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Christopher H. Wellman

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CHRISTOPHER H. WELLMAN Liberalism, Samaritanism,
and Political Legitimacy

Since Plato, political theorists have been aware of the advantages of societal cooperation and at least since Hobbes we have been warned that these benefits are available only under a political state. Remarkably, we still have not adequately explained how these benefits justify the state and its coercion. In short, we have yet to bridge the gap from the benefits of a state to its legitimacy. In this article I argue that 'samaritanism' supplies the material with which to build a conceptually sturdy and normatively inexpensive bridge between a political state's function and its justification.

This paper is divided into four sections. First I explain the liberal problem of political legitimacy and samaritanism's capacity to solve this problem. In the second section I reject competing liberal views of samaritanism and advance my own approach. Next I consider the anarcho-libertarian response to the samaritan account of political legitimacy. Finally, I highlight some qualifications and implications of endorsing my samaritan model.

I. SAMARITANISM AND THE PROBLEM OF POLITICAL LEGITIMACY

To begin, let me clarify both what political legitimacy is and what it is not. Political states coerce those within their territorial borders; if you are in country X, X threatens to punish you if you disobey its legal commands. An account of political legitimacy explains why this coercion is permissible. In doing so, it explains why the state has a right to coerce

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its citizens and, correlatively, why its citizens have no right to be free from this coercion. It is crucial to notice that political legitimacy is distinct from political obligation; the former is about what a state is permitted to do, and the latter concerns what a citizen is obligated to do. Although I believe these two are related, clearly they are not identical. In my view, political legitimacy is necessary but not sufficient for political obligation.¹ In this article, I restrict my attention to political legitimacy. Political legitimacy presents a 'problem' for liberals because they place a premium upon individual liberty, and states necessarily employ coercive measures that restrict this personal dominion. A crucial task for liberals, then, is to explain why the state is justified in curtailing the liberty of its citizens. The ideal solution would be provided if citizens had consented to the state's imposition. Liberals are attracted to this consent account because it reconciles their conception of a person (as an autonomous individual with dominion over her own affairs) with political legitimacy. Thus consent theory conveniently allows the liberal simultaneously to assert that each person is morally free from all but autonomously chosen bonds and that states may permissibly coerce their citizens. Unfortunately, only wishful thinking supports the belief that existing states have garnered the morally valid consent of all of their citizens. This is why political legitimacy remains a difficulty and why liberals have looked to the benefits of political society to justify the state's coercive presence.

Problems remain for the liberal because merely gesturing toward the benefits of political society does not justify the latter's coercion. Two principal difficulties remain. First, production of benefits does not alone legitimize coercion and, while most states are *generally* beneficial (because they create more benefits than costs), none is *mutually* (or *indi-*

1. Political theorists often presume that the question of what justifies the state's coercion is merely the flip side of the issue of what grounds the citizen's obligation to obey the state. This conclusion follows from mistaking the correlative of a state's moral right to coerce as a citizen's moral duty to obey, but the true correlative of the former is merely a citizen's lack of right to not be coerced. To emphasize: Political legitimacy entails only a moral right to create *legally* binding rules, not a moral right to create *morally* binding rules. The latter entails corresponding moral duties, but the former need not; it implies at most only legal duties. The supposed existence of moral duties involves an additional (typically unrecognized) assumption that there is a moral duty to obey just law. Finally, notice that the samaritan account of political legitimacy should not be criticized for its inability to explain political obligations since, as a theory of political *legitimacy*, it does not purport to provide an account of such *obligations*.

vidually) beneficial, i.e., there will always be some citizens for whom the costs of state coercion outweigh the benefits. And second, even if states were mutually beneficial, liberalism's aversion to paternalism would preclude this from justifying the state. I will review these objections in order.

The mere fact that an institution is generally beneficial (generates more benefits than costs) does not give its leaders the license to conscript others in support of its cause. If a neighbor's youth shelter is on balance beneficial, for instance, she still may not seize my money on behalf of this shelter. But if *general* benefit does not justify coercion, perhaps *mutual* benefit suffices. That is, perhaps what is wrong with extorting my money for a youth shelter is that I get no (net) benefit from the shelter. There are two problems with mutual benefit as a source of political legitimacy, however. For starters, no existing state is mutually beneficial. There may be states that offer benefits to each of its citizens, but no state gives more benefits than costs to every citizen (especially when the opportunity cost of establishing an alternative government is considered).² Second and more important, even mutual benefit cannot justify a state's imposition because liberalism eschews the paternalism necessary to connect benefiting an individual with the permissibility of coercing that person. For instance, imagine that I have a second neighbor, an investment broker who could make me more money with my savings than I could otherwise. Clearly her ability to benefit me would not give her the right to seize my funds without my permission. Similarly, the state may not simply insist; "You cannot righteously complain about being coerced because this coercion makes you better-off."

The key is that liberals understand each person to occupy a position of dominion over her own affairs. Given this personal sovereignty, every individual has the right to choose whether and how to benefit herself, and no one may constrain someone against her will, even in the interest of benefiting her. In light of this individual autonomy, it remains unclear how the benefits of a state can justify its coercion. The overlooked link between the benefits and the justification of a state, I believe, lies within samaritanism. I will argue that what ultimately legitimizes a state's imposition upon *your* liberty is not merely the services it provides *you*, but

2. Ronald Dworkin makes a similar, but distinct, objection to justifying a state by appealing to its benefits in *Law's Empire* (Cambridge, Mass.: Harvard University Press, 1986), p. 194.

the benefits it provides *others*. As I will explain below, a state may permissibly limit a person's liberty because this restriction is necessary to provide the crucial goods of political stability to that person *and others*.

Consider the plight of Antonio and Bathsheba. Imagine that Antonio is driving along a highway when he stops to pick up a hitchhiker, Bathsheba. Bathsheba asks for a ride to Pleasantville, a town about twenty miles ahead. Antonio's route will take him through Pleasantville, so he agrees to take her. But Antonio is very explicit that he prefers driving alone, he is taking her only as a favor (suppose that he picks her up only because a storm is on the horizon), and under no condition would he be willing to take her any further. Bathsheba nods in understanding and thanks him profusely for the favor. After a twenty-mile drive in which no words are uttered, they arrive only to find that Pleasantville is anything but pleasant. In fact, it is a lawless town, a contemporary Hobbesian state of nature. The only people visible are the roving gangs of thugs responsible for the burning buildings, broken glass, and other signs of chaos that litter the scene. Antonio looks around in horror as Bathsheba begs him to escort her safely out of Pleasantville.

Is Antonio at liberty to leave Bathsheba in Pleasantville (where the car has already attracted the gangs' attention), or does Antonio have a moral duty to transport her far enough away that she will no longer be in jeopardy? I assume that Antonio is dutybound to deliver Bathsheba to safety. But notice: Antonio's duty can be attributed neither to his consent, a special relationship to Bathsheba, nor to the harm principle.³ The obligation cannot be grounded in consent, because Antonio explicitly refused to take her any further than Pleasantville. There is no special moral relationship between Antonio and Bathsheba, since the two have just met and exchanged only a few words.⁴ And the duty cannot fall

3. The harm to others principle to which I refer is the liberty limiting principle (often called the liberty principle or the harm principle) that J. S. Mill advocated in *On Liberty*. Joel Feinberg has offered the most sophisticated analysis of this principle in his book, *Harm to Others* (New York: Oxford University Press, 1984). Feinberg suggests that the harm principle forbids an agent to wrongly cause a second party to be worse-off than she would be otherwise.

4. One might object that sharing this brief ride is enough somehow either to signal Antonio's consent or to create a special bond between the 'car-mates.' This strikes me as farfetched, but those persuaded by this objection can simply alter the scenario, so that Bathsheba first appears as a hitchhiker in Pleasantville. I did not change the story this way because I would have then had to add a number of clumsy conditions about Antonio knowing that Bathsheba would not harm him or otherwise jeopardize his safety.

under the harm principle because any harm done to Bathsheba would subsequently come at the hands of a gang member rather than Antonio.⁵ What is more, Antonio could not have harmed Bathsheba, in the sense of morally wronging her (necessary for the harm principle), by taking her to Pleasantville, since she requested to be taken there, and *Volenti non fit injuria*.⁶

Antonio's duty can be explained only in terms of samaritanism. Bathsheba has a right to assistance from Antonio, and he has a correlative duty to her. Antonio's samaritan duty results from the combination of (1) Bathsheba's extreme peril and (2) Antonio's ability to assist her at no unreasonable cost to himself. Both conditions are necessary for a samaritan duty to obtain, so that if the scenario were altered on either count, no duty would exist. If Bathsheba were not imperiled in Pleasantville (suppose, for instance, that she was anxious to leave only because Pleasantville reminded her of troubled times she had spent there in the past), then Antonio would have no duty to escort her out of town. Similarly, even if Bathsheba were in dire need of help, Antonio would be at liberty to refuse if assisting would be unreasonably costly (if, for example, Antonio's car had such poor acceleration or so little gas that he reasonably feared Bathsheba's additional weight would jeopardize his escape from Pleasantville). Because Bathsheba's life is at stake and Antonio need sacrifice only his preference for driving in solitude to save her, however, he has a duty to assist Bathsheba.

Because consent, special relations, and the harm principle have been ruled out, this samaritan duty must fall under a 'benefit to others' principle.⁷ It constitutes a duty to benefit because it is a duty to make Bathsheba *better-off* (outside of Pleasantville) than she would be otherwise (left in Pleasantville). It is tempting to subsume a duty to prevent harm under the harm principle, but this temptation should not be indulged.

5. I defend this point at length below.

6. In *Harm to Others*, pp. 105–25, Joel Feinberg explains why the harm principle covers only the intersection of harms and wrongs. In other words, the harm principle prohibits one only from *wrongfully* setting back another's interests, and one's consent to be placed in a particular situation or undergo certain risks or treatment vitiates any wrongdoing on the part of another who does what is consented to.

7. The benefit to others principle (or simply the 'benefit principle') is analogous to the harm principle mentioned in note 3. A benefit to others principle forbids one from wrongly failing to make a second party better-off than she would be otherwise. As I will explain below, one's failure to benefit another is *wrong* when the other is in peril and one can rescue her at no unreasonable cost to oneself.

The mere fact that harm may occur does not show that everyone's action is forbidden/required by the harm principle. When B is about to harm C, A may have a duty to shield C from harm. B's action may be prohibited by the harm principle, but A's assistance cannot be required without a benefit principle because A's action makes C better-off (shielded) than she would be otherwise (unshielded). One might object that benefit to others principles implausibly require one ceaselessly to assist others, but a principle that requires some benefits need not require all benefits. As the samaritan account above indicates, it is neither difficult to restrict nor implausible to suppose a limited benefit to others principle according to which one is required to assist others only when they are in dire need and one can help them at no unreasonable cost to oneself.

This much is neither novel nor (hopefully) controversial. What is striking, however, is that the moral dynamics of political legitimacy are echoic of those between Antonio and Bathsheba.⁸ I will argue that, just as Antonio has no right to drive off in solitude and leave Bathsheba vulnerable in Pleasantville, citizens have no right to be free from political coercion and leave others in a condition of political instability. Just as Antonio's car is the only vehicle in which Bathsheba can flee Pleasantville, political society is the only vehicle with which people can escape the perils of the state of nature. Just as Antonio's samaritan duty to Bathsheba is not grounded in consent, special relations, or the harm to others principle, a citizen's samaritan duty to her compatriots is grounded neither in consent, special relations, nor the harm principle. In the end, if a state's coercion over its citizens is legitimate, it is because citizens have samaritan duties to each other just as Antonio has a duty to benefit Bathsheba. The state's right to coerce its citizens correlates to the latter's lack of rights to be free from political coercion, and this absence of rights stems from their samaritan duties to others. In short, our samaritan duties to others curtail our own political liberty.

To appreciate fully this analogy between a citizen and Antonio, we must understand why political states offer the only hope of escaping the state of nature. It does not require a full Hobbesian account of human

8. As Bernard Boxill has pointed out to me, there is one point of disanalogy because, unlike one's compatriots, Bathsheba clearly consents to be taken from Pleasantville. This consent does not disrupt the analogy, however, because the comparison is between a citizen and Antonio, and neither of these two give their morally valid consent.

nature to recognize that an environment with no political state would be an insecure place in which peace would be unavailable and moral rights would be disrespected. Put plainly, there will always be people unwilling to honor the moral rights of others if there were no legal repercussions of violating them. Moral rights will be respected and peace will be ensured only if police effectively protect individuals and recognized judges impartially adjudicate conflicts according to established rules.

But even if one acknowledges the value of peace and security, one might deny the necessity of territorially defined states. If the primary function of a political state is to protect rights and secure peace, then why could these same benefits not be supplied by private protection agencies or via some other arrangement? Why not sort people into protective agencies according to religion, eye color, preference for a particular set of rules, or by consent? Most importantly, how can we justify coercing people into territorially defined political units when the benefits of these states might be achieved through less coercive or even consensual means? The proper response is that political coercion is permissible because (and only when) no other arrangement is feasible. It is no mere historical accident that states are territorially defined; they are territorial because this is the only way for them to perform their functions. Recall that peace would be unavailable unless we have a decisive and accepted method of enforcing common rules and adjudicating conflicts. But notice. Because conflicts typically occur between parties in spatial proximity (since conflicts require interactions and we most often interact with those nearby), and because a judge can peacefully and decisively settle conflicts only if she has authority over both parties, a judge must have power over all those who share spatial proximity.⁹ Thus, since conflicts would proliferate and escalate if those around us followed different rules and appealed to competing authorities, we could not politically sort ourselves according to religious affiliation, sexual preference, or eye color as long as we live among people of varying religions, sexual preferences, and eye colors. I will return to the neces-

9. Because of technological advances, we are increasingly interacting (and coming into conflict) with others to whom we are spatially disparate. In international business, for instance, conflicts frequently arise between parties who are thousands of miles apart. Unless special arrangements are made, these contests are typically adjudicated by the local authorities where the product is sold. This arrangement confirms that interacting/potentially conflicting parties must appeal to the same authority and submit to the same power.

sity of political society below, but for now we can see why states must be territorially defined.¹⁰

Given that states must be territorial, it is easy to understand why political units cannot rely upon consent. The benefits of political society accrue only if all those in close proximity are similarly bound, so a state must insist that residents either play by the promulgated rules or leave. If each citizen had the political liberty to secede (as opposed to emigrate) and citizenship were established consensually, the numerically diminished and spatially disparate remaining people could not perform the functions of securing peace and protecting rights.¹¹ Indeed, the fact that emigration does not threaten a state's capacity to secure peace and protect rights confirms that states must be territorial. Whereas unlimited secession precludes a country from uniformly coercing all those in spatial proximity, emigration does not lead to conflicts between parties who play by different rules and appeal to different authorities. Thus, the fact that emigration is not as disruptive as secession is further evidence for the link between states being territorial and their being capable of performing their political functions.¹² In short, political liberty (under-

10. One might possibly object that the territoriality issue is a red herring because private schemes can and often do supply life-saving (or otherwise very important) benefits to those they serve. I agree that private agencies provide important benefits, and I admit that private agencies should be preferred when they can adequately replace coercive ones. The fact that private agencies currently provide many essential services is not necessarily a good objection, however, because it is doubtful that they could do so in a state of nature. Even if voluntary businesses could provide these benefits in the state of nature, however, I believe that the former could not *remove* us from a state of nature. I develop and defend this empirical assumption (which is admittedly necessary for my account of political legitimacy) later in this paper when I consider the anarcho-libertarian response to my views.

11. There are a number of ways a citizen can 'opt out,' so it is important to recognize that an absence of political legitimacy leaves room for unlimited permissible secession. Recall the distinction between political legitimacy and political obligation explained above: an absence of political obligation does not entail a similar lack of political legitimacy, and the former has much less striking implications. If there is no political obligation, citizens are morally free to break the law and to emigrate if they would like. If there is no political legitimacy, on the other hand, then the state's presence is impermissible and it has no right to force those within its jurisdiction to "play by the rules or leave." In the absence of political legitimacy, citizens have a moral claim to stay put *and* to be free from any legal interference; in other words, they may secede.

12. I do not claim that it is *inconceivable* that samaritanism would prohibit emigration as well as secession. Because I admit samaritan duties and the space this leaves for political legitimacy, I must admit that emigration may permissibly be limited where such limitation is compatible with samaritanism. This may sound like an awkward implication, but

stood in terms of a right to personal dominion over one's political affiliation) is incompatible with political stability. If so, samaritanism is an ineliminable ingredient of political legitimacy because people cannot enjoy the benefits of political stability without uniformly restricting the political liberty of those around them. To emphasize: The reason that *I* have no moral right to be free from political coercion (to secede) is because, even if *I* would rather forego the benefits of political society, *I* have a moral duty to others which allows my state to coerce me in order to secure political stability for *my fellow citizens*. To return to the analogy, the legitimacy of my state's coercion over me stems from the same samaritan source as Antonio's duty to Bathsheba. The only difference is that Antonio's duty to escort Bathsheba from Pleasantville requires him to give her a ride in his car, and my duty to help keep my compatriots out of the state of nature allows the state permissibly to coerce me.¹³ Once one recognizes the two facts that (1) a political state is necessary to avoid the hazards of the state of nature and (2) a government can successfully eliminate these dangers only if it is territorially defined, one appreciates why political legitimacy has the same grounds as Antonio's samaritan duty to Bathsheba.

Of course, some are likely to complain that a citizen's duty to her compatriots is disanalogous to Antonio's obligation to Bathsheba. A

I suspect this is only because the circumstances would have to be radically counterfactual for this to be so. In particular, the chances are slim that all three of the following conditions would be met: (1) a society's population is so diminished that it could not perform its political functions if more citizens left; (2) those citizens who would voluntarily remain cannot find political stability elsewhere, i.e., they cannot also emigrate; and (3) for those who would prefer to leave, the burden of staying is not unreasonable. In the end, limiting emigration is normally impermissible because it is typically either unnecessary or too costly to those denied emigration, but limiting secession is more often permissible because it is more likely both necessary and not unreasonably costly to those who would prefer to secede. If circumstances were different and all three of the above conditions obtained, on the other hand, then samaritanism could be invoked to limit emigration. I am grateful to the journal's editors for suggesting that I clarify this point.

13. The careful reader will notice the discrepancy between Antonio having a duty and a citizen being permissibly coerced by her state (as opposed to having a duty to obey her state). This is intentional because I am proposing a model of political *legitimacy*, not a theory of political *obligation*. I believe that samaritanism is required for both, but the two are not the same. As I proposed earlier, political legitimacy is necessary, but not sufficient, for political obligation. Notice also that I am not tacitly assuming some principle justifying coercion to enforce performance of one's duties. Instead, I am suggesting that the presumption in favor of each citizen's freedom from coercion is outweighed by the necessity of political coercion to rescue all of us from the perils of the state of nature.

critic might contend that the two are importantly different because either (1) citizens have consented to the imposition of their states, (2) there are morally significant allegiances among compatriots, or (3) the limitation of political liberty is covered by the harm principle. Although the consent model of political legitimacy historically has enjoyed a great deal of support, it has more recently been thoroughly discredited. This approach is doubly flawed since (1) citizens almost never consent to their governments, and (2) any act even resembling that which implies consent (like voting) is a moral nullity because it is performed under coercion (the voter in a political election will be—and has been—subject to the state's laws no matter how, or even whether, she votes).¹⁴ The notion that special, associative duties obtain among fellow citizens has been riding a recent wave of popularity, but it is no more plausible than consent theory.¹⁵ As I argue elsewhere, compatriots do not have associative responsibilities toward one another, and even if they did, these responsibilities could not solve the problem of political legitimacy.¹⁶ Given the failure of these two approaches, the most tempting way to distinguish between Antonio's duty to Bathsheba and the source of political legitimacy is to associate the latter with the harm principle. Although this move may be tempting, I will argue it is incorrect.

Since the state is justified in virtue of the harmful conditions it helps us avoid, it seems natural to subsume political legitimacy under the harm principle. After all, limiting political liberty appears justified for the same reasons the state may restrict other liberties, like free speech. (For instance, even if an individual has a right to express her beliefs, we may still permissibly prohibit her from screaming "Fire!" in a crowded movie theater.) The rationale for both restrictions is apparently that ex-

14. For illuminating discussions of consent theory, see Harry Beran, *The Consent Theory of Political Obligation* (London: Croom Helm Publishers, 1987); and A. John Simmons, *Moral Principles and Political Obligations* (Princeton, N.J.: Princeton University Press, 1979). I do not consider hypothetical consent arguments here, not necessarily because they are unilluminating, but because I follow David Schmidtz in believing that they ultimately appeal to the benefits of political society rather than consent. See David Schmidtz's article, "Justifying the State," *Ethics* 101 (October 1990): 89–102.

15. Ronald Dworkin, in *Law's Empire*, and Yael Tamir, in *Liberal Nationalism* (Princeton, N.J.: Princeton University Press, 1993), develop 'associative' accounts of political obligation, for instance.

16. See my article, "Associative Allegiances and Political Obligations," forthcoming in *Social Theory and Practice*. A. John Simmons is similarly skeptical of this approach in his article, "Associative Political Obligations," *Ethics* 106 (January 1996): 247–73.

exercising one's liberty is harmful to others and, therefore, can permissibly be curtailed by the state. Contrary to initial appearances, however, there is an important point of disanalogy between restricting political liberty and standard appeals to the harm principle. Specifically, punching, stabbing, or shooting another *causes* the victim to be worse-off in a manner that exercising political liberty would not. If one stabs someone, or even yells "Fire!" in a crowded movie theater, one is the *proximate cause* of another's harm. If everyone were individually to secede from their existing political union, on the other hand, it would lead to a harmful state of affairs, but the political fragmentation would not itself be the proximate cause of the harm. The post-political environment is harmful because of its many attendant rights violations, but in each case it is the particular rights violation, rather than the antecedent secession, which is the proximate cause of the harm. To see this point more clearly, imagine a political state with only three citizens: A, B, and C. We might prohibit A from seceding, not because the secession itself would harm either B or C, but because B and C would be vulnerable to harm after A has seceded (perhaps because B would violate C's rights once A is no longer there to mutually support C). In this case, B's action, rather than A's secession, is the proximate cause of C's wrongful harm. Thus, justifying political states for the harmful consequences they help us avoid is not tantamount to limiting political liberty with the harm principle because the mere exercise of political liberty does not *cause* harm in the manner required by the harm principle.¹⁷ In short, if A's conduct does not cause B to be worse-off than B would be otherwise, A's conduct does not harm B and, therefore, A's conduct cannot be forbidden by the harm principle.

A critic might object, however, that this case shows merely that the harm principle must be expanded to include cases when one's action leads to conditions in which rights are violated. But this proposal is unacceptable for the inaccuracy with which it assigns harm to an agent. To see this, consider a country that denied women's suffrage. Suppose that male supremacists responded to a growing women's movement by threatening to murder one hundred women if females are allowed to vote. This threat provides reasons to deny women the right to vote, but

17. For an explanation of the causal component of the harm principle, see Joel Feinberg, *Harm to Others*, pp. 165–71. I will critically assess Feinberg's stance on the causal efficacy of samaritan omissions below.

clearly it does not show the harm principle to be against women voting. Similarly, the fact that B will violate C's rights if A does not protect C does not mean that A's failure to protect C harms C; it is B who harms C, and expanding the harm principle to pin the harm on A only confuses the issue. (Of course, none of this shows that A cannot have a duty to protect C; it demonstrates only that such a duty would fall under a *benefit* rather than a *harm* principle.) Thus we must not abandon the harm principle's proximate cause requirement and, therefore, cannot restrict political liberty in the name of the harm principle.

At this point, a steadfast proponent of the harm principle might retort that exercising political liberty does harm others because it disrupts *existing* political stability. The idea here is that, since one's compatriots currently enjoy peace and security, the insecurity accompanying unlimited secession would leave them worse-off and thus harm them. The problem with this reply, however, is that the mere fact that one's compatriots currently enjoy a level of political security is insufficient to invoke the harm principle; what is essential is that one's fellow citizens have a *valid claim* to this level. Unless one's compatriots have a *right* to the advantages of political stability, they are harmed but not wronged when they lose these benefits. And since the harm principle limits only that conduct which *wrongfully* harms others, it would not restrict secession and its undeniable potential for harm. To see this, imagine that Jill daily extorts Jack's lunch money. Even if Jill became accustomed to her daily heist, she would have no right to it. And, absent Jill's right to Jack's lunch money, Jack would not be *wrongfully* harming Jill if he suddenly withheld his money. Or, in terms of slavery, a slaveowner cannot appeal to the harm principle to justify retaining her slaves on the grounds that she currently enjoys a level of comfort possible only via slavery. Thus, without a justification for the initial use of political coercion, citizens cannot cite their current political benefits to invoke the harm principle any more than Jill can appeal to the harm principle to defend her continued robbery of Jack. In the end, we must conclude that the harm principle cannot cover political legitimacy.

Before I go on to consider implications and defend my positions, it is worth recapitulating my reasoning in terms as plain as possible. I believe that Antonio has a duty to escort Bathsheba away from the perils of Pleasantville, and I suggest that this duty is a samaritan chore required by a (duly limited) benefit to others principle. Similarly, I believe

that the presumption in favor of each citizen's political liberty is outweighed by a samaritan duty to save others from the hazards of the state of nature. Because the only practical way to ensure peaceful interaction among people is to impose a common power over all those in spatial proximity, a territorially defined monopolistic authority is the only vehicle capable of hoisting us out of the state of nature. In those cases in which a state can perform its political functions without requiring more of its citizens than allowed by a duly limited benefit to others principle (i.e., when the state eliminates the perils of the state of nature without unreasonably limiting the liberty of its citizens), the state permissibly limits the liberty of its citizens. In short, if citizens do not have unlimited rights to be free from political coercion, it is because they have samaritan duties to protect their compatriots from the harmful conditions of political instability. This samaritan duty defeats the citizen's normal right to be free from political coercion and correlates to the state's right to coerce those within its territory.

If the foregoing analysis is on target, political legitimacy joins Antonio's duty to Bathsheba in being grounded in samaritanism. I have also alleged that samaritanism is best explained in terms of a 'benefit to others' principle. This account is contested by prominent liberals, however, so I will now explain my dissatisfaction with the competing liberal analyses of samaritanism.

II. LIBERALISM AND SAMARITANISM

Liberalism's alliance with the harm principle has led its adherents to struggle with samaritanism. The latter is troublesome because it appears both (1) required by duty and (2) not covered by the harm principle. Liberals typically deny either (1) or (2), but I will argue that it is better to accept both (1) and (2) and to revise liberalism. In short, I propose that the best understanding of liberalism includes a 'benefit to others' principle alongside the harm to others principle.

Jeffrie Murphy is an example of one who explicitly denies that there are samaritan rights and correlative duties. He writes:

... I can be morally lacking even in cases in which I violate no one's rights. For example: I am sitting in a lounge chair next to a swimming pool. A child (not mine) is drowning in the pool a few inches from

where I am sitting. I notice him and realize that all I have to do to save him is put down my drink, reach down, grab him by the trunks, and pull him out (he is so light I could do it with one hand without even getting out of my seat). If I do not save him I violate no rights (strangers do not have a right to be saved by me) but would still reveal myself as a piece of moral slime properly to be shunned by all decent people.¹⁸

Certainly Murphy is right that there is more to morality than merely respecting rights, but a liberal can agree with Murphy on this point and still reject his analysis of the drowning child. I take issue with Murphy's description of the poolside encounter because I believe there are samaritan rights and correlative duties. One need posit only the existence of positive rights in order to allege that the lounge has a duty to save the drowning child. I shall return to positive rights in the next section when I consider the rigorous libertarian position, but for now let me make plain that I reject Murphy's analysis because I believe that the child has a positive right against the lounge.

Joel Feinberg leads another liberal approach to samaritanism. He argues that the harm principle covers the drowning child's right to be saved and the lounge's correlative duty.¹⁹ I grant that there are perfect duties to assist strangers, but I question Feinberg's claim that these duties issue from the harm principle. Expanding upon my discussion above, I will argue that Feinberg fails to reconcile samaritanism with the causal component of the harm principle.

As Feinberg acknowledges, conduct can be limited by the harm principle only if it *causes* harm.²⁰ If one fails to act, however, it is difficult to see how one's nonaction can be a causal factor at all, let alone the proximate cause. In Antonio's case, it seems curious to allege that he is the proximate cause of Bathsheba's harm when Antonio takes no action to harm her. Feinberg concedes that most inactions cannot be causes but argues that some can. Consider, for instance, a causal explanation for Itchy's broken arm. Suppose Itchy broke her arm falling down a flight of stairs. Itchy's fall was her first after thousands of trips up and down these stairs, and she slipped on a patch of ice that had never collected

18. Jeffrie G. Murphy, "Blackmail: A Preliminary Inquiry," *The Monist* 63, no. 2 (1980): 168 n. 6.

19. Joel Feinberg, *Harm to Others*, pp. 126–86.

20. Joel Feinberg provides a full account of why the harm principle prohibits only conduct which produces or causes harm in *Harm to Others*, pp. 105–25.

there before. Assume further that ice had never formed because Itchy's landlord, Scratchy, had always put salt on the stairs before winter storms. If we discovered that Scratchy had not salted Itchy's stairs before this particular storm, we are liable to cite Scratchy's omission as the cause of Itchy's broken arm.

Rather than allege that just any inaction could be causally cited, Feinberg specifies that *omissions* can cause. Thus, not everyone who failed to prevent another's harm could be causally responsible: only those who *omitted* to prevent the harm. According to Feinberg, a failure to act constitutes an omission only when the following criteria are met.

A omitted to do X when

1. A did not in fact do X.
2. A had a reasonable opportunity to do X.
3. A had the ability to do X.
4. A believed that there is at least good chance that there is a person in peril and that he has sufficient ability and a reasonable opportunity to rescue that person.
5. It was in some way reasonable to expect A to do X in the circumstances, either because
 - a. A or people in A's position ordinarily do X, or because
 - b. A had a special duty to do X in virtue of his job, his socially assigned role, or his special relationship to B, or because
 - c. A had a moral obligation to B to do X in virtue of a prior agreement between them, or a promissory commitment, or because
 - d. for some other reason there is a moral requirement that people in the position A found himself in, do X.²¹

Feinberg's argument for construing a samaritan's failure to prevent harm as causing this harm can be reduced to two premises and a conclusion. (1) Because of her moral duty to act, a samaritan *omits* rather than merely fails to act. (2) Omissions (as opposed to mere nonactions) can be causes. Therefore, (3) the samaritan's nonaction can be the cause of the harm and thus is covered under the harm principle.

The problem with this argument is that it does nothing to show that samaritan inactions cause harm; it demonstrates only that a samaritan's inaction *cannot be ruled out* as a possible cause merely because it is an

21. Joel Feinberg states and explains these conditions in *Harm to Others*, pp. 159–63.

inaction. Feinberg attempts to show that samaritan inactions can cause by classifying them as omissions. This move is insufficient, however, because, even if samaritan inactions are omissions, we must further know that *all* omissions can be causes. If not all omissions can be causes, then the fact that samaritan inactions are omissions does not entail that the former can be causes. Thus Feinberg's argument trades on a fallacy involving sets and the properties generally exhibited by members of these sets. It is analogous to classifying a duck-billed platypus as a mammal, taking time to indicate that many mammals give birth to their young live, and then concluding that duck-billed platypuses give birth to their young live.²² To fortify his argument, Feinberg needs to show not just that *some* omissions can be causes, but that *all* can be. But even if he does this, he would still need an independent argument, rather than a stipulation, as to why samaritan inactions are omissions, and this would constitute a radically different argument (since his current argument for the causality of these inactions assumes they are omissions, and the new one would have to *prove* they are omissions).

While Feinberg has not shown that samaritan inactions necessarily are causes, neither have I demonstrated that they are not. In fact, if Feinberg could demonstrate why samaritan inactions should be considered omissions and then could show that all other omissions can be causes, there would be a presumptive case in favor of viewing samaritan inactions as potential causes. To combat this *prima facie* case, I will show why, even if samaritan inactions were labeled omissions, they are distinct from other omissions in a way that suggests their causal inefficacy.

If one surveys Feinberg's list of circumstances in which it is reasonable to expect A to act (a–d of condition 5), the samaritan condition (d) is the only one in which no special moral or statistical relationship exists between A and B. (Indeed, the samaritan case is a shorthand label that specifically designates the absence of a special bond or relationship.) Furthermore, I submit that it is precisely these special relationships, rather than moral duties, that prompt our causal citations. To see this, imagine two possible scenarios involving samaritans. In the first, A encounters B, who requires assistance in manner Y. A has no duty to assist B in manner Y, but as a matter of fact, almost everyone in A's position does offer this assistance. In the second scenario, C encounters D who

22. The duck-billed platypus is categorized as a mammal despite the fact that its young are hatched from eggs.

requires assistance in manner X. C has a moral duty to assist D in manner X, but as a matter of fact, almost everyone in C's position withholds this aid. I suggest we would causally cite A's omission rather than C's because we typically single out deviations from the normal circumstances (including aberrant behavior), not moral relationships. Indeed, Feinberg acknowledges the importance of the former when he writes; "We ask what caused the surprising event and expect an explanation that will cite a factor normally present but absent this time, or normally absent but present this time, that made the difference. The occasion for explanation is a breach of routine; the explanatory judgment cites another deviation from routine to correlate with it."²³

Given Feinberg's recognition that causal citations involve deviations from normality, it is curious that condition d (which refers to moral relations rather than statistical normalcy) is included. Perhaps the inclusion of conditions b and c (in which inactions qualify as omissions in virtue of the special obligations) led him to believe that mere duties make inactions omissions, but even in these cases I think it is the manner in which the obligation emerged rather than the duty itself which prompts our causal citation. For instance, we speak of a lifeguard's failure to prevent a drowning as an omission because lifeguards have jobs to, *and normally do*, act to prevent drowning rather than simply because they have duties to do so. What is more, morality might indirectly influence our causal citations because if people are generally moved by their duties, we can reasonably expect one to do one's duty. But even in these cases any failure to perform a duty invokes causal citations for its *abnormality*, not its *immorality*.

In the end, though, I suspect Feinberg wants to suggest that samaritan inactions can be considered causes from a nonexplanatory standpoint. According to Feinberg, this nonexplanatory cause need not be an abnormal interference because the causal citation is used not to explain how the harmful state of affairs occurred, but to fix the blame upon a certain agent.²⁴ This notion of causation may be illuminating in some contexts, but it cannot be useful in samaritan cases for two reasons. First, this nonexplanatory cause seems incompatible with the causal component of the harm principle, which requires that the conduct

23. Feinberg, *Harm to Others*, p. 176.

24. Feinberg discusses explanatory and nonexplanatory causal citations in *Harm to Others*, pp. 176–77.

cause or *produce* the harmful state of affairs. Perhaps Feinberg could relax the causal requirement, but this procrustean move reconciles samaritanism with the harm principle only by distorting the latter's initial dimensions, not by showing samaritan cases to fit our previous concepts. Second and more importantly, we cannot use causal citations to fix the blame in samaritan cases because we must already know the agent is blameworthy in order to know that her inaction constitutes a cause. This is because, of inactions, only omissions are causes. And since we know that a samaritan's inaction is an omission only once we posit that she has a duty to act, we already know that she is blameworthy before we can make any causal claims, so the causal citation does no work in fixing the blame. (In other words, we need not reason that [1] duty implies omission, and [2] omission implies cause, and [3] cause implies harm, so that we can conclude [4] harm implies blameworthy because we can simply infer the blameworthiness from the duty with which we began in [1].) Thus it appears that the appeal to nonexplanatory causation will not reconcile samaritan omissions with the harm principle.

In sum, even if Feinberg could furnish an argument which proves that samaritan inactions should be considered omissions (that is, why clause d should be included in condition 5), he would still need to show that *all* omissions could cause before he has proven that samaritan inactions can cause harm. Not only has he not done so, but I have countered even a presumptive case for this conclusion. What is more, I have indicated why expanding the causal condition to include nonexplanatory causes is not helpful. We may safely conclude that Feinberg has not shown that duties to prevent harm derive from the harm principle. So, while authors like Murphy reject Feinberg's analysis because of skepticism about samaritan duties, I accept these duties but dispute that they are subsumed under the harm principle. If samaritan duties exist, they must stem from a benefit to others principle.

Because my difference from Feinberg on this point is of such importance, it is worth recapitulating it in plain terms. Feinberg and I agree that, in general, A harms B when A's action makes B worse-off than B would have been otherwise, and A benefits B when A's action makes B better-off than B would have been otherwise. We diverge regarding samaritan acts, however, because in these cases Feinberg thinks A's samaritan action merely does not harm B, whereas I believe A's action

actually benefits B. To review this difference, consider how Feinberg and I would describe Alice's relation to Betty and to Carol. Suppose that Alice is lounging beside a pool, Betty is relaxing in the pool and wants Alice to help her get out of the pool without getting her hair wet, and Carol is drowning in the pool and would die unless Alice rescues her. Feinberg and I agree that Alice benefits Betty if Alice helps Betty exit the swimming pool without getting her hair wet, but we disagree on the best description of Alice's helping Carol out of the pool when Carol is drowning. I insist that Alice benefits Carol since Alice's action makes Carol better-off than she would have been otherwise. Feinberg, on the other hand, argues that Carol's peril transforms Alice's assistance into a failure to harm rather than a benefit. I agree that Alice has a duty to assist Carol and no duty to help Betty, but I disagree that this duty shows why the harm principle must be invoked.

Although I have not argued for this here, I suspect Feinberg's error stems from his regard for the harm principle and, as a result, his inclination to argue that a harm results wherever a duty is not fulfilled. Confusion results unless we keep harms and duties separate. A harm makes someone worse-off, a duty is a moral requirement, and (absent an argument to the contrary) there is no reason to insist that harms and duties must be extensionally equivalent. Feinberg recognizes that not all harms are wrongs, and I urge us not to mistake all wrongs as harms.²⁵ To my mind, Murphy is wrong to deny samaritan duties, and Feinberg is mistaken to align samaritanism with the harm principle. If I am correct, we are sometimes morally required to perform samaritan rescues, and these duties derive from a 'benefit to others' principle.

III. THE ANARCHO-LIBERTARIAN RESPONSE

In the absence of consent, a liberal cannot purchase political legitimacy for free. With this in mind, we must acknowledge that the samaritan justification for political coercion is not without costs. In particular, it requires one to grant two premises: (1) positive rights exist, and (2) a political state is essential to secure peace and protect rights. An anarcho-libertarian might contest each of these positions.

Because there are different ways in which one can be either an anar-

25. As I mentioned in note 6, Feinberg's harm principle prohibits one only from *wrongfully* harming others.

chist or statist, let me distinguish between descriptive and normative anarchism and descriptive and normative statism. One is a *descriptive anarchist* if one believes the state performs no vital function that could not be performed without it, and one is a *normative anarchist* just in case one believes the state is not morally justified. One is a *descriptive statist*, on the other hand, if one believes the state performs a crucial function that could not be performed without it, and one is a *normative statist* just in case one believes the state is morally justified.

The most rigorous form of libertarianism denies positive rights and alleges that, even if *descriptive* statism is true, *normative* statism is false. This position insists that, even if there are vital functions that only a state can perform, the state may not limit the political liberty of its citizens without their consent. Rather than plod through the well-worn arguments in favor of positive rights here, I will openly assume their soundness and take the time only to point out that the arguments of this paper strike yet another blow against the rigorous libertarian position.²⁶ If I am right that samaritanism is essential to justify the state, then we can turn this first objection on its head and use it as a *reductio* against libertarians. Whereas the rigorous libertarian rejects political legitimacy because it requires positive rights, I recommend dismissing libertarianism because it precludes political legitimacy in the absence of unanimous consent. This swapping (and inverting) of intuitions is unlikely to convince an unblinking libertarian that she is mistaken, but at the very least she must add the impossibility of political legitimacy to an already steep moral price-tag for her view. Again, recall that we are considering political legitimacy, not merely political obligation. Thus, while if the libertarian cannot explain the latter, she need admit only that citizens have no moral obligation to obey the state's laws and they are free to emigrate. Because my argument shows that the rigorous libertarian cannot give an account of political legitimacy, however, she must bite a bigger bullet and confess that each existing state must allow unlimited secessions and then may permissibly govern only those who consent to its imposition.

Normative statisticians should not be too quick to claim victory, however, because there is another way to attack the samaritan account of political legitimacy. A more popular (and promising) anarcho-libertarian approach is to assert that normative statism would be true if descriptive

26. Allen Buchanan provides an exceptionally clear explanation of the problems of endorsing negative rights while denying positive rights in his book, *Ethics, Efficiency, and the Market* (Totowa, N.J.: Rowman & Littlefield, 1988), pp. 64–78.

statism were accurate, but normative anarchism is true because descriptive anarchism is accurate. In terms of my premises, this libertarian critic grants (1) but denies (2). Some believe that states perform no vital function that could not be provided by private enterprises in the state's absence and, as a consequence, states that lack consent are not justified.²⁷ They reason further that because existing states lack consent, all are illegitimate. What is more, they argue that rational and informed people would never consent to any state once they recognize that private groups could perform all the political functions more efficiently than any state does. This is how some libertarians argue for normative anarchism. It is important to recognize that my view diverges from the second libertarian critic's only because we disagree over a descriptive claim. These anarcho-libertarians and I both agree that a state is justified only if it performs a crucial function that cannot be served by private industry. We differ, then, only because I am a descriptive statist while they are descriptive anarchists. With this in mind, let me briefly revisit my claim that the state is necessary to perform certain vital functions.

I argued above that unlimited political liberty precludes peace and security because the voluntarily remaining citizens would be unable to construct an effective legal regime. This counterfactual hypothesis relies upon the assumption that many of us would not respect moral reasons without an effective legal system providing self-interested practical reasons for doing so. The recent riots in Los Angeles following the Rodney King verdict support this view. Once the chaos was so extreme as to render the police helpless, masses of people took advantage of the inoperative legal system by selfishly violating the rights of others. I believe many simply ignored the moral rights of others because there were no longer sufficient self-interested, practical reasons to motivate them to respect these rights.

A descriptive anarchist need not assert that everyone will respect moral reasons in the absence of effective legal regimes; she can make the more plausible claim that private companies can effectively protect

27. Authors like David Friedman, Bruce Benson, and Randy Barnett argue in this manner. To my knowledge, the most impressive attempts to show that the state cannot be justified in terms of functions which cannot be performed in its absence are Benson's *The Enterprise of Law* (San Francisco: Pacific Research Institute, 1990), and Barnett's article, "Restitution: A New Paradigm for Criminal Justice," *Ethics* 87 (July 1977): 279-301; and Barnett's lengthy unpublished manuscript, "The Function of Justice and the Rule of Law." I am indebted to Randy Barnett for showing me that descriptive anarchism should not be dismissed lightly; my thinking on this subject has been influenced dramatically by our helpful conversations.

moral rights. In my view, this is a very real possibility that has been given short shrift by traditional political theorists. Federal Express is an excellent example of a private company which provides a service that most of us assumed could be performed only by a (state's) monopoly. But, while I am impressed with Federal Express and am open to privatizing many current political institutions, I remain skeptical of trading our states for private protection agencies. The principal difficulty is that not all people would gravitate to one single protective company, and stability would be threatened by clashes between competing enforcement agencies. More specifically, because private companies are concerned principally with profits, each would strive maximally to attract and retain clients. Since people would select agencies for self-interested reasons, they would seek agencies that best protect their clients. A problem arises, then, since maximally protecting clients could require a company to disrespect the moral rights of nonclients. Because these nonclients of one agency would likely be customers of another agency that similarly strove to protect its clients, however, there is apt to be constant strife and struggle between competing protective agencies which threatens peace and leaves individual moral rights vulnerable.

I suspect that a system of private protection agencies would experience additional difficulties, but we need not catalogue these here. For now, it is enough to note that the state appears the only effective vehicle to maintain peace and protect rights because such peace and security requires a territorial monopoly of power which cannot be achieved if everyone's consent is required. In a market situation, no private agency would be selected by all, so competing agencies would clash in a manner that undermines peace. I must confess, though, that if someone could generate conclusive evidence that peace and security could be secured in the state of nature, I would reject descriptive statism and endorse both descriptive and normative anarchism.

IV. AMPLIFICATIONS, QUALIFICATIONS, AND IMPLICATIONS

Before closing, I will highlight several striking features of the samaritan justification for political coercion. Understood correctly, this view shows why our duties of political stability are more expansive than many have thought and why those who object to bad samaritan legislation and redistributive policies often do so on confused grounds.

This model's first revisionist implication is that duties to provide political stability are due to all *humans*, not just fellow *citizens*. This is in stark contrast to most theories which view a citizen as having political duties to only her own state and/or compatriots (since only *it* has benefited her or because only *they* partake in the same political association as she, for instance). Because samaritan duties can be owed to anyone, however, the samaritan model of political legitimacy can ground a duty to imperiled foreigners just as it generates a justification for one's own country.²⁸

Although this element of samaritanism is at odds with many traditional models, it is compatible with, and supportive of, several historical and contemporary political theorists. Immanuel Kant, for instance, recognized that people not only have an obligation to the state to which they belong, they would also have a duty to *create* a state over themselves and those with whom they regularly come into contact if they were ever in the state of nature.²⁹ A powerful gangleader in Pleasantville might have a duty to help construct a stable government if she were able, for instance. More recently, Allen Buchanan has appreciated that one country (or a conglomerate of countries, like the United Nations) might have a duty to help create political stability where a government

28. The samaritan model does recognize an important difference between compatriots and foreigners, however, because the former contribute to one's own political benefits whereas foreigners do not. This explains why we may have more substantial and more frequent samaritan duties to our fellow citizens (since the reasonableness of the chores we must perform is measured in terms of the burdens we endure minus the benefits we receive). Thus, it is not that the samaritan model does not distinguish at all between compatriots and foreigners, it is merely that it does not do so in a manner that rules out political duties to benefit foreigners.

29. Immanuel Kant, *The Metaphysical Elements of Justice* (New York: Macmillan, 1965), trans. John Ladd, p. 76. Although I follow Kant in alleging that duties to ensure political stability are owed to all persons (not just current compatriots), our views differ in a number of important respects. Most significantly, Kant does not distinguish between political legitimacy and political obligation, nor does he recognize that the initial duty required is a positive duty (and even if he did, he would not likely characterize it as—or limit it to—a 'samaritan' duty). In addition, I reject the account of positive and negative freedom he invokes to politically bind citizens. Despite these differences, our arguments share important features. In light of this, one might question whether I follow Kant in positing a duty among states to enter into a cosmopolitan federation. I have no firm view on this matter, but I doubt that such a 'world state' is required. I recognize that similar dynamics exist between countries that would exist among individuals in the state of nature, but I suspect that collective-decision and collective-action problems (among other things) keep states from violating each other's rights in the way that individuals would in a state of nature. I appreciate the editors' suggesting that I compare my view to that of Kant.

has collapsed.³⁰ The recent difficulties in Somalia and Cambodia, for instance, are prime cases where the strongest actors on the international stage can have a duty to help resurrect a stable government.³¹ I believe Kant and Buchanan are correct to defend these positions, and I would add only that these revisionist conclusions cannot be supported without positing a duty to benefit others.

Secondly, samaritanism's role in political legitimacy has some striking implications for immigration. In particular, we cannot assume without argument that we may permissibly close the doors of our state to those who most need entrance. But while samaritanism prohibits us from dogmatically invoking an 'us' as opposed to 'them' mentality, it does not require the wealthy countries to have an 'open-door policy.' Samaritanism has a built-in mechanism to limit excessive immigration because, after a certain point, the costs to the citizens of the wealthy countries become unreasonable. (Because samaritanism requires one to benefit others only when the rescue is not unreasonably costly, there are limits to the amount of charitable immigration a country is obligated to endure.) Thus, samaritanism has the quite plausible implication that, although no wealthy country can turn its back to the most desperate refugees in the international community, a country is not required to absorb immigrants until there are no foreign countries with a lower quality of life.

In addition, notice that the necessity of samaritanism for political legitimacy spells trouble for those who contest the permissibility of either 'Bad Samaritan' criminal statutes or redistributive programs. Bad samaritan laws make criminal certain samaritan omissions (like failing to dial 911 on Kitty Genovese's behalf, for instance), and redistributive policies transfer resources from the rich to the poor. Some libertarians favor a minimal state and insist that samaritan and redistributive legislation is unjust because it is incompatible with the harm principle. If the arguments of this article are correct, however, these libertarians face a

30. Allen Buchanan, "The Morality of Inclusion," *Social Philosophy and Policy* 10, no. 2 (1993): 233–57.

31. Like most authors, I am loathe to encourage larger, more powerful countries to interfere with the autonomy of smaller, more vulnerable ones. Consequently, I would prefer for imperiled states to be assisted by international task forces designed specifically to help create and maintain peaceful and stable governments. If no such body is able and willing to assist, however, the people of one country might have a duty to assist the people of another territory.

dilemma because political legitimacy does not derive from the harm principle; a minimal state requires a benefit to others principle just as bad samaritan criminal statutes and redistributive legislation do. So the libertarian must either confess that even a minimal state is unjust or accept the permissibility of samaritan and redistributive legislation; she cannot retain the former without the latter or dismiss the latter without the former. Of course, there may be good objections to any particular samaritan or redistributive policy, but neither can be summarily dismissed merely because of its incompatibility with the harm principle. Because theorists differ regarding how extensive and demanding a list of positive rights they assert, liberals will inevitably vary concerning which functions a state may justifiably impose upon its citizens.³²

At this point, a critic might object that the samaritan account of political legitimacy requires too much. That is, samaritanism is too liberal in doling out obligations because, while I am correct that it can legitimize a government's coercion, it can also justify a slaveowner's use of force. Earlier I rejected possible sources of political legitimacy because they apply equally to slavery, so it is worth taking the time to show why (even if there is disagreement about the scope and depth of our samaritan duties) endorsing the samaritan model of political legitimacy need not force one to permit slavery.

The short answer is that slavery cannot be grounded in samaritanism because it requires too much of the slaves. Although samaritanism derives from a benefit to others principle, it does not demand that one ceaselessly or excessively give to others. It requires one to assist others only when such assistance is not unreasonably costly and will save the person from peril. (Recall that Antonio would have no samaritan duty to escort Bathsheba away from Pleasantville if either Bathsheba was not seriously imperiled, or Antonio's own escape might be jeopardized by assisting Bathsheba.) Clearly, then, slavery is incompatible with samaritanism on two counts: (1) slaveowners would not be imperiled without their slaves, and (2) slavery is unreasonably costly to the slaves.

32. In other words, since two liberals may emphasize liberty to varying degrees, they are liable to disagree about the permissibility of particular secessionist movements. For instance, one author might believe that the American Revolution (which was actually a secession) was justified but that the South had no right to secede from the Union, whereas a second might allege that both had a right to independence, and a third could insist that neither had any such right. Their disagreements boil down to their differing emphases upon liberty and the duty to benefit others.

To this a critic might retort that political citizenship is also too costly for samaritanism. Thus, even if one's fellow citizens would be sufficiently imperiled in a state of nature, the costs of citizenship are far too high, and, therefore, one's liberty to secede cannot be defeated by samaritanism. Indeed, along the spectrum with Antonio and Professor Murphy's lounge on one side and the slave on another, a citizen's burden would apparently place her far closer to the latter than the former. But this objector errs by forgetting that, while the costs of citizenship are frequently plentiful and far-reaching, so are the benefits. Once one subtracts the benefits from the costs of citizenship, one understands the plausibility of invoking samaritanism to justify political coercion. This is why I specifically explained above that "a state may permissibly limit a person's liberty because this restriction is necessary to provide the crucial goods of political stability to *that person and others*" (p. 174, emphasis added). At the time, my insistence that 'that person' receive the goods of political stability might have seemed paternalistic and out of place. But we now see that allotting benefits to all citizens is essential for political legitimacy not because of paternalism, but because these benefits are necessary to ensure that the burden of citizenship is not unreasonably costly.³³ South Africa's recent system of apartheid could not be justified with the samaritan model, for instance, because (given that blacks had all the costs without all of the benefits of political life) the costs of citizenship were too high for blacks. In terms of the spectrum, blacks in South Africa were much closer to slaves and much farther from Antonio than the citizens of a just state. Thus, while an efficient and fair government can be justified with samaritanism, a grossly inefficient or unfair state would be disqualified as too burdensome.³⁴

Here a critic might accuse me of making a stone soup since I am getting away from samaritanism by invoking fairness and efficiency.

33. Given that this samaritan duty obtains only when citizens themselves share in the political benefits, the question arises as to what conception of benefits (objective, subjective, or 'reasonable person') is at work here. I suspect that the usual difficulties will attach to any choice (the objective standard will allow for individuals to suffer subjectively and the subjective standard would limit the state too much, for instance), but I am inclined to favor a reasonable person standard of benefits. I am grateful to the editors for raising this question.

34. This feature of the samaritan model of political legitimacy allows it *plausibly* to distinguish between justified and unjustified states, unlike other accounts (the consent approach, for instance, must implausibly allege that just states have received consent while unjust ones have not).

This criticism is inappropriate, however, for two reasons. First, the fairness and efficiency required are not merely added to samaritanism; their presence is necessary for samaritanism to obtain in this context. And second, I never claimed that a duty to others was the *only* ingredient in the best recipe for permissible political coercion. Justifying the state is a complex issue that cannot be reduced to any solitary element.³⁵ I have argued only that samaritanism is an essential component that has been all too often ignored by liberals concerned to solve the problem of political legitimacy.

V. CONCLUSION

In the introduction, I advertised samaritanism as the overlooked key to a “conceptually sturdy and normatively inexpensive” account of political legitimacy. This model is conceptually sturdy because its only contestable empirical premise is that political states are necessary to avoid the extreme perils of a lawless environment, and it is normatively inexpensive since its only controversial moral premise is its presumption of positive rights.³⁶ I have offered a conclusive deductive argument for neither of these claims, but I have tried to show why each is plausible. Like other liberal theorists, I would prefer a “conceptually flawless and normatively costless” account of political legitimacy. In lieu of a theory that squares political coercion with the harm principle, however, I recommend paying the small costs of samaritanism over engaging in either conceptual fantasy or normative wishful thinking.

35. Indeed, not only do I think that samaritanism cannot alone justify the functionalism of political legitimacy, I believe that the functions of a government are not the whole story. I have suggested elsewhere that this functional component must be combined with a consent mechanism for groups able to perform the requisite political functions. I argue for this hybrid account of political legitimacy in my essay, “A Defense of Secession and Political Self-Determination,” *Philosophy & Public Affairs* 24, no. 2 (Spring 1995): 142–71.

36. Of course, not all assumptions of positive rights are “inexpensive.” My view has a small cost, however, because it supposes only samaritan rights. It should be pointed out, though, that these samaritan rights are not sufficient to purchase a ‘full-blown’ liberal welfare state; the latter requires much more expensive positive rights. I am not suggesting that such a state is illegitimate, but it would require more than the samaritan rights I posit in this essay.