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**Colonialism, Injustices of the Past, and the Hole in Nine**

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What makes colonialism wrong? There have been a number of recent proposals. One sort, defended by thinkers like Margaret Moore and Andrew Altman and Christopher Heath Wellman, grounds the wrongness of colonialism on the right to self-determination, which is violated when one group colonizes another (Moore 2019; Altman and Wellman 2009). Another view, inspired by some of Kant’s thoughts about a cosmopolitan duty of rightful relations to others, is advanced by Lea Ypi, who argues that colonialism is wrong because it instantiates an unjust kind of political relationship (Ypi 2013a). Cara Nine argues that Ypi’s account is incomplete (Nine 2020). Unless we supplement Ypi’s account with a commitment to the value of existing political associations and the obligations they generate, Ypi’s view allows for settler colonialism.

Nine is right that Ypi’s account has a hole in it which potentially allows for justified colonialism. Nine is probably also right that Ypi needs to adopt something like Nine’s solution in order to plug the hole. But we are not done yet. Nine’s own proposed solution has its own hole, which admits of two possible remedies. For Nine’s solution to succeed, we need to either accept that past colonial injustices have been resolved, or, alternatively, give up the goal of completely plugging the hole in Ypi in the first place, and thus give up the goal of showing that colonialism is always wrong. I will suggest that the balance of reasons points in favor of the second option. Surprisingly, we should admit of the possibility of justified colonialism, at least in principle. This realization points to another theory about the wrongness of colonialism, an alternative to Ypi (and thus to Nine’s modified version of Ypi) which I call cosmopolitan instrumentalism. This theory is interesting and deserves extensive discussion. The goal in this paper is thus twofold: to highlight a way in which Nine’s modification of Ypi is still unfinished, and to suggest that leaving it unfinished may be the right choice.

In section 1 I briefly recap Ypi’s argument and Nine’s addition, and I explain why Nine’s response requires us to say that the injustices of past colonialism have been resolved if we want to plug the hole entirely and show that colonialism is wrong. In section 2 I discuss two replies Nine might make, one which accepts that past colonialism has been remedied and another which rejects this. I describe how the second option opens the door to another sort of solution, cosmopolitan instrumentalism, which I describe and defend in section 3.

**1. The Dialogue So Far and the Hole in Nine**

Ypi argues that colonialism is always *per se* wrong because it constitutes an objectionable political relationship (Ypi 2013a). Colonial political arrangements, both in their initial imposition and their continued functioning, do not treat people in a way which affords them equal and reciprocal participation in their government. Because all governments must abide by this requirement, colonialism is *always* wrong. This account makes no reference to territorial claims: it is the origin and form of governance that constitutes the wrong of colonialism, not the taking of land.

Nine replies that Ypi cannot quite explain what is *always* wrong with colonialism without some sort of territorially-focused consideration. Specifically, Nine thinks that we have to add one more piece to Ypi’s account, which is that existing relationships, and the obligations that these relationships generate, ought to have independent normative weight, such that impinging on them is *per se* wrong. This addition is territorial because some existing relationships, and the obligations generated by them, relate to the use of territory. For instance, Val and Adrien may have agreed to develop a plot of land into a movie theater, and if I arrive and must be treated equally according to Ypi’s principles, I now have undue power over Val and Adrien’s agreement, like the power to reopen negotiations about what to do with the plot of land in ways which may entail a new agreement which blocks the theater (Nine 2020, 8–9).[[1]](#footnote-1)

If we scale this point up to the size of state-wide associations, it is clear how this relates to colonialism. Ypi’s account, according to Nine, leaves open the possibility of settler colonialism in the form of new people coming into an existing state and demanding that land be used in different ways. According to Ypi, ‘territorial activities, plans, and attachments do not have independent moral weight prior to establishment of appropriate political associations,’ and thus the best we can say is that ‘land-specific rights and obligations are merely preferences with no inherent moral value’ (Nine 2020, 6). This means ‘established patterns of land use by indigenous or historical groups’ are ‘treated as preferences rather than as something with independent moral weight’ and thus ‘they are subject to revision through negotiations where newcomer’s preferences for land use are procedurally equal to the preferences of historical residents’ (Nine 2020, 6). Unless we hold that there is something *per se* wrong about impinging on existing political associations like this, it’s not clear what will rule out at least some sorts of settler colonialism (Nine 2020, 4–6). And so, colonialism will not *necessarily* be wrong.

Nine is right that Ypi’s account has this hole. Ypi leaves open the possibility of settler colonialism, not as it has ever been actually practiced in human history (which was obviously and indescribably unjust) but in principle. Below I will defend this hole. But, first, Nine’s account has a hole of its own. The account blocks off the possibility of new settler colonialism by privileging existing political associations. But existing political associations have their own ties to settler colonialism, not in the future but in the past: many states exist in their present forms due to settler colonialism. According to the account defended by Nine (and Ypi) these acts of colonialism were unjust when they happened. But that was some time ago. Former colonies contain existing political associations, and it is precisely these political associations which, according to Nine, have independent moral weight hefty enough to explain (among other things) the wrongs of present day colonialism. Why would it be wrong for Germany to colonize Guatemala? Because a while ago, Spain colonized Guatemala, and years later, that colonization has resulted in a political association in Guatemala that has independent moral weight, weight which Germans have no right to ignore. Thus Nine’s objection to colonialism faces a challenge: if settler colonialism was unjust back then, why can present states advert to their present political associations to block new settler colonialism? The goal is to avoid legitimizing settler colonialism, but it seems like we are forced to admit that past settler colonialism has been legitimized if we attribute value to the political associations which the past colonialism grew into. Unless we can point to some change in the legitimacy of the association between the past unjust settler colonialism and the present post-colonial states, we cannot explain the value of present associations without committing to the value of the past associations, which is precisely what we want to avoid.

**2. Nine’s Replies**

There are two replies Nine might make. The first is to say that it is true that the associations were unjust in the past, but this has been remedied somehow. At some point, colonial associations (which lacked value) gave way to valuable political associations which themselves explain why colonialism iswrong today. The second reply is to add nuance to the claim. Not all associations are valuable. Only associations that are just are valuable. Unjust associations, like those that exist in many former colonies, aren’t valuable: they were unjust when they began, and they haven’t fixed this injustice. The first reply might work, in which case we have found a resting place for the argument with a bit more nuance and detail than the original. But I will suggest that we should prefer the second reply. This second reply has merit, and furthermore, its logic suggests we should endorse full-on instrumentalism about the justice of colonialism, rather than the view that colonialism is always *per se* wrong.

**2.1 The Injustice has been Fixed**

First, Nine could accept that her modification to Ypi’s argument closes the door on present colonialism only once we accept that past colonialism is no longer a worry. Past colonialism was wrong then, but its results are right now, because the past colonialism generated political associations which have independent moral weight of precisely the sort that explains why it would presently be wrong to disrupt things via colonialism all over again. One way to make this claim would be via Jeremy Waldron’s supersession thesis (Waldron 1992; 2002). According to the supersession thesis, something which initially constitutes an injustice which cries out for remedy (like colonization) may eventually no longer amount to an injustice. Rather than supersession, Nine might instead endorse some other possibility for remedying injustice, like reparations of some kind. Whatever the details are, the general principle is clear: supersession or some remedy allows for the possibility of lending value to present political associations – despite the injustice of the past association – by claiming that the past injustice has been fixed.[[2]](#footnote-2)

Given the assumption that the injustices of past colonialism have been fixed, Nine’s proposed modification to Ypi’s theory works fine. So, in effect, we’ve now modified Ypi twice: once to add Nine’s machinery, and a second time to add the remedy point. One could plausibly stop here. We now have further clarity about the shape of the view, which is good. Just as Nine added required nuance to Ypi, we’ve added required nuance to Nine. This is not an independently objectionable resting place, and it is also a useful one, because it highlights a third key component that Ypi’s account needs: one which describes how present associations have remedied past injustices or how these injustices have been superseded.

Other competing discussions of colonialism’s wrongness have endorsed supersession, like those provided by Margaret Moore and Anna Stilz (Moore 2015, ch. 7; 2018; Stilz 2011; 2013; 2019, 79).[[3]](#footnote-3) So, the supersession thesis is one good option for plugging the hole. Supersession itself, however, is not universally endorsed.[[4]](#footnote-4) It is likewise controversial to claim that the injustices of colonialism have in every case been remedied via other procedures, like restorative justice. This means we should at least explore what it would mean for Nine’s account if we reject the view that past colonialism is no longer a worry. This inquiry is even more useful because Nine elsewhere rejects supersession in the form it is usually defended: she argues that Waldron confuses rights of residence in territory and rights of sovereignty over territory, and the latter rights do not disappear over time. Thus, the injustice of colonialism always calls out for restoring sovereignty to the group which originally ruled the land, although this does not require existing inhabitants to leave (Nine 2008).[[5]](#footnote-5) Since very few states have carried out this procedure, supersession is likely dead in the water from Nine’s point of view. Moreover, since many original indigenous groups do not have the sort of sovereignty rights Nine defends, we aren’t able to plug the hole for these presently unjust societies.

That at least is the simple description of Nine’s view of supersession. In fact things are more complicated. As is clear from the discussion above, Nine thinks that political associations themselves have value. So one might wonder why this sort of value cannot ground a right to sovereignty for descendants of colonizers, a right which perhaps competes with the right still held by the original group but which cannot be ignored. This would mean the two competing sets of interests must be balanced somehow. This indeed is the conclusion Nine arrives at with respect to supersession: ‘the outcome of the territorial dispute between the descendents of colonists and original inhabitants, purely from the perspective here, would be for the two groups to share territorial sovereignty, if possible’ (Nine 2008, 85).[[6]](#footnote-6)

 But, now we have a problem. Nine’s modification to Ypi is designed to avoid cases where newcomers, who generate duties of equal reciprocal political association, conflict with existing associations and their corresponding duties. Existing associations must have a right to exclude newcomers from showing up and demanding to be incorporated into the association. We don’t want to allow for such cases, because this would mean an existing citizen could end up in something like ‘a compromising moral position, where she may not be able to help doing wrong’ (Nine 2020, 8). She would have her existing association and its corresponding duties, and also the new set of duties generated by the association with the newcomer. So, Nine might need supersession, or some other remedy to injustice which doesn’t require sharing sovereignty. Her rejection of supersession seems to generate exactly the problem she raises for Ypi, in that it leads to conflicts between newcomers and indigenous groups. In Nine’s case the “newcomers” are not newly-arrived, but rather descendants of colonists. But the issue is precisely the same.

Whatever response we give to this, the general point should be clear: we cannot point merely to the value of political association to explain what is wrong with colonizing these societies. Rather, we need to point also to the success of supersession or some remedial procedure. This means that the hole in Ypi is still open for societies which have not fixed all of the injustice of colonialism. To close the hole, we must commit to the view that all of the injustices of colonialism have been solved, either via supersession or some other remedy. It is not clear that all of the injustices of colonialism have been solved. So we may not wish to commit to this. If we do not commit to this, we cannot plug the hole. But we do not need to plug the hole. We can live with it, and in fact the possibility of the hole points towards a better theory about the injustice of colonialism than Ypi’s. We can see this by turning to Nine’s second option: add nuance to account by suggesting that only just political associations have the value Nine discusses, and thus only just political associations are the ones it would be wrong to impinge upon via settler colonialism.

**2.2 Only Just Associations Matter**

Nine might say that she is not defending all existing relationships, but only the just relationships. Settler colonialism is not (and was not) a just relationship, and so associations built on settler colonialism are unjust until some remedy is carried out. This approach avoids the above-mentioned conflict between existing residents and “newcomers.” According to this different approach, either the “newcomers” have no right to be there, even if they’ve been there since their ancestors arrived as colonizers, because colonialism is unjust; or, the “newcomers” *do* have a right to be there because they have carried out their duties of remedial justice and compensated for the wrongs of colonialism. This does not quite secure the view that Ypi aimed to defend, which is that colonialism is *per se* wrong. This only secures the view that colonialism is wrong insofar as it is carried out in a society that has remedied its past colonialism (or which has no past colonialism, and no other past injustice which robs the present association of value). If any society (hypothetical or actual) has not remedied past colonialism, there is nothing *per se* wrong about colonizing it, because its present political association does not have the value that Nine’s account is built on. The “newcomers,” or in other words the descendants of the original colonizers, do not necessarily have a political association with the value Nine describes, and thus they do not necessarily have a right against colonialism (or, for that matter, against claims made by descendants of the indigenous inhabitants at the time of colonization).

In other words, if we argue that colonialism is wrong so long as a society has carried out some sort of restorative justice procedure or otherwise arranged itself in a just manner, this pushes the question back to what it is for a political relationship to be just. Ypi leaves open the possibility that that starting these relationships in ways which interfere with existing relationships is sometimes just and sometimes unjust, and Nine’s point is that this will allow for some sorts of colonialism. But Nine might also admit that some relationships can be unjust. And so the hole in Nine remains, unless we assume (perhaps implausibly) that no existing political associations are unjust.

**2.3 Accepting the Hole**

Thus Nine either accepts that no existing political associations are unjust, or accepts that the hole in Ypi remains in cases where remedial justice has not been achieved. But, surprisingly, this hole is fine, not just in cases of unjust associations but in all cases. Ypi is right to allow for some limited forms of settler colonialism. We can see this by noting the implications of pushing the question back to whether existing associations are just. If justice is the currency of value for associations, then it can be the currency of value for determining colonialism questions more generally. If I am starving to death and other people are using the land to grow peonies, then some settler colonialism to get my potato farm up and running is okay (Ypi 2013a, 171). It would be unjust for me to starve to death simply because some people want to grow excess potatoes to sell on the market in order to fund the purchase of (say) a fifth yacht. So Nine is correct to note that there is a hole in Ypi’s theory but wrong to plug it. Ypi, Nine correctly points out, overreached by suggesting her theory proved colonialism is *per se* wrong. Colonialism isn’t *per se* wrong, and Nine has identified why: sometimes, it can be just to impinge upon existing arrangements (like, for instance, some unjust ones, including perhaps some of the relationships which are unjust because they have not remedied past colonialism).[[7]](#footnote-7) So, this proposed solution to Ypi ought to be rejected: we can’t plug the hole entirely, and it would be bad if we could. Ypi’s theory ought to remain ‘flawed,’ in the sense of admitting at least the bare possibility of legitimate colonization. If the goal is to plug the hole as much as possible, Nine might argue that starvation and other similar cases are exceptions to the general rule.[[8]](#footnote-8) But now we are just haggling about when there ought to be exceptions, and on what basis. Or, in other words, we are haggling about how large the hole is, and thus admitting that there ought to be a hole.[[9]](#footnote-9)

There is one way to plug the hole entirely, which is to grant that colonialism is always *per se* unjust. But this solution is no help in the present circumstances. If we were willing to grant this assumption then Ypi never needed to offer a theory in the first place. The point of contention is whether colonialism is always *per se* unjust. Saying that we need only respect just associations is no help unless we offer the further thesis that colonial associations will always be unjust. Someone attempting to plug the hole in Nine like this could say more. One could describe what is valuable about relationships such that we would think that all colonial relationships will be unjust. It is not as if there is nothing to say on these topics.[[10]](#footnote-10) But at this point, what we are doing is articulating an entire theory of justice which entails the wrongness of colonialism. Once we are going this far, there are more desiderata attached to our choice than merely whether the theory can deliver the results we want about colonialism. We cannot just cast about for whatever theory ensures that colonialism is *per se* wrong and endorse that theory for that reason.[[11]](#footnote-11)

**3. Cosmopolitan Instrumentalism about Colonialism**

I will not here attempt to articulate an entire theory of justice that would guarantee the hole ends up entirely plugged. This is for various reasons, most notably because I do not think any such theory succeeds. Instead I will offer an alternative theory of justice which I think works better.

There is, lurking around the edges of the discourse on colonialism, a neglected theory of justice which does the job quite well. It was defended at least as early as 1979 by Charles Beitz, whose cosmopolitan theory of justice contains its own under-appreciated explanation of the wrongness of colonialism (Beitz 1979, 92–105). According to Beitz, colonialism is wrong because it is unjust, where ‘unjust’ is cashed out in terms of his overall cosmopolitan theory, and thus colonies have a right to independence insofar as this would reduce injustice (Beitz 1979, 104). This has the odd-sounding implication that if independence would *not* reduce injustice, then there is *not* a right to independence. ‘The validity of any particular claim of a right of self-determination can only be assessed with the aid of complex empirical considerations together with a theory of social justice appropriate to the group involved’ (Beitz 1979, 104). Colonialism is not *per se* wrong. It is wrong because it is unjust, and at least in principle there could be cases of colonialism which are not unjust. Settler colonialism to avoid famine might be an example. If there is a famine in Afghanistan and for this reason a group of Afghanis moves to Colorado and set up a farming commune, this amounts to exactly the sort of settler colonialism Nine aims to rule out. The Afghanis have slipped right through the hole in Ypi’s theory. But it is not implausible to think that this is a good hole for them to have slipped through. The Coloradans have plenty of land, and whatever the value of Colorado’s existing political associations, surely they can manage getting jumbled together with the newcomer Afghanis without us worrying that an injustice akin to historical settler colonialism has occurred.

In addition to settler colonialism, there is another form of colonialism we might want to make space for. This colonialism comprises peacekeeping, transitional administrations, humanitarian interventions, and similar sorts of cases where outsiders show up and interfere with existing political associations for the sake of helping. Cécile Fabre’s cosmopolitan account of peacekeeping, military occupation, and transitional regimes provides an example of exactly the sorts of things which one might think are justifiable and which conflict with Nine’s modification of Ypi’s theory (Fabre 2016, ch.3 and ch.8).[[12]](#footnote-12) Like Beitz’s account, which has the seemingly paradoxical-sounding conclusion that there could be just colonialism, Fabre’s account has the seemingly paradoxical-sounding conclusion that there could be just annexation, a conclusion she straightforwardly endorses (Lippert-Rasmussen 2019; Fabre 2019).[[13]](#footnote-13) These are bullets to bite. But everyone will bite bullets somewhere.[[14]](#footnote-14)

Finally, once we accept in principle that justice broadly speaking should be governing our decisions about colonialism, we can analyze harder cases, like ‘settler colonialism’ outside of cases of famine, or, in other words: immigration. After all, immigrants impinge upon existing associations in ways that constitute settler colonialism, at least as Nine understands it in the context of this discussion. Do people have a right to immigrate through the hole in Ypi’s theory? Yes, if this would lead to more justice. Otherwise, no.[[15]](#footnote-15)

This, then, is the suggestion. Colonialism is not *per se* wrong, and existing political arrangements - even the just ones, and perhaps especially the unjust ones - are not sacrosanct in the ways they would need to be to explain why colonialism is *per se* wrong. Rather, we have a broader theory of justice (of the sort defended by Beitz) and we see what it says about any given instance of colonialism.[[16]](#footnote-16) This works just fine for historical colonialism, whether or not we endorse supersession, and in fact it lets us sidestep worries about supersession entirely. This theory is, as Ypi puts it, a ‘forward-looking theory,’ because the concern is with what will or will not promote justice in the future (Ypi 2013b, 251).[[17]](#footnote-17) According to Ypi, the approach is ‘implicit in many cosmopolitan theories of global justice’ (Ypi 2013b, 251). Thus for many, cosmopolitan instrumentalism is not a stretch. They are committed to it already, although they may not realize it. This may even explain why Ypi failed to see the hole. Her account is built on Kant’s cosmopolitan right to establish political relations with others, a right which, if developed in depth, leads one naturally to accept, rather than reject, the notion that outsiders may sometimes justifiably impinge upon one’s existing associations (Ypi 2013a, 173–75). This is a possibility we should welcome, not a hole in our theory which needs to be patched.

**4. Conclusion**

The above considerations alone do not settle matters in favor of cosmopolitan instrumentalism. They mostly just serve to illustrate the space for, and one motivation behind endorsing, cosmopolitan instrumentalism, especially if one is inclined to think that the injustices of past colonialism have not been entirely remedied or superseded. If we are always going to be pushed to the fundamental question of whether colonialism is or isn’t unjust, we can either decide the question in advance and then build a theory around that, or instead choose an existing theory of justice and let it tell us what to say. Cosmopolitan instrumentalism is an example of what happens if a cosmopolitan picks the second route. Whether it is on the whole the best choice is a large separate topic. But we should at least keep it in mind as an option when we think about colonialism.

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1. Nine’s account of how existing relationships and their attendant obligations are impinged upon by newcomers is more detailed and subtle than described here, but the details are not apposite for present purposes. [↑](#footnote-ref-1)
2. I thank an anonymous reviewer for helping me clarify this point and the discussion of supersession more generally. [↑](#footnote-ref-2)
3. For a critical discussion of Moore see Timothy Waligore (Waligore 2017). For a critical discussion of Stilz see A. John Simmons (Simmons 2015, 165–71; 2016, 135–36). [↑](#footnote-ref-3)
4. I think one ought to reject it, for a variety of reasons. There is much debate over supersession beyond what I can cover here. For some objections to supersession, see (Sanderson 2011; Lefkowitz 2015; Catala 2018; Reibold 2019). Reibold’s alternative solution fits into the category of other remedial solutions I discuss below. [↑](#footnote-ref-4)
5. See also (Nine 2012b, 176). Tamar Meisels offers a criticism of Nine’s argument (Meisels 2009, 78–86). Meisel’s concerns about sharing sovereignty echo the worry Nine raises for Ypi, discussed immediately below (Meisels 2009, 85). I think Nine can simply deny that Meisel’s incredulity is any objection to Nine’s conclusion. [↑](#footnote-ref-5)
6. It is not entirely clear if Nine herself endorses this view, or if she merely endorses this response on the part of someone who wants to save a modified version of supersession. If Nine rejects this view then presumably she does not think supersession can be saved even with this modification. [↑](#footnote-ref-6)
7. For another defense of the view that colonialism is not *per se* wrong, see Laura Valentini (2015, 328). [↑](#footnote-ref-7)
8. Nine defends something like this exception with respect to groups whose territory becomes uninhabitable due to climate change (Nine 2010). [↑](#footnote-ref-8)
9. Insofar as there is some remedial procedure Nine could endorse which would remedy past colonialism, I am inclined to think very few societies have accomplished this procedure, and thus in principle most post-colonial societies would lack the value necessary to explain what makes colonialism wrong. Thus a backwards-looking theory is probably not a good basis on which to build an anti-colonial project. We should instead prefer the sort of forward-looking procedure I defend below in section 3, which can explain why it would be wrong to colonize (say) Brazil even though Brazil has not remedied past colonialism. [↑](#footnote-ref-9)
10. See for instance (Nine 2012a; 2012b; 2018). [↑](#footnote-ref-10)
11. We *can* actually pursue a theory like this. Altman and Wellman’s theory is basically this: its fundamental grounding is the intuition that colonialism and other violations of self-determination (most notably annexation) are wrong, and from there they derive their theory (Altman and Wellman 2009, 12–16). If one adopts Altman and Wellman’s theory, one never gets as far as endorsing Ypi, let alone Nine’s modification. [↑](#footnote-ref-11)
12. Fabre’s own response to the colonialism charge mostly amounts to arguing that the actions she defends are not unjust in the way colonialism was unjust, which is exactly the sort of argument the cosmopolitan instrumentalist should give (Fabre 2016, 237–44). Her response differs in a few very minor (mostly terminological) ways from mine. For a brief presentation of my view in the context of intervention see (Weltman 2019, 82-3). [↑](#footnote-ref-12)
13. Recall that annexation is the other example besides colonialism which Altman and Wellman use to construct their theory (Altman and Wellman 2009, 12–16). Wellman rejects while Fabre endorses supersession, which is interesting to note in the context of this discussion, although it doesn’t affect my argument (Wellman 2019; Fabre 2019, 397). [↑](#footnote-ref-13)
14. Altman and Wellman have to endorse a very permissive theory of secession and extensive leeway for states to block immigration, including immigration from refugees, all of which strikes many as implausible (Altman and Wellman ch. 3, ch. 7). [↑](#footnote-ref-14)
15. For two other routes to the same conclusion, which is that considerations of justice rather than self-determination should determine immigration regulation, see Weltman (2020; forthcoming). [↑](#footnote-ref-15)
16. For a fuller defense of this approach, see Weltman (manuscript). [↑](#footnote-ref-16)
17. For another forward-looking approach, see Kim Angell (Angell 2017). Angell’s account is built on a different foundation than Beitz’s. Waldron’s endorsement of supersession is in service of defending a forward-looking approach, so he can be happy with this conclusion even if does not agree with the route we’ve taken to it (Waldron 1992, 27). [↑](#footnote-ref-17)