the intrinsic value of different entities will always remain a matter of debate, I will attempt to clarify my specific assumptions about the values of life, liberty and possession in order to convince the reader that my assumptions are superior to Nozick's assumption of the fundamental value of the right to property.

I believe that life bears a larger intrinsic value than liberty and property, because life is a necessary and sufficient condition for the exercise of freedom and for the use of property; without being alive, a person cannot be free or own property, which makes life a necessary condition to liberty and property. Furthermore, being alive is everything one needs to be free or to have possessions; there are no additional states of affairs required; this makes life a sufficient condition for liberty and property.

One may argue that oxygen is a condition to life, and thus that the right to oxygen should be on top of the pecking order. Although oxygen may be a necessary condition - without oxygen one cannot live - it is not a sufficient condition to life, because one needs more than oxygen, such as food and shelter, to stay alive. Therefore the right to oxygen should not transcend the right to life in the pecking order. The same goes for property; most people need a certain

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<sup>95</sup> These rights are inspired by John Locke's natural rights theory. According to Locke the origin of these rights lies with God. I will not further specify this origin; the reader is free to interpret it as God, human nature, reason, some kind of social contract or a combination of these - Van der Meer (2012): 10.

<sup>96</sup> Van der Meer (2012): 10-12

amount of property to stay alive, which might make property a necessary condition to life. However, property is in no way a sufficient condition for life, the right to life should therefore continue to occupy a higher rank in the pecking order than the right to possessions.

The right to life is placed on top of the pecking order, above the rights to liberty and possessions, because every state of affairs and every right to a specific state of affairs start with life; life is a necessary and sufficient condition to both freedom and property.

From the fact that life is a sufficient condition to property, it follows that liberty cannot be a sufficient condition for having possessions, because one is at least required to be alive in order to be able to have property. Furthermore, liberty is neither a necessary condition for property, since a person might be able to hold possessions without being (totally) free. Imagine a prisoner for example; although he is not free to do whatever he might want to do, or to go wherever he might want to go, he might be able to own property.

Although liberty is neither a necessary, nor a sufficient condition to property, I still believe that liberty bears a greater intrinsic value than property. Whether one values liberty or property more, depends on one's conception of liberty. I think that the right to liberty belongs to a higher order of rights than the right to property, because I define liberty primary as 'being free to act', and only secondary as 'actually being able to act'.

Freedom goes beyond ability; theoretic possibilities determine the amount of freedom one has and practical possibilities determine the extent, to which that freedom can actually be used. Actual individual ability is important, but freedom starts with general frameworks<sup>97</sup> and its extent is determined by the amount of abstract constraints.

I will demonstrate this by the following empiric example: being free to do X, but not being able to do X, is undesirable. However, being able to do X, but not being free to do X, is even more undesirable. I think this latter state of affairs is even more unattractive than the first, because the ability to act depends on practical constraints, while the freedom to act is a matter of legal<sup>98</sup> constraints.

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<sup>97</sup> These could be legal or moral frameworks, for example.

<sup>98</sup> I refer to positive law as well as natural law here.

When facing practical constraints, a person might be more capable of resolving the limitations, then in a situation where he is facing legal constraints, because he might be more dependent on others in case of legal limitations, than in situations of practical restrictions.

Contrary, it seems that Nozick defines liberty at first instance as 'being able to act'<sup>99</sup>. And whether one is free to act, depends on the side constraints, set by other peoples' rights. Here we see the difference between my conception of rights and the right to liberty in particular, as goals in themselves, and Nozick's idea of rights as side constraints only.

I believe that rights, including the right to liberty, are ends in themselves. Therefore, liberty should at first instance be defined as 'being free to act' and only secondary as 'actually being able to act'. This interpretation of rights and liberty differentiates freedom from property. Freedom bears value, even without property. Hereby, liberty becomes a higher order entity than property.

This places the right to liberty on the second position in the pecking order of rights. The right to liberty can be divided into another internal order: the right to bodily freedom, the right to freedom of mind and the right to freedom of speech.<sup>100</sup>

Bodily freedom requires having self-determination over one's own body; no one may make use of somebody else's body without the consent of the individual in question. As you may have noticed, this liberty seems similar to self-ownership. However, I envision the right to bodily freedom as an unalloyed liberty and not as a result of the fundamental right to property. Life and liberty, in my opinion, do not belong in the category of property; they belong to a higher order, as I have attempted to demonstrate with this pecking order theory so far.

Freedom of mind entails the right of an individual to think and believe what he might want to believe; no one should impose beliefs on any other person<sup>101</sup>. The final liberty within the right to liberty is the freedom of

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<sup>99</sup> Since liberty is tied up with the notion of property. Nozick states that taking one's property is limiting his liberty – Nozick (2010): 172. It seems that liberty is thus depending on property.

<sup>100</sup> Van der Meer (2012): 10-12

<sup>101</sup> The imposition of beliefs cannot be completely prevented; every person influences others and is influenced by those around him. Under the violation of

expression, which maintains the right to say and write whatever a person might want.

The right to liberty, the second right on the pecking order, is limited in two ways; individual freedom ends where the freedom of another person starts and one does not have the freedom to ultimately give up his right to freedom. This second limitation originates from paternalism; I do not think it will benefit people if they are able to completely alienate their freedom. I believe there is a difference between alienating freedom and alienating other states of affairs. If I am owner of this pencil I can give it away, but I will remain the powers to claim it back some day, or maybe buy another pencil. On the other hand, if I give away my freedom and consent to lifelong enslavement, I might never have the power or means to gain back my freedom. Furthermore, as discussed in section 2.1.c, there are practical problems concerning rectification of past injustice in case of voluntary enslavement. All these practical issues make it hard or even impossible to secure the conservation of the *right* to liberty, after one gives up his freedom. Therefore, I suggest a paternalistic constraint, which links the right to liberty to a certain extent<sup>102</sup> to the obligation to never give up one's freedom entirely.

At the third place in the pecking order of rights stands the right to property, which bears the least intrinsic value of the three entities under discussion. This right belongs in the pecking order because, in general, individuals need some possessions to stay alive and preserve a free life<sup>103</sup>. Whenever an individual does not possess sufficient means to have the necessary resources to maintain a free life, the rights to life and/or liberty are violated.

However, like the right to liberty, the right to property is limited. It is limited up to the point, where it enables a person to stay alive and to be free. Every possession above the minimum necessary amount of property, prescribed

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the right to freedom of thought, I mean indoctrination and advanced forms of propaganda.

<sup>102</sup> Which I will not further specify in this thesis.

<sup>103</sup> Within the constraints I laid out above.

by this pecking order<sup>104</sup>, is superfluous. People do not have a de jure right to redundant property.

Now, one may wonder why there should be a link between X and the right to X; why there should be a link between life itself and the right to life, for example. Let us assume for the moment that no such link exists. Life is, as I mentioned, a necessary and sufficient condition to liberty and property; however, the right to life is (for the purpose of this example) not on top of the pecking order, but the right to property is – as is in fact the case in Nozick’s theory. In situations, where these rights are positioned in relation to each other in such a way, life may be overruled by property.

Imagine a world with only two people in it: X and Y. Both are alive for the moment, but X is extremely poor and will die within a day if he does not eat something, furthermore, X is not able to provide for himself. Y, on the other hand, is extremely rich and possesses enough food to feed both, but he does not consent to giving food to X. The system of rights, in which the right to property is on top of the rights hierarchy, averts X from taking food from Y, because Y’s right to his property is more important than X’s life. Therefore, justice is served if X dies. Although this is an extreme example, it illustrates the consequences of such an order of rights.

Furthermore, we should ask ourselves what the worth of the right to property is, if life itself is not certain<sup>105</sup>. Would you choose to give priority to your right to property, if your right to life can thereby be overruled by someone else’s right to property? I believe that a significant majority of people would and should<sup>106</sup> grant more value to life than to possessions and would therefore logically prefer to prioritize securing their lives through a right to life, over securing their potential possession through a right to property.

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<sup>104</sup> The minimum necessary amount of property depends on time and place; different amounts are required in different places of the world and during different times of the year, for example. This thesis does not allow for further examination of this minimum necessary amount.

<sup>105</sup> Life is of course never certain. Here I am referring to a limited certainty to X, provided by a right to X.

<sup>106</sup> Because life is a necessary and sufficient condition for property and thus bears more intrinsic value.

Moreover, liberty is intrinsically more valuable than property and therefore the right to liberty should have priority over the right to property. I believe such association between liberty and the right to liberty is justified, because rights provide de jure protection. Priority should be given to the protection of the intrinsically most valuable state of affairs, or to the state of affairs, which is a necessary and sufficient condition for all other states of affairs; because, by protecting such state of affairs, the precondition of all other desirable states of affairs is protected as well. If my life is protected, my liberty and possessions are simultaneously protected to some extent, because, if my life were threatened, my rights to liberty and possessions would be threatened as well.

Every individual should be able to be alive, to have the three liberties named above, and to possess the minimum amount of property to lead a good human life. All these elements are equally important to life. However, whenever these elements come into conflict with each other, the pecking order should determine the outcome: the highest right on the pecking order gets priority.

The three basic rights in the pecking order are universal and inalienable. This does not mean that people necessarily may not alienate themselves from the states of affairs that are protected by these rights, because rights do not entail an obligation to make use of them.

A person may quit his life or give all his holdings away; he thereby alienates himself from certain states of affairs, but not necessarily from his rights, because he might retain his rights to those states of affairs. If he decides he wants to provide himself with new holdings, this should be possible because he has a right to such state of affairs. In the case of suicide this is more complex, because the person committing suicide does not have the possibility to take his life back. However, when a person commits suicide, he ceases to exist and could therefore no longer have the desire to make use of his right to life.

Only in the case of the right to liberty I would like to impose a limitation, as mentioned above. An individual should not be free to give up his liberty entirely and consent to a lifetime of enslavement. However, Nozick does concur to voluntary slavery. I will elaborate further this subject in the following section.

This pecking order of rights offers an alternative to the SOT because, as we will see in section 2.2.b and 2.2.c, it provides different outcomes on moral crossroads. Whether rights, as the rights to life and liberty, fall within the category of property, or whether they are seen as morally superior to this category, will determine the ethical lay out, to which societies are arranged.

### 2.2.c *The fundamental right to property*

The pecking order theory stated above makes a conceptual distinction between different kinds of rights and assigns different moral (intrinsic) values to each right. Nozick, on the other hand does not differentiate rights and, in his theory, “all rights are conceived as property rights. Rights to liberties then become just one among several kinds of rights that persons own and have at their disposal. Basic liberties are of no greater moral or political significance than any other kind of property right”<sup>107</sup>, as Freeman has pointed out. Also, in section 1.1.b we have seen that Nozick’s SOT leads to a fundamental right to property, because the ownership relation you have towards yourself makes your ability to act or even to live a part or component of the possession you have of yourself. Life and liberty thus become special kinds of property rights.

Because of your property right over yourself, you have a de jure control over yourself, which allows you to breathe or act freely, for example. In this sense, the rights to life and liberty are consequences of the property right you have over yourself (self-ownership). As consequences, they are subordinates of that property right and of the notion of the right to property in general. As subordinates and components of the right to property, the rights to life and liberty may be alienated and traded for rights to other kinds of property.

An example of such trade is voluntary slavery. Nozick agrees to individuals voluntarily selling themselves into lifelong enslavement<sup>108</sup>, because such transactions are within an individual’s transfer rights, since his life, body and powers are his property.

According to my theory, such transfer into lifetime slavery is not justified. As mentioned before, I insist upon a paternalistic principle that argues against

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<sup>107</sup> Freeman (2001): 131

<sup>108</sup> Nozick (2010): 331

voluntary slavery, by linking the right to liberty to an obligation. One should never entirely abandon his freedom because there is a difference between alienating freedom and alienating other states of affairs. If I entirely give up my liberty and consent to lifelong enslavement, I might never have the power or means to regain my freedom. Therefore, it is hard or even impossible to secure the conservation of the *right* to liberty, after one gives up his actual freedom. Consequently, I suggest a paternalistic constraint, which links the right to liberty to a certain extent<sup>109</sup> to the obligation to never give up one's freedom entirely.

One might wonder why a theory that agrees to suicide, does not agree to voluntary enslavement. This is because, although suicide entails a vanishing of life itself and might entail the loss of the right to life with it (because after suicide there is no right bearing entity left), suicide also effaces the possibility of the individual desiring to have his life back, since the individual ceases to exist. In the case of lifelong slavery however, a person alienates his right to freedom; he not only gives up his actual freedom but also the possibility to ever claim back this freedom, because consenting to slavery means a transfer of the right to freedom from the person in question to the slaveholder.

Slavery is not the only issue that Nozick and I disagree upon. I believe that the alienability of all three rights, the right to life, liberty and possessions, and the fact that these *rights* can be *traded* are morally objectionable. I will elaborate further on this by means of some examples in the next section 2.2.d.

#### 2.2.d *Thought experiments*

In this section I will explicate some thought experiments by the examination of two topics of moral debate: organ trafficking and redistribution of wealth. I will analyze these topics on the basis of Nozick's SOT and my own theory of the pecking order of rights to see how both theories might lead to different outcomes. It is up to the reader to decide which outcomes are to be considered morally superior.

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<sup>109</sup> Which I will not further specify in this thesis.

1. *Organ trafficking*: According to Nozick, certain matters come into the world while they are already someone's property<sup>110</sup>. Body parts are a good example of such things. Nozick states that because my kidney is my property and I have a property right over it, you may not use my kidney, even if you need it more than I do<sup>111</sup>. However, since my kidney is my property I may consent to the use of my kidney by you and I may even sell my kidney to you, due to the transfer rights I have over my kidney.

Whether or not organs should be traded for money or other goods is a much-debated topic in today's society. The case of the sale of a kidney is a difficult case, since the human being is equipped with two kidneys and losing one kidney is therefore not as radical as losing one's heart, for example.

I would like to provide two arguments against the selling of organs; first, organ trafficking is not in accordance with the pecking order of rights and second, I would like to offer a paternalistic argument, which states that economic benefits might blur the decision power of the individual.

According to my theory of the pecking order of rights, giving away a kidney or any other organ is within your right to bodily freedom, because this right does not entail the obligation to use your own body and all its body parts. Even giving away your heart is within your rights<sup>112</sup>. However, according to my theory, your kidney and heart are not articles of property and therefore the trade of your organs for money or other goods would not be just. Trading your kidney for money involves a transfer of bodily freedom<sup>113</sup> in return for property, which is in conflict with the pecking order, in which a larger intrinsic value is assigned to bodily freedom than to property.

Furthermore, because I assumed a moral framework, in which particular rights are ends in themselves, it would not be just to trade (a part of) your right to bodily freedom for a right over any particular object of property, because that property right bears a smaller intrinsic value. I stated that having certain rights

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<sup>110</sup> Nozick (2010): 160

<sup>111</sup> Nozick (2010): 206

<sup>112</sup> Since this action will cause death, this action is connected to your right to life.

<sup>113</sup> Giving away a kidney limits your bodily freedom, because it reduces your bodily freedom to function in full capacity. You can no longer eat or drink whatever you might want without potentially endangering your health.

is a moral end per se. This means that the instrumental use of your rights to freedom or to life in order to gain another moral end, namely the right over a particular item of possession with a smaller intrinsic value, is not good and should not be permissible in my opinion. With 'good', I am referring to moral and the conception of morality I described in section 2.2.a.

Nozick states that redistributive theories, like Rawls' and like mine (in the second topic under discussion we will see that my theory also argues for redistribution of goods), would argue for a redistribution of body parts like kidneys or eyes<sup>114</sup>. This is a misinterpretation of such theories, because most redistributive theories, including my theory, do not place body parts within the category of property like Nozick does. Hence, according to my theory, body parts may be given away voluntarily, but they should never be the subjects of mandatory redistribution.

Nor should they be the subjects of economic transactions, because this is in conflict with the pecking order of rights, as I mentioned, and because this might blur the decision power of the individual. If people could get money for their organs, they might make the decision to give up their organs under economic pressure. My paternalistic view suggests that the possibility of bringing economic benefits into the consideration might endanger a person's life and liberty.

Imagine for example a person, who lives in poverty. The sale of his kidney will provide him with one thousand Euro's. This is a lot of money and it will make his life easier for a while. However, after a certain amount of time, he will have spent all the money and, provided that he did not spend it wisely, he will be poor again. Now he is considering the sale a part of his liver, a longue, his left eye or pieces of his skin. Why should he not sell these other body parts as well? The sale of his kidney was permissible, why should the vending of all his other organs not be acceptable? I believe that organ trafficking leads down a slippery slope, where the confines of moral permissibility are very hard to define. Therefore, I plea in favor of a paternalistic principle, that entirely organ trading.

To summarize, organs are not items of property; therefore they are not exchangeable objects in the first place. Organs are linked to the rights to life and

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<sup>114</sup> Nozick (2010): 206

(bodily) freedom and these rights bear greater intrinsic value than the rights over the entities, which the organs may be exchanged for. Therefore the sale of human organs leads to a conflict within the pecking order of rights. Moreover, my paternalistic principle holds that people should not be able to trade their organs for money or other kinds of property, because such reimbursements might cloud an individual's judgment regarding the desirability of ceding his organs.

2. *Redistribution of wealth*: Nozick is against the redistribution of wealth; according to him, such redistribution comes down to a form of slavery.

“Seizing the result of someone's labour is equivalent to seizing hours from him and directing him to carry on various activities. If people force you to do certain work, or unrewarded work, for a certain period of time, they decide what you are to do and what purposes your work is to serve apart from your decisions. This process whereby they take this decision from you makes them a *part-owner* of you; it gives them a property right in you”<sup>115</sup>.

I disagree with Nozick and I believe that there should be redistribution of wealth to a certain extent.

It is important to note that my definition of property is narrower than Nozick's take on property. As mentioned, I do not categorize body parts as possessions, and hence they cannot be the subjects of redistribution. The same goes for a person's liberty and life, they are not items of property and they should not be subjected to redistribution.

However, goods like money or food can and should be redistributed, whenever the current distribution of goods prevents some people from being able to make use of their rights to life and liberty, while others have superfluous<sup>116</sup> possessions. This statement is in line with my theory of the pecking order of rights, in which the ability to use the rights to life and liberty are of greater importance than the ability to use the right to property.

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<sup>115</sup> Nozick (2010): 172

<sup>116</sup> Possessions are superfluous when a person has more than he needs to gain and retain his life and liberties.

The distribution of wealth in society<sup>117</sup> should be arranged in such a way that each member of society<sup>118</sup> is in principle able to make use of his rights to life and liberty. This might appear simple and clear-cut, however, it is not. If I was born in such a poor state that I would have been deprived of food or other basic needs, like shelter or clothes, while other people in society would have abundant possessions, I believe there should be a redistribution of wealth. I suppose most people agree with this kind of redistribution. However, when I would have enough property to maintain a free life, but I would decide to waste all my money on gambling and I would end up penniless by my own fault, should there then be any redistribution as well? And what should happen if all my initial money is wasted because my IQ is too low to understand good bookkeeping? Or what should happen if I am poor, because I would have spent all my money to cover the medical expenses of my chronic disease?

These are all questions that need answering, when we discuss redistribution of wealth. This topic is however an elaborate debate and I would not do it justice if I discussed it in a few short paragraphs in the last section of this thesis. Nevertheless, I did mention redistribution of wealth, because this issue is inextricably connected to the self-ownership debate. Because of my disagreeing with Nozick on the redistribution theme, I started investigating the SOT. Unfortunately, the scope of this thesis limits the possibilities to describe the consequences of the dismissal of the SOT for the distribution of wealth into detail. Nevertheless, the refutation of the self-ownership thesis is a first and necessary step towards a worthy redistributive theory.

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<sup>117</sup> I will not elaborate on the confines of society and details about when an individual is part of a certain society, because this is a debate on its own.

<sup>118</sup> See fn. 113.

## C Conclusion

The emphasis on property in today's society and on today's political agenda is wrong. Property naturally plays an important role in our lives, but we should realize that there are things with greater intrinsic value, such as liberty or life itself. Therefore, the right to property, which is portrayed as the most important right by libertarians and whose fundamental character is defended, amongst others, by Robert Nozick and his self-ownership thesis, ought to be positioned in a suppositional pecking order below the rights to life and liberty.

In this thesis I have examined Nozick's version of the SOT and I have challenged it in an attempt to disprove the fundamental character of the right to property. The answers to the two main questions posed in this thesis: 'Is Nozick's version of the self-ownership thesis, which justifies the fundamental character of the right to property as the highest priority right, coherent? And is it moral?' are *no* and *no*. Nozick's SOT is neither coherent, nor is it moral.

Nozick's concept of self-ownership extends the ownership relation that a person normally has to things, onto himself. Hereby a person's entire being, including his body and powers, such as his capacity to breathe or to freely make decisions, become items of property. The rights to life and liberty turn into special kinds of property rights as they become tradable and alienable. I believe this transition to be wrong in two ways.

First, the SOT is incoherent; Nozick makes use of two contradicting concepts within this thesis: ownership, which entails a hierarchical relationship, and the reflexive relation the indivisible individual has towards itself. Reflexivity and hierarchy exclude each other. Nozick makes use of both and therefore lacks consistency.

Furthermore, the SOT is immoral because it assigns a fundamental character to the right to property, which might thereby overrule the rights to life and liberty. In my opinion, these latter rights bear more weight than the right to property. To support this claim I have made the assumptions that there are three basic rights: the right to life, the right to liberty and the right to property. These rights should be arranged in a suppositional pecking order, with the right to life on top of this order and the right to property at the bottom. It would be immoral

to degrade the rights to life and liberty to some kind of inferior property right, because they bear more intrinsic value and they are rights of a higher order.

I am not the first person to assess the SOT; many thinkers have examined this topic before me. However, I hope that my attempt to provide a new perspective has made a contribution to the existing debate on self-ownership.

This being said, I do not suggest to have found the answers to all moral questions that the SOT has left unanswered or has answered unsatisfyingly. There are still problems to be sorted out, like conflicts of rights of the same order or the distribution of property after everyone's minimum required level of property is reached, or the exact amount of property needed to reach this level.

I am proposing the point of view, laid out in this thesis, as a starting point. A starting point in a new direction, away from the incoherent and immoral concept of self-ownership.



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