Legitimacy of power

-an argument about the justification of redistributions and restrictions of liberty of action within a state.

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Titel Maktens legitimitet - ett argument rörande rättfärdigandet av redistribution och restriktioner avseende handlingsfriheten inom en stat

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Sammanfattning
Abstract
This thesis aims at answering the following questions: 1) How can the existence of a state be justified? 2) To what extent does the state have the right to restrict individual’s liberty of action? 3) To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”? 4) Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”? In order to answer these questions, I will analyze Robert Nozick’s and Michael Walzer’s answers to these questions, as presented in Anarchy, State and Utopia (1974) and Spheres of Justice (1983). My answers, which are founded on an argument for the necessity of freedom of choice and ambition-sensitivity in theories of justice, are results of a compromise between the ideas in these theories, but also partially on criticism of both theories.

Nyckelord
Keyword
Political philosophy, Liberty, Legitimacy, Justice, Nozick, Walzer.
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1 Introduction

Purpose
Questions about how to structure co-operative living in a just way have probably been more or less discussed all since human beings grouped together in societies. Life in society brings benefits, but the resources are scarce, and all preferences can therefore not be satisfied fully. This thesis aims at answering the following four central questions in this discussion of the legitimacy of the state’s exercise of power:

Questions
1) How can the existence of a state be justified?

2) To what extent does the state have the right to restrict individual’s liberty of action?

3) To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”?

4) Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”?

Method
I will answer the questions by discussing the arguments of Michael Walzer as presented in Spheres of Justice (1983), and the arguments of Robert Nozick as presented in Anarchy, State and Utopia (1974). My reason for choosing Walzer’s and Nozick’s theories is that they represent two different, influential points of view. I wish to investigate the two theories I intuitively find most adequate. This might appear to be an arbitrary method of narrowing the field of investigation, but as my argument proceeds, my reasons for letting my conclusions rely on an analysis of libertarianism and communitarianism/egalitarianism will be clarified. There might be possible to find a compromise between the two, or rejection of one or both.

Structure
I will begin with a short presentation of Nozick’s and Walzer’s theories, and continue with a historical survey, presenting the main line of ideas by the most influential authors on the subject in order to place my thesis in a context. Next, I will present some definitions and distinctions. Then I will present Walzer’s and Nozick’s answers to the four questions above.
Then, I do a comparison, analysis, and discussion of the two theories, and finally, I draw a normative conclusion about the questions addressed above.

**Walzer**

The theory of *complex equality* begins with the idea that all “goods” which we distribute are *social goods*, meaning that they are given different meaning in different societies. With “goods”, Walzer means for example “distributions of membership, power, honor, ritual eminence, divine grace, kinship and love, knowledge, wealth, physical security, work and leisure, rewards and punishments, and a host of goods more narrowly and material conceived…” (Walzer 1983, p 3) These “goods” operate within different “spheres”, and “the meaning of the goods determine their movement.”

“Distributive criteria and arrangements are intrinsic not to the good in itself but to the social good. If we understand what it is, what it means to those for whom it is a good, we understand how, by whom, and for what reasons it ought to be distributed. All distributions are just or unjust relative to the social meaning of the goods…this is in obvious ways a principle of legitimation…” (Walzer 1983, p 8-9)

Walzer claims that the best way to achieve equality is to allow any group of men and women to gain monopoly over certain “goods”, as long as they only dominate this area of “goods” within their proper sphere. No one should be allowed to gain influence over “goods” in another sphere merely because of influence in one sphere. This is obviously a restriction of use of skills which helps the person to gain influence, but also a restriction of the person’s opportunities to gain material benefits, compared to if he was acting within a system of *free exchange*. Free exchange means that the only limitation of distribution is other people’s consent to trade. Walzer does not accept the system of free exchange, since he means that it, for example, would be possible to sell one’s vote in an election. This is unacceptable to Walzer, regardless of if everyone involved agree to the trade. Walzer explicitly says that his theory is *egalitarian*.

**Nozick**

Nozick thinks that the state should exercise *no restrictions* or *redistribution* of any goods, including *influence*, except restrictions to protect people’s right to life and property, and taxes to uphold the minimal state.

All gaining of goods that are the results of *fair transactions* are *legitimate*. With fair gaining and fair transaction, Nozick means that the person has gained the “goods” according to the
Lockean principle, or from someone else who has gained the goods according to the Lockean principle. This is the only legitimate gaining of “goods”. This means that restrictions of someone’s influence, which is the result of personal qualities, in order to create equality among people, is to confiscate some of the person’s skill, and use him as a mean to gain someone else. This is unacceptable to Nozick.

Nozick means that the system of free exchange is the only legitimate, and that free exchange will break down every kind of egalitarian system, unless the egalitarian system uses methods that Nozick finds morally unacceptable.

Nozick’s theory, he says, includes no goal-direction. With goal-direction, Nozick means that a certain ideal decides whether a distribution is legitimate. It is a historical theory, meaning that the legitimacy of a person’s holding some “good” depends on how it came to be this person’s holding.

Differences

The authors disagree about which restrictions the state could legitimately proclaim.

Nozick means that 1) the state should only prevent people from harming each other or each other’s property. Other people’s rights are a persons only restrictions of his/her behaviour. These rights do not include anything but the right to protection of life and health and protection of property. The state has no right to force a person to pay tax for anything but the upholding of this protection of life and property. Every other tax or attempt to redistribute “goods” of any kind, including influence, would be theft, since a person has exclusive right to everything he/she has gained in a fair way, and 2) Equality has no worth in itself, since a moral theory should not be “goal-directed.”

Walzer means 1) that the state should prevent people from gaining too much influence and other “goods” that comes along with influence by prohibiting dominance. This is a way to safeguard the equality among people, and 2) he seems to assume that people generally consider equality to have a worth in itself, since he means that there is a “…popular demand for the abolition of social and political difference…” (Walzer 1983, p xiii). His theory is therefore goal-directed (?). I am aware that it is problematic to use Nozick’s terminology when describing Walzer’s theory, but as long as we are aware that “goal-directed” means that a theory aims at fulfilling some value, for example equality, to the greatest possible extent, I think that clarity is gained and confusion avoided by using this term, since goal-direction is discussed in both theories, even though Nozick does so explicitly and uses the term “goal-
direction”, while Walzer discusses it implicitly and do not use any specific term. But they both discuss goal-direction.

When discussing Walzer, question three above will be discussed before question two, since this will be necessary in order to present Walzer´s theory in a chronological way.

2 The legitimacy of the state’s exercise of power

I will now give a short historical survey of the major ideas concerning the legitimacy of the state’s exercise of power. I will concentrate on the concepts divine authority, tradition, infallible truth, the principle of popular sovereignty, social contract theories, and the authors Hobbes, Locke, Rousseau, Bentham, Mill, and Rawls.

The first four keywords are described in the following way in Routledge Encyclopedia of Philosophy:

Historically, claims made for the rightful source of political authority have been enormously diverse, including: divine authority, mediated via religious doctrine and it’s interpreters; tradition and the principle of continuity with a society’s past; some infallible truth, such as Marxism-Leninism, about society’s future destiny and it’s chosen agents; and the people as a whole, and the principle of popular sovereignty. Although the first of these are still defended within parts of the Islamic world, most Western political philosophy of the modern era has sought to establish a secular source for political authority. With the authority of tradition relegated to at most a secondary plane, and Marxism-Leninism now discredited, the principle of popular sovereignty is virtually uncontested in the contemporary world. (Routledge Encyclopedia of Philosophy, vol 5 p 538)

We see that there have been disputes concerning what makes a political authority’s exercise of power legitimate. The sources of authority has been considered to be some divine power, which I interpret as every conception of God, tradition, which I interpret as a way of living that has been exercised for “some time”, “infallible truth”, which I interpret as a doctrine which claims to be based on an assumption which is not considered to be questionable, or a sovereign supported by the majority of the people. I am not certain whether this support necessarily needs to be based on free choice and lack of external constraint.

I interpret “popular sovereignty” as exercise of power by ruler(s) elected or in other ways accepted by a majority of the citizens of a state. I avoid calling it “democracy”, since this term can be interpreted in several ways.
There are disagreements about “which constitutional arrangements best realize [the principle of popular sovereignty]…and…who…constitutes the people that is the source of political authority. (Routledge Encyclopedia of Philosophy, vol 5, p 539)

Social contract theory claims that a government is a “product of conscious human artifice; its legitimation derived from its authorisation by the people themselves…both defined the proper purposes of government and also set a limit to its legitimacy.” (Routledge Encyclopedia of Philosophy, vol 5 p 539) The two founding philosophers of early social contract theory are Hobbes and Locke.

Hobbes meant in Leviathan (1651) that government gains it legitimacy of power through its provision of physical security. Hobbes idea is that the only alternative to the state is so unpleasant, that people will accept the discomforts of being restricted in order to avoid this situation. Human beings are above all self-preserving and strives to satisfy their preferences. Therefore, it is possible to formulate some laws which, if obeyed, would gain the individual in the state of nature. The only way to uphold these laws is to agree about a covenant, which states a society ruled by a sovereign. The individuals are obligated to obey the sovereign as long as he is able to protect the citizens from each other. (see Filosofilexikonet 1988, p 233-234, and Hobbes 1962, p 173)

Locke meant in Essays on the law of nature (1660) that government gains its legitimacy of power through protection of natural rights, which are given by God, whose existence is indisputable, and the rule of law. The right follows from the duty to govern in the citizen’s interest. In the state of nature, people are obligated by natural law not to harm each other in life or health, and not to steal. The purpose of the natural law is to “preserve mankind”. Rules for preservation of mankind as such is according to Locke an extention of the rules for preservation of the individual. In the state of nature, everyone is allowed to punish transgressors to such extent that the violation is unlikely to be repeated in the future, and the victim has the right to compensation to such extent that the sufferings are compensated for, but no more. (See Locke 1965, p 95-106, 109)
Locke meant that human beings are born with particular rights, which can be detected and realized, and that those consists the standard for what characterises legitimate exercise of power.

Both Locke and Hobbes meant that “the true purpose of government defined its limits”. (Routledge Encyclopedia of Philosophy, vol 5, p 539)

Critics have pointed out the arbitrary description of the state of nature, and questioned whether a once and for all given authority to government through the social contract legitimates that future generations are governed in this way. Rousseau tried to solve this problem by suggesting elections, where the citizens votes decides which rules should exist:

Political authority could be legitimate…only where citizens had the right to vote in person on legislation and where the executive was directly accountable to the sovereign legislative assembly. (Routledge Encyclopedia of Philosophy, vol 5, p 539)

Rousseau meant that since “each gives himself completely, so that, in the first place, this stipulation places an equal burden upon everybody; and nobody, for that very reason, has any interest in making it burdensome for others” people would act for the benefit of the society as a whole. (Rousseau 1954, p 19)

Rousseau’s theory offered the citizens a method to regular modification of the legislation.

But the citizens were not considered as having equal status, and the direct voting was not possible except in small societies. These shortcomings led to the development of the utilitarianism, since the utilitarianism claims to value each preference equally, and provide general rules for distribution of “goods”.

Utilitarianism exists in many different versions, but the following is considered to be the original formulations: “the greatest happiness of the greatest number” (Bentham 1776, 1778) “Protect the interests of the large majority against the sectional interests of the few.” (Mill, 1821) The main idea in utilitarianism is that as many preferences (interpreted widely, meaning many different kinds of needs and desires) as possible should be satisfied, and that a rule is justified if it contributes to this goal.
John Rawls tries to find an alternative to utilitarianism, which he considers to violate the individual’s rights, and intuitionism, which he claims to be too imprecise. He suggests a specific kind of social contract theory, which “… people would agree to if they could imagine themselves under ideal circumstances…standards which they would authorise if they were truly impartial. (Routledge Encyclopedia of Philosophy, vol 5, p 540) Rawls suggests that laws regulating society should be formulated as if those formulating the rules were placed behind a “veil of ignorance”. This would make them ignorant of their place in the society they create laws for, and guarantee that they, driven by self-interest, consider every possible member of the society.

3 Discussion of the concepts of liberty, legitimacy, and justice

In this chapter, I will try to clarify the meaning of the concept of liberty, legitimacy, and justice, and make some distinctions.

Liberty

My discussion of the concepts above is founded on definitions in several encyclopedias and Felix Oppenheim’s book Political Concepts (1981). My reasons for adopting his description of some of the concepts and their relations are 1) that Oppenheim’s interpretation of the concepts seems to correlate with what I will interpret to be the meaning of the concepts in Nozick’s and Walzer’s theories. Nozick and Walzer do not, however, explicitly describe the meaning of the concepts mentioned above. Therefore, I consider Oppenheim’s terminology to be a useful mean in order to clarify which meaning Nozick and Walzer seems to give these concepts. Therefore, I will in this paper understand the concepts of liberty, legitimacy and limits of justice in accordance with Oppenheim’s and the encyclopedia’s meaning of these concepts. 2) My second reason for relying on Oppenheim’s interpretation is well described by his own words: he says that “to make political concepts suitable for political inquiry, it seems to me necessary to reconstruct them, i.e., provide them with explicative definitions; these must in certain cases deviate from ordinary language to avoid ambiguities and valutational overtones. The proposed explications will be descriptive, so that political scientists with differing, normative commitments can nevertheless agree…I advocate no normative doctrines, not even implicitly [about the meaning of the concepts] ” (Oppenheim 1981, p 1)
Oppenheim emphasises that he discusses “analysis of concepts, not...definitions of words.” (Oppenheim 1981, p 3)

He also points out that the concepts of social unfreedom and social freedom are “relational concepts”, not “property concepts”. This means that they are “referring to someone’s ability [to do or refrain from something in relation to another individual]...”. If a relation has certain characteristics, it displays a condition, but there is no property.

Oppenheim describes “property concept” as “what can be asserted or predicated of individual entities of some particular kind.” (Oppenheim 1981, p 4) He uses the concept “democracy” as an example of a property concept: “…the word ‘democracy’ stands for a property-namely, one that can be attributed to human organizations like trade unions, universities...To define the concept of democracy is to say what property it is that we attribute to an organization when we call it democratic.” (Oppenheim 1981, p 4-5)

Finally, he claims that the actors (agents) in a relation do not necessarily have to be individuals. An actor can also be characterised by his/her office. A “group, a formal or informal organisation, or a society” (Shubick 1964, p 8, quoted in Oppenheim 1981, p 8) can also be an actor.

Oppenheim uses the word “freedom”, not liberty, but considers freedom and liberty to be synonyms: “freedom...and its synonym liberty.” (Oppenheim 1981, p 53) Therefore, I will, while discussing Oppenheim’s arguments, use “freedom” instead of “liberty”. We will see that Oppenheim’s meaning of “freedom” do not differ from Nozick’s and Walzer’s meaning of “liberty”.

In order to understand Oppenheim’s definition of the concept “freedom”, it is necessary to understand the meaning of the concept he calls “social power”. Exercise of social power is, according to Oppenheim, what limits the exercise of liberty. Oppenheim says that it is “indispensable for political analysis...because it belongs to a network of other key notions [such as] legitimacy...and also unfreedom and freedom.” (Oppenheim 1981, p 10) He also points out that he will “only examine power relations between single actors.” (Oppenheim 1981, p 10)
Oppenheim distinguishes between exercising power and having power, and argues that “the former…is a subcategory of the latter”. (Oppenheim 1981, p10) He defines “exercising power” in the following way:

**Definition:** P exercises power over R’s doing x iff [if and only if] P influences R to do x or coerces R to do x or punishes R for not having done x. P exercises power over R’s not doing x iff P influences R not to do x or restrains R from doing x or punishes R for having done x. (Oppenheim 1981, p 10)

Next, he defines influence, coercion, restraint, and punishment. He considers influence to be a subcategory of power:

**Definition:** P influences R not to do x iff P performs some action y that causes R to choose not to do x. (Oppenheim 1981, p 11)

Oppenheim says that “Exercising influence, like the other categories of exercising power, refers to a relationship of interaction.” (Oppenheim 1981, p 11) He points out that “action” can be understood as a “speech act”, understood as some kind of “communication”, or by “occupying a position and playing in that capacity role of an authority figure in the eyes of R.” (Oppenheim 1981, p 11)

Coercing and restraining are specific kinds of methods for making people act in accordance with one’s will. Coercing and restrain are not influence, since they do not make the person choose to act in a certain way. They are defined in the following way:

**Definition:** P coerces R to do x iff P performs some action y that causes R’s attempt to avoid doing x to fail. P restrains R from doing x iff P performs some action y that causes R’s attempt to do x to fail. (Oppenheim 1981, p 14)

Another way of directing someone’s behaviour is the use of punishment, which is defined in the following way:
Definition: P punishes R for having done x iff P believes that R committed offence x, and this belief causes P to perform some action y with the intention of depriving R. (Oppenheim 1981, p 17)

Oppenheim distinguish between having power and exercising power. He describes the difference in the following way:

People of average rationality tend to refrain from pursuing, attempting, choosing, or even contemplating goals they know others have made attainable to them or only attainable only at great risk or cost…there is no exercise of power…yet there is [latent] power…P may thus have power over R’s not doing x without R’s actually intending or attempting or doing x, and without P’s exercising power in that respect through acts of influence, restraint, or punishment. (Oppenheim 1981, p 21)

I will now present Oppenheim’s description of unfreedom and freedom. Oppenheim says that “like the concept of social power, that of freedom will be taken here as referring to a relationship of interaction between two persons or groups, i.e., to situations in which one actor is, wrt [“with respect to”, my comment.] another actor, free to act in any of several alternative ways.” (Oppenheim 1981, p 53)

Oppenheim first describes the concept of social unfreedom, since he considers it to be necessary in order to understand the concept of social freedom. (see Oppenheim 1981, p 53)

He defines unfreedom in the following way:

Definition: Wrts P, R is unfree to do x iff P prevents R from doing x or would punish him if he did x. (Oppenheim 1981, p 53)

Oppenheim defines social freedom in the following way:

Definition: Wrts P, R is free to do or not to do x iff wrts P, R is neither unfree to do x nor unfree not to do x. (Oppenheim 1982, p 64)

Social freedom means that “P does not make it impossible or punishable for R not to do x.” Social freedom, Oppenheim says, “unlike influence and prevention, does not refer to the actor’s actual behavior.” Oppenheim points out that social freedom can be interpreted both as negative and positive freedom, since absence of punishment or prevention can be seen both as
a positive action (the act of refraining from punishment) or a negative action (not punish or prevent)

We have seen above that liberty of action has been understood as an individual’s freedom to act. This freedom is considered to be dependent on other peoples actions, and when someone is said to have the right to liberty of action, we also assume that it follows that other people have a duty to actively contribute to the individual’s exercise of his right to liberty and/or refrain from actions that could coerce the rightholder’s exercise of his right to liberty. The first question to ask when discussing whether someone has a liberty to do or refrain from something is always how to fill in the blank spaces in the following sentence: “_ has a liberty to do _ regarding _. (see Oppenheim 1981, p 65-66)  Here, we can mention a sometimes challenged distinction between positive and negative right to liberty. This distinction is the same for all rights. If someone has a positive right to liberty, others are required to actively contribute to the rightholder’s possibility to exercise the right to liberty. If someone has a negative right to liberty, others are required to refrain from intervention with the person trying to exercise the right to liberty. Oppenheim means that a person R is free (has a right to liberty) (to do X) towards P, if “P does not make it impossible or punishable for R to do X, and does not make it impossible or punishable for R not to do X.” (Oppenheim 1981, p 65) This, I understand as negative liberty. He distinguish this from what he calls the right to “freedom of action”, which I interpret as positive freedom, since it requires an action from someone, or certain conditions, in order to be realized.

**Legitimacy**

I will here discuss legitimacy of the state and its exercise of power understood as philosophical justification of the state and its exercise of power. I will not discuss legitimacy understood as international criterias in order for a state to be considered as a state.

I have found no definitions of legitimacy, but the following descriptions are offered in three different encyclopedias:

What … makes government legitimate? Most thinkers agree that a necessary condition is that power should be acquired and exercised according to established rules, whether these are conventionally or legally defined. However, legal validity cannot be a sufficient condition of legitimacy, since both the rules and the power exercised under them also have to be morally justifiable. Two broad criteria for moral justifiability can be
Philosophers have generally identified legitimacy with a certain kind of moral authority in the legal or political realm. More specifically, legitimacy is the moral property of states, regimes (rulers, governments), or laws which makes them genuine, rightful or authoritative. States or regimes are typically regarded as legitimate if they possess the moral right to rule, the right to command and be obeyed and supported by their subjects, the right to self-determination and the control of territory, and/or the right to use coercion to ensure compliance. Legitimate states possess *de jure* authority, not mere physical power to compel obedience (or *de facto* authority ) The capacity of a state to motivate willing obedience, loyalty, and civic sacrifice, and hence to provide the structure for a stable and enduring civil society, is also sometimes named as a necessary (or even sufficient ) condition for state legitimacy. Laws are normally said to be legitimate if they flow from the legal procedures of a legitimate state or regime, although some philosophers insist that particular laws must also be themselves consistent with independent moral standards in order to be legitimate or binding. (Encyclopedia of Ethics, second edition vol 2, p 960)

Theories of legitimisation attempts to offer reasons why a given state deserves the allegiance of its members. (The Oxford Companion to Philosophy, p 477)

All the quotes above points at two necessary components in order for a state’s exercise of power to be legitimate:

1) The exercise of power must be specified in some kind of *rules*, which should be “established…[either] conventionally or legally defined.” (p 538) The author of the first quote above seems to mean that the “rules” can be those *conventionally* accepted as well as those stated in some kind of *source*. I interpret “conventionally” as something which people have accepted for some time (how long?), but which is not stated in a legal document. The two other quotes above seem to assume that the rule must be stated in some legal document in order for the discussion of legitimacy to have any meaning. The reason for this could be that it is only meaningful to require moral legitimacy if someone already holds legal power. If the legal power did not exist, one could simply ignore the “rules”.

2) The exercise of power must be morally justifiable. “Morality” is a problematic concept. One can find different ways to define morality and to justify different conceptions of it. Perhaps it, in this context, correlates with my interpretation of the
The concept of “rightful source and purpose”, mentioned above as a necessary requirement in order for a state’s exercise of power to be legitimate, needs some further interpretation. I interpret it as a requirement that the government must have 1) gained its power through a *for some standard adequate procedure*, using *methods reflecting the values of this procedure* while in office, and 2) exercises power with the intention of gaining the people over which it rules. There are, however, disagreements about what the adequate procedure of gaining office is, and about what “gaining the people” means.

*Justice*

In *Filosofilexikonet*, justice is described in the following way:

The minimal requirement of a just action or decision is that the individuals affected by the action or decision are treated in the same way. Similar cases are to be treated similar, and different cases are to be treated different (Perelman, Hart). This principle of justice is formal, since it only says that what belongs to a certain category shall be treated similar, but nothing about what this category is like, or how to decide whether something belongs to the category or not. (Filosofilexikonet 1988, p 483, my translation)

The concept of justice needs to be specified. With justice, I will understand treatment of individuals that, within the frame of social interaction, can be considered as not arbitrary. With “not arbitrary”, I mean that in the arguments for treatment of different individuals, there is some element of universalism. With universalism, I will, in this context, understand that when we decide how to distribute something that is wanted by more than one individual, we base our judgement of each individual’s “right” to the resource on some ground which is not depending on whom we “investigate”.

Further, justice is either distributive or restributive, the further dealing with principles for distribution of resources, the latter with principles for punishing offenders. The formal requirement of justice described above is a necessary part of every conception of justice.
4 Nozick’s theory of the \textit{minimal state}

4:1 How can the existence of a state be justified?

Nozick discusses the question of the legitimacy of the state as such and criterias for a legitimate state at the same time. His idea seems to be that if we reach the conclusion that the minimal requirements for a state can be fulfilled in a legitimate way, the state as such \textit{and} the legitimate state is one and the same, and we have therefore shown that they are both legitimate.

Nozick begins his book with the question “[Why] any state at all? Why not have anarchy?” (Nozick 1974, p 4) He shows a) that the state’s (both the ultraminimal and the minimal) existence as such can be justified, and especially b) that the existence of the minimal state can be justified, and c) that no state with more extensive restrictions of people’s freedom, both regarding what people are allowed to do and redistribution, than the minimal state can be justified. In this chapter, the first two claims will be discussed. In order to be a state, a person, group or institution or other agent within an association of people living together must, according to Nozick, have at least two functions: 1) It must “announce that, to the best of its ability (taking in account costs of doing so, the feasibility, the more important alternative things it should be doing, and so forth), it will punish everyone whom it discovers to have used force without its express permission” (Nozick 1974, p 24), and 2) provide protection for everyone within its territory. (see Nozick 1974, p 23, 25) Nozick explains that he will use a hypothetical situation, Locke’s version of “the state of nature”, in order to show how a state can arise in a legitimate way. He defends his use of a hypothetical situation by saying that it can serve “explanatory purposes” even if it never existed. Nozick also defends his use of this particular “initial situation” by saying that “the more fundamental the starting point (the more it picks out basic, important and inescapable features of the human situation) and the less close it is or seems to its results (the less political or state-like it looks), the better.” (Nozick 1974, p 7) Nozick seems to mean that Locke’s state of nature fulfils the requirements above: “Since considerations both of political philosophy and of explanatory political theory converge upon Locke’s state of nature, we shall begin with that. More accurately, we shall begin with individuals in something sufficiently similar to Locke’s state of nature…only when some divergence between our conception and Locke’s is relevant to political philosophy, to our argument about the state, will it be mentioned.” (Nozick 1974, p 9) I interpret Nozick as meaning that there may be differences between his and Locke’s description of the state of nature, but as long as Locke’s differing views would not, if adopted,
change the adequacy of the argumentation based on Nozick’s description of the state of nature, the differences will not be mentioned. He seems to assume that the ideals in “the law of nature” realized in “the state of nature” are sound. His goal is to show that living in a state as characterised above is the only way of protecting the ideals of the law of nature. The existence of a state seems to be justified since it protects the ideals of the law of nature, that is, that no one is allowed to hurt, kill, steal from or deprive any one of his/her freedom, and the protection of these goods means improving our situation, and improvement of our situation is intrinsically valuable. The following quote supports this interpretation:

…this state of nature situation is the best anarchic situation one reasonable could hope for. Hence investigating its nature and effects is of crucial importance to deciding whether there should be a state rather than anarchy. If one could show that the state would be superior even to this favored situation of anarchy, the best that realistically can be hoped for, or would arise by a process involving no morally impermissible steps, or would be an improvement if it arose, this would provide a rationale for the state’s existence, it would justify the state. (Nozick 1974, p 5)

(See also Nozick 1974, p 10-11) He also seems to assume that the ideals of “the law of nature” is commonly shared, since he means that it is “a state of nature that begins with fundamental general descriptions of morally permissible and impermissible actions, and of deeply based reasons…” (my italics) See also Nozick 1974, p 7 above. But he also points out that the reasons for accepting “the law of nature” as a starting point for his argument are undeveloped. (see Nozick 1974, p 9)

Lockes’s “state of nature” shaped according to “the law of nature” have the following characteristics according to Nozick:

Individuals in Locke’s state of nature are ”in a state of perfect freedom to order their actions and dispose their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or dependency upon the will of any other man” (sect.4). The bounds of the law of nature require that ”no one ought to harm another in his life, health, liberty, or possessions” (sect.6) Some persons transgress these bounds, “invading other’s rights and…doing hurt to one another,” and in response people may defend themselves or others against such invaders of rights (chap.3). The injured party and his agents may recover from the offender “so much as they make satisfaction for the harm he has suffered” (sect. 10; “everyone has the right to punish the transgressors of that law to such a degree as may hinder its violation” (sect.7); each person may, and may only “retribute to [a criminal] so far as calm reason and conscience dictate, what is proportionate to his transgression, which is so much as may serve for reparation and restraint” (sect .8) ( Nozick 1974, p 10)

From this quote, I interpret “the law of nature” as follows:
1) No one may kill or in other ways physically hurt any member.
2) No one may restrict any member’s liberty of action.
3) No one may take something that belongs to some other member.
4) If the rules above are broken by some member, he has the right to be compensated for the 
injure suffered, but only enough to compensate the injure. The member does not have any 
right to gain more than what is needed in order to compensate him.
5) If the rules are broken by some member, everyone has the right to punish the offender as 
much as is needed in order to avoid violations in the future.

All the rules 1-5 can be interpreted in several ways. I here present the interpretation I find 
most likely.

I will now explain how Nozick argues for the view that a state will arise out of the natural 
state, and that it can do so without any of the ideals in the “law of nature” is conflicted with. 
This does not mean that the law of nature will not be modified, but since Nozick means that 
the modifications will be necessary in order for the law of nature to be realized to the greatest 
possible extent, the final result is still in accordance with the law of nature. The result of this 
hypothetical process, he calls the ultraminimal state and the minimal state. The ultraminimal 
state exists if some agent of the society claims monopoly of the use of force, but only protects 
those who have paid to be protected. The minimal state exists if this agent also redistributes 
resources among its members in order to protect everyone, not only those who can pay for 
their protection, such as in the ultraminimal state, but also those who cannot afford to 
purchase protection.

First, he claims that the people in the state of nature will face difficulties to uphold their 
ideals. When everyone has the right to punish and require an offender to compensate injuries, 
the victim of the offence will, according to Nozick, overestimate the damage suffered. In 
short, people are likely to require greater compensation than “the law of nature” allows. This, 
he means, “leads to feuds, to an endless series of acts of retaliation and exactions of 
compensation. And there is no firm way to settle such dispute…” (Nozick 1974, p 11) Also, 
Nozick means that a person might be unable to defend his interests when offended, because 
the aggressor is stronger than himself or for other reasons.
Next, Nozick asks how these inconveniences can be dealt with within the state of nature. First, he addresses the second inconvenience addressed above. He argues that people most likely will group together, supporting each other against aggressors from outside the “mutual-protection association”. Nozick points out two inconveniences with this solution: “1) everyone is always on call to serve a protection function (and how shall it be decided who shall answer the call for those protective functions that do not require the service of all members?); and 2) any member may call out his associates by saying his rights are being, or have been, violated…Difficulties will also arise if two different members of the same association are in dispute, each calling upon his fellow members to come to his aid.” (Nozick 1974, p 12-13)

In order to solve the last difficulty, Nozick suggests that the members could promise not to intervene with each other in this way. But he suspects that this will cause people to group together in subgroups within the association, which will break up the association. It would also invite to joining as many subgroups as possible, in order to assure support at all times.

Instead, Nozick means that the associations most likely will agree on some procedures to decide what to do when some member claims that his rights have been violated. Also, in order to solve the first problem mentioned above, some people will be hired to exercise protective services. There will be several different “protective policies…at different prices” (Nozick 1974, p13) He also suggests that people will be aware of the hazard of judging their own case, and therefore will consult some neutral party if they claim their rights to be violated. The conflicting parties might even turn to the same neutral party to settle their disputes. Most likely, both protection and neutral judgement will be offered by the same “company”.

Next, Nozick asks himself what will happen if conflict occurs between different protection-companies “in the same geographical area.” Sometimes the companies will not be able to agree about a solution, which will lead to conflict. Nozick means that these disputes can lead to one of three possible scenarios: 1) One company is always stronger, and will therefore win the other company’s clients. 2) Each company wins the battles close to it’s centre of power. The borders will therefore in practice be non existent after some time. 3) The companies are very even and decides to decide peacefully about conflicts, using the services of a third, neutral party, an agency in which they will all be components.
Nozick concludes: “in each of these cases, almost all the persons in a geographical area are under some common system that judges between their competing claims and enforces their rights.” (Nozick 1974, p 16) This, he means, seems to be a minimal state, or several minimal states (Even though Nozick here only have given an “invisible hand” explanation of how an ultraminimal state could appear, he says that it appears to be a minimal state). But is it a state? Nozick says that it might not be a state, since 1) it appears to allow some people to enforce their own rights, and 2) it appears not to protect all individuals within its domain.” (Nozick 1974, p 22-23) Next, he argues that it is a state. He tries to show that the minimal state includes monopoly of the use of force and protects everyone within its territory, and does so without violating any rights, member’s or non-member’s.

I will now show how Nozick reaches the following conclusion:

A protective agency dominant in a territory does satisfy the two crucial necessary conditions for being a state. It is the only generally effective enforcer of a prohibition on other’s using unreliable enforcement procedures…and it oversees these procedures. And the agency protects those nonclients in its territory whom it prohibits from using self-help enforcement procedures on its clients, in their dealings with its clients, even if such protection must be financed by its clients. (Nozick 1974, p 114)

While showing this, he also wants to argue that the state can exist without violating anyone’s (member’s or non-member’s) rights.

First, Nozick asks us to assume that “among a larger group of persons who deal with one protective agency lives some minuscule group who do not. These few independents (perhaps only one) jointly or individually enforce their own rights against one and all, including clients of the agency” (Nozick 1974, p 54) Nozick suggests that the members of the agencies could isolate themselves from this group, and create “internal as well as external boundaries”. But this would not work, Nozick claims, since the independents could find ways to break these boundaries by retaliating offences outside their areas. Another solution could be not to stop independents from retaliation across borders, but to investigate afterwards whether the independents have overreacted, and then punish if they prove to have overreacted. But Nozick says the victim of a “wrongful and unjust” retaliation might be seriously injured or killed. Nozick doubts whether one should just wait for this to happen. Nozick means that
To answer these questions and hence decide how a dominant protective agency may act towards independents, we must investigate the moral status within a state of nature of procedural rights and upon prohibitions upon risky activities, and also what knowledge is presumed by principles about the exercise of rights, including especially rights to enforce other rights. To these issues, difficult ones for the natural rights tradition, we now turn. (Nozick 1974, p 56)

Nozick asks whether, no matter if we consider the Lockean version of natural rights or other versions, natural right theory allows that we forbid certain actions, or if it only allows us to require that the victim is compensated once the act is done? With “forbidden”, Nozick means that, adding to that compensation is required if the act is done, some punishment is inflicted on the agent. A person is considered as compensated if he is no worse of than he were before the act was done to him. Next; Nozick asks why a system should prohibit actions at all? Nozick aims at answering the following questions: “1) Why is any action ever prohibited, rather than allowed, provided its victims are compensated? 2) Why not prohibit all crossings of the moral boundary that the party impinged upon did not first consent to? Why ever permit anyone to cross another’s boundary without prior consent?” (Nozick 1974, p 59)

Nozick means that the first question needs to be narrowed, since it says that it would be forbidden to act in a certain way and then not compensate the victim, and this prohibition of the “joint act of doing [an action] and refus[e] to pay compensation” would be a contradiction to the principle that anything can be done to any person if he is compensated for the sufferings. Therefore, he asks us to assume that compensation is “easily collected”, if the identity of the violator is known. But it is not always so. This, Nozick means, makes him conclude that attempts to escape from one’s duty to compensate or to keep one’s identity unrevealed should be prohibited.

Next, Nozick argues that this is not a satisfactory system. He is concerned about the lack of fairness of the “price” set on the allowance of one person to let another violate his boundaries, since the deal will always favour the buyer of the right, since he is better off than if he had not bought the right, while the victim is afterwards only as well of as he would have been if he had not been violated at all. Nozick seems to mean that, in order for the deal to be fair, the violated part must gain no more from the deal than the violator does, and vice versa. Furthermore, discussing violations of material “goods”, such as in cases of theft, Nozick seems to argue that even if a deal is fair when a “good” is gained by one person from another
and the latter is compensated, the price will when it is “sold” further in the same way, or with the consent of both traders, maybe rise, and the original “owner” might in this way be cheated on what the “good” proves to be worth.

Nozick then discusses the argument he considers “most interesting”. He states that “among those acts that can be compensated for, some arouse fear”. (Nozick 1974, p 66) The knowledge that some actions will be done to us causes anguish, even if we are guaranteed compensation for our sufferings. Could not the person violated be guaranteed compensation for the anguish as well? But, Nozick argues, “under a general system that permits assault provided compensation is paid, a victim’s fear is not caused by the particular person who assaulted him. Why then should this assaulter have to compensate him for it? And who will compensate all the other apprehensive persons, who didn’t happen to get assaulted, for their fear?” (Nozick 1974, p 66) But, Nozick adds, not all violations cause this fear. If I know that my car will be stolen and I will be compensated for it and for the inconveniences, I will not feel fear, as I would if I knew that someone will break my arm and compensate my sufferings.

Can the problem with general fear be solved without forbidding violations of individual’s boundaries? What if “the victims were compensated immediately, and also bribed to keep silent?” (Nozick 1974, p 67) But, Nozick points out, the knowledge that this procedure is allowed causes anguish in itself. Could this be solved if the potential violator announced that he will commit a certain violation, and compensate all suffering and all anguish appearing in society as a result of his announcement? Not only will the victim be compensated, but also everyone else who felt fear as a result of the announcement, but who was not violated. This would be very expensive, but except from the practical difficulties, would it hold as an argument? No, Nozick says. He gives the following reasons why this system would not work: First, people would worry because they might suspect that they have missed an announcement. This, they cannot be compensated for. But they can still be a victim if they really did miss an announcement, but will then not be compensated since they can not feel fear for something they have not heard of, “so who would compensate for it?” (Nozick 1974, p 68) Second, Nozick argues that we should require that the victim is compensated not only so that the sufferings are compensated for, but also so that the victim will be “glad, not sorry, it happened…” (Nozick 1974, s 68) It will, however, be almost impossible to state the correct compensation, since the suffering almost always seems less when reflected upon afterwards than when it was inflicted upon the victim. Nozick concludes:
Our argument for prohibiting certain actions, such as assaults, assumes that merely to require an attacker to compensate his victim for the effects of the attack (though not for any general anticipatory fear) would not sufficiently deter attacks so as to leave people unfearful. The argument from fear fails if that assumption is mistaken. (Nozick 1974, s 68-69)

The argument from general fear justifies prohibiting these boundary-crossing acts that produce fear even when it is known that they will be compensated for. Other considerations converge to this result: a system permitting boundary crossing, provided compensation is paid, embodies the use of persons as means; knowing that they are being used, and that their plans and expectations are likely to be thwarted arbitrarily, is a cost to people…(Nozick 1974, p 71)

Nozick discusses the second question mentioned above: Why not always prohibit all violations of people’s boundaries? Nozick argues that penalties on all actions not consented to would make people very insecure, since one could never know if one, acting with the best intentions, would accidentally violate someone’s boundaries. He leaves this question and discusses cases when one knows that one is going to violate someone's boundary. Should we always require consent, and punish if the act is done but not first agreed to by the victim? Here, Nozick argues that the consent might be very hard to get, due to practical difficulties, such as getting in touch with the victim.

So which boundary-crossing acts should be allowed? Not the fear-creating acts, according to Nozick. Nozick suggests that acts not creating fear ought to be allowed without consent if the costs for getting the consent is larger than the expected cost of the victim’s compensation. But Nozick is not satisfied, since we have found no precise principle to regulate the problem with insecurity due to not knowing if one have accidentally violated someone’s boundary, and how to decide whether the cost of getting the consent or compensating the victim are the greatest. So we have not yet found a solution according to Nozick.

Nozick goes on and discusses how to solve the problem with actions which are not serious enough to prohibit when occurring one at the time, but when the totality of such actions causes fear. How are we to decide when an action ought to be prohibited? For those decisions, we need a central apparatus. Since no specific answer seems to exist within the law of nature, Nozick suggests that the people in the state of nature will agree on one of the three following principles: “1) The action is prohibited and punishable, even if compensation is paid for any boundary crossing, or if it turns out to have crossed no boundary. 2) The action is permitted
provided compensation is paid to those persons whose boundaries actually are crossed. 3) The action is permitted provided compensation is paid to all those persons who undergo a risk of a boundary crossing, whether or not it turns out that their boundary actually is crossed.” (Nozick 1974, p 75-76). Nozick means that a system which only accepts the second principle above would be more “manageable” and have “smaller costs” than a system were everyone is compensated, as in 3 above. He discusses the difficulty with actions that leads to the victim’s death, which seems difficult to compensate. But Nozick claims that this can be solved since “…an individual himself can benefit from a system of post-mortem compensatory payment to the estates of victims. While alive, he can sell the right to this payment, should it have to be made, to a company that purchases many such rights… (Nozick 1974, p 77) This means that an individual sells his right to a company. He enjoys the money while he is alive, and is in that way compensated for the risk of getting killed. If he dies as a result of a violation, the company gets the money back. This is, according to Nozick not a completely satisfactory solution, since no one can be completely compensated for his own death, and since people who turns out never to be harmed are compensated. But Nozick admits that the system could be considered as appealing by individuals.

Now, Nozick discusses those cases when an individual does not have resources to compensate violations of other’s boundaries. Prohibiting these people would, according to Nozick, not be in accordance with our picture of a free society. But, he continues, “why should some have to bear the costs of other’s freedom?” (Nozick 1974, p 78) But it could also be the case that some actions that could be risky but in some cases proves to hurt no one when done, such as when an epileptic (without resources to compensate victims) is driving a car and actually never gets sick while doing this, and never hurts anyone. To prohibit this person from driving, we have to compensate him, according to Nozick, since he is held from doing something basically everyone does. If prohibited to do certain actions, the individual must be compensated according to Nozick. The compensation ought only be enough to cover the sufferings and inconveniences of being prohibited. The individual must be “as satisfied” as if he was allowed to do the action, but not more.

Nozick now returns more specifically to the questions whether a state as characterised above can occur in a legitimate way out of the state of nature. He asks what the dominant protective association may forbid independents to do? “Has any monopoly element yet entered our account of the dominant protective agency?” (Nozick 1974, p 108) Nozick concludes: “…its strength leads it to be the unique agent acting across the board to enforce a particular right.
Nozick seems to mean that since the agency has a *de facto* monopoly, “as the most powerful applier of principles which it grants everyone the right to apply correctly, it enforces its will, which, from the inside, it thinks is correct. From its strength stems its actual position as the ultimate enforcer and the ultimate judge with regard to its own clients.” (Nozick 1974, p 109), it has monopoly of the use of force. It will force its will on anyone who tries to violate its clients. Nozick here softens his statement that the state, in order to be a state, must claim the monopoly of force over everyone within its territory, including the independents. It deals with conflicts between clients, and between clients and independents, but not between independents. Still, he claims it to be a state, even though he says that he will “occasionally” refer to it as a “state-like entity”. (Nozick 1974, p 118) He also argues that the agency protects everyone within its territory, including the independents, since it not only protects its clients against each other and independents, it also forces its clients to compensate the independents for not being allowed to punish actual violations inflicted on them by clients.

So, Nozick now claims that he has shown that *not only the ultraminimal state is legitimate by showing that monopoly of force is not illegitimate, but also the minimal state, by showing that redistribution in order to protect everyone within its territory is legitimate. Redistribution is legitimate when it can be considered as compensation for suffering and not distribution*. Elaboration of this claim follows beneath.

**4:2 To what extent does the state have the right to restrict individual’s liberty of action?**

Nozick’s theory is based on a Kantian approach, meaning that his theory is founded on the assumption that individuals may not be used as means, but always be considered as ends. This leads to the argument for side-constraints. Side-constraints, in contrast to goals, means that we set limits for what people may do to each other, by deciding to what extent an individual is inviolable. Every person has rights, which may not be violated, even if the violation of one person´s rights would lead to a greater total amount of unviolated rights. Nozick argues that this principle follows naturally when we realize that there only are individuals living their individual lives. Sacrificing one person´s interests in order to maximise the total amount of protected interests is using a person as a mean to gain other people. *The only acceptable restrictions of a person’s actions is therefore restrictions in accordance with the law of nature; no one may harm any other person’s life, health or property. The state may restrict*
individual’s liberty of action only if it is necessary in order to uphold the minimal state and its principles.

Nozick also addresses the question whether it is legitimate for one person with superior skill or other advantages to block another person’s opportunity to succeed within some area by using his skill, or if this should be prohibited. Nozick argues that this kind of attempts to equalise opportunities are unacceptable. He argues that those suggesting this kind of equalising assumes that equality of opportunity is necessary to achieve justice. Nozick means that this can not be assumed. He concludes that “the major objection to speaking of everyone’s having a right to various things such as equality of opportunity, life, and so on, and enforcing this right, is that these “rights” require a substructure of things and materials and actions; and other people may have rights and entitlements over these. No one has the right to something whose realisation requires certain uses of things and activities that other people have rights and entitlements over…If his goal requires the use of means which other people have rights over, he must enlist their voluntary co-operation.” (Nozick 1974, p 238)

4:3 To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”?

The following quote is central in order to understand Nozick’s “entitlement theory”:

…we are not in the position of children who have been given portions of pie by someone who now makes last minutes adjustments to rectify careless cutting. There is no central distribution, no person or group entitled to control all the resources, jointly deciding how they are to be doled out. What each person gets, he gets from others who give to him in exchange for something, or as a gift. In a free society, diverse persons control different resources, and new holdings arise out of the voluntary exchanges and actions of persons. There is no more distributing or distribution of shares than there is a distribution of mates in a society in which persons choose whom they shall marry. ( Nozick 1974, p 149-150)

I will now describe how Nozick in his “entitlement theory” elaborates this idea and argues that this is “the correct view about justice in holdings.” (Nozick 1974, p 150) The theory is divided in three parts, and Nozick claims that “if the world were fully just, [these three parts of the theory] would exhaustively cover the subject of justice in holdings.” (Nozick 1974, p 151)

1) Description of how something originally may be held in a just way, “the original acquisition of holdings”. Nozick says that “this includes the issues of how unheld things
may come to be held, the things that may come to be held, the things that may come to be held by these processes, the extent of what comes to be held by a particular process, and so on.” (Nozick 1974, p 150)

2) Description of how something may be transferred from one person to another in a just way, “the transfer of holdings”. Nozick means that the following questions are addressed: “By what processes may a person transfer holdings to another? How may a person acquire a holding from another who holds it?” (Nozick 1974, p 150)

3) Nozick concludes that ”no one is entitled to a holding except by (repeated) applications of 1 and 2”. (Nozick 1974, p 151)

Nozick returns to Locke when specifying “how unheld things may come to be held”. He relies partly on Locke’s theory of acquisition, which says that a person is the legitimate owner of anything he has mixed his labour with, but makes a few adjustments. Nozick does not specify what he means with “mixing his labour with”, but admits that the formulation could be interpreted in several ways. Nozick argues that “any adequate theory of justice in acquisition will contain a proviso similar to the weaker ones we have attributed to Locke. A process normally giving rise to permanent bequethable property right in a previously unowned thing will not do so if the position of others no longer at liberty to use the things are thereby worsened.” (Nozick 1974, p 178) Nozick accepts that it would be “implausible” if one had the right to everything one has mixed ones labour with, if it left others worse than before. But he means that people can be worse off in two ways: “…first, by losing the opportunity to improve his situation by a particular appropriation or any one; and second, by no longer being able to use freely (without appropriation) what he previously could.” (Nozick 1974, p 176) Nozick calls the first one a stringent requirement, and the second one a weaker requirement.

Nozick means that it is acceptable that someone “loses the opportunity to improve his situation by a particular appropriation”, if he is “allowed to use freely what he previously could.” Nozick means that this can be argued for by saying that the holdings should be in the hands of those with the greatest opportunities to use the resources to greatest possible extent, and that this is in accordance with the idea to also leave as much as possible to others. In this way, the positive consequences of expanded production will gain others, through work opportunities and non-exploitation of resources, and so on. (see Nozick 1974, p 177) He admits that the problem remains how we are to decide if a person is better off, since it is not obvious which state we should compare the “improvement” to. But he does not discuss this issue. Nozick specifies, however, in what ways a person legitimately can make the situation worse for another: “…the worsening due to more limited opportunities to appropriate…and it
does not include how I “worsen” a seller’s position if I appropriate materials to make some of what he is selling, and then enter into competition with him.” (Nozick 1974, p 178)

A holding may be transferred from one person to another if the transfer is voluntary for both parties and has, for every transaction before this one, been transferred without any of the principles under 1) above being violated.

This means that all distribution of resources through tax on income is illegitimate, except from means needed to uphold the minimal state. The reason for this is according to Nozick that taking parts of someone’s income is equivalent with stealing X hours of the persons time of labour, which is equivalent with forcing someone to work for someone else (see Nozick 1974, p 172). The only exception from this rule is distribution in order to protect everyone within its territory, since distribution is a practical necessity in order to uphold the minimal state, and since independents must be compensated through free protection (see Nozick 1974, p112,) for limited freedom of action towards the members of the state. This would be the only legitimate way to prohibit independents to act certain ways, since it would be justified to prohibit the act if the number of independents doing the act was large enough to create fear, but not if the number was small enough not to create fear. And if the number was big enough, and the individuals in it mutually decided to keep it on a level low enough not to cause fear, someone would always break out and do the act anyway, certain that he can take advantage of that no one else is allowed to do so. This would of course result in that none of the independents could be prohibited to act. And the state would not have the right to decide which totality of action to prohibit, since only individuals or groups within the state has this right towards each other, but not towards outsiders.

Nozick also discusses the question whether there is some “internal goal” of an activity, and if “the only proper grounds for the performance of the activity, or its allocation if it is scarce, are connected with the effective achievement of the internal goal. If the activity is done upon others, the only proper criterion for distributing the activity is their need for it, if any.” (Nozick 1974, p 234) Nozick seems to mean that there could be an internal goal in an activity, but that this does not have to be the reason for acting in order for the activity to be legitimate. He says that a doctor, for example, must not exercise his profession because people have medical needs. We do not require that a barber, if he cuts hair in order to earn money, only cut
the hair of those tipping well, or a gardener only taking care of those lawns in most need of care. The situation of the doctor or any other professional is no different according to Nozick.

4:4 Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”.

As we have seen above, Nozick distinguishes between “historical” and “goal-directed” theories of rights or distribution. A historical theory, Nozick means, do not strive towards a specific goal. Instead, it restricts how for example a “good” ought to be held. If the procedure leading to the holding of a “good” is just, the holding is just. A “goal-directed” theory strives for a certain goal, such as equal distribution, without minding how the goal is reached. Nozick’s theory is historical. He dismisses goal-directed theories of distribution in general. In this theory, he dismisses it since he means that there is no “central” distribution. He also argues that every egalitarian system will be broken down by people’s free choices, and that the egalitarian system can only be upheld by constant interference with people’s lives.

5 Walzer’s theory of complex equality

5:1 How can the existence of a state be justified?

Walzer does not attempt to argue for the legitimacy of the state as such, since he states that “Men and women come together because they literally cannot live apart. But they can live together in many different ways. Their survival and then their well-being require a common effort.” (Walzer 1983, p 65) I interpret Walzer as meaning that the state, understood as any co-operative living-arrangement necessary for survival, is a fact, and that the question of the legitimacy of the state concerns which way of living together can be justified. The justification, as we will see, depends on people’s actual opinions in a certain society: “If such a society isn’t already here-hidden, as it were, in our concepts and categories—we will never know it concretely or realize it in a fact.” (Walzer 1983, p xiv) But the kind of state he discusses here seems to have the characteristics which Nozick considers to be necessary in order for a co-operative living to be a state, with some additional characteristics described beneath.

Walzer also argues, as we will see beneath, that states with restricted admittance are necessary as long as we make a difference between strangers and non-strangers. Walzer aims at answering the following questions: “Whom should we admit [as a member of the state]? Ought we to have an open admission? Can we choose among applicants? What are the appropriate criteria for distributing membership?” (Walzer 1983, p 32) I think that we could
consider both restrictions and admissions as restrictions of individual’s liberty of action: restrictions of admission could be restriction of non-member’s liberty of action. This is obvious. Admissions could also be restrictions of the member’s liberty of action in several ways. First, the members are no longer free to use the amount of space or resources they used to, and second, they are forced to at least risk to associate with people who they have not chosen to associate with. And even if they were not affected by any of these inconveniences, they could still be forced to accept that something happens which they do not agree to, no matter the reasons for disagreement, and this is a restriction of liberty of action. The individual no longer has an opportunity he used to have or could have had.

Walzer argues in the following way to reach the conclusion that ” [a theory of distributive justice] must vindicate at one and the same time the (limited) right of closure, without which there could be no communities at all, and the political inclusiveness of the existing communities.”( Walzer 1983, p 63) First, he explains why we should consider admittance as a problem in the first place. He sees a conflict between (according to Walzer) the fact that people not belonging to a state seems unprotected, and the fact that a limited geographical area for several reasons only can offer space and resources for a limited amount of people.

First, Walzer suggests that the people already living in an area “do the choosing, in accordance with [their] own understanding of what membership means in our community and of what sort of community we want to have.” (Walzer 1983, p 32) This means that since the members of a community decide the social meaning of all “goods”, they “are in charge of its distribution.” (Walzer 1983, p 32) But this conclusion is, according to Walzer, not acceptable, since the members do not distribute the membership among themselves, but to non-members. This fact, Walzer means, adds another aspect to consider: our relationship to the strangers. Not only our understanding of the strangers but our contact with them, and our “contacts, connections, alliances” with them. First, Walzer discusses “strangers in the literal sense”, understood as “men and women whom we meet…for the first time. We don’t know who they are or what they think, yet we recognize them as men and women…when we decide on membership, we have to consider them as well as ourselves.” (Walzer 1983, p 32)

Walzer builds on the discussion above by saying that ”Membership is important because of what the members of a political community owe to one another and to no one else, or to no one else in the same degree. And the first thing they owe is the communal provision of
security and welfare [...] Political community for the sake of provision, provision for the sake of community: the process works both ways, and that is perhaps its crucial feature." (Walzer 1983, p 64) Walzer means that we need society in order to provide for our needs, but that one of these needs is society itself. Therefore, we also provide for each other because provision is the only way to uphold a society, since it "teaches us the value of membership. If we did not provide for one another, if we recognized no distinction between members and strangers, we would have no reason to form and maintain political communities." (Walzer 1983, p 64)

5:2 To what extent does the state have the right to restrict or redistribute any kind of "goods", and if so, which restrictions should be allowed on which "goods"?

I interpret that Walzer’s basic assumption seems to be that people generally think that a society where every individual has the same amount of "goods" would be the ideal society, but that they realize that it is practically impossible. (see Walzer 1983, p xi-xvi, p 10-20) Therefore, he tries to find a principle of distribution which, when applied on the society, will result in a distribution that is as equal as possible: "We may dream of a society where power is shared, and everyone has exactly the same share. But we know that equality of that sort won’t survive…we may dream of a society where everyone has the same amount of money. But we know that money equally distributed…will have been unequally distributed before the week is out…we may dream of a society where all the members are equally honored and respected…but…we know that we cannot refuse to recognize—indeed, we want to be able to recognize—the many different sorts and degrees of skill…that distinguish one individual from another.” (Walzer 1983, p xi) He also mentions the unattractive conformity which equality in its literal meaning would lead to, since it would be an attempt to “stretch and shrink” people whom in fact are different. But I still interpret Walzer as meaning that people generally think that if these problems could be solved, (which they do not think is possible) equality according to the first meaning above would characterise the ideal society. Walzer seems to discuss two different meanings of the concept "equality". First, the ideal equality, meaning that every individual has the same amount of resources, and second, the equality we can actually achieve. This last kind of equality, “complex equality” will be described in detail beneath.

With “goods”, Walzer seems to mean everything that people desire, both material and non material resources. He gives the following examples of what “goods” can be, but does not seem claim the list to be exhaustive:
...membership, power, honor, ritual eminence, divine grace, kinship and love, knowledge, wealth, physical security, work and leisure, rewards and punishment, and a host of goods more narrowly and materially conceived—food, shelter, clothing, transportation, medical care, commodities of every sort, and all the odd things (paintings, rare books, postage stamps) that human beings collect. (Walzer 1983, p 3)

The “goods” which are subject for distribution are all social “goods”. Walzer does not exclude the possibility that all “goods” are social “goods”, but leaves the question open. (Walzer 1983, p 7) With “social goods”, he means that the “goods” are given their meaning and value by the society where it occurs, “they are not and they cannot be idiosyncratically valued […] Goods in the world have shared meanings because conception and creation are social processes. For the same reason, goods have different meanings in different societies. The same “thing” is valued for different reasons, or is valued here and disvalued there…a solitary person could hardly understand the meaning of the goods or figure out the reasons for taking them as likable or dislikable. Once people like in crowds, it becomes possible for individuals to break away, pointing to latent or subversive meanings, aiming at alternative values…” (Walzer 1983, p 8) But Walzer also seems to mean that “goods” affect people. He says that “Men and women take on concrete identities because of the way they conceive and create, and then possess and employ social goods…Distributions can not be understood as the acts of men and women who do not yet have particular goods in their minds or in their hands.” (Walzer 1983, p 8)

Next, Walzer claims that it is the social meaning of a good which decides whether a distribution is legitimate or not: “…it is the meaning of goods that determines their movement. Distributive criteria and arrangements are intrinsic not to the good-in-itself but to the social good. If we understand what it is, what it means for those for whom it is a good, we understand, how, by whom, and for what reasons it ought to be distributed. All distributions are just or unjust relative to the social meanings of the goods at stake”. (Walzer 1983, p 8-9) He means that the “goods” belongs to different “spheres”, and that all distributions which do not violate the borders of a sphere are legitimate: “When meanings are distinct, distributions must be autonomous. Every social good or set of goods constitutes, as it were, a distributive sphere within which only certain criteria and arrangements are appropriate.” (Walzer 1983, p 10)
In order to show this, he argues in three steps. First, he explains what monopoly and dominance is. Second, he explains how he means that social conflict occurs. Third, he argues why we should strive for non-dominance rather than non-monopoly or any other principle of distribution.

Walzer means that a good is dominant “if the individuals who have it, because they have it, can command a wide range of other goods”. (Walzer 1983, p 10) This means, that if someone has lots of influence in one sphere, and as a result of this gains influence in another sphere, dominance has occurred. He means that a “good” “is monopolized whenever a single man or woman, a monarch in the world of value-or a group of men and women, oligarchs-successfully hold it against all rivals.” (Walzer 1983, p 10) Monopoly means that an individual or a group of men and women exclusively controls a certain “good” and its distributions within one or more spheres.

Social conflicts occur, according to Walzer, in the following way: some dominant “good” is monopolized by some individual or group. This causes protests and revolts among those who do not enjoy the advantage of monopoly. They might reduce the monopoly, but, as we will see in Walzer’s argument beneath, soon some other “good” becomes dominant and is monopolized.

He argues in the following way to show that the reduction of dominance is a more effective way to protect the equality than the reduction of monopoly. The reason why equality should be protected by guarding these boundaries is, as we will see, that violation of the boundaries is “tyranny”. (see Walzer 1983, p 19) First, he asks us to imagine that we have a situation of “simple equality”, meaning that everyone have an equal amount of money. He also assumes that money is a dominant good. But free exchange in the market will result in inequalities. To avoid this, a strong state would be needed to control the trade, and regularly bring the citizens back to a situation of simple equality. But Walzer doubts that anyone would be willing or able to exercise such control. Also, during the free exchange, some people will buy some goods, such as education, and others won’t. If education turns out to be “a good investment”, only people with education will get access to certain kind of “goods”. Then everyone makes sure they get an education, and money is no more the dominant “good”. Instead, “natural talent or family upbringing or skill in writing examinations are dominant instead, and educational success and certification are monopolized by some new group.” (Walzer 1983, p14) Then,
this group will claim that education will be dominant outside the educational sphere. In order to limit the dominant “good” to the adequate sphere, a strong state would be needed. Here, we face the problem that political power itself will be a dominant “good”, influential outside its proper sphere. If the power was spread out in society, the different interests would “break” the dominance of political power, and other dominant “goods” would turn out to be dominant. Walzer concludes that “these problems derive from treating monopoly, and not dominance, as the central issues in distributive justice.” (Walzer 1983, p 16)

Could there be principles of distribution other than the principle of non-domination? Walzer examines three possible alternatives to show that they all fail. The three alternatives are free exchange, desert and need.

Walzer means that simple equality combined with free exchange, meaning that everyone have an equal amount of money and freedom to do any exchanges they want, even though it is an “open ended” principle with no given result, will result in that for example political power will be sold, which is intrinsically unacceptable according to Walzer. This kind of illegitimate exchange will, according to Walzer, occur since “social meanings are not subject, or are not always subject, to the interpretative decisions of individual men and women.” (Walzer 1983, p 22)

Desert is not a better alternative, since there are no solid arguments to derive from the fact that someone has certain characteristics, that he or she deserves a certain “good”. Also, no one is capable of deciding who deserves what.

Need is also troublesome, since in situations of distribution of some “goods”, such as employments, need and competence will not correlate. There are also “goods” that we do not really need, but still wishes to distribute.

Walzer seems to conclude that the best mean to achieve as equal distribution as possible is to allow monopoly within the spheres, but to prohibit dominance.

Walzer seems to assume that the fact that we all are human beings with needs requires us to care for each other at least to some extent. He calls this “the principle of mutual aid”, and means that we, “through a process of trial and error, [have come] to distinguish [strangers and
enemies] and to acknowledge that, in certain circumstances, strangers (but not enemies) might be entitled to our hospitality, assistance, and good will.” (Walzer 1983, p 32-33) I interpret Walzer as meaning that the principle of mutual aid is a product of our culture, and not a natural-right principle or as having “intrinsic” value no matter the culture it appears in. The expression “trial and error” could be interpreted as suggesting that Walzer’s description of the mutual-aid principle is descriptive but with normative colourings; the situation of mutual aid is a fact and normatively superior to hostility. If Walzer is consequent, this normativity is still relative to the surrounding culture. In order for Walzer to be consistent, he must mean that the improvement is not relative neither to any natural right nor to the actual general opinion in the society, but to the practical aspects such as less conflict. But could not this be achieved by all close borders? This is an empirical question, which Walzer does not address.

Walzer says that “it is the absence of any co-operative arrangements that sets the context for mutual aid.” (Walzer 1983, p 33) He asks us to imagine a meeting between two strangers. Walzer claims that we “commonly say” that they clearly owe each other assistance if: “1) it is needed or urgently needed by one of the parties; and 2) if the risks and costs of giving it are relatively low for the other party. Given these conditions, I ought to stop and help the injured stranger, wherever I meet him, whatever his membership or my own. This is our morality…” (Walzer 1983, p 33) Walzer also means that the principle of mutual aid can be generalised to cover not only relationships between individuals, but also relations between groups. Walzer suggests that mutual-aid should be “the… principle for distribution of membership”. (Walzer 1983, p 33) Walzer admits that the principle is vague, and possibly could conflict with the social meanings in a society. Therefore, Walzer discusses the suggestion that we should strive for “a world without particular meanings and without particular communities: where no one was a member (libertarianism according to Walzer) or where everyone “belonged” to a single global state(socialism according to Walzer).” (Walzer 1983, p 34) Questions of admittance would be needed in none of these cases. But Walzer means that this probably will not happen, and that admission principles will be needed as long as we distinguish between members and strangers.

The fact that people living in a community have separated themselves from other people makes Walzer conclude that they ”owe one another more than mutual aid, for that they owe or can owe to anyone. They owe mutual provision of all those things for the sake of which they have separated themselves from mankind as a whole and joined forces in a particular
community…Mutual provision breeds mutuality. So the common life is simultaneously the prerequisite of provision and one of its products. (Walzer 1983, p 65) Walzer means that since people join together in communities because they have certain needs, and since these needs can not be satisfied by mutual aid, they owe each other provision since provision was the reason for joining together. And when the community is a fact, it also creates need for provision. Walzer means that the community is a sphere of security and welfare, but that the character of this sphere can be different from one community to another. Different communities provide for their member’s needs in different ways, but they all have the provision as such in common.

Given this conclusion, what is each member’s legitimate share of security and welfare provided by the community according to Walzer? Walzer says that "there are…two different questions here. The first concerns the range of goods that ought to be shared, the boundaries of the sphere of security and welfare…The second concerns the distributive principles appropriate within the sphere…” (Walzer 1983, p 75) The first question, Walzer answers by saying that "once the community undertakes to provide some needed good, it must provide it to all the members who need it in proportion to their needs…all other criteria, beyond need itself, are experienced as distortions…(Walzer 1983, p 75) The boundaries of the sphere of security and welfare is need. No other criteria decides whether someone should enjoy security and welfare. The resources to be shared are the sum of the resources, "past and present” which the community has managed to gain, not only the ”surplus”. The reason for this, Walzer means, is that we cannot distinguish the surplus from the resources which are necessary in order to survive. Also, there is, according to Walzer, no surplus until the ”socially recognized” needs of the members are met. Walzer emphasises that need is not only physical, and that needs differs from one society to another. He concludes that the member should be provided security and welfare because they need it and because it is necessary in order for the members to participate fully in the community.

Walzer now turns to the discussion about which share each individual should receive within the sphere. Walzer means that no ”members have a claim on any specific set of goods.” (Walzer 1983, p 78) He means that every individual’s share should be decided by ”the character of a particular political community.” (Walzer 1983, p 78) There are, however, rights that every member in every society has, for example not to starve to death if food is available.
Walzer seems to mean that at least life-upholding provision is the right of every citizen in every state, while others, specifically culture-dependent rights, do not belong to every citizen.

Money and commodities
Walzer tries to answer two questions about money: "What can it buy?...How is it distributed?" (Walzer 1983, p 95) Walzer explains that the first question must be answered in order for us to be able to answer the second, since "we must figure out how important money really is." (Walzer 983, p 95) First, he describes the sphere of money, and then its distribution. Walzer criticises the view that anything can be exchanged for money, and describes what cannot be bought. This shows the limits of the sphere of money. Walzer means that some "things" have a social meaning that excludes them from trade with money. Disregarding this fact is disregarding the real value of those "things" according to Walzer. Which these "things" are is, according to Walzer, an empirical question. Therefore, I interpret him as meaning that the "things" he claims to be outside the sphere of money are generally considered to be outside the sphere of money. The extent of the sphere of money is different from society to society. Next, Walzer asks "What is the proper sphere of money? What social goods are rightly marketable?" (Walzer 1983, p 103) Walzer gives the following answer:

The obvious answer is the right one; it points us to a range of goods that have probably always been marketable, whatever else has or has not been: all those objects, commodities, products, services, beyond what is commonly provided, that individual men and women find useful or pleasing, the common stock of bazaars, emporiums, and trading posts. It includes, and probably always has included, luxuries as well as staples, goods that are beautiful as well as goods that are functional and durable. Commodities...are above all commodious; they are a source of comfort, warmth and security...but while we all need to be anchored, we don’t all need the same anchor. (Walzer 1983, p 103-104)

I interpret this as meaning that some objects and services are adequately traded for money since a) they have traditionally been considered as adequately traded for money within some society, and b) they are "things" that for different reasons have been considered necessary for survival or important for our comfort, or simply pleasing.

They belong to the sphere of money because these are things that are generally wanted but not communely provided, but which must be created or bought if one wants them. Money is the simplest way to satisfy people´s need for those commodities:
Beyond whatever is communely provided, no one is entitled to this or that useful or pleasing object. Commodities don’t come with proper names attached, like packages from a department store. The right way to possess such things is by making them, or growing them, or somehow providing them or their cash equivalent for others. Money is both the measure of equivalence and the means of exchange; these are the proper functions of money and (ideally) its only functions. It is in the market that money does its work, and the market is open to all commerce. (Walzer 1983, p 104)

Money may not, according to Walzer, be used outside the market to buy influence over other people:

…I am concerned now to sustain the integrity of the other distributive spheres-by depriving powerful entrepreneurs, for example, of the means of capturing political power or bending public officials to their will. When money carries with it control, not of things only but of people, too, it ceases to be a private resource. (Walzer 1983, p 121)

5:3 To what extent does the state have the right to restrict individual’s liberty of action?
An answer to this question could be interpreted out of the conclusions above. Walzer would probably say that whether a restriction of a person’s behaviour is legitimate, depends on the social meaning in a particular society. Every action which does not violate the boundaries of the spheres is legitimate according to Walzer. Even though Walzer does not discuss cases where people physically threat each other, he would probably say that assault is a violation of some boundary of some sphere in every society.

Since Walzer could be interpreted as indirectly considering restriction or redistribution of different forms of non-material “goods” to be restrictions of some individuals liberty of action, these “goods”, which are not covered by section 5:1 and 5:2 above, will be discussed under this headline. Since Walzer does not make a difference between liberties and other “goods”, I will here discuss those “goods” which Walzer investigates which are not material “goods”. The “goods” I will discuss here are: office, hard work, free time, education, kinship and love, divine grace, recognition, and political power. Membership, security and welfare, and Money and commodities was discussed under 5:2 above. All these areas constitute a sphere of distribution. I consider the principles for distribution of these non-material “goods” to be restrictions on some individual’s action, since they limit the amount of opportunities among which an individual could choose, but do not through distribution of property.
*Office*

With ”office”, Walzer understands ” any position in which the political community as a whole take an interest, choosing the person who holds it or regulating the procedures by which he is chosen.” (Walzer 1983, p 129) One suggestion for distribution is to turn every job into an office. Every person has an equal opportunity to win a place. Since every job is an office, they must all be distributed ”for the same kind of reason”. These reasons must be stated and their application enforced by state officials. Walzer means that offices will be distributed according to some criteria, for example ”going to school, taking an examination, doing well in an interview, leading a disciplined life, and obeying orders.” (Walzer 1983, p 132) These abilities will create monopolies, and people will order themselves in a hierarchy, not only in the sphere of office but in society as a whole. Their place in this hierarchy will depend on to which extent they have the mentioned abilities.

Instead, Walzer proposes a ” mixed system of selection”. He argues for ”complex equality in the sphere of office”. He says that

It requires the career open to talents but sets limits on the prerogatives of the talented. If individual men and women are to plan their lives, to shape careers for themselves, there is no way to avoid he competition for office with all its triumphs and defeats. But one can reduce the frenzy of the competition by lowering the stakes. Offices are at stake, and nothing more…Men and women committed to complex equality will cultivate a more realistic sense of what those merits are and how they operate within the sphere of office. And they will recognize the autonomy of the other spheres, where other forms of competition and cooperation, other forms of aggrandizement, honor, and service, legitimately prevail. (Walzer 1983, p 164)

Walzer’s main point is that offices (Which according to Walzer could ”constitute a social or economic advantage” to the office-holder) should be distributed to those candidates with the skills most crucial for doing the job which comes with the office, and not by some other universalized criteria. Walzer says that we should ”attend more particularly to the actual job and its social meaning, to draw a line (it will have to be drawn differently in different cultures) between those selection processes that the political community should control and those it should leave to private individuals and collegial bodies.” (Walzer 1983, p 134) Further, office-holders should be allowed to gain influence and benefits, but only within the sphere of office. His opportunities to influence in society should not merely depend on whether he is an office-holder or not. Walzer claims that ”Office holders should be held rigidly to the purposes of their office.” (Walzer 1983, p 135)
Walzer means that every qualified individual deserves to be considered, but is not treated unfairly if he does not get the office, as long as the reason is that someone more qualified won it. Therefore, qualification, (with the social meaning of the office as frame of reference) not desert, is an adequate criterium for distribution of offices among those qualified enough to deserve to be considered.

**Hard work**

With hard work, Walzer understands not "demanding or strenous work" but "harsh, unpleasant, cruel, difficult to endure", "jobs that are like prison sentences, work that people don’t look for and wouldn’t choose if they had minimally attractive alternatives.” (Walzer 1983, p 165) Walzer calls these jobs "negative goods”, and claims that they bring other negative "goods” such as "poverty, insecurity, ill health, physical danger, dishonor and degradation". (Walzer 1983, p 165) The work is necessary, and therefore we need to find a legitimate principle of distribution.

Walzer discusses the "conventional” suggestion that people with low social status should be given low-status employments, so that "hard work is distributed to degraded people”. (Walzer 1983, p 165) This system would distinguish "citizens” from other inhabitants of the state, such as "slaves, resident aliens, guest workers, outsiders all” (Walzer 1983, p 165) The citizens doing hard work would also be considered ”inside aliens” according to Walzer. He mentions women, indians and American blacks as examples of such ”inside aliens”. According to Walzer, this argumentation assumes the idea that distribution is based on desert. The ”non-citizens” are considered as deserving their employment because of their social status, or not deserving not to have it. Walzer asks what this desert would be based on. He discusses whether criminals can be considered as deserving hard work, and admits that they could. But he points out that they deserve it only temporarily. When the punishment is over, so is the desert of the hard work.

Non-members of the state can not be forced to do hard work, since he means that ”people who do this sort of work are so closely tied into the everyday life of the political community that they cannot rightly be denied membership.” (Walzer 1983, p 166) Hard work “…brings membership…” (Walzer 1983, p 166)
Walzer discusses the idea that hard work should be "shared, rotated". (Walzer 1983, p 167) Walzer adopts this idea, after some modifications:

Negative goods have to be dispersed not only among individuals but also among distributive spheres. Some we can share in the same way that we share the costs of the welfare state; some, if market conditions are roughly egalitarian, we can buy and sell; and some require political arguments and democratic decision making. But all these forms have one thing in common: the distribution goes against the grain of the (negative) good. Except in the case of punishment, it just isn’t possible to fit the distribution to the social meaning of the good…no one qualifies…all of us, in different ways and in different occasions, have to be available. (Walzer 1983, p 168)

Walzer’s idea seems to be that since no one person or character trait ”matches” the hard work, the social meaning of this negative ”good” does not decide which individuals should do it. But he seems to resist the idea that all the kinds of hard work should simply be divided equally among the members of the state, so that everyone does a little bit of everything. Instead, he seems to allow people to do their part in a way which is most practical given their life-situation, including, for example, variations in which spheres they most often act within.

Free time
Walzer says that ”unlike money, office, education and political power, free time is not a dangerous good”. (Walzer 1983, p 184) He means that free time cannot be used for dominating other spheres of distribution. It could, at most, be used for ”display”, but not even this is likely under a system of complex equality according to Walzer, since ”the required concentration of social goods [such as servants and their dedication] is unlikely to occur…” (Walzer 1983, p 185)

How is free time such as vacations and holidays to be distributed? The only restriction Walzer suggests is that the state may not deny it to certain groups of people, and it may not deny anyone such free time that should (I interpret ”should” as referring to the overall social meaning of the state, which Walzer seems to think is to gain the inhabitants) be made possible by the state

Education
Walzer seems to assume the need for education since he says that ”every human society educates its children…Education expresses what is, perhaps, our deepest wish: to continue, to go on, to persist in the face of time. It is a program for social survival.” (Walzer 1983, p 197)
This "program for survival" will, according to Walzer, look different in different societies. But Walzer means that there are limits to this relativity. He wishes to address the problem with "sorting out" students: who should be allowed entrance to which kind of education? He claims that education cannot merely be a question of "reproducing" the values in society. The reason is, according to Walzer, that there would be no need for a sphere for the distribution of education: the values would be preserved by guarding the other spheres of distribution, and the distribution of education would "parallel" the other spheres. Walzer means that as soon as schooling is performed outside the home, by an "independent body of knowledge", questions of principles for distribution of education will arise. It will produce as well as produce social critics. Walzer says that this will happen "as a fact of life in all complex societies." (Walzer 1983, p 198) He says that "what is most important is that schools, teachers, and ideas constitute a new set of social goods, conceived independently of other goods, and requiring, in turn, an independent set of distributive processes." (Walzer 1983, p 198)

The distribution he wants to suggest is the one he considers to be most common, represented in "many different societies". Walzer means that education should be divided equally among the citizens to a certain level. This level must be such that every citizen masters the skills necessary in order to exercise full citizenship.(see Walzer 1983, p 203) But he means that we also must realize that individuals differ in capacity and interest. The ideal would, according to Walzer, be to allow everyone interested to study until interest is exhausted. As long as the citizens are ready to make this possible by financing this kind of education for other citizens without themselves necessarily gaining from the system, every individual should be allowed to study as long as he or she is interested. No society is, however, morally obligated to offer this, according to Walzer. But it is important that this opportunity, if open to anyone, is open to all, and not only to the privileged few. Professional or specialized education must, however, be distributed in a different way according to Walzer. He considers the basic schooling to be "communal provision", "welfare", while specialized education is "a kind of office", which must be qualified for. There is nothing wrong in selecting the most able individuals for specialized training, as long as the selection is "intrinsic to the work". Their status of the individuals may be higher the more able they are, but only within the sphere of their profession.
Kinship and love

Walzer points out that "kinship ties and sexual relations are commonly thought to constitute a domain beyond the reach of distributive justice." (Walzer 1983, p 227) But he argues that "it would, nevertheless, be a mistake to think of kinship and love as a sphere different from all the others…in fact, it is closely connected to other distributive spheres, highly vulnerable to their interventions and itself pervasively influential. (Walzer 1983, p 227) As an example of intrusion in the sphere of kinship and love from other spheres, Walzer mentions intrusions and demands from soldiers to get food and shelter in private homes. As an example of intrusion of the sphere of kinship and love in other spheres, Walzer mentions nepotism in distributions of offices. Walzer also describes how distributions are made within families: "Dowries, gifts, inheritances, alimony, mutual aid of many different kinds.” (Walzer 1983, p 228) Walzer means that we also have an understanding of how certain feelings and acts should be "distributed” within the family: “Honor thy mother and thy father is a distributive rule…these distributions, too, depend on cultural understandings that change over time.” (Walzer 1983, p 228) He points out that our way of marrying is a reflection of how we understand love and marriage. The social meaning of love and marriage decides the procedure of marriage.

Walzer means that the family-life breeds inequalities. Within the family, there are favoritism and struggles for other individual’s attention. The family also excludes outsiders from their group. Are these mistakes which should be corrected? Walzer discusses whether "the abolition of the family” is an adequate solution? Should we adopt Plato’s ideal society, "where, within each generation, all the members are siblings, brothers and sisters who know nothing of their own blood ties and who produce through a kind of civic incest a new generation to whom they are only generalized, never particular, parents. Kinship is universal, hence effectively non-existent, assimilated to political friendship.” (Walzer 1983, p 230) This principle, however, regulates only the "Guardians”. Common people are free to marry and to raise their own children. But this kind of division is unacceptable to Walzer. The principles for the distribution of love kinship and love should be the same for every citizen. Therefore, he gives up the idea of universal kinship and accepts that some children will be more loved than others and some families more closed to outsiders than others. Walzer says that no emotional tie can be considered more adequate than another, but that "when familial distributions undercut the promises of communal membership and welfare are interventions required, as in the case of neglected children, say, or battered wifes.” (Walzer 1983, p 232) Walzer seems to mean that distribution of kinship and love only should be restricted if it
threats the citizens basic right to welfare and security, as described above. I interpret Walzer as meaning that the restrictions can look different in different societies, be more or less extensive and be so for different reasons, as long as they fulfil every citizens needs. Those needs are, as we have seen, different from one society to another. The citizens should be provided according to the need for provision that made the citizens form a society. Some needs, such as enough food to stay alive are, as we have seen, not relative. This need should be fulfilled by every society according to Walzer.

**Divine Grace**

Walzer begins his argument about the distribution of divine grace by describing what it is. He says that "Grace is the gift presumably of a gracious God. He gives it to whomever he pleases, to those who deserve it...or to those whom He makes deserving, for reasons known only to Himself." (Walzer 1983, p 243) Here, grace seems to mean to be "saved" (see Walzer 1983, p 243). I interpret him as meaning "selected" and/or "blessed". But, Walzer points out, we know nothing about His preferences. Therefore, the grace is always distributed according to the social meaning of grace, created by some agent(s), and is different from one society to another. The distribution of grace has been "disputed", not because it is a limited "good" so that one person receiving it worsens another persons chances of receiving it, but because "first, its availability is sometimes thought to depend on specific public arrangements; second, its possession by some people (and not others) is sometimes thought to carry with it certain political prerogatives." (Walzer 1983, p 243) Walzer means that these two statements today is "commonly denied". The reason why it is so is that grace is considered as something "free": "...even if we imagine grace to depend on the social practice of communion, it is still thought that communion must be free, a matter of individual choice. Here is perhaps the clearest example in our own culture of an autonomous sphere. Grace cannot be purchased or inherited, nor can it be coerced. It cannot be had by passing an exam or by holding an office."(Walzer 1983, p 244) The "wall" between state and church as in the first amendment to the united states Constitution, Walzer means, is a sign of complex equality. Grace can not be distributed, but the limits of the sphere, which makes the reception of grace merely a matter of belief, creates distribution indirectly.

**Recognition**

Walzer understands "recognition" as the way we address other citizens; the use of their title. Here, Walzer discusses titles such as "goodman", "esquire", "sir", "Lord", and not
professional titles. Walzer says that "there is a proper form of address for each and every person, one that simultaneously establishes the degree of recognition to which he is entitled and accords him just that degree." (Walzer 1983, p 249) Walzer points out that "recognition depend not upon independent judgements but upon social prejudgements…and what reality lies behind [the recognition] we are not to talk about" (Walzer 1983, p 250) This, I interpret as meaning that recognition is a social construction which is not based on any performance except the one required to keep not the title but other people´s respect for the title. The idea that everyone should have the same amount of recognition is according to Walzer "a joke", it is not possible. But "we can insist as a matter of principle that everyone…is a gentleman, but we can’t provide everyone with the same reputation for gentle—that is, ‘unrestrained yet delicate´ manners”. (Walzer 1983, p 256) The reason is that not everyone will have the resources necessary to uphold the respect for the title. These resources are “personal qualities, skills and talents valued in a given time and place, with which particular men and women are able to command the admiration of their fellows.” (Walzer 1983, p 256) But these qualities are not possible to determine in advance, and no one knows how long they will be respected by other citizens. But we can, according to Walzer, get "equality of opportunity”, even if we cannot determine the outcome of the "competition” for recognition. This equality of opportunity could, according to Walzer, be reached by allowing some skills to bring recognition with it, but not a title. The recognition should not be “seen as a crucial step on the road to wealth and power.” (Walzer 1983, p 257) Instead, the recognition should depend on people´s free judgement. Walzer seems to mean that the amount of recognition only should be decided by the "sum” of other people´s recognizing him, and the amount of recognition should not be specified in titles. Then, more individuals would be recognized, and for many more different reasons. Recognition would, then, not necessarily correlate with social status. We could "respect the kindness of a neighbor without letting that respect interfere with our more precise calculations of social status.” (Walzer 1983, p 257) "This”, Walzer says, "would be complex equality in the sphere of recognition.” (Walzer 1983, p 258) He distinguish between ”simple recognition”, which requires that everyone is entitled to a certain amount of recognition; basic respect, meaning that ”we have to acknowledge that every person we meet is at least a potential recipient of honor and admiration…” (Walzer 1983, p 258), and ”recognition as this or that”, which depends on a certain skill or trait of character.
Political power

Walzer seems both to consider political power to be a necessary part of every sphere, since the protection of the boundaries of the spheres must be executed by the state. (Walzer 1983, p 15) But he also means that it is a distinct sphere, since the authority of the officials also can be used for other purposes than upholding the boundaries of the spheres. Political power could be, and have been, used as a mean for domination, according to Walzer.

Walzer begins his discussion of the sphere of political power by focusing on "soverignty, political command, authoritative decision making-the conceptual foundation of the modern state." (Walzer 1983, p 281) He means that "soverignity by no means exhaust the field of power, but it does focus our attention on the most significant and dangerous form that power can take." (Walzer 1983, p 281) The sphere of political power is, according to Walzer, so dangerous because it is the "means by which all the different pursuits, including that of power itself, are regulated. It is the crucial agency of distributive justice; it guards the boundaries within which every social good is distributed and deployed." (Walzer 1983, p 281) The purpose of the political power is to protect against tyranny, but the political power easily becomes a mean for tyrants. This is, according to Walzer, the reason why political power "is so much desired", but also so often discussed and disputed over. Since the rulers sometimes exercise tyranny (violations of spheres), people have accepted, implicitly or explicitly, that some spheres are "blocked" for exercise of political power. Which spheres people consider to be blocked differs from one society to another. Walzer means that "once we have located ownership, expertise, religious knowledge, and so on in their proper spheres and established their autonomy, there is no alternative to democracy in the political sphere." (Walzer 1983, p 303) He means that only arguments matter in the political sphere. All other "goods" are to be left outside, due to the autonomy of the other spheres. If the boundaries of the other spheres are respected, they will automatically not matter in the sphere of politics, which leads to democracy. With democracy, Walzer seems to mean that every individual has one vote, that the people elects their leaders, and that the only mean of persuasion allowed to politicians are arguments. (See Walzer 1983, p 304, 305) But Walzer admits that citizens will gain more or less influence depending on rhetorical skill. This, he finds acceptable as long as the monopoly of political power belongs to the "most politically skillful citizens". This, he means, depends on that "a perfectly democratic decision is likely to come closest to the wishes of those citizens who are politically most skillful." (Walzer 1983, p 304)
5:4 Can a moral theory be “goal-directed”, and are there moral reasons that it should be ”goal-directed”?
Walzer do not discuss ”goal-direction”, but an answer to this question can be interpreted out of his theory. He seems to mean that the goal of a theory of justice is as equal distribution of ”goods” as practically possible.

6 Comparison and discussion of specific concepts and arguments
I will proceed in three steps: first, I will give a short summary and comparison, highlighting the central ideas in Nozick’s and Walzer’s answers to the questions above. Second, I will analyze, discuss and finally draw a conclusion about which ideas in the theories are adequate. Third, I will, out of my conclusions about the soundness of Nozick’s and Walzer’s theories, draw a conclusion about what I consider to be the adequate answers to the four questions above.

Summary and comparison of Nozick’s and Walzer’s theories
1) How can the existence of a state be justified?

Nozick:

a) The state is needed to uphold the ideals of the law of nature, or even create a better situation, since the state gives us an opportunity to a better life, (and a better life is intrinsically (self-evidently) good) without violating any ideals of the state of nature. For these reasons, the state as such and the ultraminimal and the minimal state are justified.

b) Nozick means that, in order for a state to be a state, it must: a) claim and generally get monopoly on the use of force, and b) protect everyone within its territory.

Walzer:

a) We must make a difference between strangers and non-strangers as long as we live in states, and states are necessary for survival. Making this difference is an expression of social meaning. The state as such is justified because it is necessary: people join together in states in order to provide for their needs, but we have a need for the state as such, and the state also creates needs.
b) Walzer seems to mean that every co-operative way of living together, with the purpose of fulfilling our need for security and welfare, is a state. Walzer do not, however present any minimal requirements for the state, since he only intends to examine the co-operative ways of living which actually exists.

2) To what extent does the state have the right to restrict individual’s liberty of action?

Nozick:

a) Only to such extent that people’s rights as presented in the law of nature are protected. Only side-constraints to protect life and property should be allowed.

b) Nozick assumes the adequacy of the law of nature.

Walzer:

a) To such extent that the intrinsic meaning of social “goods” is respected, and dominance thereby avoided.

b) Walzer assumes the existence of social meaning, including the idea that equality should be sought, and the adequacy in acting in accordance with it.

3) To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”?

Nozick:

a) If in accordance with modified Lockean principle of acquisition, an acquisition is just. No other restriction or redistribution is justified.

b) Nozick would accept what Walzer would call violations of spheres as long as the transaction is agreed to by both parties. This depends on that there are only individuals living their individual lives. Redistribution for other reasons than for protection of the side-constraints are the same as using someone as a “mean” in order to gain others. Equality has no intrinsic value.

c) Free exchange is the only kind of distribution which do not violate anyone’s rights.

d) It is unacceptable to stop someone from exercising his skills in order to benefit someone less skilled.
Since we do not have a “right” to anything except what we acquire in accordance with the principles of acquisition, and since the exercise of other “rights” would require resources which belong to other people, we must get their approval first.

Walzer:

a) All distributions and redistributions which is according to a societie’s social meaning of a “good” are justified.

b) He assumes the intrinsic value of equality, and means that non-dominance is the most effective way of reaching equality. He wants distribution to be as equal as is practically possible.

c) Free exchange has unacceptable results, since it will violate some spheres.

d) We may stop someone from using his skills if the use of skills violates boundaries of spheres.

e) The members of a state have a right to certain resources, if the society has resources to provide us with it. People may, for example, not starve to death if there are resources that could keep them alive, no matter who the resources belong to. We also have the right to “goods” necessary in order to take part fully in the community. These “goods” differ from one society to another. The reason why the members of a state owe each other security and welfare, and “goods” necessary to take part fully in the community is that the fulfilment of these needs where the reason people came together. The members of a state also owe non-members support according to the principle of mutual aid, which means that strangers should support each other when 1) it is needed or urgently needed by one of the parties; and 2) if the risks and costs of giving it are relatively low for the other party.

4) Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”?  

Nozick: No. Nozick says that we cannot assume that a theory must strive for a certain goal, for example as equal distribution as possible, or the overall reduction of violations of rights.
Walzer: Yes, since Walzer assumes the intrinsic value of equality and that distributions should be as equal as practically possible; and no, since his argumentation relies on the, for different community’s different social meaning of “goods”, which he claims to be a historical fact.

Analysation, discussion and conclusion of the adequacy of Nozick’s and Walzer’s theories.
I will now investigate the arguments of both authors on each point above. The summary above is sketchy, but I will also refer to what has been said earlier in the presentations of the theories. The summary above aims at highlighting questions which needs to be discussed in order to answer the questions 1-4.

My discussion will be structured as follows: first, by discussing question 1, I will argue that Nozick and Walzer both argue from a normative foundational assumption, and that this is unavoidable. Then, I will, through investigation of question 2, point at two possible flaws in Nozick’s and Walzer’s theories. Then, I will argue that these *are* flaws. This conclusion will be used in order to critizise parts of Nozick’s and Walzer’s answers to question 3 and 4. My conclusions will result in my answers to questions 1-4.

1) How can the existence of a state be justified?
Here, two questions needs to be addressed: 1) what are the requirements for a state? Is co-operative living, with the purpose of providing all members security and welfare, which distinguishes between members and non-members enough, or is it necessary that the state claims monopoly of force, and that it protects everyone within its territory? 2) which, of any of the assumptions above is correct: is the state justified because it is necessary in order to uphold the law of nature or is it that we must live together in order to survive, provide for our need for security and welfare, and as long as we distinguish between strangers and non-strangers?

Both authors mean that we must live together in order to survive, but Nozick means that his conception of a state is only legitimate if in accordance with state of nature, while Walzer means that we should investigate our actual societies, which are created because they are necessary for survival, in order to reach insight in which way of living is legitimate. Therefore, I will not discuss whether Walzer claims that our need for living in
communities is an adequate way of justifying the state, but whether social meaning is a
good measure.

I will begin by discussing the second question, and I will discuss Nozick’s arguments first,
and then compare it with Walzer’s argumentation. I will investigate whether the law of
nature or theory of social meaning is an adequate (adequate in order to reach a morally
justifiable conclusion, I will discuss the meaning of “justification” beneath) starting point
when arguing whether the state is legitimate. I will not discuss whether we necessarily end
up with Walzer’s and Nozick’s conclusions given their foundational assumptions, since I
will argue that their foundational assumptions are partly inadequate.

I see three possible ways in which Nozick could consider the law of nature to be an
adequate starting point when investigating the legitimacy of the state and the
characteristics of a legitimate state (we saw above that Nozick do not distinguish these
two questions).

1) The law of nature is intrinsically (“intrinsically” is here equivalent with “being self-
evident, being an empirical fact, or being deduced from an empirical fact”) just,
regardless of people’s opinions.

2) The law of nature is not intrinsically just, but people have always generally accepted
the law of nature as just, most people have always thought that it is just, even though
not everyone have lived in accordance with it.

3) People have not necessarily accepted the justness of the law of nature, but people have
realized that it is necessary to try to live in accordance with the law of nature in order
to be able to live together.

It is necessary to clear out what kind of foundational assumption Nozick builds his
argumentation on in order to decide whether the foundational assumption is adequate or not.

I will now interpret Nozick in order to state which of the possibilities above he most likely
intends. Since Nozick seems to accept Locke’s thought that there are some intrinsically just
moral laws (see Nozick p 9, p 33-34) except that Nozick probably does not consider the
intrinsicality to be due to the authority of God, and seems to claim that people generally have
reached the insight of their moral value, and that people probably realized that the law of
nature is necessary in order to be able to live together, he seems to consider the law of nature to be an adequate starting point for an argument about the legitimacy of the state for all these reasons. The law of nature’s value is, according to Nozick, intrinsic since he accepts it as fact (see Nozick 1974, p 30-35) that people are separate individuals, who are not gained in any way by being used to gain other people:

Side-constraints upon action reflect the underlying Kantian principle that individuals are ends and not merely means, they may not be sacrificed or used for the achieving of other ends without their consent. Individuals are inviolable. (Nozick 1974, p 30-31)

Side-constraints express the inviolability of other persons. But why may not one violate persons for the greater social good? Individually, we each sometimes choose to undergo some pain and sacrifice for a greater benefit or to avoid a greater harm: we go to the dentist to avoid worse suffering later; we do some unpleasant work for its results; some persons diet to improve their health or looks; some save money to support themselves when they are older. In each case, some cost is borne for the sake of the greater overall good. Why not similarly, hold that some persons have to bear some costs that benefit other persons more, for the sake of the overall social good? But there is no social entity with a good that undergoes some sacrifice for its own good. 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. What happens is that something is done to him for the sake of others. (Nozick 1974, p 32-33)

This fact of our separate existence could be interpreted as consisting of two separate parts: First, a purely empirical fact without normative colourings: A is not gained by being used to gain B, since a group of people do not consist a social entity, which, as a whole, could be gained if one part (person) of the entity is sacrificed to gain the entity as a whole. From this fact, Nozick could be interpreted as deducing a normative conclusion: A ought not to be used in order to gain B. This normative conclusion is equivalent with the categorical imperative, which Nozick also refers to. A second possible interpretation is that the normative statement is considered as a fact, but not because of any deduction from a fact without normative colourings. This is probably the correct interpretation (see Nozick 1974, p 33-34, p 48-51), but I will argue that Nozick, by building his theory on a value which he does not try to found in an empirical fact, weakens his theory.

The fact of our separate existence leads, according to Nozick, with necessity to acceptance of the side-constraints, and the idea of side-constraints is expressed in concrete rules in the law
of nature. The Lockean principle of acquisition could also be interpreted as being founded on the idea of our separate existence. Above, I interpreted Nozick as meaning that people generally have accepted the law of nature as just. The reason why the law of nature is necessary in order to live together is, according to Locke (and Nozick, since he seems to accept Locke’s idea of the reasons for the adequacy of the law of nature) that the law of nature is necessary in order to preserve mankind.

If this interpretation is correct, we see some interesting similarities with Walzer’s answer to question 1 above. Walzer means that people live together (and accept certain values) because they can live no other way (compare with point 3 above), and that people have come to realize the social meaning of different spheres (compare with point 2 above). He also accepts the values consisting social meaning as having intrinsic value, simply because they as a fact exists (compare with point 1 above). So we see that both Nozick and Walzer accepts the same kind of reasons for accepting their foundational values. The insight in these spheres could also result in something like the law of nature (except that Walzer would assume that private retaliation of crime should be excluded for practical reasons, and not, as Nozick, argue to reach that conclusion)? This would mean that Nozick and Walzer not only accept the same kind of reason for accepting their foundational values and the arguments based on this foundation, but also that they partially would accept the same principles, those presented in law of nature. The difference is that Nozick considers the intrinsicality to be due to the particular “fact” that one individual should not be gained by another person’s interests being sacrificed, while Walzer means that the existence of any values (all values are part of the social meaning of some society) gives the values intrinsic value. Both authors’ arguments are, therefore, built on values, even though they claim that their arguments are built on facts.

Both seems to think that Nozick’s definition of a state is adequate. Nozick says so, and Walzer’s theory implies that these criteria characterises the society Walzer discusses. Both seems to assume that people have to live together in some way in order to survive, and both seems to accept the same basic norms as necessary in order for people to be able to live together. Nozick calls these norms “law of nature”, Walzer calls these norms values, which are, as all values, examples of social meaning. I am not sure whether Walzer would accept a static set of values, which Nozick means that “law of nature” is, but it seems believable that Walzer would accept that the values in “law of nature” is necessary in order for people to be
able to live together. If so, these values could be seen as universally shared values, a universally shared social meaning in this limited area.

This makes me draw the tentative conclusion that the author’s argue from the same kind of normative starting point, and also partially from the same values, expressed in different ways as a law of nature or as social meaning. The only difference is that Nozick considers the values as having an intrinsic value due to a particular “fact”, while Walzer considers the values as having intrinsic value because people hold them. Both seem to claim that their foundational values, and thereby their argumentation, is based on a fact: Nozick means that it is a fact that we are morally separate individuals (see Nozick 1974, p 33), and Walzer claims that social meaning is a fact. However, both Nozick’s and Walzer’s argumentations are based on values which have no intrinsic value, they are purely normative statements. This, I will argue, is necessary. Nozick would proceed to quickly if he, from the fact that one individual is not gained by being used to gain another, would draw the normative conclusion that no one ought to be used to gain another. But even if this would not prove the normative statement, I will argue that such procedure would make Nozick’s and Walzer’s argument less arbitrary. Walzer also is mistaken, since he does not seem to realize that even though the existence of social meaning, expressed as people’s general opinions, is a fact, the opinions are generally accepted values, and I will question whether we should build our morality on popular opinion. This makes me draw the conclusion that both Nozick’s and Walzer’s theories are based on values without intrinsic value. I will assume that a value which cannot be deduced from a fact have no intrinsic value, assuming that we with intrinsic value mean that the truth of the value is self-evident, can be proven empirically, or is being deduced from an empirical fact. I will, when I discuss values without intrinsic value in this sense, simply call them “normative statements” or “values”.

Should a theory of justice be founded on normative statements, and, if so, are these particular values, expressed as law of nature and the concept of social meaning adequate starting points, in the sense that they are an indisputable foundation, an axiom from which the author’s respective argumentations can be deduced from? Here, Nozick’s and Walzer’s arguments can, at least initially, be analyzed by the same kind of argumentation.

Addressing the first question, I think we have to accept that a theory of justice must be based on normative statements, at least as long as we have found no satisfactory solution to the “is-
ought” problem. As long as we have no proof that a value can be deduced from a fact, we have to build the theory on values. This leads us to the second question: are the values of law of nature and Walzer’s description of social meaning adequate values to build a theory on? In order to answer this, we must ask ourselves the following questions: What are the requirements of an adequate value? Consistence with the values deduced from it? Should it be in accordance with our intuition? Should it be in accordance to the purpose of the theory? If so, what is the adequacy of this purpose based on? We will see that the law of nature and Walzer’s description of social meaning are only partially adequate, and that the foundation I will find adequate is a compromise of some of Nozick’s and Walzer’s ideas, and are relying on intuition, consistence, and that these two traits will lead us to the adequate purpose of any adequate theory of justice. This conclusion will be reached by analysing the main values of the theories which could be interpreted as being deduced from law of nature and Walzer’s description of social meaning, since the inadequacy of some of these values will reveal the flaws in the law of nature and Walzer’s description of social meaning.

2) To what extent does the state have the right to restrict individual’s liberty of action?
Here, the following questions needs to be addressed: 1) are Nozick’s side-constraints an adequate measure when deciding restrictions of liberty of action the state may force us to follow? 2) Is social meaning and spheres a good measure? 3) can we assume the adequacy of the law of nature? 4) can we assume the adequacy of respecting social meaning and spheres?

Question 3 and 4 are answered above. Question 1 and 2 will depend on my conclusions beneath about the purpose of an adequate theory of justice.

Nozick’s theory’s main value, which could be interpreted as being deduced from the fact of our separate existence, where no one is gained by being sacrificed for another, is that we should maximize the individual’s opportunity to freedom of action. I accept the adequacy of this value, for reasons which will be elaborated beneath. But he does not consider unequal distribution as a result of shortcomings in skill which the individual can do nothing about and for which the individual is not responsible to be a moral problem. Compensations for such shortcomings are instead considered as threats against other individual’s use of their property and mental skills. This leads me to suggest that we should require that a theory of justice is ambition sensitive, meaning that every individual should be supported, perhaps by use of resources already held by another individual, to improve skills necessary in order to “mix his
labour” with unheld resources. In that way, the individual’s share of the resources depends on his choices, not on brute luck.

Walzer’s basic normative assumption is that we should strive for equality in distribution of “goods” to the greatest possible extent, which is distribution in accordance with the social meaning of the “goods”. But since “social meaning” is decided by the opinion of the majority, I question whether this is a good measure of fairness.

I draw the tentative conclusion that the purpose of a theory of justice should be to maximize individual’s freedom of choice, and thereby reward ambition, but that this ideal can be realized in different ways in different cultures. I will also argue, that even though a value cannot be deduced from a fact, we should strive to tie our values to empirical facts to the greatest possible extent, and that this can be done. I will elaborate this claim beneath, and show why this foundational value (maximized freedom of choice and rewarding of ambition) is more intrinsic than the foundational values of Nozick and Walzer, and therefore a more solid foundation. This justifies the arguments deduced from this value, and thereby my answers to the four questions to a greater extent than Nozick’s and Walzer’s. But we will see that my answers to the four questions are a compromise between Nozick’s and Walzer’s main ideas.

The most important questions to answer are the following, since these answers will lead us to the most adequate answers to the four questions: how are we to gain resources necessary for individual’s equal opportunities to improve the skill necessary to “mix their labour” with resources without illegitimately confiscating anyone’s resources, time or skill? (With “illegitimately confiscating” I will hear mean every claim on an individual’s resource which limits his realisation of his intentions.) And if these problems can be solved, how can we justify the differences still remaining, due to individual’s lack of natural talent to improve, for which the individual cannot be held responsible? The answer to this question about justice in distribution of resources will also explain why the principle of ambition-sensitivity will be applicable to the question of restriction of freedom of action.

The answer to these questions will decide my answer to the four questions above. I claimed above that the most adequate foundational normative assumption is that ambition should be rewarded without anyone’s resources being illegitimately sacrificed. I will argue
that this foundational assumption in fact is equivalent to the purpose of every adequate (non-arbitrary) theory of justice. I will assume the value of non-arbitrariness.

Why is this assumption the foundation and purpose of every adequate theory of justice? If so, we only need to require that all arguments are deductions from this foundational assumption. If so, the resulting theory is adequate.

Problems in distributions are basically about combining different people’s striving for resources so scarce that everyone’s preferences cannot be satisfied. Why, then, should people be compensated for lack of social or material resources necessary to do their best in this strive? Dworkin’s answer is that people’s choices should decide their share of the resources. But why are people’s choices important? Choices, in contrast to being born into a situation, individuals can be held responsible for. With “to be held responsible for”, I will mean that people are able to affect the outcome of a situation. Those things we can make choices about are the only ones we can affect.

But why should we require that people affect moral situations which they are able to affect? The fact that we are able to affect moral situations is the reason for discussing moral worth of actions. So as long as we accept the relevance of giving arguments for our actions and not only act on random or flip coin, affecting states have relevance due to the fact that we consider arguments for choices relevant. Moral theory is all about affecting states of nature in a certain direction. So the most foundational right, since we obviously care about these questions, is to protect the opportunity of free choice for every individual. This is due to the most basic purpose of the activity of moral reasoning, it is the least arbitrary basic value. By caring about these questions we implicitly show that we accept the worth of affecting states of nature. Here, we have not proved the adequacy of the value (that we should promote exercise of free choice) through deduction from fact (that we actually care about making choices), but we have come as close to such deduction that is possible.

But this only means that every individual’s opportunity to affect should be maximized, which means that we may not worsen one individual’s opportunity to make changes in order to gain another. So, what we must protect during distributions are every individual’s right to as free choice as possible. This means that a) one person may be deprived on resources which do not affect his freedom, if they affect (in a positive way) the freedom of other people, and b) that these procedures will differ from one culture to another. This may only be done in an initial state, in order to equalize opportunity to free choice. After that, Locke’s modified principles of aquisition are exhaustive. By initially maximizing individual’s freedom of choice, and
make the size of the initial share (and later the total share, since the individual later will be required to contribute to other individuals in the initial state with all surplus not used to realize intentions) of the resources which the individual is allowed to keep dependent on whether he uses his share to realize intentions, the system promotes ambition.

So how do we achieve maximal freedom of choice for every individual within a state? We must define “freedom”, “choice” and “opportunity” and let this decide the rules for distribution in an initial situation.

With maximal freedom, we will, in accordance with Oppenheim’s definition understand minimal unfreedom, which is minimal risk of punishment or restraint, and minimal unfreedom of action, which is minimal lack of resources and talent, restrictions which can be both internal and external, but not directly caused by another individual.

The following suggestion is very sketchy, and many problems remain unsolved, but a complete discussion would require a project beyond the scope of this thesis.

In order to illustrate my suggestion in simplest possible way, I will assume that there are only two individuals (children, we can consider this the “initial situation of life”) among which resources is to be distributed. All resources are, as Nozick pointed out, already someone’s property. The resources here presented are those available to the two individuals, but they are not necessarily the owners of the resources. Their parents or other relatives might be the actually holders of the resources.

Individual 1 and 2, each having
- natural talent
- social circumstances
a) resources matching individual’s intentions and talent and potential
b) resources which will not be used to realize intentions, use talent or realize potential. Resources for realization of pure pleasure. Surplus resources.

Individual 1’s resource b ought to be distributed to Individual 2’s resource a, and individual 2’s resource b ought to be distributed to individual 1’s resource a.
Once divided, Locke’s principles of acquisition ought to be exhaustive. But when is the distribution to be executed? This question can only be addressed once some severe difficulties are solved.

Which are the difficulties, and how are we to solve them? How are we to know about natural talent, intentions and potentials? Assume some basic level which is covered by surplus? Will surplus cover these costs? How do we know what might be non-surplus in the future, even if it is surplus now?

How are we to justify remaining inequalities which will be the result of lack of natural talent, even after all resources necessary to improve the actual talent has been provided? It is justified since further compensation would make another individual less free to the resources necessary to maximize the improvement of his talent and opportunity of choice.

3) To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”? The conclusion above will be adopted in order to answer this question. I will argue that acceptance of an ambition-sensitive libertarian theory will lead to the most adequate answers to the four questions.

Here, the following questions needs to be addressed: 1) are the principles of acquisition adequate? Are distribution according to social meaning adequate? 2) is redistribution the same as using someone as a mean, is it always wrong to use someone as a mean? 3) does equality have intrinsic value? 4) should we allow free exchange? Is it the best principle of distribution? 5) should we block someone from using his skill in order to benefit someone else? 6) do every human being have rights to certain resources, for example those needed in order to stay alive?

1) According to Nozick, an acquisition is just if it is in accordance with modified Lockean principle of acquisition. No other restrictions are justified. But due to the ambition-sensitivity I require, the principles of acquisition are fair only if everyone initially are given the same opportunity to develop the skills necessary to be able to gain resources through work. When everyone has been given a fair chance, the rules of acquisition are adequate, but they do not “exhaustively” consist a fair theory of justice, as Nozick claims that they do. According to Walzer, an acquisition is just if in accordance with social meaning. The ambition requirement could also be considered as social meaning, the most basic social meaning of every co-
operative way of living where resources are scarce. But, in contrast to Walzer, I do not claim that this value, an expression of social meaning, is adequate merely because people accept it as valuable. Freedom of choice is a more foundational value than other values, because we are forced in our daily life to make moral choices.

2) Using someone as a mean is unacceptable except in the initial situation. The ambition requirement and principle of acquisition are adequate and exhaustive. If Walzer’s social meaning is in accordance, it is correct, otherwise it is inadequate.

3) Equality of opportunity has intrinsic value—but only if no one else’s freedom is restricted. Walzer’s equality has no intrinsic value, and only non-dominance is unacceptable since it does not maximize everyone’s freedom.

4) Here, Nozick’s and Walzer’s foundational assumptions (moral separateness of individuals/existence of spheres) makes them consider the other author’s foundational assumption as a reason to accept their own foundational assumption. Nozick means that all distributions from one individual to another without all involved parts consent is a violation of rights, while Walzer means that some distributions, even with the consent of all involved parts, are violations of spheres, decided by people’s general opinion. I claim that free exchange is acceptable if the ambition requirements are fulfilled. Free exchange is the only acceptable system, if combined with the ambition requirement. Free exchange do not violate the most basic and important social meaning: maximized freedom of choice for every individual.

5) Blocking someone from using his skill is unacceptable, since the chances should be maximized, not equalized. Some resources necessary in order to use and improve one’s skill should be equally distributed in the initial situation, but not on anyone’s expense.

6) No, not once the conditions above are fulfilled. We must have approval after the ambition requirement is fulfilled. But some basic needs must be fulfilled, otherwise we can know nothing about interests, potential, etc.

4) Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”?"
Goal-direction is a more complex concept than any of the authors above have realized. What is goal-direction? Goal-direction is construction of a theory so that it aims at realizing a certain “highest” value. How does it appear/not appear in the both theories? Nozick and Walzer claim that their theories are not goal-directed. I mean that both theories are goal-directed: Nozick’s goal is to maximize the liberty of freedom for every individual, and Walzer’s goal is as equal distribution as is practically possible. The theories are goal-directed, since the realisation of the values which are the goal of the theory are reflections of the purposes of the theories. However, Walzer’s theory appears not to be consistent. Parts of the theory could be interpreted as in this thesis: Walzer aims at reaching equality to the greatest possible extent (see Walzer p 20-26). It could also be interpreted as mainly aiming at protection of the spheres; the equality being an outcome of protected spheres, but not the main purpose (see Walzer p 312).

I am aware that many problems remain unsolved. But if I have managed to show that my foundational value is a more solid foundation than those presented by Nozick and Walzer, but still a compromise between Nozick’s requirement that all have the right to the result of their on work and Walzer’s context sensitivity, it will without doubt restrict the amount of possible answers to the four questions. My tentative answer, given these restrictions, are the ones presented beneath. In accordance with my conclusions above, I consider the following to be the most adequate answer to the four questions above:

1) How can the existence of a state be justified?
The state, characterized by at least Nozick’s minimal requirements, is necessary in order to survive and is also necessary in order for my ambition sensitivity requirement to be realized.

2) To what extent does the state have the right to restrict individual’s liberty of action?
Only those restrictions necessary in order to give all individuals equal opportunity. We should adopt Nozick’s side-constraints and theory of aquisition, combined with my ambition requirement.

3) To what extent does the state have the right to restrict or redistribute any kind of “goods”, and if so, which restrictions should be allowed on which “goods”?

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Redistribution necessary in order to give every individual as equal initial opportunities as possible, but we should not compensate inequalities which could be reduced by the individual using his skill. If “goods” can be gained through realisation of ambition, and all are given equal opportunities, no further redistribution is justified.

4) Can a moral theory be “goal-directed”, and are there moral reasons that it should be “goal-directed”? It may be goal-directed, if the goal strived for is ambition sensitivity.

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