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Topic:

## **Is distributing wealth violating rights?**

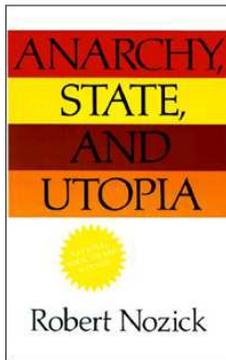


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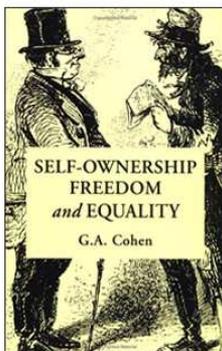
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### **Robert Nozick:**



■ *“There are only individual people, different individual people, with their own individual lives. Using one of these people for the benefit of others uses him and benefits the others. Nothing more. [...] Talk of an overall social good covers this up... (Nozick 1974: 32-33).”*

### **Gerald Allan Cohen:**



■ *“Any but the most utopian socialist must be willing under certain conditions to restrict the liberty of a few for the sake of the liberty of many (Cohen 1995: 31).”*

■ *“The capitalism Nozick advocates is more pure than the one we have today. It lacks taxation for social welfare, and it permits degrees of poverty and inequality far greater than most apologists for contemporary bourgeois society would countenance (Cohen 1995: 19).”*

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## **Abstract**

### **Is distributing wealth violating rights?**

Nozick's theory of *Justice in Holdings* is the signboard of the Libertarian philosophy. The idea: People own themselves and have therefore fully rights about what they produce. Taxation is limited only for the minimal state. Forced redistribution for social welfare is like forced slavery.

In this essay I present some aspects of the academic debate between Robert Nozick and one of his main critics Gerald Cohen, as well as some of my own thoughts.

He claims that Nozick's theory leads to a dangerous, radical capitalistic society, in which you are either talented or starve to death. I agree with Cohen against Nozick and try to highlight some concerns to human dignity. In my view, Nozick fails to deliver a theory about a 'just' society.

## I. Introduction

Using the slogan "Freedom through socialism" a new nationwide left-wing party called *Die Linke* was founded in Germany these days. The liberal party, which was holding his party congress the same weekend, talks about a big threat for Germany and prophesies a dark future for Germany if this party comes to power someday.

This political event reflects in an astonishing way the political topic and positions of my essay. This essay wants to discuss ideas of two opposed philosophers about *The Just Society*. Robert Nozick on the one hand called himself (once) a "hardcore libertarian" (Sanchez 2001) and tried to find a moral legitimation for (even large) inequalities. Gerald Cohen follows the school of Marxism / Socialism that argues for an egalitarian society.

After a very short abstract of the basic ideas of Nozick's *Entitlement theory* the argumentation presents two of the most important general critics from Cohen on Nozick. Subsequently I deliver an invented answer of Nozick<sup>1</sup>; followed by my own arguments.

At the end of my essay the reader should understand why Nozick would possibly oppose and Cohen would possibly agree<sup>2</sup> on the slogan "Freedom through socialism". The reader also should get a basic overview about Nozick's theory, Cohen's and my main critics.

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<sup>1</sup> They are based on his opinion of 1974, not on his part retract from 2001. Because I only can speculate about his answers, I write them in a "first-person" view, to contrast it with the other parts of the scientific essay.

<sup>2</sup> Actually he wrote in an e-mail: "Well, it makes more sense than "socialism through freedom", but I wouldn't go much further than that" (personal Communication, June 17<sup>th</sup> 2007).

## II. Definition

### 1. The basis<sup>3</sup> of Robert Nozick's entitlement theory

Robert Nozick's theory can be understood as a libertarian answer to John Rawls redistributing<sup>4</sup> *Theory of Justice*, which only looks at the (maybe unequal) outcome of distribution today. Nozick developed a historical entitlement theory that tries to find a legitimation for having and transferring property and wealth. For the justification he refers to Locke's idea that men 'own themselves' (so called self-ownership argument). The self-ownership argument is also very important for his rejection for distributive justice. In Nozick's view everything we are, all talents we have and develop, and (as a consequence) everything we produce with them belongs to ourselves. We have a fundamental 'right' to it. Taxation is only limited to keep a minimum state alive, that delivers protection and enforces contracts<sup>5</sup>.

In a second step he applies the self-ownership argument on property. When one mixes his own labour with a property, so that the value of the property increases, this property becomes his own. The only limit to that is a weaker<sup>6</sup> form of the 'Lockean Proviso', which limits acquisition rights to the point that nobody else should be worse off than their position was, when the land in the nature state was unowned or held in common.

After a property is once through this way justly acquired and justly transferred (that means fully voluntary and without e.g. theft), everything developed from that situation is in itself just. Possible unjust property acquisition in the past history (within and across countries) should be recompensed by the 'principle of rectification', which he did not describe in detail.

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<sup>3</sup> For a detailed description see Lamont/Favor (2007, Ch. 7).

<sup>4</sup> John Rawls theory is not an egalitarian, but suggests limiting inequalities only to the point to which the absolute level of the least advantages is lifted at most.

<sup>5</sup> Every tax that goes beyond this point (e.g. for social transfers for less talented or disabled people) violates this right.

<sup>6</sup> Locke originally said, that there must be „enough and as good left in common for others“.

### III. Argumentation

#### 1. Cohen's first rejection: Chamberlain & much ado about nothing

Cohen has several rejections to the famous *Chamberlain-Parable* that Nozick uses to explain his ideas of justice through voluntary transactions<sup>7</sup>. Cohen's main criticism is that Nozick did not deliver anything substantial to rely on. The parable does not deliver any reasons to defend a specific moral principle (see Cohen 1995: 24). It only supplies some rules of justice to govern a certain situation. In Cohen's eyes Nozick does not even try to legitimate the outcome D2 in any way. Cohen says the Chamberlain story, "even when we take it at its face value, impugns not the original distribution, but [only] the exclusive rightness of the principle mandating it" (1995: 24).

When the *Chamberlain-Parable* gets interesting for Cohen – after the basketball season – it ends and Nozick explains that the result has to be accepted, because this seems to be in line with one's intuitions (see Nozick 1974: 19).

Cohen's pupil Will Kymlicka expands this criticism. The reason why Nozick's example seems to defend no specific moral principle is in his view an argumentative prestidigitation. While we are using our own just initial situation D1 (e.g. John Rawls *Theory of Justice*), Nozick applies (without asking or telling his readers) his own full property-rights on them. But this kind of total property rights are (for reasons) inconsistent with an equal society. "[...] the legitimacy of such rights is precisely what is in question" (Kymlicka 1990: 101-103).

In addition to that Cohen complains that Nozick neglects possible negative developments by not mentioning or reflecting about them. He also does not compare his model with alternatives, which may provide better or more equal outcomes.

##### 1.1. Nozick's possible answer:

As I mentioned in the preface of *Anarchy* (xii-xiv), my theory is a philosophical exploration, with open questions and problems. It therefore does not present a precise theory but delivers a main line of arguments. Hence I did not check all possible consequences.

What Cohen describes as weakness – a missing defence of the situation of D2 – is in fact the actual strength of the theory. Despite the different initial situations all outcomes are just – as long as they follow just steps of full voluntary exchange.

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<sup>7</sup> In short: Imagine a just society – however you think it looks like. This is the initial situation D1. In this society there is the talented and famous basketball-player Wilt Chamberlain. He is such an attraction in his team that he claims to get 25 Cent extra directly from each spectator in the stadium (additionally to the normal ticket price). In this season one million persons attend to his home games and Wilt winds up with \$250.000. Nozick asks now: If D1 was a just distribution, and people voluntarily moved it to D2, is not D2 also just? Why should Chamberlain not be entitled to his talents and his own labour? If the people were entitled to the resources (under D1), did this not include their being entitled to give it to, or exchange it with, Wilt Chamberlain? And third parties still have their legitimate shares. This is a very short description. You find the full story in Nozick's book (1974) from page 160-164.

Pattern end-state theories tend to ignore that wealth is earned by one's own: One's individual talents and individual efforts are necessary. Hence self-ownership is the moral principle I defend with this example. The Wilt Chamberlain story does nothing else than to visualise this principle of entitlement in practice. Wilt Chamberlain is entitled to get the 25 Cents, because he trained his talent to this extent.

According to the length of the text, I cannot give a full answer to the mentioned fears that socialist connect with liberalism. But I like to point out, that even some traditional socialist support my view, when they say that workers are entitled to the product and full fruits of their labour: They have earned it. A distribution is unjust if it does not give the workers what they are entitled to. These socialists rightly, in my view, hold onto the notions of earning, producing, entitlement, desert and so forth, and he rejects current time-slice principles that look only to the structure of the resulting set of holdings (see Nozick 1974: 154-155).

## **1.2. My point of view**

I am not sure if Nozick would have replied like I did in his name, but if so, this would have been unsatisfying for me. The Chamberlain story is of course designed to demonstrate his principle in practice, but the way he constructed it, is misleading. It does not talk about the risky impacts of D2 or compares alternatives. Instead the reader is somehow controlled to just think in one (Nozick's) way. For me the Chamberlain story is like an advertisement for pure egoism that blank out the rest of the community.

The task of a theory of justice is to justify an actual or aimed society to all its actual or future inhabitants. While I was reading Nozick, I was always waiting for a eureka moment. To say "we own ourselves and consequently have full right on all we produce" is too 'simple' for me. "Whatever happens from just steps is just"<sup>8</sup> is no explanation for a complex society. I understand the wish for an elegant and narrow theory. But with my present experience I realize that in most cases they fail, because they are too extreme.

One of the points Nozick does not mention is that the original (in the case of Cohen's 'equal') distribution is not re-established and that this could include dangerous consequences for the development in the D2 society. Chamberlain destroyed (Cohen's) egalitarian economy. After the transfer Wilt is in a very special position. For Cohen he has an unacceptable amount of money (and with that a lot of power), regardless of how he came to hold it. All other people depend on him<sup>9</sup>. Wilt could e.g. now start speculations.

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<sup>8</sup> For the full, correct formulation I refer to the definition part.

<sup>9</sup> This includes in Cohen's view even third parties, who did not watch the game. Although they still have the same share as in D1, they have become relatively worse off. You find this argument in Detail in III.2.

## 2. Cohen's second rejection: To be or not to be – your right to choose!

"Whatever arises from a just situation by just steps is itself just" (Nozick 1974: 151). This is the main rule of justice<sup>10</sup> Nozick tries to promote with the *Chamberlain-Parable*: 'Just steps' – that means for Nozick 'without violating the rights of individuals' or shorter 'fully voluntary'.

Cohen investigated if the condition 'voluntary' is enough to legitimate everything that results from it.

His arguments are:

- 1.) Cohen asks what happens if you change the product in the parable from a basketball game to selling bread. Do the people still buy it voluntarily or because they have to do it, to prevent themselves from starving? (Cohen 1995: 22)
- 2.) The strongest counter-example for Cohen is slavery: "We might then say: voluntary self-enslavement is possible<sup>11</sup>. But slavery is unjust. Therefore [the condition] is false" (Cohen 1995: 21).
  - I. If the result of distribution only based on the voluntary actions of people, they have to be very rational. Because every decision they make voluntarily has consequences for them and those of future generations. Cohen asks (and refuses) that people really are thus rational (Cohen 1995: 22-23).
  - II. The second condition is, that people need to know the outcome of all their actions and possible alternatives, including those for the next generation. Only then their voluntary decision can be justified. But Cohen does not think that the average Chamberlain fan is aware of all consequences. They are "insufficient reflective" (Cohen 1995: 23).
- 3.) The other concern Cohen is about "third parties". If (person) A and (person) B voluntarily agree on something, this should have no implication on (person) C, who was never asked. Nozick says that as long as A and B do not hurt C's rights, there is no effect. Cohen still disagrees and he demonstrates the consequence for workers in detail (1995: 34-36). In Nozick's society (and Cohen says in most capitalist countries today) abject proletarian often only have the 'choice' to work 'voluntarily' for a capitalist (serving his conditions) or to starve to death. Cohen rejects Nozick's claim that the worker still act 'voluntarily'.

Cohen asks as a result: "How is libertarian capitalism *libertarian* if it erodes the liberty of a large class of people<sup>12</sup>?" (1995: 36).

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<sup>10</sup> The self-ownership argument is the underlying moral principle.

<sup>11</sup> Though my research I did not found an official statement of Nozick, if he would agree on that.

<sup>12</sup> In a interview with Imprint (June 1996) he states: „Marxist and revolutionaries didn't think that people who didn't produce should starve“.

## 2.1. Nozick's possible answer

The problem Cohen shows is based on a fundamental misconstruction of 'freedom'. I take freedom as an individual right, not a collective one of an alleged group (e.g. workers). "There are only individual people [...]. Using one of these people for the benefit of others, uses him and benefits the others. Nothing more. [...] Talk of an overall social good covers this up", as I wrote in the preface of *Anarchy* (1974: ix). If the state forces us to give services and benefits without our consent, it abuses our rights<sup>13</sup> of self-ownership.

Cohen writes "[One] must be willing [...] to restrict the liberty of a few for the sake of the liberty of many" (1995: 31). My question is here: Who decides which rights are restricted and which are advanced? To which scale? Concerning which criteria? I showed (1974: 155-158) that it is nearly impossible to find a fair and applicable distribution system<sup>14</sup>.

The second misunderstanding here is Cohen's biased idea of men in his D1 situation. I do not justify inequalities although people are unequal, but because of that. People are – of course – not fully reflective about the results of their actions in future. I simply said that they have to act 'for reasons', which does not necessarily mean rational (Nozick 1974: 159). I compare people with their chances in the state of nature, where they have the same lack of awareness and rationality.

My point of view about third parties is reflected in detail on pages 30 to 31 (Nozick 1974). Cohen's objection is based on the same misinterpretation of individual freedom I already mentioned. There is nothing to add.

## 2.2. My point of view

In the end, this dispute between Nozick and Cohen is a question on how to interpret 'freedom'. And at the bottom of that is the interpretation of self-ownership. I agree with Cohen's complaints<sup>15</sup> (the ones I mentioned and the ones I left out), that Nozick's construction does not deliver a fair society with equal opportunities for everybody.

Instead of circulate Cohen's and Nozick's arguments I want to take three own – maybe unconventional<sup>16</sup> – arguments. They should help establish an idea of man, that I think is irreconcilable with Nozick's theory. These arguments could be seen as a support for Rawls view on moral arbitrariness, that we did not 'earn' our talents.

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<sup>13</sup> These rights are inviolable.

<sup>14</sup> However, I never denied my theory – if realised – would change the society dramatically. But in a way that voluntary donations would replace state taxation. In my theory work I also point out, that there can be state compensation to all who suffer from injustice in acquisition, and therefore not reach a certain welfare level (compare White 2004).

<sup>15</sup> Peter Vallentyne (2004) delivers an interesting but not completed summary in the Stanford Encyclopaedia of Philosophy.

<sup>16</sup> I think one cannot technically 'prove' which world view is correct. We only can try to come closer or see which view makes more sense under certain conditions.

### **2.2.1.) Human Rights & German History**

Nozick's appeal for a Just Society fails strongly to enforce basic human rights like human dignity or the rights for disabled people. On the contrary it delivers arguments for the possibility of self-enslavement.

Especially as a German I cannot share his view about isolation of disabilities and talents, which he left to everybody on his own. Like no other nation we followed the idea of "racial hygiene"<sup>17</sup>. Systematically we killed 75,000 to 250,000 people with intellectual or physical disabilities (so called Euthanasia-Killings), because they were supposed to be 'worthless' and too 'costly'. It would be unfair and false to put Nozick on the same step with these inhuman policies, but it is true that if one reflects that time and how the decisions were made, one asks for what reason this people had to suffer. It is the same (moral) question I would ask Nozick, too: How can he justify his society to the least advantaged? Why do they have to suffer from starvation or depend on generousness? Because they would suffer in the state of nature, too? But today, there are already better solutions. Why should property rights overrating all other (human) rights?

As an example of a compromise between different concurrent rights, I quote partly Article 14 of the German constitution: "Property and the right of inheritance shall be guaranteed. [...] Property entails obligations. Its use shall also serve the public good." (*German Basic Law* 2000: 20). This is a compromise which somehow reminds on Rawls Difference Principle.

### **2.2.2.) Intuition**

Nozick argues that his idea (like liberal principles in general) is more in line with our intuitions than redistributive principles like Rawls's difference principle (see Kymlicka, 100). But I do not believe that. That might be true in a country with a strong liberal background like America, but not categorical in Europe and especially not in Scandinavian countries. At the latest, when we consider the outcome (starving of less talented people) of the friendly looking *Chamberlain-Parable* our intuition will warn us.

Even if it is true, it is a weak argument to base on.

### **2.2.3.) Limiting Rights**

In my first lecture in public law somebody asked, if it is possible to violate basic rights. The professor was all smiling. He answered that this happens all the time. Every law, administrative act or traffic sign violates our basic rights: Freedom of movement, personal freedoms and also the freedom to have property. But every (state) violation must be legitimated, so it is with the *principle of proportionality*<sup>18</sup> in Germany. Violations of property rights are allowed

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<sup>17</sup> These actions were influenced by dangerous ideas of Social Darwinism between different human races.

<sup>18</sup> Every state interaction has to be capable (to achieve its aim), necessary and proportional (that means the violation of the act has to stand in a proportional relationship with the aim).

for unlimited reasons, e.g. for taxes, social security or even public goods (like building highways or airports).

No German law professor would ever suggest restricting property rights to an extent like Nozick suggested. In fact, the only right with total restriction is, like in many constitutions, 'human dignity' – our first article and highest aim, exactly the one which Nozick leaves to the individual.

Not mentioned aspects – such as the missing principle of historical rectification<sup>19</sup> or the unfair system of gifts and devisee – boost my doubts. Nozick does not seem to worry much about those who could possibly suffer from his theory. This cannot be a 'just' society.

A well balanced summary is given by David B. Lyons: "[...] the justice of a social situation cannot be determined without regard to how it came about. But it should not be supposed that such an example [Chamberlain] shows any other considerations to be irrelevant. [...] it is perfectly possible [...] that more than one type of principle (for example historical principles plus some others) determine the truths of social justice" (Lyons 1976: 212).

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<sup>19</sup> This is especially sad for a *historical* theory of justice (see Lamont and Favor 2007, Ch. 7).

## IV. Conclusion

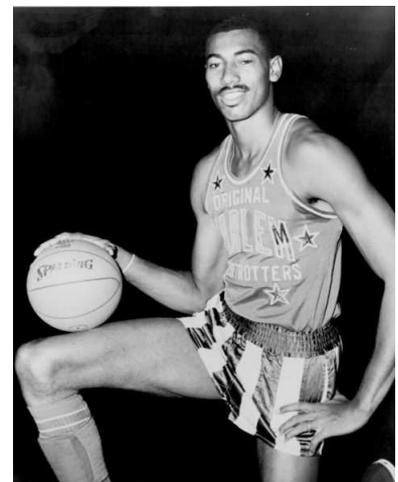
As Holmstrom (1997) said: "Cohen's criticism of the full self-ownership thesis are powerful and convincing." The Chamberlain story with voluntary exchanges did not deliver substantial arguments, the self-ownership argument is highly questionable, the resulting extreme interpretation of property rights are without conclusive reason and the separation of talented and untalented people is inhuman. I agree with Kymlicka: "It is wrong for people to suffer from undeserved inequalities in circumstances, and the disadvantaged have direct claims on the more fortunate, quite independently of the question of access to external resources" (Kymlicka 1990: 125).

For me Nozick presents a 'me-society' without delivering a sufficient justification, so that I could call it 'just'. A just society should offer fair opportunities and a live in dignity for the least advantaged. Both are missing.

Of course, "Freedom through socialism" is the opposite of Nozick's kind of individual freedom and may be an interesting topic for the next essay.

Sebastian Jabbusch.de , June 18<sup>th</sup> 2007

*"Whether Wilt would then still play [if he has to pay taxes] is a further question on which I shall not comment, except to say that anyone who thinks it obvious that he would not play misunderstands human nature, or basketball, or both" (Cohen 1995: 26).*



Wilt Chamberlain, American basketball player wearing uniform of Harlem Globetrotters.

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