

THE QUEST FOR THE STATE LEGITIMACY

The Quest for the State Legitimacy: Between the State Authority and Citizens' Rights

Andrej Semenov

Faculty of Social Science, Charles University

Correspondence concerning this article should be addressed to Andrej Semenov, FSV Charles University, U Kříže 8 Prague

Contact: andrej.semenov@fsv.cuni.cz

THE QUEST FOR THE STATE LEGITIMACY

Abstract

The aim of the paper is to explore in which situations the state can exercise political power over its citizens. The art is to find the fine line between citizens' rights and the state coercion. I believe that the best way to present an answer on this issue is to list the principles when state coercion might be justified therefore I examine eight following principles: The Harm Principle, The Offense Principle, Legal Moralism, Legal Paternalism, The Collective Benefits Principle, The Justice Principle, The Need Principle, The Sufficiency Principle. While I undoubtedly defend liberal principles, I argue that Legal Paternalism and The Justice Principle can be adopted only in specific situations. Finally, I suggest that The Need Principle and The Justice Principle cannot be used as justification of one's freedom but they might be translated and expanded into The Sufficiency Principle.

Keywords: state legitimacy, state authority, citizens' rights, the harm principle

THE QUEST FOR THE STATE LEGITIMACY

The Quest for the State Legitimacy: Between the State Authority and Citizens' Rights

The subject of this paper is the scope of political authority, i.e. in which (if any) situations the state can exercise political power over its citizens? It is worth emphasizing a fairly obvious point here: I assume that the state is legitimate. The issue is rather of simple nature but with no easy answers; we possess certain rights but at the same time the state is justified in using its coercive power to limit our rights. I believe that the best way to deal with this challenge is to provide a list of principles when state coercion is justified. I will examine in depth J.S. Mill's harm principle (1909), but also Joel Feinberg's four principles (1984, 1985, 1986, 1988) along with the three extra principles discussed by Alan Wertheimer (2002): The Harm Principle, The Offense Principle, Legal Moralism, Legal Paternalism, The Collective Benefits Principle, The Justice Principle, and The Need Principle. I will also consider The Sufficiency Principle which above-mentioned authors do not discuss. Let me briefly introduce those principles. The Harm Principle states that the state is justified in limiting A's liberty if that act will prevent A from harming others. The Offense Principle justifying the state coercion if A is prevented to offend others. Legal Paternalism says that the state coercion is justified if it is to prevent A from harming himself. Legal Moralism says that the state is justified in limiting A's liberty in order to prevent A from engaging in immoral behavior even in the case A's is not harmed or harming others without their consent. The Collective Benefits Principle limits liberty in order to provide public benefits otherwise would be provided. The Justice Principle says that the state can limit A's liberty on ground of justice. The Need Principle states that limitation of A's liberty is just if provides other people's needs. The Sufficiency Principle says if the state can prevent B's suffering by sacrificing A's nothing of comparable importance, the state can limit A's liberty.

THE QUEST FOR THE STATE LEGITIMACY

Before exploring the eight principles I have to stress that, as many authors earlier, giving the list of liberty-limiting principles do not imply their defense. Firstly, I will defend liberal principles The Harm Principle and The Offense Principle. Secondly, I will examine Legal Paternalism and add hard component of Legal Paternalism to liberal principles. I will argue that Legal Moralism, The Justice Principle, and The Need Principle make the weak cases and finally I will introduce The Sufficiency Principle to replace them. In this paper, I will acknowledge the two points given by Wertheimer. First, he develops the claim that ‘a valid liberty principle provides a justification for a liberty-limiting policy’ but the principles do not ‘provide positive reasons for a policy because there may be moral or practical reasons that “outweigh” the reason for such a policy’ (2002: 43). In other words, if we find heavy drugs bad for people we might incriminate them on the ground of Legal Paternalism, nevertheless if economic and social benefit is higher (the cost of enforcing ban, collected taxation, etc.) if drugs are legal then we might reject this policy. Second, Wertheimer notices that a liberty-limiting policy may be supported by not only one principle thus drugs might be banned on grounds that make people violent (the Harm Principle), that are bad for users (Legal Paternalism), that it is widespread among population (the Collective Benefits Principle), that it is not socially accepted behavior (Legal Moralism). Finally, I will take into account Feinberg’s distinction between the questions of constitutionality and moral justifiability: there are cases where an act is constitutional but not justifiable limitation of individual liberty while other cases might be justifiable but not constitutional.

The Harm Principle

Mill had very bold and optimistic idea:

The object of this Essay is to assert one very simple principle, as entitled to govern absolutely the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively in interfering with the liberty of action of any of their number, is self-protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant (J.S. Mill, 1909: 18).

Mill's the Harm Principle is certainly not the only defensible reason to limit someone's liberty nevertheless it is the best point of departure. I will argue against his claim that harm should be the only reason justify state power but let me first explore what the Harm Principle requires.

The Harm Principle is everything but not simple as Mill argues: what does it mean to harm others? Who are others? If we claim "others" are person we need to discuss whether a fetus is a person: if a fetus refers to a person then there is case to ban abortion on the ground of the Harm Principle, if it is not a person then there is no case. There seems to be no compelling reason to argue that the fetus cannot be harmed in the womb, nevertheless it lies on assumption that the fetus will suffer from harmful consequences of prenatal injuries. Along similar lines, Wertheimer argues that 'if "others" refers only to homo sapiens, then we cannot limit behavior on the ground

THE QUEST FOR THE STATE LEGITIMACY

that it is harmful to animals” (2002: 45), thus how do we incriminate behavior harmful to animals?

The second important question refers to “harm to others” and has several implications. Feinberg lists three of them (1984). First, can we harm a person by making him a worse person than he was before? In other words, does moral harm counts as harm? I believe that making someone worse person does not necessary makes him worse off, thus only if he had an interest to be a good person can be said he is harmed after making him worse character. Second, can we harm person A by harming person B? It is my contention that this point is clear: if person A harms person B while person C has interest in B’s good, then we can say that A harms B. Third, can person be harmed by his own death? Feinberg develops the claim that death can be harm to a person who dies in the respect to his interest which is defeated by his death, but if the person had no interest? It is not difficult to imagine a dying person who does not want his family to their spend resources: do we have the case if someone takes his life? If we believe that ‘over himself, over his own body and mind, the individual is sovereign’ (Mill, 1909: 19) and there is consent, we can conclude that if a person has no interest in life and consent is given then taking his life cannot be banned on the ground of the Harm Principle. Harm Principle does not justify limiting A’s liberty to harm B if B gives consent to be harmed. As Mill argues, our society has no right to intervene in people’s business conducted ‘with their free, voluntary, and undeceived consent and participation’ (1909:22). Wertheimer’s conclusion on Mill’s argumentation deserves to be quoted in length:

If B wants her physician to terminate her life, so be it. If A wants to purchase use of B’s womb, or sell an ineffective drug, or sell cocaine, or toss dwarfs against a padded wall, or sell tickets for an exorbitant price, or engage in sexual relations

THE QUEST FOR THE STATE LEGITIMACY

with his patient, or hire someone for \$3.00 per hour, or have sexual relations with a woman who is severely intoxicated, or rent a rat-infested unheated apartment, or buy another's kidney, the Harm Principle does not justify interference by the state so long as B consents, as well she might for one reason or another (2002: 46).

At this junction three further implications may come to mind. Does inaction can harm? If inaction cannot harm then no one can claim that parents whose child dies because they refuse modern medicine (on religious ground) actually harm their child. As a rebuttal to this point, Mill makes following observation:

There are also many positive acts for the benefit of others, which he may rightfully be compelled to perform; such as, to give evidence in a court of justice; to bear his fair share in the common defence, or in any other joint work necessary to the interest of the society of which he enjoys the protection; and to perform certain acts of individual beneficence, such as saving a fellow-creature's life, or interposing to protect the defenceless against ill-usage, things which whenever it is obviously a man's duty to do, he may rightfully be made responsible to society for not doing (1909:21).

The problem here is of different nature, if we accept that 'a person may cause evil to others not only by his actions but by his inaction' how do we decide which inactions cause harm to others? Mill's explanation that "it is obviously man's duty" when to act does not seem very appealing: do we harm a beggar with no giving him anything? Is it our obvious duty to help his fellow who felt and hurt himself to extend cannot stand up without someone's help – do our inaction harms him? I am less than Mill sure that harm is self-explanatory.

THE QUEST FOR THE STATE LEGITIMACY

The second implication refers to the question – can we limit someone’s liberty if his behavior does not harm but only increases the risk of harm? Mill here puts the claim that ‘there is a definite damage, or a definite risk of damage... the case is taken out of the province of liberty, and place in that of morality of law’ (1909:139). I find this approach rather risky as it opens the possibility that wide range of behaviors can be taken under its umbrella.

Final implication I would like to examine is collective or public harm. Public harm is identical to what some authors call Collective Benefit Principle thus the principle will not be discussed separately. In previous cases we have been concerned with direct harm, in other words whether A harms B. But what to do with cases where A does not harm B but if a number of citizens do the same as A, person B would be harmed? The most used example is tax evasion: if I do not pay my taxes, I doubt that any of my fellow compatriots would be harm but if my whole region does not pay taxes to state, that is harmful for my compatriots. Lord Patrick Devlin makes very provoking point:

You may argue that if a man’s sins affect only himself it cannot be the concern of society. If he chooses to get drunk every night in the privacy of his own home, is any one except himself the worse for it? But suppose a quarter or a half of the population got drunk every night, what sort of society would it be? You cannot set a theoretical limit to the number of people who can get drunk before society is entitled to legislate against drunkenness (1975: 14)

There is no objection that Devlin is right regarding drunkenness and tax evasion, but I feel that the Harm Principle might be stretched too far when it comes to public harm. Let me shift from tax evasion to homosexual acts. The logic remains the same: if only a few people engage in homosexual behavior there is no damage for society, but imagine that entire population engages

THE QUEST FOR THE STATE LEGITIMACY

in homosexual acts. Similar argument can be applied to compulsory voting. Does it mean that we should ban homosexual acts and promote compulsory voting? There is ample support for the claim that there is no reason to believe that many people would choose or refuse to vote even if they have chance to engage in homosexual activities and ignore their duty to vote. Considering the previous case, we need to be aware of limitations and misapplications of public harm but also of possible benefits.

Although the Harm Principle is hardly “very simple principle”, it seems plausible to claim that the state can justifiably limit someone’s liberty on the ground of caused harm, of course with consideration of six implications I have discussed. Let me now explore whether the state can legitimately interfere with individual liberty when behavior cannot be viewed as direct or public harm to others.

The Offense Principle

The Offense Principle claims that justifying the state coercion if A is prevented to offend others even if he does not harm others: there are many harmless but yet unpleasant human experience where legal protection from them is justifiable. In certain case such as mental distress, it is difficult to decide whether that behavior is harmful or offensive.

However, the question here is not to make a distinction between harm and offense but rather to examine whether the state can justifiably interfere if person is engaged in offensive but harmless behavior. The intuition in favor of the Offense Principle runs as follows: person A has no right to engage in offending behavior even though he does not harm anyone. It seems that even Mills himself supports the Offensive Principle: ‘there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done

THE QUEST FOR THE STATE LEGITIMACY

publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited' (1909: 166-167). The main objection to the Offense principle might be the claim that what is for A sacred for B is a mere joke, as Dudley Knowles puts: 'in multicultural society... offensiveness cannot be avoided' (2001: 121). It might be true that offensiveness cannot be avoided but does it mean that the state cannot limit A's liberty if B has been mentally abused by A? The art is to find the fine line between offensive behavior and freedom of expression. No doubts, there is no simple formula for deciding whether some behavior is offensive or not, but Wertheimer convincingly identify six criteria our society might use:

Avoidability. The easier it is for people to avoid being offended, the more difficult it is to justify prohibiting offensive behavior. If one doesn't want to see nudity, then don't go to the nude beach.

Pervasiveness. The more widespread the tendency to be offended, the easier it is to justify interference. We should not restrict behavior that a minority or even a bare majority find offensive.

Magnitude. The more intense and durable the offense, the easier it is to justify intervention. We should not restrict behavior that gives rise to only mild or short-lived distress.

Legitimacy. The more legitimate the state of being offended, the easier it is to justify intervention. Although this criterion presents its own theoretical difficulties, it seems more legitimate to be offended by the flasher than, say, by the sight of a homosexual couple embracing.

THE QUEST FOR THE STATE LEGITIMACY

Social Value. Some offensive behaviors are of a type that have greater social value than others. Mill argued that the expression of false and offensive ideas has value: “the clearer perception and livelier impression of truth produced by its collision with error.” By contrast, there is little value to indecent exposure.

Individual Integrity. Does prohibiting offensive behavior represent a threat to an individual’s integrity? To ask someone not to expose himself or make noise does not (I think) ask A to stop being who he is. To ask someone not to express his ideas or to wear different clothing represents a greater threat to individual integrity (2002:49).

Legal Paternalism

During our lives we engage in various stupid things, we might argue what “stupid” means though. We drink too much alcohol, do not fasten our seat belts, use drugs, smoke cigarettes, have unprotected sex with strangers, and so on. This chapter is meant to answer the question – is it justifiable to interfere into people’s life in order to prevent them doing foolish stuff? Before offering an answer, I would like to stress that context is crucial when we judge whether a policy is paternalistic: if the idea of introducing seat-belts is to cut the cost of hospital treatments then this policy is not paternalistic.

As we have seen, Mill is not sympathetic to this principle: ‘Over himself, over his own body and mind, the individual is sovereign’ (1909: 19). However, Mill’s view on paternalism is not that simple: ‘his doctrine is meant to apply only to human beings in the maturity of their faculties’ (1909:19). In other words, he rejects the idea of interference into life of an adult but

THE QUEST FOR THE STATE LEGITIMACY

children are another matter. Let me now paraphrase the question – is the state justified in limiting liberty of adults for their own good?

The short answer is yes and no. Legal Paternalism has two components: hard and soft. Soft paternalism says that the state can restrict liberty of adults whose decision-making capacity has been compromised. The best example is given by Mill himself:

[if one saw] a person attempting to cross a bridge which had been ascertained to be unsafe, and there were no time to warn him of his danger, they might seize him and turn him back without any real infringement of his liberty; for liberty consists in doing what one desires, and he does not desire to fall into the river (1909: 163-4)

In other words, we do not compromise a person's autonomy with limiting his liberty if he lacks capacity to make rational judgment about situation. There seems to be no compelling reason to argue against soft paternalism.

On the other hand, hard paternalism says that the state can limit someone's liberty when there is no reason to question his competence and rationality. Prohibition of smoking would be the case for hard paternalism. The logic runs as follows: if A is rational and competent to decide, why would the state mind his business? Wertheimer expands Mill's bridge story on two additional possibilities:

1. The person knows that the bridge is unsafe and is attempting to commit suicide because he is severely depressed.
2. The person knows that the bridge is unsafe, but has a hobby of crossing rickety bridges (2002:51)

THE QUEST FOR THE STATE LEGITIMACY

Wertheimer puts forward the view that severe depression compromises person's rational capacity thus the version 1 represents a case of soft paternalism. I am not convinced: saying that the state can limit A's liberty because A's is severely depressed equals to the statement that the state can limit A's liberty because A is addicted to cocaine. This is the case of hard paternalism: the person has autonomy as an independent value thus A knows what he needs for happy life and knows that cocaine is addictive. Put it bluntly, we all experience weakness of will (for example: eating delicious but unhealthy food, skip running session) but does it mean that the state should limit our freedom whenever we feel miserable? Similarly, the version 2 is also a case of hard paternalism unless we are ready to mark dangerous hobbies as irrational.

Legal Moralism

The principle says that the state is justified in limiting A's liberty in order to prevent A from engaging in immoral behavior even if A does not harm or offend others. It is worth emphasizing a fairly obvious point here "even if" is essential: murder is immoral, but we consider murder under the Harm Principle.

Legal Moralism has several versions. The traditional version holds that the state can justifiably limit someone's liberty if his behavior is "objectively" immoral. The main issue is to define immoral: one person may say that homosexual act or premarital sex are immoral while others strongly disagree. However, both groups of people might agree (or disagree) that the state should prohibit an activity if it is immoral. A second version comes in form of moral paternalism. It argues that "immoral things are bad for people". In other words, every immoral act one has made damages his well-being in establishing an upright moral character. But again, who is the one to say whether eating pork or engaging in homosexual acts are the steps forward

THE QUEST FOR THE STATE LEGITIMACY

or steps back toward upright moral character? A third version is another child from family of moral paternalism. It holds that the state is responsible to protect its citizens from injuries. This is a rather weak case. We need to make a space for people even if they make bad choices: we cannot protect them from all miseries of this world. After all, not everyone prefers long and healthy life to drugs.

The next two versions are more challenging. A third version maintains that a common morality is an important basis of social cohesion: it is legitimate to prohibit behavior seen as immoral regardless if that behavior is “objectively” immoral. As Devlin argues:

What makes a society of any sort is community of ideas, not only political but also ideas about the way its members should behave and govern their lives...

Every society has a moral structure as well as a political one... society is not something that is kept together physically; it is held by invisible bonds of common thought (1975: 9-10).

Devlin takes interesting position that legal moralism requires from people not to do things even if they do not see those things as immoral: ‘A common morality is part of the bondage. The bondage is part of the price of society; and mankind, which needs society, must pay its price’ (Devlin, 1975: 10). However, he does not argue that society should prohibit everything seen as immoral; those decisions society would make depending on the urge society feels. It is obvious that this point does not see anything wrong in prohibiting Homosexual acts or sale of pork if significant majority supports it. The question is – are we really ready to let society to discriminate minorities by their gender, race, religious affiliation, etc? The next is – what if there is a society such as Saudi Arabia which uses this principle but everyone agrees (at least officially)?

THE QUEST FOR THE STATE LEGITIMACY

Finally, the fourth version of Legal Moralism goes as follows: prohibiting harmless but yet immoral activities if that will make less likely that people will harm other in future. In other words, if there is activity x that increases chances that A will engage in prohibited activity y then activity x should be banned. Even though this claim has logical soundness, I am not sure that there are solid evidence which support ideas that pornography increases men's violence towards women, or that people involved in dwarf tossing are more likely to commit violent acts. However, if there are strong indications that doing x means A will commit prohibited activity in future then this version of Legal Moralism might be justified.

The Justice Principle

The Justice Principle says that the state can interfere in individual liberty on the ground of justice. Let me explore four ways that the Justice Principle might be justified.

The first one is named non-discrimination. The state is justified to limit someone's liberty if he discriminates on the grounds of race, religion, ethnicity, gender, sexual orientation. One might argue that non-discrimination can be packed with the Harm Principle but Wertheimer gives good argument in favor of their separation:

We are and should be free to make many decisions that have adverse effects on others. An employer can refuse to hire those she thinks are unqualified or obnoxious or ugly. A landlord can refuse to rent to a smoker, or someone with pets, or to undergraduate students, because we think justice prohibits treating people differently on the basis of some criteria, but not on the basis of other criteria (2002: 56).

THE QUEST FOR THE STATE LEGITIMACY

The art is to decide when justice requires prohibition of certain discriminations and when it does not: we are free to choose our friends even if we discriminate on the basis of race, religion, gender, and so on but public school is not.

Second is – equality of opportunity. Equality of opportunity has roughly three different levels. First, if we say that all children should get education we might support public schools. Second, if we claim all children should have similar educational opportunity we might limit spending of some communities so all communities would have approximately similar educational opportunities. Third, if we say that people should not start their lives with grossly unequal resources and consequently opportunities, we might support high taxes on inheritance. I believe that equality of opportunity is matter of the Sufficiency Principle which will be discussed later.

Third way considers economic transactions. We might think that the state should interfere into citizens' businesses if their transactions are not just. For example, ticket scalping might be prohibited on the ground that price is unjust. Ticket scalping might be convincing example but I am rather skeptical about whether the argument will generally work and I am not alone in my view: '[if it does not work] it prevents the exploited person from advancing her own interests, but if it does work, then we have another justification for interfering with consensual transactions (Wertheimer, 2002: 57).

Finally, there is view people should do their fair share in providing public benefits, even in cases when benefit would be provided without their share, i.e. free ride on the contribution of others. Mill develops the view that one 'may rightfully be compelled to perform... to bear his fair share in the common defence, or in any other common work' (1909:21). There is no doubt this behavior should be prohibited but the question which looms in the background here is

THE QUEST FOR THE STATE LEGITIMACY

whether free riding problem comes under the Harm Principle or the Justice Principle. Due to space constraints, let me only indicate the logic of the puzzle. Non-voters are free riding on those who sacrifice their time to vote in a different way people who do not pay their taxes are free riding on those who sacrifice their money to pay. The difference is that in the former case the benefit is provided without compulsion while paying taxes is mandatory for everyone.

The Need Principle

Wertheimer proposes the Need Principle as the last non-liberal principle. This principle justified the state intervention in A's liberty in order to provide B's needs. Wertheimer is clear that this does not mean that we should always do what is necessary to meet people's needs: 'If B will die unless she receives A's kidney, it does not follow that we should coercively extract A's kidney' (2002: 57). The Need Principle says that the state is justified in interfering people's business in order to provide for others' need for medical care, food, education. Wertheimer gives a very convincing example:

'Suppose that we need much more blood than we can obtain through voluntary donations or for pay (say, because the quality of commercial blood may be too low), that people will die because there is insufficient blood available. If we can require people to provide money because other people need goods in order to live, I do not see why we cannot require people to provide a renewable resource such as blood. If we can require people to serve as witnesses or on juries, I do not see why we cannot require people to make easy rescues' (2002: 57-58).

The Need Principle discussed by Wertheimer is something I will examine in the Sufficiency Principle: I have no objections on the given example but the problem here is the Need Principle

THE QUEST FOR THE STATE LEGITIMACY

does not draw the clear line between situations when we should or should not meet people's need.

The Sufficiency Principle

The Sufficiency Principle says if the state can prevent B's suffering by sacrificing A's nothing of comparable importance, the state can limit A's liberty. This principle take as the point of departure the two assumptions from the famous Peter Singer's article *Famine, Affluence, and Morality*: (a) suffering and death from lack of food, shelter, and medical care are bad; (b) if it is in our power to prevent something bad from happening, without thereby sacrificing anything of comparable moral importance, we ought to do it (1972: 3). What he has in mind goes as follows:

If I am walking past a shallow pond and see a child drowning in it, I ought to wade in and pull the child out. This will mean getting my clothes muddy, but this is insignificant, while the death of the child would presumably be a very bad thing (1972: 3).

However, we are not concerned here with moral obligation of individuals but the justification of the state authority thus let me translate the application of the argument: if the state can prevent people's suffering and death by sacrificing nothing of comparable importance then the state is justified to interfere in our liberty. Put it differently, the state should have power to relocate resources from richest people in society to those who are in need. But what I have in mind here is not mere survival (food, shelter, and medical care) but rather that everyone has enough to live with dignity. At this point the Sufficiency Principle is overlapping with the Need Principle with one big difference: A's need might differ from B's need but for both A and B remains the line what is life worthy human being. Need is slippery area from the two reasons. First, all what

THE QUEST FOR THE STATE LEGITIMACY

matters is which need is stronger and how can we measure it? One might say it is easy to determinate which need is stronger when we compare a person with twenty pairs of shoes and person with none, but what happens when we compare a young girl with five pair of shoes and old man with one – can we really say that he needs second pair more than she fifth? After all, A might argue that he needs particular car more than number of people needs third meal every day – can we compare their happiness? Second, as Onora O’Neill notices we do not need only ‘precise measurements of happiness, but precise prediction of which policies lead to which results’ (1987: 144). On the other hand, the Sufficiency Principle overcomes these challenges by not comparing but by setting the same bar for everyone.

Along similar lines, the Sufficiency Principle might find the moral principle which can justify the state intervention. Previously I rejected the argument of the traditional version of Moral Legalism on the ground that no one can determinate what is “objective” moral. Similarly, one can argue that the Sufficiency Principle faces the same obstacle. It is my contention that there is a difference between in saying we can agree on prohibition of pork or homosexual activities and we can agree on importance of human lives. We cannot simple say to A “you have right to live” but then leave him without shelter, food, education, basic income. What I referred to “enough to live with dignity” is exactly that: people should be provided with the tools which enable them to live. What we need to avoid is to confuse those values with the practices that aim to realize those values. On one hand, the state can sacrifice x in order to prevent A from suffering because A *has right on* something. On the other hand, human rights are inalienable rights that are exercised *against* the state.

Conclusion

This paper has dealt with a distinctly modern question: why and when (if anyone) has right to exercise coercive power over citizens? The immediate dilemma we face is that the individuals have individual freedom of the utmost importance while we still think that the state is justified in using political power. I have tried to answer this question by listing the principle which might be used to justify the state's coercion: The Harm Principle, The Offense Principle, Legal Moralism, Legal Paternalism, The Collective Benefits Principle, The Justice Principle, The Need Principle, and the Efficiency Principle.

Mill notices that 'there is, in fact, no recognized principle by which the propriety or impropriety of government interference is customarily tested' (1909: 17), but Mill himself believed he can find only one "very simple principle" to say when it is legitimate for the state to limit citizens' liberty. I argued that his principle is neither simple nor sufficient to determinate all situations in which the state is justified to limit our liberty. Further, I introduced and defended the Offense Principle to which Mill was also sympathetic: 'a violation of good manners... may rightfully be prohibited' (1909: 167). I have to admit, there is no magic formula for defining whether a certain behavior offensive or not and use of this principle much depends on a context.

After defending liberal principles I explored non-liberal principles. Legal Paternalism can be used only in cases when restricts liberty of adults whose decision-making capacity has been compromised, otherwise people are free to choose. I presented four versions of Legal Moralism and gave my reasons why the state generally has no business in prohibiting "objectively" or "non-objectively" immoral behaviors; however I made a compromise when it comes to satisfying basic human needs in the last chapter. The Collective Benefit Principle has been added to the Harm Principle as I do not see why we would discuss collective and individual harm separately.

THE QUEST FOR THE STATE LEGITIMACY

Further, I put the claim that the state can interfere in individual liberty on the ground of justice in the four particular cases: non-discrimination, equality of opportunity, economic transaction, and public benefit. The Need Principle is a slippery terrain as we cannot measure it and we cannot know which policies lead to which results and it is better to be replaced with the Sufficiency Principle. The Sufficiency Principle would instead set the bar and avoid any kind of measurements, also this principle would introduce moral as justification for the state intervention but in very narrow sense: the state can interfere in someone's life on moral ground if that will ensure other to have life worth human being.

THE QUEST FOR THE STATE LEGITIMACY

References:

Devlin, P. (1968). *The Enforcement of Morals*, Oxford University Press, Oxford

Feinberg, J. (1984). *Harm to Others*, Oxford University Press, Oxford

Feinberg, J. (1985). *Offense to Others*, Oxford University Press, Oxford

Feinberg, J. (1987). *Harm to Self*, Oxford University Press, Oxford

Feinberg, J. (1988). *Harmless Wrong-Doing*, Oxford University Press, Oxford

Mill, J.S. (1909). *On Liberty*, The Floating Press (e-book)

O'Neill, O. (1987). 'Rights, Obligations and World Hunger', in *Poverty and Social Justice: Critical Perspective: A Pilgrimage Toward Our Own Humanity*, eds F. Jimenez, AZ: Bilingual Press, Temple

Singer, S. (1972). 'Famine, Affluence, and Morality', *Philosophy and Public Affairs*, vol.1, no.3, 229-43

Wertheimer, A. (2002). 'Liberty, Coercion and the Limits of the State' in *The Blackwell Guide to Social and Political Philosophy*, eds L.R. Simon, Blackwell, Oxford