Summary

This thesis addresses the issue of state intervention in families that give reason for concern about the welfare and upbringing of their children but do not meet the current legal criteria for limiting parental authority over their offspring. By current law it is often impossible to intervene in cases where professionals do feel this would be in the best interest of the child. I will argue that the state should have the right to intervene earlier compelling parents to accept help much sooner than is currently possible. I will discuss a number of objections against state intervention in such cases, and show why these objections should not be decisive.

The first chapter presents several proposals aimed at increasing the possibilities of state intervention in families. In each of them the state is the actor, obligating parents to comply, in situations that are currently not (yet) eligible for state intervention. Such proposals invite various objections and questions. In addition to legal questions and practical problems, more fundamental objections may be raised. These objections concern the foundations of state authority in a liberal democracy. In our society, any state intervention is to be justified within the realm of liberal morality. The critical question here is whether or not early intervention in families is defensible within this scope. This kind of intervention involves limiting civil liberties and revoking the separation of the public and private domains. Moreover, there is the risk of the state losing its neutrality by implying that one way of raising children is ‘better’ than another. On the other hand, in a liberal-democratic state, protecting citizens against maltreatment by others is an important duty of the government. We do not want children to become the victims of a state afraid to act. Therefore, I want to explore the possibilities of justifying early intervention in families within the boundaries of liberal morality. Is it possible for a state whose actions are guided by liberal principles to compel parents to accept aid and assistance in their families, even when it is not (yet) obvious that these parents damage their children or their children’s development? Which demands may a liberal state make on parents?

The second chapter discusses liberalism and its implications for state intervention in families and upbringing. Basic values central to liberalism are: liberty, equality, neutrality, and the separation of the public and the private domain. I distinguish four main trends within liberalism, each of them endorsing these core values but each with their own interpretation of these values and their implications for the radius of action of the liberal state.

According to liberalism, there are two principles that justify restrictions to the liberty of citizens. The first is the harm principle: the state may intervene if, and only if, citizens harm one another. Harm is defined as a setback in interests that is also a violation of rights. Rights are violated if welfare interests are thwarted beyond a certain threshold.
value. In contrast to the welfare interests that all citizens share, ultimate interests depend on a specific conception of the good and therefore do not warrant protection by the state. Secondly, a liberal state may impose restrictions in order to protect certain public goods. These are goods that no person in our society can do without and that require a joint effort or contribution by all citizens. Public safety and upholding the nation’s laws and liberal democracy are examples of public goods. In order to protect public goods and to maintain a democratic constitutional state, it is necessary for children – our societies’ future citizens – to acquire certain attitudes and capabilities. Therefore, the state is entitled to safeguard the civic education of its future citizens.

The third chapter discusses the four liberal views mentioned above by taking a closer look at the work of some representative authors. Furthermore, I elucidate the implications of their ideas on the role of the state in the education and upbringing of children. The first view is liberal minimalism, claiming that the role of the government should be as limited as possible in every domain. Here, (negative) liberty is the greatest good. Chandran Kukathas, whose work I discuss, does not want to impose any demands on parents whatsoever, because that would go against his ideas about the relations between a liberal state and its mature citizens. Next, I examine diversity liberalism by discussing the work of William Galston and Shelley Burtt. To them, respecting differences between people and the liberty of citizens to live their own way of life is crucial. This means that tolerance and neutrality are very important. When it comes to the upbringing of children, Galston’s main concern is their future citizenship, whereas Burtt also stresses the developmental needs of children. The third view is political liberalism, represented here by Stephen Macedo. A core concern of political liberalism is the separation of the public and private sphere. In the public domain, liberal citizens are expected to act as autonomous persons showing a liberal attitude. The private domain is considered to be separated from this; it should not to be subjected to any demands from the state. Thus, with regard to state involvement in education, Macedo focuses on children as future citizens, to be prepared for their future roles in the public domain. Finally, autonomy liberalism is represented here by the work of Jeffrey Blustein and Meira Levinson. At the forefront of their ideas on education and family life is the development of autonomy. In their vision, the liberal citizen should be an autonomous person, capable of forming and revising his or her own conception of the good and of choosing independently on the basis of this conception. The state should warrant the development of autonomy for every child. All of these authors base their ideas about what the education and upbringing of children should involve mainly on the kind of future adult the child is to become, be it an autonomous person, a liberal citizen, or a member of a cultural community. They
do not pay much attention to the life and welfare of children before the age of 18, except from a developmental perspective. However, in exploring questions of state intervention in family life, it is the child’s current situation and welfare that I claim to be most important.

In the fourth chapter I argue that a liberal state may indeed press certain demands on parents, namely concerning their children’s welfare and civic education. The demands concerning welfare are based on the welfare rights that Joel Feinberg claimed every human being to possess. In the case of children, these welfare rights appear in two ways. First, children are entitled to welfare rights now, in their childhood, while and because they are children. Second, they are entitled to developing in a way that does not threaten their future welfare as adults. The state may intervene if parents do not guarantee their children’s welfare, or if children grow up in a way that interferes with minimal welfare later on in life. Furthermore, children should go to school and receive civic education in order to develop the attitudes and capabilities associated with liberal citizenship. The state should provide for this. Parents should ensure that their children receive school education and they should enable them to function well in society, for instance by teaching them basic social skills and morality.

While I argue that children do have certain welfare rights and the right to schooling and civic education, I do not claim they have a right to developing autonomy. In my view, autonomy is rightly considered to be an ultimate interest, specific to some conceptions of the good, but not to others. A neutral state should not pass judgement on its citizens’ conceptions of the good, nor should it impose or favour one conception of the good rather than another. Therefore, a liberal state need not and should not guarantee or impose the development of autonomy, nor should it interfere if such a development does not seem to take place. The primary task of the state is to facilitate citizens in carrying out their role as parents. Only when parents do not meet the standards as proposed here, should the state intervene. To determine whether or not an intervention is warranted, both the seriousness and the probability of a setback in interests should be taken into consideration. And, preferably, the decision should be based on what is apparent in the current situation, rather than on predictions about what is to be expected in the future. In addition, the context should be looked at, in order to find out whether there is a pattern of harmful behaviour by the parents and if there may be a trade off with other interests. Finally, in order to avoid (statistical) discrimination, the decision to intervene should always be based on the individual characteristics of a particular family, not on characteristics of any group they belong to.

On the other hand, we must not wait until a child’s development is clearly thwarted, as is often done now. On the contrary, intervention is justified as soon as welfare
rights are being impaired. Children’s welfare rights encompass much more than the right not to be abused or neglected. This point of view makes it possible for the state to intervene much more often than it does at present. However, a requirement of compulsory participation in primary prevention programmes for all (future) parents is not suitable, as most families do not experience serious problems that the parents cannot deal with themselves (or with some aid they may have arranged for themselves) and because intervention in the private lives of citizens is acceptable in a liberal state only under very strict conditions.

From the above considerations I then deduce a double criterion for early state intervention in families. First, we can maintain that a liberal state should intervene if children’s welfare rights are violated or if their civic education is endangered. Second, the state may only intervene in these situations, and in doing so should respect parental liberty and authority as much as possible. These two criteria complement each other and cannot be separated.

In the final chapter I develop a practical proposal. Anybody who is concerned about any child’s situation should have the possibility to discuss their worry with a professional working for a central agency. The concern may be about a child’s welfare or about his or her civic education. There need be no suspicion of child abuse or neglect or of a seriously disrupted development; much less grave worries suffice to warrant a report. Following this report parents are invited to confer about the worries concerning their child. This may result, if necessary, in a proposal for some course of action to the parents, which they are not allowed to refuse (although they may of course challenge every decision, whether or not in a legal procedure). As the welfare of their child is the justification for the proposed intervention, parents can only be compelled to cooperate in a course of action that reasonably can be expected to improve their child’s welfare. For one thing, this means that effective treatment strategies should be available indeed, and also that all decision making should be sensitive to the specific situation of the child and family. During the process, the parents should maintain as much authority as is compatible with their child’s welfare and civic education. By working in this manner, the state can meet the double criterion for intervention in families indicated above, respecting family privacy and parental autonomy, while at the same time guaranteeing children’s welfare rights and civic education.