

Structural injustice and the irrelevance of attachment

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Reflection on the historical injustice inflicted on many formerly colonized groups has left us with a peculiar account of their claims to material objects. One important upshot of that account, relevant to present day justice, is that many people seem to think that indigenous people have special claims to the use of particular external objects by virtue of their attachment to them. In this paper I argue against that attachment-based claim. In the first part I argue that attachment is not normatively important. In the second part I suggest that, to provide a normatively defensible account of why sometimes agents who are, as a matter of fact, attached to certain external objects might also have special claims over them, the most important consideration is whether the agents making such claims suffer from structural injustice in the present. In the third part I try to explain why structural injustice matters, in what way attachment-based claims relate to it and when they count.

I. Introduction

In early August 2013, an Australian mining company was fined \$150,000 for desecrating and damaging “Two Women Sitting Down”, an allegedly sacred site in the custody of the aboriginal people of Kunapa living near Tennant Creek, in the Australian Northern Territory. The damage was ascribed to blasting at a nearby mine that caused the collapse of an overhanging rock and the consequent split of the site into two parts, provoking irremediable damage to the site. Although aboriginal representatives had been consulted when undertaking the works, the mining company was accused of “abusing their trust” and concealing the full extent of the impact of the operation. The collapse, according to Kunapa people, made it impossible for them to continue perceiving the site as part of a traditional songline (in this case narrating the story of

blood spilled during the fight between a marsupial rat and a bandicoot) making it “much harder for Aboriginal people to recognise the dreaming”.¹

Many people tend to think, and I agree, that the verdict of the Australian courts in this case was right. The Kunapa people had been affected in some non-negligible way: their sense of loss of a place inhabited for many centuries by their ancestors could not be compensated by offering an alternative bundle of goods to which the Kunapa people could relate in the same way. Many people also tend to think, and again, I agree, that the Kunapa people were wronged. But they also think they were wronged because people who are attached to particular external objects ought to have a special say on how those objects are used. This account of the wrong, I suggest, is misguided. Although attachment to particular external objects is a very important component of our descriptive explanation of why people object to the way others (who may not share the same sense of attachment) make use of such objects for other purposes (including distributive purposes), I do not think it plays any role in helping us construct an account of why that complaint is *normatively defensible*. This paper tries to show why.

The paper proceeds as follows. Section II explains what attachment to external objects is, what we might think it justifies, and why it seems so attractive. Section III argues that (similarly to arguments like improvement, desert, labour or any other attempt to explain how the history of the relation to a particular object gives us a special claim to it) attachment-based arguments also fail. Section IV argues that to provide a normatively defensible account of why *sometimes* agents who are attached to certain objects might also have special normative claims over them, the relevant consideration is whether agents making such claims suffer from structural injustice in the present. In section V, I explain what structural injustice is, why it matters and in what way attachment-based claims are related to it. Section VI considers objections. Section VII concludes.

II. Claims based on attachment

Attachment-based claims to external objects have recently attracted a great deal of

¹ See <http://www.theguardian.com/world/2013/aug/02/mining-company-fined-aboriginal-site>

attention.² Unlike theories centred on improvement, desert, or labour, attachment-based accounts try to justify the need to secure access to specific external objects to agents who require them to sustain a particular form of life (e.g. the claims of many indigenous groups) even in the absence of a productive interaction with such objects. Unlike institutionalist conventionalism, they can explain what links *particular* agents and individuals to *particular* external objects, even in the absence of institutional procedures able to adjudicate on the allocation of such claims. The normative foundation of attachment-based claims is the centrality of particular objects to agent's life-plans, and the importance of securing access to them for such agents' ability to retain authorship over their lives. Since certain individuals and groups rely on access to certain external objects to sustain a sense of who they are, and to promote particular purposive goals and activities, to deprive them of the ability to continue doing so, is to impose on them ends that are not theirs, showing disrespect for their pursuits and significantly violating their autonomy.³

The argument from attachment seems particularly attractive in the case of indigenous groups who could neither claim to have improved external objects (the Kunapa people did not in any way improve the rock to which they were attached) nor to have created (or joined) institutions able to authoritatively establish norms of resource distribution or territorial allocation.⁴ Yet, many people seem to agree that the case for granting such groups a special say in the use of objects central to their life plans is intuitively forceful. Consider, for example, the Saami people of Scandinavia, an indigenous group of Ugro-Finnic descent whose semi-nomadic herding of reindeer

² For recent defences of attachment-based claims to natural *resources* see Chris Armstrong, "Justice and attachment to natural resources," *Journal of Political Philosophy*, 22 (1), 48-65 (2014); Avery Kolers, "Justice, Territory and Natural Resources", *Political Studies*, 60 (2), 269-286 (2012); Margaret Moore, "Natural Resources, Territorial Right and Global Distributive Justice," *Political Theory* 40 (1), 84-107 (2012). A. J. Simmons, qualifying Lockean theories of property in ch. 5 of *The Lockean Theory of Rights* (Princeton: Princeton University Press, 1992) also discusses the importance of particular resources to promoting agents "purposive projects" as part of the defence of an improvement theory of property. For discussions of the relevance of attachment in making territorial claims see David Miller, "Territorial rights: concept and justification", *Political Studies* 60 (2) 252-268 and Anna Stilz, "Occupancy rights and the wrong of removal," *Philosophy and Public Affairs*, 41 (4), pp. 324-356. In this paper I use the more general term "external objects" rather than "resources" to avoid the question of the "value" of such objects for particular group or individual purposes. The argument I make is compatible with a plurality of ways of relating to such objects, seeing them either as goods that are instrumental to obtain other goods (resources proper) or goods that might be considered important in themselves, with different value conferring processes specific to different groups.

³ On the issue of respect see for example Armstrong, "Attachment based claims to natural resources," 8-9.

⁴ These two alternative strategies for reflecting on such claims go back to authors like Locke in the first case, and Rousseau or Kant, in the second.

provides a main source of sustenance and constitutes a central feature around which collective life is organized. The special claims of Saami people over external objects are recognized in a number of official legal documents of several Nordic states that, for example, grant Saami people special concessions with regard to the herding of reindeer (otherwise legally prohibited to other individuals or groups). The reason behind such special dispensation is thought to be the recognition of the central role that certain activities play for the self-understanding of members of that group and the realization that attachment to external objects that are not easily substitutable is crucial to the individuals' ability to promote particular ends and retain authorship over their lives.⁵ If my argument in this paper is correct, this way of justifying special claims to the use of external objects is misguided.

Before proceeding a few definitions and clarifications are in order. What exactly does it mean to have a special claim on the use of external objects? This issue is slightly opaque but one might think of a range of modes of relating to such objects (some more exclusive than others) on which the agents in question retain a prerogative. These include claims to access and use such objects, to transform them, or to derive income from them.⁶ Defenders of attachment-based claims insist that although such claims are often advocated on behalf of *groups*, what makes the claim justifiable is the importance of attachment *for individuals*, with communities playing only a derivative role (to the extent that their continued existence is necessary to sustain those individual choices). The claims of this paper are compatible with that individualistic stance and, like those authors, I try to avoid the discussion on whether there are any specifically *cultural* rights.

A second important clarification concerns the limits of my argument. The paper tries to show that one prominent strategy for justifying special claims over external objects, the attachment-based one, fails. But I do not offer a full positive account of how we should think about the distribution of shares in objects and lands. Elsewhere I provide a more constructive argument and my own view comes very close to a version

⁵ See on this example Armstrong, "Justice and attachment to natural resources", p. 56-7.

⁶ For a much more sophisticated list of the ways in which resources might be claimed, see also Chris Armstrong, "Against "permanent sovereignty" over natural resources," (Politics, Philosophy and Economics, forthcoming).

of conventionalism, what we might label as global democratic conventionalism.⁷ But it is not necessary to endorse that positive view to see the shortcomings of the alternative I am interested in criticizing. Likewise, although in sections III and IV I offer an alternative analysis of what might justify *some* special claims to external objects of particular groups (namely, these groups' subjection to structural injustice *in the present*), I make that argument only to explain why we might occasionally be sympathetic to cases like that of the Australian Kunapa with which I started (even when we deny the importance of attachment). But by invoking that alternative account, I do not mean to suggest that we should turn to such considerations of structural injustice as providing defeasible reasons that *always* count in favour of granting groups' special claims over external objects. I only mean to suggest that, *if* we choose to do so, we will be on stronger ground by invoking structural injustice than by appealing to attachment-based claims.

Thirdly, arguments that bear on the question of whether groups have special claims over external objects must often confront the thorny question of what is the relation of individuals to the groups of which they are members. This seems particularly relevant in the case of attachment-based claims since, as we already emphasized, the addressees of justification are here individuals, with communities playing only an instrumental role in allowing individuals to pursue particular life plans. If it turns out that group membership is in any way an obstacle to individual development, we will have to reconsider the recognition of group-based claims thereby significantly qualifying the scope of the attachment-based argument. On the alternative analysis invoked in sections III and IV, we do not need to know anything about the internal composition of particular groups and the relation of individuals to them. The question of whether a particular group can make special claims over the use of external objects in virtue of its position in society is independent of other considerations pertaining to the dynamic of justice within the group (i.e. whether the group oppresses its members and whether justice norms are internally followed). These issues require an independent assessment and in no way interfere with the question of whether members of that group are collectively entitled to special claims given their position of structural disadvantage.

⁷ Lea Ypi, "A Permissive Theory of Territorial Rights," *The European Journal of Philosophy* 22 (2) 288-312.

Finally, the argument made in this paper should be appealing to readers who are more sympathetic to end-state rather than historical theories of justice. However, I do not seek to justify such end-state theories here.⁸ Theorists of attachment are often split between the two. They appreciate the importance of end-state theories of justice and often also emphasise that the history of how one ends up making certain claims does not provide conclusive considerations against the need to override such claims on the face of wider distributive requirements. The general constraints on attachment that they are prepared to endorse range from needs-based to proviso principles to full-blown egalitarian requirements.⁹ However, as we saw above, they also insist that attachment to specific objects is normatively important to address the so-called *particularity* question, i.e. to explain how particular agents relate to particular objects (including particular land, particular territory and particular resources) and why it would be *pro tanto* wrong to deny them special claims over the use of such objects. If I am right in what follows there is no normatively plausible answer to the particularity question.¹⁰ The reason that certain agents end up with certain shares is just an accident of history determined (if we are lucky) by convention: there is no nobler story to be told. All we can do is revisit those conventions with the aim of remedying the injustices they inherit and preventing the creation of new ones. Attachment, as such, matters as little to our claim to particular distributive shares as the other ways of connecting particular agents to particular objects that attachment-based theorists criticise (e.g. claims based on labour, desert or improvement). Therefore, if I am right in what follows, we should be as indifferent to claims based on attachment as they are to these other claims that inherit their justification from a historical approach to rights and justice. Conversely, if readers are intuitively more sympathetic to historical accounts of justice than they are to end-state theories, it is unlikely that they will find appealing my argument.

⁸ For a discussion of the difference see Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 153-5.

⁹ See Simmons on proviso constraints, Kolers, Moore and Stilz on needs-based requirements, and Armstrong on egalitarian principles.

¹⁰ Elsewhere I have examined this question with regard to the problem of colonialism and the occupation of particular territories, trying to explain that the wrong of colonialism does not consist in depriving particular agents of territorial entitlements but in the modality in which particular distributive norms with territorial implications are established and enforced.

III. Distributive constraints on attachment

Those who insist on the relevance of attachment to ground special claims over particular external objects typically appeal to the importance of such objects to the pursuit of individuals' life plans and the structuring of their projects. It is often argued that attachment gives us a more specific reason for understanding why particular agents might be entitled to maintain certain prerogatives over particular external objects – an issue that, critics argue, we cannot settle by endorsing a conventionalist account. But why should attachment serve to justify special claims over external objects? Why should the people of Kunapa, simply because they are attached to the rocks and songlines important for locating themselves and their life plans prevent the rest of their fellow-citizens from making use of them in a way that might be incompatible with theirs? And why is it that only Saami people can hunt reindeers in Sweden while other Swedes are prohibited from doing the same? Defenders of attachment-based claims insist that the Kunapa or the Saami are connected to the rocks and reindeers in some unique way: such objects are central to make sense of who they are, and to the pursuit of purposive activities together with others they are related to. To deny these groups the particular use of objects central to their life plans, implies interfering with their autonomy to construct these lives as they see fit. To be attached to a certain external object the way, say, the Saami people are, implies to structure an entire life around activities sustained by access to those objects, and to do so in a way that recognizes and supports the meaning and values of certain group practices.

This argument, however, is unpersuasive. Consider a different case: fox-hunting. The activity, which involves the chasing, hunting and often killing of foxes with the use of scent-hounds, had been practiced in England for some 300 years and came to an end with the introduction of the Hunting Act in 2004, legislated by the then Labour government. The ban, which the House of Lords refused to approve despite an overwhelming majority voting in favour of it in the House of Commons, followed a controversial campaign against the ban, which listed among its supporters several celebrities, the then Conservative Party Leader Iain Duncan Smith and even members of

the royal family.¹¹ Pro-hunting activists insisted during their campaign on the importance of fox-hunting to sustain traditional English values and a rural way of life, increasingly threatened by city elites. Indeed, the vision of the Countryside Alliance, the pressure group established to mobilize against the hunting ban, was to promote “equal access to those facilities enjoyed in urban communities and where people can pursue their business, sports and pastimes according to the dictates of their own conscience, and in a society that appreciates and understands their way of life”.¹² Notwithstanding these protests, the ban was supported by many Britons who saw fox-hunting as a social practice essential only to sustain an aristocratic pastime which reproduced divisive class distinctions.¹³ Oscar Wilde’s reference to “the English country gentleman galloping after a fox” as “the unspeakable in full pursuit of the uneatable” seemed to capture well the mood of the public over the character of those who were interested in fox-hunting and their reasons for it.¹⁴ It was therefore no surprise when, several years after the legislation was passed, and despite all the lobbying efforts designed to change the legislation, surveys showed that 71% of the British public continued to express support for the ban.¹⁵

What makes our intuitions about the killing of foxes in the hunting ban case differ from those concerning the killing of reindeer in the case of the Saami people? One might argue that the difference is subsistence: the latter rely on reindeer to sustain and nourish themselves whereas the English aristocrats pursue killing as a sport (although campaigners also insisted on the benefits of such regulated sport to the conservation of wildlife).¹⁶ But this answer may be too quick: the Saami would not starve if they stopped nourishing themselves with reindeers; other sources of food are available in Scandinavia. And there are many other cases of exemptions granted to particular indigenous groups where the issue does not concern at all the use of objects for personal subsistence but rather the ability to control what is made of them, including

¹¹ See Anderson, Alison (2006), *Spinning the Rural Agenda: The Countryside Alliance, Fox Hunting and Social Policy*. *Social Policy & Administration*, 40: 722–738, at p. 727.

¹² <http://www.countryside-alliance.org/ca/article/our-vision>, accessed 10th September 2013.

¹³ See paragraph 4.12 of the report issued by the Government Inquiry Commission led by Lord Burns at <http://web.archive.org/web/20090410213249/http://www.defra.gov.uk/rural/hunting/inquiry/mainsections/huntingreport.htm>.

¹⁴ Oscar Wilde, *A woman of no importance*. REF

¹⁵ <http://www.theguardian.com/uk/2012/dec/25/britons-fox-hunting-ban-survey>.

¹⁶ These benefits had to do with the fact that in the absence of regulated fox-hunting other species such as hedgerows and thickets would disappear.

their sale and trade. A good example is the controversy over the European Council's ban on the import of products drawn from the hunting of seal pup, including luxury clothing, bags and jewellery. The ban, which affects a number of non-EU countries involved in the commerce of sealskin, including Russia and Canada, and which is fiercely opposed by a number of fur traders, explicitly exempts products obtained by traditional indigenous communities such as the Canadian Inuit.¹⁷ Moreover, many animal rights associations that support the ban and are pivotal to its enforcement also emphasise their support for the exemption. As the executive director for the Humane Society International Canada, an association which campaigned in favour of the prohibition of commercial seal hunt in Atlantic Canada, has recently put it: "we have always argued that there should be an exemption for products from traditional Inuit hunters".¹⁸

Yet the fox hunting, reindeer herding and sealskin trade cases are in many ways analogous. These groups have preferences over the use of external objects that are challenged by other groups of citizens. There is a clear tension here concerning whose claims to prioritise. In all cases, an argument about attachment seems to be in play. In all cases, attachments have an important collective dimension: they are central to a particular way of life sustained by particular structured activities. In all cases specific activities cannot be easily replaced by others without some loss to the customs and traditions of a particular social group. Interference in all of them involves some degree of restriction of freedom of choice. But why are we not as concerned about a bunch of aristocrats losing their privileges over activities essential to sustaining their life style as we are about indigenous people's claim to land and objects central to their pursuits? If the answer were an argument from attachment, it should have similar force in both cases. However, that argument is misguided. To see what is special about certain claims to external objects on the side of particular groups we need to turn to other considerations.

Before we examine these other considerations, it might be worth reflecting on one obvious objection. One could argue that there is a difference between the projects and pursuits that are valuable to sustain a certain culture (like the culture of particular

¹⁷ See on this directive [9/370/EEC](#) of the European Commission:

http://ec.europa.eu/environment/biodiversity/animal_welfare/seals/index_en.htm.

¹⁸ See <http://www.cbc.ca/news/canada/north/canada-eu-edge-toward-agreement-on-inuit-sealskin-products-1.2798211>. The controversy is still ongoing due to difficulties with the implementation of the exemption and the trouble with separating the Inuit harvest from that of East Coast seal hunters.

indigenous groups) and different ways of orienting one's preferences in a society made up of different social groups (as in the cases of members of particular classes). But even if that were the case, even if we were to dismiss the idea of a distinct and pervasive “aristocratic” culture whose features are so elegantly depicted in the great 19th century historical novels, from Balzac to Tolstoy and from Stendhal to Dickens, this is not the case that theorists of attachment tend to make. Attachment-based accounts are insistently individualistic. They emphasise the extent to which certain life habits, contexts of choice and the objects essential to the pursuit of such choices are central to *individuals'* capacity to make plans. They do not emphasise the distinctiveness of cultural groups but rather that interference with particular practices or the objects necessary to sustain such practices would disrupt individuals' ability to set autonomous ends. And here, whatever we make of Marie Antoinette's famous 'let them eat brioche', including the absolute detachment from the way of life of other groups that it reveals, there is no doubt that events like the French Revolution did deprive the upper classes of objects (both land and resources) to which they were significantly attached. Such objects played a central role in the location of their life plans and depriving such groups from having a special say on how they should be used significantly impaired their ability to make projects for the future. But should we worry about it?

Of course some might worry about the process through which such distributions were enforced, about the fact that in the more extreme cases they tended to involve the execution of members of the royal family or the imprisonment of their upper class relatives. We might also worry that the suddenness with which events unfolded left many people hardly able to adjust to new circumstances - think about the scene in *Doctor Zhivago* where Yuri returns to Moscow on the eve of the Bolshevik revolution and is told by his wife Tonya that they now have to get used to live in a small space because many of the rooms in their big family house had to be offered to the new agricultural academy.¹⁹ But all this has little to do with the fact that attachment to

¹⁹ As one of the characters commenting on the events puts it: “This new thing, this marvel of history, this revelation, is exploded right into the very thick of daily life without the slightest consideration for its course. It doesn't start at the beginning, it starts in the middle, without any schedule, on the first weekday that comes along, while the traffic in the street is at its height.” See Boris Pasternak, *Doctor Zhivago*, New York: Pantheon, p. 163 and in general all of chapter 6 for a good account of the disruption.

certain objects gives those who are related to such objects special claims on their use. So why are we sympathetic to the claims of some groups but not in the case of others?

IV. Injustice and special claims to external objects

The claims of Marie Antoinette, like the claims of Queen Elisabeth to the parks, forests and animals surrounding Balmoral Castle seem importantly different from those of the Kunapa people over the rocks of Northern Australia. But if we ask ourselves why, we would struggle to find an adequate answer in an argument from attachment. What might be an alternative account? I think we would be on much stronger ground if we were to stop looking for an argument that links particular external objects to the preferences of particular people and if we focused instead on the relations between people themselves. The case for paying *more* attention to the resource claims of aboriginal groups and indigenous people than to Her Majesty and her relatives does not rest on the special place that such external objects occupy in sustaining their life style. From the point of view of a neutral observer, attentive only to the significance of external objects to agent's structuring of purposive goals and activities, there is no difference between aristocratic life plans and those of aboriginal communities. Both are the result of circumstances with which members of such groups strongly identify. Both play a significant role in how agents see themselves and their lives, who they regard as their peers and how they share with particular others specific values and purposive activities. And an abstract principle of equal respect commands concern for both.

However, there are also important differences. While members of the first group have traditionally been implicated in systems of rules that they have contributed to making and enforcing on others, members of the second group have been victims of injustice and ongoing oppression whose effects are still persistent in the present.²⁰ Unlike privileged upper class representatives, indigenous people and members of aboriginal groups have found themselves on the receiving side of an endless chain of murder, persecution, abuse, exploitation and oppression with ongoing present-day

²⁰ This is also the difference that Brian Barry misses completely in his critique of multiculturalism, despite my sympathy with many of his other arguments, see especially Brian Barry, *Culture and Equality: An Egalitarian Critique of Multiculturalism* (Cambridge: Polity Press, 2001), ch. 7.

implications that are still difficult to shake off. It is in virtue of their subjection to injustice perpetuated by an objectionable systems of rules and the social structures it replicates over time, a system that they did not contribute to making and that they still struggle to endorse, that we owe members of particular groups a special say on the use of external objects.

But whether members of these groups are also attached to such objects is irrelevant to reach this conclusion. Suppose that instead of asking to have a special say on the particular rocks of the Australian National Territory to which they are attached, the Kunapa people asked for free tickets to the Sydney Opera House. If accommodating that claim could help remedy the effects of historical injustice on their present-day condition as part of a process of conferring economic, political, cultural or symbolic powers of resistance to the structural injustice that endangers such groups, there would be nothing unreasonable to that request. But what are the limits of these claims? Suppose that instead of asking for free tickets to the Sydney Opera House the Kunapa asked to turn the building into a cricket ground: should they be allowed to? Again here I think we should be prepared to grant the claims, if doing so would help remedy their condition of structural injustice without fuelling further injustices towards worse-off members of other groups. If the claims of the Kunapa could be accommodated without violating the equal claims of other similarly positioned citizens, then I would be prepared to be sympathetic to this claim too.

In reality of course, none of this is likely to occur. People will make claims to objects they are attached to, not to things they don't care about. But this is beside the point. The point of the examples is to suggest that whatever objects are claimed by victims of past injustice, it is not the historical attachment to such objects that justifies the claim but rather the obligation to make amends for past injustice and the need to ensure that the effects of such injustice are not persistent in the present. It is very difficult to say what this obligation exactly entails in any given case. Sometimes (very often) what is needed is access to the economic resources necessary to fight poverty, inequality and social marginalisation and special claims to external objects help groups preserve traditional economic activities (fishing, hunting etc) that are also important in the present. Sometimes it is a voice (and where necessary a group differentiated voice and even extensive rights of self-government) that would restore the equal standing of members of previously oppressed group in political institutions and structures largely

set up by past colonial masters. Sometimes it is the symbolic recognition of particular claims demanded to restore the sense of dignity and self-respect that would empower these groups against the threat of ongoing injustice.²¹ None of these decisions can be made in the abstract and without a full involvement of members of these groups themselves. But notice that nothing in this process relies on knowing anything about the previous structure of entitlements (who is attached to what, who deserves what, who got here first). Making amends for the past and the acknowledging the obligation to remedy present injustice are owed not for the loss or damage or mishandling of certain objects to which some people are attached. It is rather due to the past failure to treat as equals members of particular groups (for example by failing to apply the same conventions about property that were applied to members of other groups) *and* for the resulting structural injustice that is fuelled by that failure. But attachment plays no role whatsoever in making any of these claims. And if demands grounded on attachment are ventured in the public sphere, they are only relevant in so far as they help remedy the condition of structural disadvantage that victims of past injustice suffer in the present.

To understand these points, consider the following example. For years and years, Victor, the local bully, has persecuted and abused his neighbour Nora: prevented her from exiting her house, forced her to work for him, frightened her with constant threats, and always insulted her with unbearably offensive barbs. As a result Nora is very badly-off, her dignity has been insulted and her self-respect severely impaired. At one point, and after several attempts, Nora successfully rebels and Victor has a change of heart: he realizes his mistake and, genuinely upset, decides to apologize, compensates her for the wrongs suffered and promises to never torment her again. Now suppose that from now on Nora and Victor have to decide on how to use a shared allotment. In the past, Victor enjoyed a veto over how such allotment had to be used, he decided which vegetables to grow, what to do with them, and how to invest the income derived from their sale. But now Nora says she would rather plant flowers than grow vegetables in the allotment. Should Victor listen to her? Or should they take turns? I think, if Victor is not starving and can get vegetables from elsewhere, he ought to grant Nora her special request. He owes it to her in virtue of their tainted history of past interaction and the effects of that history in the present, to make up for the injustice and abuse she has been suffering for

²¹ See for a good analysis of these different types of claims with regard to debates on toleration, Rainer Forst, *Toleration in Conflict* (Cambridge: Cambridge University Press, 2013), ch. 12.

all those years, and to allow her to develop her own interests and pursue her preferences unthreatened by the fear of her bullying neighbour. Victor, after all, had a chance to grow vegetables for as long as he wanted, and now it's Nora's turn to decide how to use the allotment.

But I don't think it matters to settle the case in favour of Nora rather than Victor to know that Nora is attached to flowers and Victor is attached to vegetables, or that the activity of flower-planting is crucial to Nora's life plans and to the development of her projects. I think we would grant Nora her special claim over the use of the allotment, even if she didn't have any plans at all, or if flowers didn't feature in them, or if we didn't know about any of her projects, or if she kept changing her mind on what to do with the allotment every day. The grounds on which the case in favour of Nora is made have very little to do with what contributes to a valuable pursuit of life projects, or with one's purposive goals and activities or with one's emotional investment in those activities or with what one is entitled to as a matter of abstract consideration.

But suppose Nora and Victor have now both died, and it is their children who are next door neighbours. What should they do with their shared allotment? Victor's grandchildren would like to go back to growing vegetables and Nora's family still like to plant flowers. If continuing to grant Nora's family a special claim over the use of the allotment is important to ensure that they feel considered by their neighbours, that they remain integrated in the area, that they continue to be free from stigmatization and disrespect, and that they are not bullied by the family of Victor ever again, then they should retain their special prerogatives. If none of this represents an ongoing threat and the descendants of Victor and Nora are in a roughly similar position, they might consider a different way of making these common decisions, one that gives both parties a more strictly equal say and where special claims over external objects no longer play a normatively relevant role.

V. Structural injustice and the effects of past oppression in the present

Of course, the example above simplifies matters enormously. Victims of past injustice are hardly ever free from the burdens of the past. The tainted history of interaction with their bullying colonial masters continues to affect the way these groups relate to each other, the position in society of their members, whether they suffer from path-

dependent disadvantages and whether they have a de facto equal say in matters of common concern. Yet the answer to whether they should have special claims concerning the management of external objects is analogous to that in the simplified example above. To the extent that the social and political institutions established in a unilateral and abusive way by past colonial masters continue to have a profound and pervasive effect on the lives of members of formerly oppressed groups, their claims to a special say over how certain objects should be used are prima facie justified. This is so because despite any good faith effort at treating as equals victims of past injustice, the effects of that injustice are present and persistent even if the intentions of current members of former colonial societies are now different from those of their ancestors.

To better understand this point we should think about the effects on specific social groups of what I have referred to with the term structural injustice. Structural injustice is the kind of injustice one finds in society even in the absence of a living agent responsible for producing that injustice. A structure is commonly defined as a set of rules and resources recursively implicated in the reproduction of social systems in a way that both presupposes and creates certain patterned constraints on agents' social positions.²² Structural injustice can then be understood as disadvantage suffered by members of particular social groups in virtue of those groups' limited or unequal access to resources, opportunities, and social roles available to others. This limited or unequal access may be the result of a causal history of subjection to particular social and political institutions or it may be the effect of unintended consequences leading to the consolidation of negative patterns of access to resources, advantages or social roles. Structural injustice then indicates the patterned constraints encountered by some individuals in planning their lives; constraints which result from the cumulative effects of their membership in social groups whose access to particular objects, opportunities

²² For similar analysis of structure see Anthony Giddens, *The constitution of society : introduction of the theory of structuration* (Berkeley: University of California Press, 1984), 2. See also I. M. Young, "Equality of whom? Social groups and judgments of injustice," *Journal of Political Philosophy* 9, no. 1 (2001) who criticizes Giddens for placing too much emphasis on agency and the intentional role of agents in changing social structures. For further discussion of the various components of this definition see W. H. Sewell, "A Theory of Structure - Duality, Agency, and Transformation," *American Journal of Sociology* 98, no. 1 (1992).

and social roles is marked by persistent disadvantage compared to members of other groups.²³

If this analysis is correct, members of indigenous communities might be victims of structural injustice resulting from the persistent effects of former colonial structures on the opportunities and social roles available to them, even without any member of the current society intending for this to happen. Empirically this is not far from true. To take only two relevant examples, Aboriginal Australians and Native Americans typically have lower incomes, higher infant mortality rates, lower levels of education and less access to desirable professions than members of any other groups in their societies, which suggests the presence of a pattern of structural injustice with effects that are difficult to remove even in the present.²⁴ It is in virtue of this, and only this fact, that their special claims on the use of particular external objects are normatively appealing.

From this point of view then, some claims to external objects have force not because those who make such claims are attached to such objects. They have force as part of a process of empowerment (whether political, economic or symbolic) that would help members of structurally disadvantaged groups overcome the effects of past oppression. That they happen to be claims about objects to which members of these groups are attached, as in the case of the Kunapa or the Saami or the Inuit, is only a matter of contingency. Empowerment requires taking measures designed to ensure that victims of structural injustice are able to participate in a society of equals without risking the ongoing silencing, marginalisation or stigmatisation of their claims by other more powerful groups.²⁵ Now in some cases, where there is a basic recognition of the authority of existing institutions, members of formerly oppressed groups might be able to articulate their views and obtain fair resources and opportunities within functioning political structures without need to attend to special claims. But in many other cases, the effects of the past unilateral imposition of different political structures, and alien social norms and conventions might be so profound that the recognition of special claims becomes part of a process of returning social and political autonomies that are instrumentally or symbolically important to avoid the ongoing non-consensual political

²³ My account here is similar to and influenced by Young, "Equality of whom? Social groups and judgments of injustice," 14-15.

²⁴ See on this *ibid.*, 16.

²⁵ See on this Iris Young "Polity and Group Difference - a Critique of the Ideal of Universal Citizenship," *Ethics* 99, no. 2 (1989).

association of these groups.²⁶ In both cases, as I said, attachment might be descriptively important to see why members of particular groups demand access to this or that particular object. But the mere fact of attachment is neither here nor there to justify such demands.

VI. Objections

We might wonder here about the exact link between remedying structural injustice and granting members of the particular groups I have discussed special claims over the use of particular external objects. Again, it would be misguided to turn to the attachment principle in order to understand the link. What justifies the special claim to the use of particular external objects is the fact that it is *their* claim and that recognising it *as such* is instrumentally or symbolically important to overcome the condition of structural disadvantage in which such groups find themselves. The process through which these claims come to be asserted, what role they play in the lives of those who make them, and how they contribute to furthering their projects, is of no normative relevance. If structural injustice of the kind I have discussed persists and the claim to the special use of external objects is important to help the victims of structural injustice overcome that social and political disadvantage, then we ought to recognise the force of such claims regardless of how they come to be asserted (whether by labour, improvement or, in the accounts I have discussed, attachment).

But if attachment plays no role in linking particular agents to particular objects does it mean that members of formerly colonised groups can claim pretty much anything regardless of their relation to what they claim? I think they can, *if* granting such claims helps overcome their position of structural injustice and that satisfying their demands is feasible without causing more injustice than we are trying to overcome. The particularity issue that theorists of attachment (and more generally historical theories of justice) seek to solve is, from my point of view, unsolvable. How particular shares are linked to particular objects is largely a matter of contingency and

²⁶ For a discussion of the relation between non-consensual political association and domination, see Lea Ypi, 'What's wrong with colonialism' in *Philosophy and Public Affairs*, vol. 41 (2), pp. 158-191.

convention and I doubt that it is possible to find an account of how agents acquire a special title over certain shares that can claim superiority over any other. But while I think it is both utopian and unproductive to reflect on what justifies such conventions at their origin, it is imperative to think about how they affect justice in the world we have and in what way outstanding injustices can be overcome.

This might seem to lead to a second problem: if granting special claims to the use of particular external objects is conditional on overcoming structural injustice, should we rather not welcome other equally (or even more) effective ways of obtaining the same goal that do not depend on what indigenous people want? What if instead of granting the Kunapa a special say on the rocks of the Northern Territory or conceding the Saami the right to herd reindeers, we provided them better opportunities for healthcare, education, and overall more resources enabling them to reacquire the political, economic and symbolic power necessary to overcome their condition? Wouldn't that be preferable?

I am in principle open to this suggestion but it comes with a few troubling features that are worth highlighting. A key problem here is what factors enable structural injustice to emerge and persist, who decides what counts as an effective remedy to it, through which processes that verdict is reached and who has a say in these processes. Imagine, to go back to my Nora and Victor case above, that now Nora is back to planting flowers but Victor who (recall has had a change of heart) suggests that it would be much better for her if she joined in his activity of cultivating vegetables, perhaps taking some extra free courses on how to do it properly and having a greater share of the vegetables sold. And suppose that this is furthermore true. Since Victor has been the local bully for a while, he has managed to shape the preferences of other people in accordance with his. As a result, flower planting is now neither economically rewarding nor a particularly valued form of activity; it might just make Nora feel good but it does not help at all with improving her position in the neighbourhood. Growing vegetables on the other hand and selling them would be much more likely to bring Nora on a par with the rest of her neighbours and, in the long run, make her kids better off and more similar to everyone else. Now, I think we would still regard Victor's intervention as just a more subtle instance of the same kind of dominating behaviour he has displayed all along. We would start doubting whether Victor ever really regretted what he did since what he ends up doing, yet again, is telling Nora what to do and what

is best for her, imposing values, standards and preferences on her which she does not really recognise as her own. And we would think so *even if* he does this with (what he thinks are) Nora's best interests in mind, and *even if* his strategy ends up being successful in the long run. Even if we concede that there might be preferable alternatives other than following what previously oppressed groups tell us we should do in order to enable them to overcome structural injustice, it should trouble us that what those alternatives often imply ends up consolidating the same values, preferences and indicators that are at the basis of the system of rules that we are trying to improve. It is for this reason, I think, that we need to hear what victims of injustice have to say themselves about what they want (including where what they want is special access to particular objects). It is for this reason that recognition of those special claims is often thought to play a key role in the instrumental and symbolic empowerment of such groups against the ongoing threat of structural injustice.

Finally, let me add a few words on the place of historical injustice in my argument. I have emphasised that the reason we care so much about historical injustice has to do with its effects on the lives of current generations of members of historically oppressed groups. The French committed grave injustices against the Spanish during the War of the Spanish Succession but we have no reason to be concerned about such injustices now (except for learning from and about them). History matters because events of the past have contributed to shaping the system of rules and resources that we have inherited and which is responsible for the generation of patterned constraints over the resources, opportunities and social positions available in the present. But here one might ask whether there is any principled difference between members of groups that have been exploited and oppressed throughout history and more recent victims of social injustice, say members of particular immigrant groups facing threats of domination, discrimination and stigmatisation. If we are prepared to concede special claims over the use of external objects to indigenous people, conditional on such claims helping us remedy structural injustice, should we also be prepared to recognise special claims to other groups who are threatened in the present? If instead of the Kunapa people a group of recently arrived Somali immigrants laid a claim to the rocks of the Northern Territory would we be prepared to endorse their request? I can't see any reason to deny it. If the injustice from which these groups suffer is equally grave and if providing access to particular external objects helped remedy those injustices then we

could not grant to one particular group privileges that are denied to the other. But what if there was a conflict between two equally oppressed group (say the Kunapa people and the Somali immigrants) over who can make special claims to the use of the northern rocks? Again here, the answer cannot be given simply with the help of an attachment theory. It depends on the availability of other means of redress, on the process through which these alternatives are formulated and on the participation to that process of members of oppressed groups and the balance of reasons given for any set of preferences. There is very little we can tell in advance of that process about who has more or less claim to what: in some cases we will be convinced by reasons based on need, in other cases by reasons based on desert, at other times we will have to look at what is feasible, and yet in other cases we will follow established rules and conventions and seek to improve and apply them consistently.

Therefore there is no reason to single out attachment as a ground for granting special claims. The important point, as I argued above, is not the relation between people and certain objects but the relationship of people to each other. What grounds the special claims to the use of external objects is the fact that agents making such claims suffer from political, economic and social injustices that might be remedied if we supply the resources (both real and symbolic) that would help them overcome structural injustice. Structural injustice, as we argued, stems from a unilateral imposition of a system of rules and resources with pervasive effects on the position, opportunities and social roles of particular groups of people. If the recognition of special claims is required to remedy the unilaterality of that imposition then these claims would be justified. The same does not apply if other groups, who are not victims of structural injustice (think about my example of aristocrats above) were to make such claims. But if we single out attachment as the ground for recognising special claims (even if we recognise that attachment can sometimes be constrained) we have have no principled way to resist that extension.

VII. Conclusion

Attachment-based claims to the use of particular external objects have received a great deal of attention in the recent literature. In the first part of this paper I have argued that,

absent certain considerations of background justice, attachment to external objects should be irrelevant to our distributive concerns. In the second part, I have argued that the only plausible reason for granting members of particular groups special claims over the use of external objects has to do with remedying the structural effects of past injustice on their present-day condition. If granting those claims is required to empower those groups and free them from the threat of ongoing structural injustice, their claims are justified. If they play no such role, then they are not.