

## Article

# Immigration Ethics: Sacred and Secular

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**Abstract:** The U.S. and other nation-states regularly impose horrific harm on immigrants, would-be immigrants, refugees, and asylum seekers: ‘migrants’, for short. Migrants are regularly separated from their spouses and children, detained for long periods under brutal and dehumanizing conditions, forced to live in squalid camps, threatened with state-sanctioned violence, deported to foreign lands in which they have little social connection or means of support, forcibly prevented from fleeing violence and poverty, and more. The vast majority of migrants subject to such treatment are non-criminal people looking for honest work, hoping to make a better life for themselves and their children. In this paper, we will argue that the plausibility of the usual justifications for such harms to migrants depends importantly on the metaphysical framework from which one approaches the ethics of immigration. We will argue that, from within a secular framework, in which God plays no role in matters moral, there is at least a surface-level plausibility to some of the standard justifications for harms to migrants in service of border control, but that given a theistic framework of the sort at the heart of Judaism and Christianity, the usual justifications for such harms fall flat: none are even remotely plausible. The upshot of this, we shall urge, is that denizens of those religious traditions should support a policy of nearly open borders.

**Keywords:** immigration; religious ethics; open borders



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The U.S. and other nation-states regularly impose horrific harm on immigrants, would-be immigrants, refugees, and asylum seekers: ‘migrants’, for short. Migrants are regularly separated from their spouses and children, detained for long periods under brutal and dehumanizing conditions, forced to live in squalid camps, threatened with state-sanctioned violence, deported to foreign lands in which they have little social connection or means of support, forcibly prevented from fleeing violence and poverty, and more. The vast majority of migrants subject to such treatment are non-criminal people looking for honest work, hoping to make a better life for themselves and their children.

How do voters and policy makers in the wealthy democracies who impose such hard treatment on migrants justify so treating their fellow humans? In a myriad of ways: such treatment of migrants is necessary, it is claimed, to protect against would-be bad actors (terrorists, drug traffickers, etc.), to protect native wages and jobs, to preserve social cohesion or national culture, to prevent social services from being swamped, and to protect against environmental and social catastrophes.

In this paper, we will argue that the plausibility of these and other usual justifications for the above sorts of harm to migrants depends importantly on the metaphysical framework from which one approaches the ethics of immigration. We will argue that, from within a secular framework, in which God plays no role in matters of morality, there is at least a surface-level plausibility to some of the above justifications for harm to migrants. But given a theistic framework of the sort at the heart of Judaism and Christianity—on which God is the divine parent, we are all God’s children, inhabiting lands that belong not to us, but to God, lands that are intended by God to be held in trust for the care of all of his children—the usual justifications for harming migrants in the ways described above fall flat: none are even remotely plausible.<sup>1</sup>

The upshot of this, we shall urge, is that denizens of those religious traditions should support a policy of nearly open borders. By that, we have in mind any state border enforcement regime on which, for ordinary migrants anyway, anyone who needs to come in may come in: anyone who would suffer serious harm were they excluded may come in. (By *ordinary migrant*, we have in mind those, like the vast majority of migrants, who are non-criminal people seeking honest work, asylum, proximity to family, and the like.) We call this a policy of “nearly” open borders because it is compatible with some exclusion (of, for example, criminals) and because it is compatible with a good deal of border regulation. It is compatible, for example, with the imposition of registration requirements, entry fees and taxes, and other restrictions on time, place, and manner of entry. So long as these comprise no serious obstacle to migration for ordinary migrants who need to come in, all such regulations are compatible with the sort of open borders we have in mind. So we will claim, then: Adherents of religious traditions rooted in the above sort of metaphysical framework—Judaism, Christianity—should be for nearly open borders.

We start by explicating some popular justifications for harm to migrants in service of border control. All are plausibly construed in terms of the idea of defensive harm: harm aimed at defending the interests of some person or group—in this case, harm to migrants aimed at defending the interests of citizens.<sup>2</sup> We will say a bit more about the idea of defensive harm below, but by way of prolegomenal comment, we note that, though it is utterly natural to think of the usual justifications for harm to migrants in terms of the idea of defensive harm, and though there is a well-developed literature on the ethics of defensive harm, there is surprisingly little interaction between that literature and the immigration ethics literature.<sup>3</sup> We find that somewhat odd and intend our below discussion to bridge the gap between those literatures.

## 1. On Immigration Restrictions and Defensive Harm

We presuppose that persons standardly have a right not to be subjected to the sorts of serious harm typical of modern-day border enforcement—family separation, long detentions, deportation, and the like. But that right is not absolute: it can be overridden or suspended. Someone can be justifiably subjected to such harms if (i) there are sufficiently strong reasons for imposing the harms, reasons strong enough to *outweigh* the right not to be so harmed, or (ii) that right has somehow been suspended. On the latter: The most obvious way a right can be suspended is by *consent*; I can suspend my right against some treatment by consenting to that treatment. But there are other ways to suspend a right. For example, someone who attacks another without justification suspends their right against defensive harm, even if they have not consented to being harmed. When a person suspends a right against defensive harm without consenting to that harm, we will say that they make themselves *liable* to defensive harm.<sup>4</sup>

We take it, then, that there are three possible justifications for subjecting migrants to the substantial harms of modern-day border enforcement: (i) they have consented to being thus harmed, (ii) they are liable to being thus harmed, or (iii) there is a “lesser evil” justification for thus harming them (i.e., the reasons to impose the harms are sufficiently strong as to outweigh their right not to be thus harmed and make infringement of that right the lesser evil).<sup>5</sup> The main justifications, popular and scholarly, for defensive harm to migrants may be thought of as falling under these three categories. We will treat the categories in order.

### 1.1. Consent-Based Justifications for Defensive Harm to Migrants

We are not aware of such argument in the immigration ethics literature, but in classroom discussion, we have sometimes encountered the argument that unauthorized migrants—those without proper legal authorization for entry into a host country—have, at least implicitly or hypothetically, consented to the harms of border enforcement. It is well known and well-advertised that, if a migrant crosses a border illegally or improperly overstays a travel visa, s/he incurs the risk of various sorts of state-sponsored harm. If you

thought that to engage in behavior known to carry risks of certain sorts of harm was to thereby consent to such harm, you could infer that unauthorized migrants—who illegally cross borders and, in the vast majority of cases, know the risks of harms entailed thereby—have consented to the harms of border enforcement. If you thought that, you would have reason for thinking that the substantial harms imposed on unauthorized migrants by state border enforcement are, in the vast majority of cases, justifiable on grounds of consent.

Above we said that, given a secular framework on which God plays no role in matters of morality, many justifications for state-sponsored harm to migrants enjoy at least a surface-level plausibility. This is not one of those. Suppose your friend announces that she will attend tonight's fraternity party, a party well known for the frequency of sexual assaults that occur there. You decide to accompany your friend, hoping for safety in numbers. Were you to become a victim of sexual assault, the perpetrator could hardly claim that you had consented to such assault (even if only implicitly), on grounds that you knew the risks when you came. Manifestly, you did not consent to this: doing that which carries known risks of harmful treatment does not entail consent to that treatment. Likewise, we say, for migrants.

### 1.2. *Liability Justifications for Defensive Harm to Migrants*

As noted above, it can sometimes be permissible to defensively harm someone who has not consented to that harm on grounds that their behavior makes them morally liable to such harm. On a so-called *rights-based* account of liability, such as that of Judith Jarvis Thomson (1991), you are liable to defensive harm when and because the harm in question is a necessary and proportionate means (or side-effect) of preventing you from violating someone's rights.<sup>6</sup> There is debate in the defensive harm literature about just how to characterize the necessary and sufficient conditions on liability to defensive harm,<sup>7</sup> but for present purposes, we need not be persnickety. Thomson's account gets at the basic idea. Your behavior threatens to violate another's rights; imposing harm on you is necessary to prevent this; the rights are sufficiently stringent as to make the harm imposed a proportionate means of prevention. If so, you are liable to that harm.

We will consider below six popular justifications for defensive harm to migrants, justifications we think best explicated in terms of the idea of liability. We think the first is a non-starter; the rest we find at least superficially plausible (leaving God out of the picture).

#### 1.2.1. *Liability and Respect for the Law*

One sort of justification for harm to migrants one sometimes hears, especially in informal contexts, is that unauthorized migrants—again, those without proper legal authorization for entry into a host country—in some sense “deserve” the harms of immigration enforcement simply by virtue of having broken the immigration laws of receiving countries. Such, we take it, is the force of the ugly slogan, “What part of illegal don't you understand?”

We think the underlying argument here is best construed as follows. Law breaking is a moral matter: to break the laws of a society is to violate the rights of the citizens of that society (rights having to do with safety, order, or some such good). Unauthorized migrants, by dint of breaking immigration laws, violate the rights of the citizens of receiving countries. The typical harms of border enforcement are necessary and proportionate means of preventing migrants from violating (or continuing to violate) said rights of citizens. Wherefore, unauthorized migrants, by dint of their lawbreaking, are liable to those harms.

But, by way of response, we think it obvious that the substantial harms of border enforcement—e.g., family separation, long detention in brutal conditions, exile to faraway lands—are disproportionate to the threat posed by the mere breaking of immigration law. No doubt the citizens of a city suffer some sort of wrong when parking laws are violated, and motorists park in red zones. Citizens, after all, have a right to orderly, law-abiding communities, to a well-regulated driving environment, and the like. But it beggars belief to suppose that family separation, years-long detention in inhumane conditions, exile to faraway lands, and similar harm could be a proportionate means of

preventing the wrongs done to citizens by illegal parking. So too, we think, for most cases of unauthorized migration. Well and good, so-and-so has come into the country without proper authorization and thereby violated the rights of its citizens. But if they are like the vast majority of unauthorized migrants, they pose no threat of substantive harm to anyone: they have come into the country to do honest work, raise a family, pay taxes, start a business, and in other ways contribute to the common good. If they are causing harm or wronging anyone, the harm or wrongs they are committing are exceedingly small. As with illegal parking, one thinks, surely it cannot be that family separation, years-long detention, etc., are proportionate means of preventing the sort of abstract harms or wrongs imposed on citizens merely by dint of breaking their immigration laws.

We think this the least plausible of the liability justifications for the harms of immigration enforcement we will consider. One sees how, in general, lawbreaking renders one liable to some sort of state-sponsored harm, but commonsense moral opinion about liability to defensive harm includes a proportionality constraint: defensive harm must be proportionate to the threat.<sup>8</sup> The usual package of harms directed against migrants is disproportionate to the threat posed by the mere breaking of immigration law—wildly and obviously so, we would say.

### 1.2.2. Liability and Economic Harms

Another common rationale for harm to migrants has to do with the threat of economic harm posed by migrant workers to low-wage, native workers. The idea is that migrant workers are able and willing to work for lower wages than native workers; their presence in a labor market tends to drive down wages for low-wage, native workers.<sup>9</sup> Suppose so; what follows? If you thought the native workers of a country had a right against migrants to not exert downward pressure on native wages by employment in that country's marketplaces, and that migrants were violating or threatening to violate those rights by such employment, you might think the harms of border enforcement necessary and proportionate means to protect the rights of native workers. (Perhaps the situation is akin to a family business, where it is plausible that the economic interests of family members should be prioritized over non-family members.) You might think, then, that by dint of working (or attempting to work) in foreign marketplaces, migrants thereby make themselves liable to the typical harms of border enforcement.

Our reply here is similar to the one made in the previous section. When you consider the horrific harms visited on migrants by family separation, long detention, exile to faraway lands, and the like, is it really plausible that said harms are *proportionate* responses to the wrongs done to a small proportion of native workers by relatively modest declines in their wages?<sup>10</sup>

Moreover, according to economists, the overall effect of migration on economic activity in receiving countries is overwhelmingly positive.<sup>11</sup> That being so, is it really plausible that harms to migrants of the sort entailed by usual border enforcement practices are *necessary* means of protecting the economics interests of low-wage, native workers in receiving countries? (Recall from above that someone is liable to defensive harm only if the harm in question is both proportionate to the threat they pose and necessary to avert that threat.) Might it be that some of the wealth generated by migrant economic activity could fund programs aimed at income replacement, job retraining, housing assistance, and similar means of protecting native workers from economic harm? Might such programs protect native workers without the need to impose substantial harms on incoming migrants?

Perhaps there are good reasons for thinking the answer to these questions is no. We doubt it, but we grant that there is a surface-level plausibility to the above sort of justification for state-sponsored harm to migrants. Commonsense morality has a place for defensive harm against those who take what rightfully belongs to others. Harms to migrant workers who "rob" native workers of higher wages are, at first blush, of that sort.

### 1.2.3. Liability and Freedom of Association

Some argue that defensive harm against migrants is justified on grounds that freedom of association is a basic right, one that implies a right to exclude (White 1997; Wellman 2008). So Stuart White:

Freedom of association is widely seen as one of those basic freedoms which is fundamental to a genuinely free society. With the freedom to associate, however, there comes the freedom to refuse association. When a group of people get together to form an association of some kind (e.g., a religious association, a trade union, a sports club), they will frequently wish to exclude some people from joining their association. What makes it *their* association, serving their purposes, is that they can exercise this “right to exclude”. (White 1997, p. 373)

White is surely correct that freedom to associate sometimes implies a right to exclude. Marriage is a paradigm case. You have the right to marry whom you will and exclude anyone you wish from that association, even if doing so would impose high costs on them. You could permissibly deploy considerable defensive harm against someone who tried to force you into marriage.

The citizens of a nation-state, some argue, are in a similar situation. They have a right to exclude whom they will from their political community, even if doing so would impose high costs on would-be joiners. Just as in the case of marriage, they could permissibly deploy considerable defensive harm against someone who tried to force their way into the polis. The usual harms of border enforcement, goes the argument, are justified in this way.

By way of reply, we grant that there are certain associations such that one possesses stringent rights against being forced into them and could permissibly deploy considerable defensive harm to prevent being forced into them (e.g., marriage). But many associations are not like this. We can form a philosophy club with whomever we want, but we cannot permissibly deploy much by way of defensive harm to prevent others from joining it. We cannot, for example, beat you up or lock you in a car trunk to keep you away from our meetings.

Perhaps one could argue that political associations are more like marriage than like philosophy clubs. Political associations, like marriage, are closely tied to basic human well-being, much more closely tied than are casual clubs. Likewise, political associations are similar to marriage in their costs of withdrawal. Just as there are typically great financial and relational costs to leaving a marriage, so too are there typically great costs to emigration: one must find a new home, new work, and new community. Casual clubs are not often like this. If I do not wish to associate with the members of my philosophy club, I can easily withdraw from the club.

You might think it is these features of marriage that explain the stringency of our right not to be forced into a marriage and that the similarities between marriage and political unions suggest similarly stringent rights against being forced into political associations. But you would be wrong. There are plenty of associations with these features such that we have no very stringent right against being forced into them and no permission to engage in harmful coercion to prevent being so forced. Consider, for example, family association, the association one bears to others by virtue of being close family to them. It is both closely tied to basic well-being and carries high costs of withdrawal. Yet: you have no very stringent right against being forced into that association should your sister decide to marry someone you would rather not associate with and no permission to engage in harmful coercion to prevent her from doing so.

We suspect that the stringency of your right not to be forced into marriage and your permission to deploy considerable defensive harm to prevent that has more to do with the extreme severity of the harm you would likely suffer were you forced into marriage, and that the harm of being forced into other kinds of associations—extended family, philosophy clubs, etc.—is sufficiently minor as to make imposition of any serious sort of defensive harm to defend against being forced into these associations disproportionate. We suspect further that the same holds with respect to migrants and unwanted political association



with them. In the usual case, the harm suffered by citizens by dint of unwanted political association with any given migrant is minor indeed, nowhere near sufficient to warrant the typical sorts of harm visited on migrants by state border control practices.

Maybe there is more here than meets the eye; maybe we are missing something. We do not think so, but here again, one can at least see the logic of this sort of justification of harm to migrants. We do in general think of ourselves as having a right to freedom of association and a corresponding right to exclude; unauthorized migrants are in some sense violating that right. State border enforcement practices are the obvious means of protecting it. Here again, there is a surface-level plausibility.

#### 1.2.4. Liability and Harm to Social Services

Another common rationale for harm to migrants is that migrants place a fiscal burden on the social services—schools, hospitals, welfare, law enforcement, and the like—of receiving countries. Migrants, goes the story, pay less in taxes than the costs in social services they incur and are thus a net fiscal burden on the finances of receiving countries. If you thought that so, and that by imposing such a burden, migrants were thereby violating the rights of the taxpayers of host countries, wrongfully taking from taxpayers, as it were, what was not theirs to take, then you might think the harms of border enforcement necessary and proportionate means to protect the rights of taxpayers. You might think, then, that by dint of their fiscal imposition on host countries, migrants thereby make themselves liable to the typical harms of border enforcement.

What to say? Firstly, the above story about migrant fiscal burden on receiving countries is more complicated than the above telling of things would suggest. In 2016, the National Academy of Sciences completed a thorough review of decades of research on the overall, long-run fiscal effects of immigration in the U.S. (Blau and Mackie 2017). Their study looked at the fiscal effects on federal, state, and local-government finances, including the fiscal effects of newly arrived immigrants, their children, their children's children, etc., and concluded that the so-called “net present value” of all first-generation immigrants<sup>12</sup> was (in 2016) USD 58,000 per immigrant, and that the net present value of newly arrived immigrants (within five years of 2016) was USD 259,000 per immigrant (Blau and Mackie 2017, p. 430). In other words, the net fiscal impact of immigration, on average, is enormously *positive*, an enormous net gain.

However,—so our above claim that things are somewhat complicated here—the USD 259,000 mentioned above is the *average* fiscal impact of immigration, averaging over all age groups and skill levels. The story is mixed for low-skilled workers. For high school graduates (with no higher level of education), the net present value per immigrant is positive, USD 49,000 per person, but for those without high-school education, the net present value per immigrant is negative, −USD 117,000 per person. Age is relevant too. New immigrants under 25 have a positive net present value of USD 239,000 (with high-school education only) and USD 35,000 (with no high-school education). But immigrants who are 65 and older have a negative net present value: −USD 164,000 (high school education only) and −USD 257,000 (no high school education) (p. 430).

Perhaps the proponent of the “migrants make themselves liable to the harms of immigration enforcement by dint of their fiscal burden on host countries” argument will want to nuance her claims in light of the above: well, she might say, for the low-education-level, low-skilled at any rate, *they* make themselves liable to the typical harms of border enforcement by dint of their fiscal burden, and since a large preponderance of the harms of border enforcement falls on migrants of that demographic, the above argument shows us that a large preponderance of said harms is morally justifiable.

This takes us to our second point. If you thought low-education-level, low-skilled migrants liable to the typical harms of border enforcement by dint of their fiscal burden, you would be committed to thinking those harms proportionate and necessary means of protecting taxpayers from such a burden. But we worry that the harms are unnecessary; there are better options.<sup>13</sup> The U.S. could open its borders but charge a largish entry fee—

USD 2000, say—to all incoming migrants. Of course, many would not be able to afford the fee and would enter illegally, but vast numbers would be able to afford it and would enter the country legally. The proceeds of those fees could substantially lower or even erase the fiscal burdens of low-education, low-skilled migrants. Or: one could require migrants to pay a certain amount of taxes into the system before being eligible to receive social services. There are other options too (Caplan and Weinersmith 2019, pp. 139ff). The point, then: it is not at all obvious that the brutal harms typical of border enforcement (family separation, detention, etc.) are the best means of protecting tax-payers against the fiscal burdens of immigration. There would seem to be more effective and far less harmful means.

But perhaps there are good reasons to doubt the viability of those means. It is not crazy to suppose that, for whatever reason, the sorts of solutions we mention above would be unworkable or would impose harms of other sorts. In any case, there is at least a surface-level plausibility to the argument from fiscal burden. If a low-education-level, low-skilled migrant is imposing an average cost on taxpayers of USD 117,000—“stealing” that, as it were, from state coffers—some will think defensive harm warranted. Commonsense morality has a place for defensive harm against those who wrongfully expropriate large sums of money from others. Harm to migrants—low-skilled and low-education-level migrants, at any rate—are, at least at first blush, of that sort.

#### 1.2.5. Liability and Preservation of Culture

Some have argued that nations have a strong interest in preserving their native cultures, or perhaps controlling the development of their cultures, and that immigration threatens that. Immigrant peoples bring different cultures into their host countries and thereby cause changes, sometimes dramatic changes, to the cultures of their host countries. If you thought nations had an interest in preventing that from happening, you might argue that the harms of border enforcement are justifiable means of doing so.<sup>14</sup>

How exactly would the reasoning go, though? There is no straightforward argument from the claim that X has an interest in Y to the claim that X can harm someone to obtain Y. You may well have an interest in having your car repaired, but it does not follow therefrom that you can do or threaten harm to make that happen.

Perhaps the thought is that citizens of a nation have both an interest in the preservation of their culture (or control of its development) and a right against outsiders to non-interference with that. If you thought that right sufficiently stringent, you might think harms to migrants of the usual sorts necessary and proportionate means of protecting that right. You might think, then, that by virtue of the threat they pose to the preservation of native culture (or the ability of natives to control its development in ways they deem best), migrants thereby make themselves liable to said harms.

Supposing the argument framed in these terms, there are questions. So, for example, pick any one migrant entering the country to seek honest work, build a family, start a business, etc. Now, it is not implausible to suppose that this person will causally contribute in small ways to cultural change in the communities in which he lives and works. However, for any one person, in the vast majority of cases, that causal contribution will be minuscule. *Maybe* some of his acquaintances will change their eating habits, improve their foreign language skills, develop a taste for different styles of music, or the like. But in the vast majority of cases, the causal contribution of any one migrant to cultural change will be tiny.

That being so, the claim that imposing the standard harms of border enforcement on any given migrant is a *proportionate* means of defense of the right of cultural preservation is, at least in most cases, implausible. You live in Solvang, California, built by Danish immigrants. It is important to you and your neighbors that the town have an authentic, Danish feel; you pass strict laws requiring all new construction to be thus themed. Marvin,<sup>15</sup> one of your neighbors, builds a small bird feeder in his yard without the requisite theming. You alert the authorities, who arrest him, detain him for several months in squalid conditions, drop him off thousands of miles away, and threaten him with violence should he return. To be sure, Marvin’s bird feeder threatens infringement of your right of cultural

preservation. But it is a very small threat. Surely, one wants to say, the harm imposed on him is not a proportionate means of defense of that right. So too, we think, for the usual migrant. The threat any one migrant poses to cultural continuity is typically very small, but the harms imposed on someone by our border enforcement practices are often enormous—disproportionately so, we would say.

Perhaps this line of objection can be plausibly countered.<sup>16</sup> We doubt it, but one can at least see the logic of this sort of justification of harm to migrants. We do in general think that the culture of a people or place is something of great importance. Plausibly, people have an interest in preserving their culture and having a say in its evolution. They may even have a right that outsiders not set back those interests. It is not crazy that *some* sort of defensive harm could be warranted here.

#### 1.2.6. Liability and Property Rights

Another sort of liability justification that we will sometimes come across has to do with private property rights. The argument goes like this:

An individual's private property rights over a physical space include the right of non-occupation—the right that others not occupy that space. Persons who pose a threat of infringing the right of non-occupation make themselves liable to harm to prevent that infringement (i.e., to prevent occupation), thus making it permissible for the owner or others (e.g., neighbors, police, private security) to deploy defensive harm. Just as individual owners of a space have a right of non-occupation, so too does a nation and/or its citizens have a right of non-occupation with respect to the nation's territory. A nation's right over its territory is just a private property right "writ large". Thus, just as private trespassers make themselves liable to harm to prevent them from occupying someone's property, so too do trespassing migrants make themselves liable to harm to prevent them from occupying a nation's territory. Wherefore, the state's imposition of harm to prevent trespassing migrants from occupying the nation's territory is permissible.

By way of reply, it is not just obvious that a nation or its citizens have a property right over the whole of a nation's territory of the sort enjoyed by owners of private property. Even if there is such a property right, it is hardly obvious that it is sufficiently stringent as to make it the case that the usual harms of border enforcement (which after all are considerable) are *proportionate* means of preventing migrants from violating that right. Try a case: You are backpacking and have become trapped in a freak blizzard. Fortunately, you come across an unoccupied cabin, boarded up for the winter<sup>17</sup>. You are about to enter the cabin, your only hope of surviving the storm, but unbeknownst to you, the cabin owner is watching this unfold on security camera footage. To prevent your entry, he activates his cabin's security system, which delivers a shock forceful enough to render you unconscious. You die of hypothermia. Now, had you entered the cabin, it is plausible that you would have thereby infringed the cabin owner's property right. But, one thinks, the harm he imposed on you to protect that right was wildly disproportionate. So too, we suspect, the harms of immigration enforcement: even if nations or their citizens have a property right over the national territory, the substantial harms imposed on migrants to protect that right seem wildly disproportionate.

Perhaps this sort of worry can be countered; perhaps there is a crucial disanalogy between the cabin case and migration. We doubt it, but we grant that the above sort of justification for state-sponsored harm to migrants has at least a surface-level plausibility to it. Commonsense morality does countenance harm in defense of property rights; harm to defend against unauthorized border crossing seems, at first blush, somewhat similar.

#### 1.3. Lesser-Evil Justifications for Harm to Migrants

So far forth, we have been focusing on liability justifications for harms to migrants: justifications rooted in the idea that migrants have forfeited their right against such harms by threatening the rights of citizens in receiving countries. But as noted above, there are other ways to justify defensive harm. It can sometimes be justifiable to impose defensive



harm on someone who has a right not to be harmed if the reasons in favor of imposing the harm are so strong that they “outweigh” the rights-based reasons against the harm. You face this choice: allow your child to die for want of a life-saving medicine or inflict a small bruise on someone who is inadvertently blocking your access to the medicine. In doing the latter, you infringe that person’s right not to be harmed. But you are plainly permitted to do so; the reasons for doing so outweigh the reasons against.

The literature on defensive harm calls this type of justification a “lesser-evil” justification; we will do the same. Some popular justifications for harm to migrants are plausibly thought of in these terms. We will consider two.

### 1.3.1. Lesser Evils, Migration, and Crime

In 2016, then candidate Donald Trump’s son, Donald Trump Jr., famously tweeted an image of Skittles candy and the text, “If I had a bowl of skittles and I told you just three would kill you, would you take a handful? That’s our Syrian refugee problem,” to which candidate Trump tweeted, “This image says it all” ([Hauser 2016](#)).

We suggest that the argument Donald Trump Jr. had in mind here is most charitably construed as a lesser-evil justification for the harms of border control. The thought is that some migrants pose a risk of substantial harm to native populations—the risk of terrorism is the usual bugbear. Why think, though, that that fact justifies defensive harm against other migrants, the vast majority of whom pose no threat at all of substantial harm to native populations? Perhaps it is akin to cases of tactical bombing. Suppose bombing and destroying a munitions factory during war would save tens of thousands of lives but that several innocent non-combatants live in a house adjacent to the factory and would die in the explosion. Many will think there is a lesser-evil justification for bombing the factory, even if so doing would mean the death of those innocents: though the non-combatants have a right against being thus harmed, the reasons in favor of bombing are so strong as to outweigh that right.<sup>18</sup> One could argue that immigration enforcement is akin to dropping such a bomb. The bomb in this case is the package of harms entailed by immigration enforcement, deployed against would-be terrorists and other bad actors; harms to innocent migrants are collateral damage. The sort of argument we are envisaging would claim, then, that there is a lesser-evil justification for the latter harms.

It is an empirical question, of course, whether the harms averted by border control practices—harms of terrorism and other criminality—justify the massive harms imposed on vast numbers of migrants and their families and the rights infringements entailed thereby. We will just note that we find it enormously implausible to suppose this so. Migrant rates of criminality are considerably lower, on average, than native rates: rates of incarceration for the foreign-born are nearly a third lower than for natives; rates of incarceration for naturalized immigrants are a fifth of that for natives ([Caplan and Weinersmith 2019](#), pp. 91ff). Terrorism is incredibly rare: the annual risk of death from terrorism in the U.S., between 1975 and 2015, was 1 in 3.2 million ([Nowrasteh 2016](#), pp. 4–5). It is not implausible that incidents of serious criminality and terrorism would increase in frequency should the U.S. open its borders to a large inflow of migrants, but when one considers the truly staggering amount of suffering visited on the millions of migrants over the decades who have been separated from their families, detained for months or years under brutal conditions, forced to live in squalid camps, deported to faraway lands with no social connections or means of support, suffering consequent homelessness, PTSD, depression, and similar maladies—not to mention the children of these migrants who have lost their parents, been shunted into foster care, suffered PTSD, etc., it beggars belief to suppose that such harms could be dramatically outweighed by the harms of the relatively rare cases of migrant criminality and terrorism.

But perhaps we are wrong about this. Perhaps we are misjudging the balance of harms here. We do not think so, but we grant that, were it the case that open borders would mean dramatic increases in harm due to terrorism and other forms of criminality, there would be

the makings of a lesser-evil justification for defensive harm to migrants. As with several of the above arguments, then, there is at least a surface level plausibility here.

### 1.3.2. Lesser Evils and Catastrophe

Some argue that open borders would lead to societal collapse and environmental ruin. Brian Barry (1992), for example, argues that a *billion* immigrants would flood into the U.S. were the U.S. to open its borders, resulting in large-scale ethnic violence, poverty, catastrophic increases in carbon emissions and other forms of pollution, governmental collapse, and all-around chaos.

If he is right, we have the makings of a lesser-evil justification for defensive harm to migrants akin to that explored in the previous section. Just as many would think it justifiable to bomb a terrorist training camp to save many lives, even if doing so means unintentionally killing a few adjacent non-combatants, many would think it justifiable to impose the harms of immigration enforcement to forestall societal collapse, even if doing so means unintended harm to migrants and their families. The latter, one could say, is the lesser evil.

Now, we gather that there is debate among economists about whether and to what extent a policy of open borders would cause the sorts of harm Barry predicts. We will just report that we are skeptical of Barry's claims; we suspect that the much more sanguine modeling of open borders in economist Nathan Smith's work (Smith 2015a, 2015b) is the more accurate prediction. But were it the case that open borders would mean the sorts of dystopian suffering predicted by Barry, there would be the makings here of a lesser-evil justification for defensive harm to migrants. As with several of the above arguments, then, we have at least a surface level plausibility here.

So far forth, then, some main justifications for defensive harm to migrants, scholarly and popular. We turn now to the second part of our project, which is to argue that none of the above justifications are even remotely plausible given the metaphysic presupposed by Judaism and Christianity.

## 2. God and Migrants

We start by briefly glossing the religious background metaphysic we take to be at the heart of Judaism and Christianity, on which God is divine parent to all on earth, or better, divine "householder".<sup>19</sup> The earth and its inhabitants, on this view, comprise a kind of household, created by God with the goal of providing a good home for all in the household, human and non-human. We humans are God's children, tasked by the divine householder with helping to manage the household for the good of all of its members. This means ensuring that all in the household—human and creature—are well cared for, that all have enough, that fields are tended, that animals are fed and watered, and that vulnerable members of the household—the old, the weak, the sick—are given tender care. The lands we live on, the things we possess: all belong to God and are given us to be used in trust for this task of caring for members of the divine household.

Such, we claim, is the basic biblical metaphysic, a metaphysic that carries in its train an ethics of *agape*, on which our fundamental moral duties to neighbor are, at bottom, duties to care for neighbor as if s/he were a sibling or other family member in our household. This is the idea back of the biblical injunction to love one's neighbor as oneself, which Jesus describes as summing up the whole of the law and prophets, the whole of the Hebrew Bible. Such, in the ancient world, is the love proper to members of one's family or household: love as for oneself. And such, according to Jesus, is the love owed one's neighbor, whom Jesus characterizes as anyone in need and in reach of one's care,<sup>20</sup> even one's enemies (Matthew 5:43–48). All fellow humans are to be loved with such love.

Suppose so and return to the ethics of immigration. To fix ideas, suppose you live and work on a large farm owned by a family trust, established years ago by your great grandparents with the understanding that the farm is to be used in perpetuity for the sustenance and care of members of your extended family. Your teenage sister, for whatever

reason, has never lived on the farm. One day, she shows up, having fallen onto hard times, and without asking your permission, moves onto the property, takes up residence in an empty building on a far corner of the land, and starts farming an adjacent field.

Try now some of the above justifications for the use of defensive harm to keep her from settling on your land.

### 2.1. Migration and Respect for the Law

On grounds that your sister has violated the rules of the farm by living and working on a part of the farm designated for other purposes and that you, your spouse, and children have a right to live in an orderly, rule-governed environment, you confront your sister at gunpoint, forcibly detain her in your basement for several months, drop her off a thousand miles away, build a tall fence around the property, and threaten her with violence if she attempts to scale it.

Your behavior here is manifestly abhorrent. Why so? Well, apart from the point that defensive harm of this magnitude seems wildly disproportionate to any harm caused by your sister, there is the point that such treatment of a member of your family is a gross violation of the moral norms governing family relationships. To treat your sister thus is to be a bad sibling to her, to violate the norms of the *sibling of* relationship you bear to her. We take it that moral duties are importantly tied to these relationships, and that gross violations of these norms involves one in wrongdoing. There is also this: Your treatment of your sister here runs badly afoul of the trusteeship duties imposed on you by the conditions of your occupancy of the land. By acting as you do, you treat the land as if it is yours to use in service of just your good (or your immediate family's good). But it is not; you live on land that is not yours to do whatever you will with. The land is given you to be held in trust, for the good of not just you and yours but of all your family members, your sister included. To treat your sister as you do is to violate the conditions of that trusteeship.

So too, we say, in the case of migrants. From the standpoint of our above-adumbrated divine householder ethic, we are all members of God's household and are mandated to hold in trust its resources for the good of all its members. Use of the brutal harms typical of state border enforcement against fellow members of the household to protect against the relatively harmless law-breaking entailed by violation of immigration laws is flatly incompatible with that mandate. It is also a violation of the familial connection we bear to our migrant neighbors, who in the divine economy, are akin to parents, siblings, grandparents, cousins, and in-laws living together in a large household: they are *family*.<sup>21</sup> To impose brutal harms upon them to protect against the relatively harmless law-breaking entailed by the violation of immigration laws is to be a bad family and household member to them.

### 2.2. Migration and Economic Harm

On grounds that the market competition induced by your sister's produce sales will cut into the profits your children had been making on sale of their produce, you confront your sister at gunpoint, forcibly detain her in your basement for several months, etc.

Your behavior is abominable, for reasons similar to the above. Aside from the point that defensive force of this magnitude is wildly disproportionate to the economic harm threatened by your sister, there are these further considerations: to treat your sister thus is to violate the norms of the family relationship you bear her—it is to be a terrible sibling—and to treat your sister thus is to violate the conditions of the trusteeship governing your use of the land, which require that it be shared for the good of all members of your family.

So too for migrants. The use of seriously harmful means to expel migrants from your territory on grounds that such measures are necessary to protect the wages of your citizens is to be a bad family and household member to these migrants and to run seriously afoul of the divine mandate to hold the lands we occupy in trust for the good of all members of God's household.

### 2.3. Migration and Freedom of Association

On grounds that you should be able to live with whom you wish and that you do not wish to live with your troubled sister, you confront her at gunpoint, forcibly detain her in your basement for several months, and so forth.

Same points as above: to act thus is to violate the norms of the family relationship linking you to your sister and the mandate to hold your property in trust for the good of all members of your family. *Mutatis mutandis* in the case of migrants.

### 2.4. Migration and Costs to Social Services

On grounds that your sister's farming activities will increase your medical and workers' compensation insurance premiums, you confront her at gunpoint, detain her in your basement, etc.

But to act thus is to be a bad sibling to your sister and to violate the conditions of your trusteeship of the land. *Mutatis mutandis* in the case of migrants.

### 2.5. Migration and Preservation of Culture

Your sister plays her music loud, cooks foods whose smells you do not like, uses farming practices you do not approve of, and embraces a "new age" spirituality you find offensive. Wishing to keep the culture of the farm as it has always been and worried that your children might embrace her religious ideas and agricultural methods, you confront her at gunpoint, detain her, etc.

You are being an awful sibling and a lousy trustee. *Mutatis mutandis* in the case of migrants.

### 2.6. Migration and Private Property

On grounds that she is living and working on a part of the property designated by the terms of the trust for use by you and your immediate family, you confront your sister at gunpoint, etc.

You are being an awful sibling and trustee. *Mutatis mutandis* in the case of migrants.

(Two points of clarification. First, we do not take the householder ethic we have been adumbrating to imply that there are no private property rights. I may well have a right against my brother not to take my car whenever he wants to: it is *my* car, not *our* car. Second, we do not take our householder ethic to imply that defensive harm may never be used to protect property rights. Were my sister attempting to steal my car keys, some force may be warranted. But because she is my sister, the amount of harm I could do her to keep her from using my car or from infringing other of my property rights is small: I would be a terrible sibling if I broke her leg to prevent her from taking my car. It is hard to imagine a situation in which it would make moral sense to visit substantial defensive harm on a sibling or other household member, merely to protect one's private property.<sup>22</sup>)

### 2.7. Lesser Evils, Migration, Crime, and Catastrophe

Finally, there are the lesser-evil justifications of harm to migrants explored above. Harm to migrants, goes the argument, is justified because (some) migrants pose a risk of terrorism or other criminality, or because too much migration would threaten dystopian societal collapse. Under the circumstances, the harms of border enforcement are the lesser evil.

But, by way of response, try this variation on our above farm scenario. Your farm is located in Germany, it is 1943, and you learn that your adopted, teenage sister is of Jewish descent. Not wanting to expose yourself, your wife, and your children to risks of running afoul of the Gestapo, you expel your sister from the farm at gunpoint and threaten to shoot her if she returns.

This would be an utterly heinous thing to do, we submit, on many levels. It would run afoul of the duties of your trusteeship, which require use of the property to care not just for you and your immediate nuclear family, but for all of your family. It would mean being a

terrible sibling. The duties of family life sometimes require the assumption of enormous risks; such are the burdens of family life. In the case we envisage, though it is regrettable that care for your sister means the assumption of enormous risks to you and your family, such is your lot: such, in your circumstances, are the requirements of family life.

So too, we would say, in the case of migrants. Though we think the risks of migrant-related terrorism and crime relatively low, there are those risks. And though we think the risk of societal collapse predicted by some quite small, no doubt opening our borders in a thoroughgoing way would entail risk. Such, we say, is our lot. Familial duty entails risk; the divine mandate of trusteeship entails risk.

### 3. Conclusions

There is much more to be said about all of this, obviously. One point of nuance we did not explore above has to do with the distinction between necessitous and non-necessitous migrants (where here we have in mind a distinction between migrants who would suffer great harm were they excluded from a receiving country and those who would not). Though it would be deeply problematic to forcibly prevent a hungry sibling from accessing food on your property, perhaps it would be fine to use a small amount of force to prevent a non-necessitous sibling from threatening certain of your rights. So, for example, you might think it fine to build a fence aimed at preventing your wealthy sister from stealing your car. Perhaps thereby you do her a small harm, but under the circumstances, the harm seems proportionate and justifiable. Applied to the case of immigration, we think it may well be compatible with our householder ethic that a nation use minimally harmful means to keep out certain, non-necessitous migrants. A nation might, for instance, impose large fees or taxes on wealthy, would-be migrants to discourage their migration. Perhaps thereby they do them small harm, but such harm may well be compatible with our householder ethic.

What is not compatible with our householder ethic are the sorts of seriously harmful border control measures practiced in the U.S. and elsewhere: separating children from their parents, erecting walls that keep people from fleeing violence and accessing necessary employment, subjecting migrants to long detentions, deporting them to faraway lands in which they lack meaningful social connections, etc. More generally, what is not compatible with our ethic is forcible exclusion of the necessitous, those who would be greatly harmed by exclusion. (To forcibly exclude under these conditions would run seriously afoul of the familial and trusteeship duties we have been on about.) What our householder ethic requires, therefore, is the practice of what we above termed “nearly open borders”: the practice of letting in any ordinary migrant who needs to come in, any ordinary migrant who would suffer serious economic or other harm were they excluded. (Note well that the practice we have in mind here is considerably more latitudinarian than are the asylum and refugee practices of contemporary nation states, who—in theory, anyway—allow in those with credible fears of persecution due to race, religion, nationality, political opinion, or membership in a particular social group. Notably absent from this list are those who would suffer grave economic harm were they excluded—i.e., the large majority of would-be migrants. The practice we are claiming as a requirement of our householder ethic means welcoming any ordinary migrant who would suffer *any* serious harm were they excluded. That would mean letting in vastly more migrants than are currently admitted under asylum and refugee laws.)

Another potential wrinkle we did not explore is the worry that our householder ethic is implausibly demanding.<sup>23</sup> So, for example, suppose you discover a needy person living in your attic and that the person would be badly harmed were they forced to leave your home. Must you then indefinitely house that person? Our ethic suggests that the answer to this question is yes, since after all, you would be a lousy sibling were you to expel your sister from your home in such a circumstance. Or suppose you have considerable moneys set aside for non-necessities and learn of the plight of the desperately poor. Must you then give away most of your wealth? Our ethic suggests that you must: after all, you would be a lousy sibling were you to hold moneys back for luxury spending while your sister starves.



Worry, then: our ethic is demanding, implausibly so. We lack the space to investigate these issues properly and so will just say this by way of brief reply: We think our ethic likely is quite demanding but regard this, so to speak, as a feature and not a bug. As we read it, the moral vision of the Hebrew Bible and New Testament entails radically demanding requirements on neighbor love. Exactly how radical, what this implies about the ethics of affluence, hospitality, etc.: large and interesting questions. Here we can just record our conviction that the demandingness of our focal ethic is indication that we are accurately tracking the moral vision of the Jewish and Christian Bibles.

There are other complications we could consider, but we take it to be clear that the usual justifications for the harms of modern-day border enforcement fall flat on the sort of theistic background metaphysic we have been exploring. Since, so we claim, the sort of theistic background metaphysic we have been exploring is that of the Jewish and Christian traditions, we submit that denizens of those traditions should reject the usual reasons given for harming migrants. Denizens of those traditions, we say, should be for (nearly) open borders.<sup>24</sup>

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## Notes

- <sup>1</sup> We also suspect that the usual arguments in defense of harm to migrants in service of border control fail given the background metaphysic presupposed by Islam and other of the world's great religious traditions, but we are less sure about that.
- <sup>2</sup> It is not quite right that the harms of immigration enforcement are aimed just at defense of the interests of citizens; they are likewise aimed at defense of the interests of legal residents and visitors. We will talk going forward about citizens and their interests, but let it be understood that we have this wider group in mind.
- <sup>3</sup> A notable exception is [Draper \(2021\)](#).
- <sup>4</sup> Talk of moral liability to harm originates with [McMahan \(2005, p. 386\)](#) and has since become a central concept in philosophical discussions of self-defense, punishment, and other harm-imposing practices. While there is some divergence in the way different theorists use the term 'liability', many use it to contrast liability with consent, as we have done here. See, for example, [Tadros \(2016, p. 113\)](#).
- <sup>5</sup> The idea that lesser evil considerations can make it permissible to infringe a right is accepted by most contemporary non-consequentialist moral theorists. See, for example, [Thomson \(1986\)](#), [Kamm \(2007, pp. 239–40\)](#), [McMahan \(2009, pp. 170–78\)](#), [Rodin \(2011, 2017, p. 30\)](#), [Bazargan \(2014\)](#), [Quong \(2015, pp. 252–57\)](#), and [Frowe \(2018\)](#).
- <sup>6</sup> Some hold that it is rights *infringement* rather than *violation* that is important, but we will ignore this complication for present purposes.
- <sup>7</sup> Most theorists agree that a person is liable to defensive harm only if they pose a threat to someone's rights (or are responsible for making it reasonable for someone to believe they pose such a threat). Some theorists—most notably [Thomson \(1991, p. 302\)](#)—have argued that the threat of a rights-infringement is also *sufficient* for liability. But many theorists disagree. Some claim that an attacker must be responsible for his threat ([Draper \(1993, p. 84; 2016, chp. 4\)](#), [Gordon-Solmon \(2018, pp. 543–67\)](#), [McMahan \(2005, pp. 394–404; 2009, pp. 157–58, 175–77; 2011, p. 548\)](#), [Otsuka \(1994, 2016\)](#)). Some claim that an attacker must be culpable or blameworthy for his threat ([Ferzan 2005, pp. 733–39; 2012, pp. 669–97](#)). Some claim that an attacker must act on false assumptions about their target's moral status ([Quong 2020, pp. 34–57](#)).
- <sup>8</sup> This opinion is also shared by theorists. The proportionality constraint—sometimes called the “narrow proportionality constraint” ([McMahan \(2009, pp. 22–24\)](#))—is one of the most widely accepted limits on defensive harm in the literature.
- <sup>9</sup> See, for example, [Smith and Edmonston \(1997, pp. 6–7\)](#) and [Borjas and Katz \(2007, p. 49\)](#).
- <sup>10</sup> According to [Borjas and Katz \(2007, p. 49\)](#), Mexican immigration from 1980 to 2000 reduced native U.S., high-school-drop-out wages by a little less than 5%.

- 11 For an authoritative overview, see [Blau and Mackie \(2017\)](#). Aside from the large fiscal contributions of migrants to U.S. public finances described below, migrants contribute an enormous amount to annual U.S. GDP: about USD 2 trillion in 2016 ([Blau and Mackie 2017](#), p. 282).
- 12 A *first-generation immigrant*, for purposes of Blau and Mackie’s study, is any foreign-born person residing—authorizedly or not—in the U.S. (excluding those born abroad to U.S. citizens). The *net present value* of an immigrant, for purposes of their study, is the net value of all future costs imposed on social services by that immigrant and their children (and their children, their children, etc.) and all future tax payments from that immigrant (their children, etc.), discounted to the present by some standard interest rate.
- 13 For an excellent overview, see [Caplan and Weinersmith \(2019\)](#).
- 14 So David [Miller \(2005, pp. 199–201; 2008\)](#).
- 15 With a bow to Michael [Huemer \(2010\)](#), whose character Marvin taught us much about the ethics of immigration.
- 16 There are deep and interesting complications regarding questions about “liability aggregation”—questions concerning when and whether an individual who poses little threat on his own can be liable to significant defensive harm in virtue of his membership in a collective that poses great harm in the aggregate. We lack the space to engage these questions in the present paper.
- 17 Cf. [Feinberg \(1978, p. 102\)](#).
- 18 See, for example, [Walzer \(1977, p. 152\)](#) and [Lazar \(2014, p. 12\)](#).
- 19 A couple comments. First, the picture we will adumbrate here—which is heavily indebted to John Dominic [Crossan \(2011\)](#)—is, so we claim, the background metaphysic at the heart of Judaism and Christianity. But of course, there is no single religious tradition which is Judaism and no single religious tradition which is Christianity: there are many Judaisms and many Christianities. We do not mean to suggest that the background metaphysic we develop here is endorsed by all Judaisms and all Christianities. We do hold, though, that the background metaphysic and accompanying moral vision we will set out is that of the Hebrew Bible and the New Testament and is at the heart of those forms of Judaism and Christianity that share the background metaphysic and moral vision of the Hebrew Bible and New Testament. It is those traditions we mean to speak about in this paper; it is those traditions we have in mind by our talk of “Judaism” and “Christianity.” Adherents of those traditions, we say, should endorse an ethics of nearly open borders. Second, though we hold that the picture developed here is endorsed by the Hebrew Bible and the New Testament, we lack the space to make the case here; arguing as much would be a big undertaking. Jesus’s use of ‘Abba’ language in reference to God, his teaching around the love neighbor commandment (the commandment to love one’s neighbor as oneself), Paul’s suggestion in Acts (17:28–29) that we are all God’s children or offspring, language throughout Hebrew scripture like Malachi’s “Do we not all have one father? Did not one God create us?” (Malachi 2:10), God’s claim in Leviticus 25:23 that the land belongs to God and that its inhabitants are mere tenants: such are some of the data we would appeal to. For a more detailed argument, see [Crossan \(2011\)](#).
- 20 Such, we would say, is the import of Jesus’s Parable of the Good Samaritan (Luke 10:25–37).
- 21 Some might object that, though the New Testament uses kinship language to refer to fellow Christ followers, it does not deploy that language to refer to humans more broadly. So too Hebrew scripture, where kinship language applies to fellow Jews but not to humans more broadly. In reply, we grant that kinship language in Hebrew and Christian scripture typically applies—biological family contexts aside—to, respectively, fellow Jews and Christians, but we would point out that there are cases in both Hebrew and Christian scripture where kinship language applies more broadly to fellow humans: e.g., Malachi 2:10 and Acts 17:28–29. Use of kinship *language* aside, we think a strong case can be made that the *idea* of kinship is central to the moral vision of both Hebrew and Christian scripture: it is the teaching of both scriptures that humans are to treat one another with the type of care owed to siblings and other members of one’s household.
- 22 We note, though, that there may well be situations in which it is permissible to deploy substantial defensive harm against a sibling or other household member for reasons other than protection of property. Were your sibling attacking your child, serious harm may well be warranted.
- 23 Thanks to an anonymous referee for pushing us on this.
- 24 Kind thanks to Paul Reasoner, Charles Taliaferro, Lee Weissman, and several anonymous referees for helpful comments and conversation.

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