

# HaLO—6: Structural Oppression and the Road to Justice

Thursday, 15 July 2021

12:25-12:30	Welcome
12:30-13:30	<b>Katharine Gelber:</b> The downsides of speech as expressive conduct (8.30-9.30 am AEST) <i>10 min break</i>
13:40-14:40	<b>Cass Sunstein:</b> Animal Welfare Cascades: A Study in Possibility (7.40-8.40 am EDT) <i>10 min break</i>
14:50-15:50	<b>Susan Benesch:</b> Put it On A Billboard: Contrarian Responses to Hateful Content (8.50-9.50 am EDT) <i>10 min break</i>
16:00-17:00	<b>Jennifer Lackey:</b> Extracted Testimony and the United States Criminal Legal System (9.00-10.00 am CDT ) <i>10 min break</i>
17:10-18:10	<b>Philip Pettit:</b> Free Speech: Three Theses (11.10-12.10 am EDT / 8.10-9.10 am PDT)

Friday, 16 July 2021

14:25-14:30	Welcome
14:30-15:30	<b>David Livingstone Smith:</b> Selection for Oppression (8.30-9.30 am EDT) <i>10 min break</i>
15:40-16:40	<b>Sally Haslanger:</b> How to Distinguish and Address Systemic, Structural, and Institutional Racism (9.40-10.40 am EDT) <i>10 min break</i>
16:50-17:50	<b>Ron Mallon:</b> Accumulation Mechanisms, Structural Oppression, and Structural Justice (9.50-10.50 am CDT) <i>10 min break</i>
18:00-19:00	<b>Colleen Murphy:</b> Countering Denial through Transitional Justice (11.00-12.00 am CDT) <i>10 min break</i>
19:10-20:10	<b>Allen Buchanan:</b> The Explanatory Power of Ideology (10.10-11.10 am MST)

## ABSTRACTS: DAY 1

### **The downsides of speech as expressive conduct**

KATHARINE GELBER (University of Queensland)

12.30 am CET — 8.30 am AEST

A longstanding, and core, debate within free speech literature is the question of whether speech is more akin to thought, or to conduct. There is now widespread acceptance of two propositions in the free speech literature: first, that “speech” ought to be understood as occurring through a variety of expressive actions (including wearing clothes or insignia, clapping, being silent, holding placards or banners, etc); and second that much of the speech with which free speech policy and jurisprudence are concerned is a type of conduct, insofar as when we speak, we do things. The former proposition is universally accepted. The latter proposition is not, but it underpins the legitimacy of regulating much harmful speech, such as hate speech, defamation and incitement to violence. In this context, not all speech-based conduct legitimately falls under the protection of free speech.

What of non-speech-based expressive conduct? Ought non-speech-based expressive conduct to constitute legitimately protected speech under free speech principles? Logic suggests that it is no more likely that all non-speech-based expressive conduct ought to be protected under free speech principles than it is that all speech-based expressive conduct ought to be completely covered by free speech principles. However, recently we have seen arguments of this nature being put forward in the case of bakers who argue they should not be ‘compelled’ to engage in speech with which they personally disagree by being required, under anti-discrimination laws for example, to provide cakes for same sex marriages or transgender clients. Cake-making, they argue, is a form of non-speech-based, expressive conduct. Similar arguments have been made by venue operators, limousine drivers, florists, and so on.

In this paper, I argue that the distinction to be made in determining what ought to be validly protected under a free speech principle is between, on the one hand, speech as expressive conduct that has as its primary function the expression of a political point of view by the speaker, yet does not reach the threshold of an actionable harm that is comparable to other types of conduct that constitute actionable harm; and, on the other hand, conduct that has as its primary function something other than the expression of a political point of view by the speaker, even though some point of view may incidentally be conveyed by it. In the latter case, the conduct ought not to fall under the protection of free speech. Because making a cake (or operating a venue, driving a limousine, or providing flowers) is non-speech-based conduct that has as its primary function the provision of goods and services by the ‘speaker’, even though some point of view may incidentally be conveyed by it, the conduct ought not to fall under the protection of free speech..

### **Animal Welfare Cascades: A Study in Possibility**

CASS SUNSTEIN (Harvard University)

1.40 pm CET — 7.40 am EDT

Informational and reputational cascades often arise in the presence of four factors: (1) preference falsification; (2) diverse thresholds; (3) social interactions; and (4) group polarization. In the context of animal welfare, cascades have often occurred, and more consequential ones are possible. First: In this domain, preference falsification has run and is running rampant. Those who care about animal welfare, or are inclined to want to say or do something about it, often

silence themselves. They know that if they speak or act, they might incur social disapproval or worse. Second: People have different thresholds for disclosing their views or for taking action. With respect to animal welfare, some people really will speak out or act, even if no one else does. Others need someone to follow – but only one. Still others need two, or three, or a hundred, or more. Third: Social interactions are and continue to be crucial to the movement for animal welfare. Who is seeing whom? When? Who is talking to whom? Are visible people speaking and acting in ways that support animal welfare? Are they credible? With whom? Fourth: In many times and places, believers in animal rights, animal welfare, or both have created communities of like-minded people. These communities can be highly effective. They create a commitment to a belief that might have been held tentatively. They make that belief salient, potentially part of people’s identity. They increase confidence and unity.

### **Put it On A Billboard: Contrarian Responses to Hateful Content**

SUSAN BENESCH (Harvard University)

2.50 pm CET — 8.50 am EDT

This talk will describe some real-life responses to hatred that have employed unusual communicative strategies, quite different from more familiar responses such as calling out and shaming. For example, some responders have chosen to amplify hatred, even emblazoning it on billboards, rather than attempting to suppress it. In another project, tens of thousands of people have joined together to respond collectively to specific forms of hatred online. Early research suggests that such methods may shift discourse norms and power dynamics in particular spaces.

### **Extracted Testimony and the United States Criminal Legal System**

JENNIFER LACKEY: (Northwestern University)

4.00 pm CET — 9.00 am EDT

At many layers of the criminal legal system in the United States, testimony is extracted from individuals through processes that are coercive, manipulative, or deceptive, and is then unreasonably regarded as representing the testifiers’ truest or most reliable selves. In this talk, I will offer a close philosophical analysis of two distinct phenomena in the criminal legal system where this practice is most vivid: confession evidence and eyewitness testimony. I will show that work in criminal law and social psychology on these issues makes clear that a significant expansion of testimonial injustice, a widely discussed notion in philosophy, is needed. At the same time, I will show that this expanded philosophical framework makes a valuable contribution to criminal law and social psychology by providing essential normative tools for understanding the distinctive epistemic wrongs at work with these phenomena.

### **Free Speech: Three Theses**

PHILIP PETTIT (Princeton University)

4.10 pm CET — 11.10 am EDT / 8.10 am PDT

What does free speech involve? What are its benefits? And what are its rights? The line taken is this. First, that free speech essentially involves legally protected speech: law is not just a means of promoting it. Second, that the benefits of equal free speech are fully available only in the presence of legal protection for all. And third, that it is up to the law, looking to the available benefits, to determine what the rights of free speech ought to be: they are not given by nature.

## ABSTRACTS: DAY 2

## **Selection for Oppression**

DAVID LIVINGSTON SMITH (University of New England)  
2.30 pm CET — 8.30 am EDT

My aim in this talk is to show how a biological form of thinking can significantly clarify how to understand a functional conception of ideology. I do this by drawing on philosophy of biology to disambiguate the idea of function, carving it into two distinct notions of what functions are. Having done this, I argue that only one of these—the teleological conception of function—provides a suitable basis for a theory of ideology. Finally, drawing more deeply on Millikan’s theory of proper functions, I provide an analysis of how ideological beliefs get their oppressive function, and proceed trace out some of the entailments of this view.

## **How to Distinguish and Address Systemic, Structural, and Institutional Racism**

SALLY HASLANGER (Massachusetts Institute of Technology)  
3.40 pm CET — 8.40 am EDT

The terms ‘systemic oppression’ and ‘structural oppression’ are often used interchangeably and often also used interchangeably with ‘institutional oppression.’ But these forms of oppression should be distinguished, both to understand the problems and to address them. This paper sketches how we might situate oppression within a systems conception of society and a practice account of social structure, and locates some of the leverage points for social change, using racism as a paradigm case.

## **Accumulation Mechanisms, Structural Oppression, and Structural Justice**

RON MALLON (Washington University)  
4.50 pm CET — 9.50 am CDT

Structure can pick out multiple sorts of entities: norms, institutions, material culture, and material conditions among them. In this paper, I want to talk about an aspect of structure that I have called “accumulation mechanisms,” that is, mechanisms that aggregate the (sometimes individually small) effects of past events into larger advantages and disadvantages resulting, at least sometimes, in structural oppression.

After offering an account of such mechanisms and their role in aggregation, I turn to draw attention to one source of the stability of such oppressive mechanisms: that such mechanisms play a central role in tracking past events in ways required by fairness and desert. One way of conceiving the social challenge of structural oppression, then, is to consider ways of resolving structural oppression produced by accumulation mechanisms while respecting the moral goals that they serve.

## **Countering Denial through Transitional Justice**

COLLEEN MURPHY (University of Illinois)  
6.00 pm CET — 11.00 am CDT

Transitional justice refers to the process of responding to widespread wrongdoing through mechanisms like criminal trials, truth commissions, and reparations. The aim of transitional justice is the just pursuit of societal transformation, that is, transforming the structure of political relationships by doing justice to victims and perpetrators of wrongdoing. Such transformation is only possible if pervasive, often official, denial about wrongdoing is countered. I first outline

three common forms denial takes (literal, interpretive, and implicative). I then explain why countering denial is essential for transformative change to be possible and for justice for victims and perpetrators to be achieved. I end by discussing potential tensions between countering denial and democracy, and risks of contributing to denial that accompany any transitional justice process.

## **THE EXPLANATORY POWER OF IDEOLOGY**

ALLEN BUCHANAN (University of Arizona)

7.10 pm CET — 10.10 am MST

My aim is to explore the explanatory power of the concept of ideology. In particular, I refute ideology skeptics, who hold that the concept of ideology is not needed to explain why the oppressed acquiesce in their oppression because such acquiesce can be explained as a simple failure of collective action.. First, I show how ideology can prevent the oppressed from getting to the point where they would encounter a collective action problem, either (i) by convincing them that the existing social order is natural and therefore unalterable, or (ii) by preventing them from seeing that the social order is oppressing them, or (iii) by convincing them that they lack the agency needed for there to be a reasonable prospect of successful revolution. Next, I explain how ideologies can solve collective action problems. Finally, I argue that ideologies can help explain the spiral of extreme violence that occurs in revolutions. (paper available on the website)