## 1

Text: The United States federal government should grant access to Pell grants to Black American inmates in the United States criminal justice system.

Education is dominated by the banking model which relies on abstract and alienating truths. Education should instead inspire the oppressed to become aware of and change their material conditions.

**Freire 70**[[1]](#footnote-1)

A careful analysis of the teacher-student relationship at any level, inside or outside the school, reveals its fundamentally narrative character. This relationship involves a narrating Subject (the teacher) and patient listening objects (the students). The contents, whether values or empirical dimensions of reality, tend in the process of being narrated to become lifeless and petrified. **Education is suffering from narration sickness. The teacher talks about reality as if it were** motionless, **static**, compartmentalized, **and predictable. Or** else **he expounds on a topic completely alien to the existential experience of the students.** His task is to "fill" the students with the contents of his narration -- contents which are detached from reality, disconnected from the totality that engendered them and could give them significance. Words are emptied of their concreteness and become a hollow, alienated, and alienating verbosity. The outstanding characteristic of this narrative education, then, is the sonority of words, not their transforming power. "Four times four is sixteen; **the capital of Para is Belem." The student** records, **memorizes, and repeats these phrases without perceiving** what four times four really means, or realizing **the true significance of** "capital" in **the affirmation** "the capital of Para is Belem," that is, what Belem means for Para and what Para means for Brazil. Narration (with the teacher as narrator) leads the students to memorize mechanically the narrated account. Worse yet, it turns them into "containers," into "receptacles" to be "filled" by the teachers. The more completely she fills the receptacles, the better a teachers she is. The more meekly the receptacles permit themselves to be filled, the better students they are. Education thus becomes an act of depositing, in which **the students are the depositories and the teacher is the depositor.** Instead of communicating, the teacher issues communiques and makes deposits which the students patiently receive, memorize, and repeat. **This is the "banking' concept of education, in which** the scope of **action allowed to** the **students extends only as far as receiving**, filing, **and storing** the **deposits.** They do, it is true, have the opportunity to become collectors or cataloguers of the things they store. But in the last analysis, it is the **people themselves** who **are filed away through** the **lack of** creativity, **transformation**, and knowledge in this (at best) misguided system. For apart from inquiry, apart from the praxis, individuals cannot be truly human. Knowledge emerges only through invention and re-invention, through the restless, impatient continuing, hopeful inquiry human beings pursue in the world, with the world, and with each other. In the banking concept of education, knowledge is a gift bestowed by those who consider themselves knowledgeable upon those whom they consider to know nothing. Projecting an absolute ignorance onto others, a characteristic of the ideology of oppression, negates education and knowledge as processes of inquiry. The teacher presents himself to his students as their necessary opposite; by considering their ignorance absolute, he justifies his own existence. The students, alienated like the slave in the Hegelian dialectic, accept their ignorance as justifying the teachers existence -- but unlike the slave, they never discover that they educate the teacher. The raison d'etre of libertarian education, on the other hand, lies in its drive towards reconciliation. Education must begin with the solution of the teacher-student contradiction, by reconciling the poles of the contradiction so that both are simultaneously teachers and students. This solution is not (nor can it be) found in the banking concept. On the contrary, **banking education maintains an**d even stimulates the contradiction through the following attitudes and practices, which mirror **oppressive society** as a whole**:** the teacher teaches and the students are taught; the teacher knows everything and the students know nothing; the teacher thinks and the students are thought about; **the teacher talks and the students listen -- meekly;** the teacher disciplines and the students are disciplined; the teacher chooses and enforces his choice, and the students comply; the teacher acts and the students have the illusion of acting through the action of the teacher; **the teacher chooses the program content, and the students** (who were not consulted) **adapt** to it; the teacher confuses the authority of knowledge with his or her own professional authority, which she and he sets in opposition to the freedom of the students; the teacher is the Subject of the learning process, while the pupils are mere objects. It is not surprising that the **banking** concept of **education regards men as** adaptable, **manageable beings. The more students work at storing** the **deposits entrusted to them, the less they develop** the **critical consciousness** which would result from their intervention in the world as transformers of that world. The more completely they accept the passive role imposed on them, the more **they tend simply to adapt to the world as it is** and to the fragmented view of reality deposited in them. The capability of banking education to minimize or annul the student's creative power and to stimulate their credulity serves the interests of the oppressors, who care neither to have the world revealed nor to see it transformed. The oppressors use their "humanitarianism" to preserve a profitable situation. Thus they react almost instinctively against any experiment in education which stimulates the critical faculties and is not content with a partial view of reality always seeks out the ties which link one point to another and one problem to another. Indeed, the interests of the oppressors lie in "changing the consciousness of the oppressed, not the situation which oppresses them," (1) for **the more the oppressed can be led to adapt** to that situation**, the more easily they can be dominated.** To achieve this the oppressors use the banking concept of education in conjunction with a paternalistic social action apparatus, within which the oppressed receive the euphemistic title of "welfare recipients." They are treated as individual cases, as marginal persons who deviate from the general configuration of a "good, organized and just" society. The oppressed are regarded as the pathology of the healthy society which must therefore adjust these "incompetent and lazy" folk to its own patterns by changing their mentality. These marginals need to be "integrated," "incorporated" into the healthy society that they have "forsaken." [Footnote #1: Simone de Beauvoir. La Pensee de Droite, Aujord'hui (Paris); ST, El Pensamiento politico de la Derecha (Buenos Aires, 1963), p. 34. The truth is, however, that the oppressed are not "marginals," are not living "outside" society. They have always been "inside" the structure which made them "beings for others." The solution is not to 'integrate" them into the structure of oppression, but to transform that structure so that they can become "beings for themselves." Such transformation, of course, would undermine the oppressors' purposes; hence their utilization of the banking concept of education to avoid the threat of student conscientizacao.

Arab Spring proves – critical pedagogy is key to praxis – empowers the oppressed to fight for change

**Barmania 11**[[2]](#footnote-2)

Frantz Fanon, Iconic psychiatrist and author of books such as “Wretched of the Earth”, wrote that “literature increasingly involves itself in its only real task, which is to get society to reflect and mediate”. Paulo Freire’s landmark book, “Pedagogy of the Oppressed” is a prime example of literature that makes one reflect, cogitate and ponder all at once. In addition, **Freire’s “Pedagogy” is** also the archetypal case in point of a book, which isjust as **relevant** today as it was decades ago. Freire was a Brazilian educator, who grew up during the poverty of the Great Depression in the 1930s and published one of his seminal works “Pedagogy of the Oppressed”, in English in 1970. Freire’s book, rooted in his experience of liberation in Brazil is equally apt **in the context of the Arab Spring,** and particularly after the death of Gaddafi last week. One of Freire’s central tenets was that “education is freedom” that leads toward true liberation and that the “banking” concept of education- where students are empty vessels to be filled, acts as an instrument of oppression. **He called on** the **cultivation of** a **critical consciousness** (conscientizacao), enabling those to reflect upon their own reality and thereby transform it. “How can the oppressed, as divided, unauthentic beings, participate in developing the pedagogy of their liberation” Freire asks? It is this concept of **the oppressed** initiating and **participating in their** own **liberation**, aswas the case in the Arab Spring, which **was central to Freire’s writing.** Freire explains: “Revolution is born as a social entity within the oppressor society…Every entity develops (or is transformed within itself, through the interplay of its contradictions. External conditioners, while necessary, are effective only if they coincide with those potentialities”. It is a sentiment shared by many involved in the Arab Revolution, including Ahmed Farid, an Egyptian lawyer and peace activist working in Alexandria, Egypt. Speaking with Farid he speaks optimistically and passionately: “**For centuries** the **Arab countries lived in a**n automatic and **dictatorial regime. People were yearning for** justice and equality for democracy and **freedom**s **but with no effective result UNTIL the revolution came.** It was not a revolution of the hungry or the miserable, though lots of people were in need, but it was a revolution for dignity and self respect”. Farid continues: “from Tunisia when a police woman slapped Mohamed Bo Azizi when he asked for his rights and he decided to commit a suicide then all the **Tunisians** went out from their homes and **demonstrated against the regime and they succeeded. Then it** [the revolution] **came to Egypt and** the regime said Egypt is not like Tunisia but **the Egyptians** made it, they **made it in a peaceful** and modern **way that attracted the attention of the whole world.** Freire also highlights the “culture of silence” and strategies that are enacted in order that oppression of the people is maintained. “Manipulation, sloganizing, depositing, regimentation, and prescription cannot be components of revolutionary praxis, precisely because they are the components of the praxis of domination” Freire’s work, often cited in peace education discourses, also highlights the real potentiality of the oppressed becoming the oppressors, which seems particularly timely given the discovery of 53 bodies of executed Gaddafi loyalists, reported by Kim Sengupta. Freire’s words seem almost like a forewarning: “[Dehumanization of the oppressed] …is a distortion of being more fully human, sooner or later being less human leads the oppressed to struggle against those who made them so. In order for this struggle to have meaning, the oppressed must not, in seeking to regain their humanity, become in turn oppressors of the oppressors, but rather restorers of the humanity of both”. Paulo Freire’s “Pedagogy of the oppressed” is timeless, as pertinent to the revolution in the Middle East now as to those in South America decades ago. Moreover, most importantly it makes one reflect and in Freire’s words it is this “reflection- **true reflection** which **leads to action**”

The federal ban on Pell Grants for prisoners encouraged emphasis on vocational training in favor of liberal arts education in prison. The plan revives liberal arts in prison, promoting critical pedagogy. **Yates 9**[[3]](#footnote-3)

In 1971, Supreme Court Justice Warren Burger spoke at the first National Conference on Corrections, “We know that today the programs of (prisoner) education range from nonexistent to inadequate, with all too few exceptions. However we do it, the illiterate and the unskilled who are sentenced for substantial terms must be given the opportunity, the means, and the motivation to learn his way to freedom” (Burger, 1985 p. 193). Prison-based programs have dated back to the 1800s as reformers sought to extend basic and vocational education, as well as moral education to those who had been convicted of crimes (Welch, 1996). Gehring and Wright (2003) propose that many of these early reformers were not just interested in improving the virtues of the inmates, but also had a sophisticated understanding of the anti-democratic nature of penal systems. They had the progressive notion that prisoners were capable of being agents in their own reformation by taking responsibility for education. Gehring and Wright call the presence of these early radical prison educators, “the hidden heritage of correctional education” (p. 52 5). They suggest this thread of progressiveness extended up through World War II after which Cold War pragmatism resulted in a return to basic education (Gehring & Wright 2003). Much of the **programs of the** 19**60s and** 19**70s** followed a functionalist approach that **equated an inmate’s** future **success** as a law-abiding citizen **with** the knowledge required to obtain lawful employment and negotiate legal society. These skill sets focused primarily on obtaining **vocational skills** and basic literacy. Howard Davidson describes this theory: “it propounds that crime results from individuals making poor (i.e. criminal) decisions when faced with life‟s many problems. Out of neoliberalism comes the market metaphor, in which individuals make rational decisions based on calculating benefits against costs” (Davidson, 1995, p.4). How did the modern functionalist approach to prisoner education take root? Much of the impetus seems to have arisen from human capital theory. One of the primary features of neoliberal thought and practice is the reliance upon human capital theory to explain the purpose of education. Human capital theory has been described by Robert Hart and Thomas Moutos (1995) as an investment of skills training in workers that seeks to balance the costs of training with the return on the investment. Even the proponents of human capital theory describe it as reductionist, mechanical and based upon “homogenized factors.” During the reign of neoliberalism, human capital theory slithered from its manufacturing origins into the corridors of education. Perhaps the most succinct description of the human capital theory of education is provided (without apparent irony) by Joop Hartog and Hessel Oosterbeek (2007): “The basic human capital model of schooling envisages two options (1) go to school for s years and earn an income Ys every year after leaving school, or (2) go to work right away and earn 53 annual income Yo” (p. 7). This reductionist view of the role of schooling does not take into account exogenous factors that can affect income level such as discrimination and availability of jobs in the market (Livingstone, 1997). The role of human capital theory in education reached a high level of urgency among neoliberals as concern arose regarding the United States competiveness in global markets. Chief among the proponents were Presidents George Bush and Bill Clinton through the Goals 2000 project which set the priority for education to create the workers who could increase the U.S. efficacy in international capitalism (Briscoe, 2000). A center-piece of the thrust toward implementation of human capital theory in education was the No Child Left Behind legislation which narrowed the focus of educational curricula toward those basic skills required for technical society such as math, reading and science at the expense of those for an active, well-rounded life such as social studies, art, music and physical education. According to Pauline Lipman (2007) No Child Left Behind is “explicitly designed to meet the needs and technical rationality of business… symbolically, as well as practically, national testing constitutes a system of quality control, verifying that those who survive the gauntlet of tests and graduate have the literacies and dispositions business requires” (Lipman, 2007, p. 46). Lipman sees the legislation as a disciplinary process with the end product being docile workers, the ultimate in human capital. Prisoner job training programs fulfilled this need. In the 1970s and 1980s, **in part due to** the availability of **the Pell Grant,** a **liberal arts** curriculum **became a major component of** many **prison education** programs in a way that it never had before. According to Mary Wright (2001) the correction education liberal arts programs remained in favor well into the 1990s even as it was de-emphasized in the 54 larger academic world. She gives several reasons, including the slow pace of change in prisons, the lack of flexibility and increased cost of obtaining equipment for technical job training programs. However, **in the** 19**90s, liberal arts** in a correctional setting **fell into disfavor, and** adult basic education and **vocational education programs reasserted their primacy** in the penal system (Wright, 2001). Vocational programs in prison included plumbing, carpentry, electrical wiring, painting, heating and air conditioning as well as computer literacy. In addition, the emphasis on job training spilled over into the **language arts and math** programs as they **were retooled to focus on technical** and applied **reading and writing** (Steuer, 2001). Between 1995 and 2000, **the percentage of state prisons offering college courses decreased** from 31% to 26% **while** those offering basic adult education increased from 76% to 80%. State prisons offering **vocational education increased** from 54% to 55% and in private prisons it increased from 25% to 44% in the same time period (Harlow, 2003). Several reasons are given for this change in addition to the dissolution of prisoner Pell Grants. One is the perceived threat liberal arts curricula pose to the penal institution. Wright (2001) states that “a **liberal arts** curriculum, **which** often **emphasizes critical thinking,** intellectual **and moral reasoning** and development of an inmate’s sense of self may **pose a challenge to the established order of a correctional facility**” (p. 13). In addition, **with Pell Grants gone, prison**er **education** programs **became** more **dependent** up**on outcome-based funding.** Performance-based management of these programs, like the parallel evolution in public schools, led to “school report cards” that evaluated the effectiveness of the programs in turning out their product (Linton, 2005). Curricula that can lend to empirical studies, such as testing in basic adult education, were given priority 55 over liberal arts, which seemingly has more nebulous outcomes. According to John Linton (2005) of the U.S. Department of Education‟s Correction Education division: “The current climate [requires] that expenditure of public funds be restricted to „scientifically proven‟ effective interventions” (p. 91). **Job training fits well to this regime because** the **results of the program could be measured empirically through** the **numbers** of the test group who are **able to obtain work.** In addition, recidivism rates could be obtained. Numerous studies have pointed to the inverse relationship between vocational technical programs and recidivism (Hall & Bannatyne, 2000; Mattuci & Johnson, 2003; Young & Mattuci, 2006, Gordon & Weldon, 2003). Empirical studies focusing strictly on recidivism as a measurement of achievement have not been without their faults. In his examination of the more recent works, Charles Ubah (2002) has found a tendency for the inmates to self-select into the programs. These participants were probably more motivated, as a whole, to succeed upon their release, than those who did not participate (Ubah, 2002). Ubah‟s findings bring up another important question: What about those who slip through the cracks in the empirical studies? An example may be found in Robert Mattuci‟s (2003) description of the vocational program that he set up in a New York state prison. It consisted of an eight session program to teach the students basic plumbing skills in order to increase their employment prospects upon release. Mattuci, who had a bachelor‟s degree in education and twenty years experience as a plumber, appeared to incorporate a well-thought out system of pedagogy. He relates that “many inmates have never known a positive schooling experience so they lack the needed confidence to succeed at learning something new. A key to the program is therefore validating their differences as 56 individuals and accommodating their multiple learning styles” (p. 16). Mattuci had them work in groups for all hands-on activities and encouraged group brainstorming and problem solving. Yet, despite the care in which the teacher took in order to facilitate a sense of community on the shop floor, there were a significant number of inmates who did not take to the class. “Especially for the younger inmates, gang activity is very evident. The dropout rate of the male youth in three of the groups was 90%. For those influenced by gangs, there is a total lack of respect for the process of setting goals and working toward them” (Mattuci & Johnson, 2003, p. 17). A conventional vocational program may not reach this group of inmates who, as dropouts of the program are more likely to return to prison. While recidivism is an important issue, it must be understood within context of the many variables that exist both within the inmates and, just as importantly, the conditions that exist once they are released. Barriers to post-release employment include lack of current job skills in a rapidly changing market, lack of available jobs in a tight market, the large hole in the employment history created by incarceration, and perhaps most significantly, the criminal record. With the rise of the information society, even jobs considered “menial,” require criminal background checks. The perceived and actual impediments to employment can decrease the seeker‟s motivation and self image (Pavis, 2002). Combined with conditions that facilitated a life of crime in the first place: poverty, discrimination, substance abuse, the deck is stacked against the average inmate. Conventional job training in itself is clearly not going to arm these people against the challenges of life on the outside. The attributes previously described that led some 57 prisons to reject liberal arts education; the “critical thinking, intellectual and moral reasoning” leading to a “sense of self,” must be cultivated (p. 1). **Friere** (2004), Giroux (2006) **and others have called for** a **pedagogy** that is **freed from the bonds of the “bottom-line**.**”** Mike Cole (2005) puts it succinctly, **calling for schools to become sites where “teachers,** other school workers **and** pupils/**students** not only **agitate for changes** within the classroom and within the institutional context of the school, but also support a transformation in the objective conditions in which students and their parents labor” (p. 16). In this vision, there is no room for docile workers. **Schools would be transformed into emancipatory institutions where workers would** not only be provided basic literacy, vocational skills and liberal arts, but would also **learn to advocate for a better world.** I explore this possibility further in Chapter 5.

Pell Grants are designed to promote critical pedagogy. Pell Grant-funded prison education encourages prison students to become aware of their material conditions and struggle against their oppression. **Yates 9**[[4]](#footnote-4)

The **Pell-sponsored education** programs, which can range from vocational to liberal arts, **provided** the **students with** a degree of agency in that they had the **potential to choose what** level or kind of **education was offered.** As will be described later, prisoner students could initiate and help establish educational programs that were relatively autonomous to the institutions where they were housed. **Because the student has** some **control over where** she wants **to apply her grant, there is** a certain level of **academic freedom** that seems to be almost entirely absent in the Second Chance Act education program.

**[…]**

**In the** 19**70s and** 19**80s,** a trend arose in prisoner education in which **prisoners were** viewed as active participants in their own learning (Davidson, 1995). It was the inmates themselves who were often **at the forefront of** initiating a new prison **pedagogy that was highly critical of** both **the criminal justice system as well as** the wider **social and economic institutions that gave rise to** the **inequities** that constituted the police/penal state. Within this school of thought, prisons are seen as an integral part of a politico/economic system that survives, as Germanotta, (1995) suggests, by “maintaining unequal relations at the level of production. Penal institutions are the ultimate vehicle used to police the borderlines of these unequal relations.” It should not come as a surprise that inmates are at the forefront of the push for a critical prison pedagogy since, “living and working within [correctional] settings will make this abundantly clear” (p.104). James Morse (2002), a former prisoner in New York State, examines the unequal relations manifest in the Harlem, Bedford Stuyvesant, Lower East Side, and South Bronx neighborhoods of New York City. These urban sectors are not neighborhoods in the traditionally middleclass sense of socially stable, economically viable residential areas. Owing largely to the polarizing effect of conservative economics during the Reagan/ Bush debacle whereby the rich become super-rich and the poor become super-poor - these sectors are principally pockets of extremely low income and dependency, exhibiting a constant and rapid turnover of residents that establishes social instability as the prevailing norm. Promoting this social instability, and characterizing these enclaves as prisoner specific, is the perpetual outflow and influx of myriads of individuals to and from the state‟s prison system.” (p. 129) Educators have described some of the many forms that critical prison pedagogy can take, from **inmates becom[e]**ing self aware and **aware of societal ills through** the reading; 179 distribution and analysis of **radical literature** of the industrial trade unions, Black Power and other resistance movements; to the influx of volunteer educators in the 1970s inspired by the well publicized prisoner resistance activities of that period. Other forms of emancipatory education include **self-taught inmate “lawyers”** who **educate their peers on** the vagaries of negotiating **the legal system.** Another account regards a group of women prisoners who staged a successful protest when their writing workshop was threatened with cancellation (Davidson, 1995). Education of this kind has the potential to help prisoners to become active, involved citizens. Paulo Freire (1970) describes the possibilities of emancipatory education, “people develop their power to perceive critically the way they exist in the world with which and in which they find themselves; they come to see the world not as a static reality, but as a reality in process, in transformation” (p. 83). What better place to facilitate transformational pedagogy than prison? Thom Gehring (2000), a longtime prison educator, describes the potential for innovative programs in the penal environment, “Democratic programs in correctional education are compelling to the human spirit – they conjure up ancient aspirations.” These aspirations include “freedom” and a “just/democratic society” (Eggleston & Gehring, 200, p.310). One means of facilitating emanicipatory education for those incarcerated is by putting into place **funding mechanisms that have few curricular strings attached** and can **allow for innovation.** These could give the prisoners themselves, some level of autonomy in choosing what kind of education they would receive. Necessary to the establishment of democratic education is reliable non-program specific funding. **An example** of such a funding mechanism **was the Pell Grant program.**180 Prisons are representative of “total institutions,” characterized by authoritarianism and regimentation and close observation of its inhabitants (Goffman, 1961). Thomas James (1988) has suggested that schools can also be totalizing organizations, marked by their ability to cause “dissolution of the self as the corporate identity of the total institution emerges from within and becomes a way of life” (p.2). While authoritarianism provides a common thread between many schools and all prisons, there is one major difference, most schools are day schools, allowing egress on a daily basis. Freedom of movement has the potential to provide access to new ideas through exposure to nonsanctioned media and new associations. Prisons, at least in theory, are set up to strictly regulate both the bodies and the minds of the inmates by controlling whatever passes through the gates. **Foucault** (1995) **suggests that prisons** function to **create “docile bodies” through continuous observation.** Because the gaze tends to be one way, toward the prisoners, they never know when they are being observed. This process tends to discipline the mind as well as the body. **The result is** to create a compliant person, with a **diminution of agency.**

This is a question of method. See cross-ex – he said the method by which black teachers would be judged qualified is the current model which Freire rejects. He says the judge has a pre-fiat duty to reject structural violence, so vote neg to reject his representations and perms would be severance.

## 2

Moral realism fails. There are no normative truths which are independent of an agent’s prior attitudes or beliefs about morality. **Street 7** writes[[5]](#footnote-5)

To begin filling out the picture, note that there are countlessly many internally consistent evaluative systems—where this is not a point about the diversity of actual evaluative outlooks that we encounter in real life—actual evaluative outlooks and actual disagreement are not to the point anywhere in this argument26—but rather a point about the diversity of possible ideally consistent evaluative outlooks that we encounter in our imaginations. Among the countless possible internally consistent evaluative systems, for example, are that of an ideally coherent person committed to morality, that of an ideally coherent Caligula,27 and innumerable much more bizarre ideally coherent evaluative systems—including, for example, systems that place above all else the value of grass-counting, or hand-clasping, or not having one’s finger scratched, or counting to the number 78 and back again, and so on.28 On the realist’s own view of things, many of these evaluative systems—including, presumably, those of Caligula, the grass- 19counter, hand-clasper, and so on—are mistaken in spite of their perfect internal consistency. These possible agents, were they ever to exist, would be badly mistaken about how to live. **The** problem for the **normative realist** arises when he **is** **challenged to give** his **reasons** for thinking **that** the **causal forces landed him, but not** these countlessly many **other[s]** poor (possible) souls, **on** the robustly **independent normative truth** he posits. By hypothesis, these other agents lack no nonnormative information that we have, and they are making no logical or instrumental errors. In explaining where these others have gone wrong, no doubt the realist can give non-trivially-question-begging reasons for holding this or that of his own normative premises as opposed to others. But the **other ideally coherent individuals are capable of defending their own premises** in a similar way, and their sets of values hold together in the same perfectly consistent internal fashion as our own (supposing falsely, but usefully for the sake of argument, that we are perfectly internally consistent). The realist, therefore, finds himself in a confrontation—whether actual or merely possible—of a kind that Dworkin himself describes as follows: We may be forced to concede, in some cases, that those who held different views lacked no information we have, and were subject to no different distorting influences. All that we can say, by way of explanation of the difference, is that they did not “see” or show sufficient “sensitivity” to what we “see” or “sense,” and these metaphors may have nothing behind them but the bare and unsubstantiated conviction that our capacity for moral judgment functions better than theirs did. (pp. 121-122) On the normative realist’s own view, in seeking to give our reasons for thinking that causal forces pushed us, and not other potential ideally coherent valuers such as Caligula or the grass-counter or the handclasper, close to the independently true ideally coherent system (or systems) of values, ultimately all we are going to be able to say is that these others do not “see” or show sufficient “sensitivity” to what we “see” and “sense.” At this point, however, **the** normative **realist is in no better position than the person who** questionbeggingly **insists that she won the** New York **Lottery, even though she has no reason** to think so **apart from the fact that she entered** it. If we are normative realists, we think there is a “winning” coherent system (or systems) of normative thought; we also think there are countlessly many false coherent 20systems of normative thought, which, but for sheer good fortune on our part, causal forces might have shaped us to endorse; we think that as it so happens, ours is among (or approximating) one of the true ideally coherent systems; but when asked to give our reason for thinking so, all we can say is to repeat, in so many words, that it is among the true ones—to insist that we, and not the countless number of mistaken possible others, “see” or “sense” what is normatively true. But this is no better than insisting, without any non-trivially-question-begging reason to think so, that one has won the New York Lottery. Given the odds we can reasonably suppose to be in play in this “normative lottery” case, we should conclude that in all probability we didn’t win—that, if there is indeed such a thing as the robustly independent normative truth we are positing as a substantive normative premise, then we are probably among the unlucky ones who (just like the ideally coherent Caligula, grass-counter, hand-clasper, and so on) are hopeless at recognizing it.29 This conclusion is so obviously implausible, however, I suggest, that we should reject the substantive normative premise that generates it—namely the supposition of robustly attitude-independent normative truths.In response to this, one might question the appeal I’m making to merely possible ideally coherent evaluative systems.30 It would be one thing, one might object, if the actual world were rife with apparently coherent grass-counters, hand-claspers, and countless other bizarre evaluative systems; this might indeed supply one with good reason to question one’s reliability with respect to the independent normative truth. But this, of course, isn’t our actual situation: instead we observe a fairly impressive degree of consensus on normative matters among those who reflect upon them. So why should the mere possibility of bizarrely different evaluative systems in any way undermine our epistemic confidence? My reply is that **actual consensus**, or lack thereof, **is** completely **beside the point** when it comes to the argument I’m making. Even if there were perfect consensus among human beings on what the independent normative truth is, the epistemic problem I am raising would still present itself, for the problem is based on an in-principle worry about why, given the realist’s conception of normative truth as robustly attitude-independent, we should have any expectation at all that causal forces would have shaped us in such a way as to be reliable with regard to it. I would be the first to agree that there is an impressive 21degree of consensus among human beings on substantive normative matters.31 The point, however, is that this **consensus may be explained from** a theoretical point of view as having **certain causal origins** (a common evolutionary history, common cultural influences, and so forth), and our question is why we should think such causes would have forged our substantive normative views in such a way as to lead them toward the normative truth if we conceive of that truth as the realist says we should. In this context, the mere presence of actual consensus among reflective human beings provides no evidence whatsoever of our reliability. To put it another way, **of course we never** actually **see grass-counters, hand-claspers, and so on**: the point is that there are obvious causal explanations as to why not. (Think how long a fulltime hand-clasper would last in the struggle to survive and reproduce.) **The realist** is the one who **makes all** the **merely possible coherent souls relevant by insisting that if they existed, they would be mistaken.** It’s this insistence that makes merely possible agents very much to the point when we assume for the sake of argument that the realist is correct about the robust attitude-independence of normative truth and ask about our epistemic situation with regard to it.

Only Humean constructivism, which says that moral truth for a particular agent derives from coherence in their beliefs, accounts for the impossibility of the view from nowhere and maintains normativity. **Street 12** writes[[6]](#footnote-6)

How then does the regress of questions end, **according to the Humean constructivist**? The rough idea is this. **Eventually** (at least in theory, if we pursue our reflections far enough) **we** get to a point where we **have** arrived at **a coherent web of** interlocking **values, such that each one**, when taken in its turn and examined from the standpoint of the others, **stands up to scrutiny in terms of** the standards **those other values** set. Once one reaches such an interlocking, coherent web of normative judgments, one can ask: “But why should I endorse this entire set of normative judgments? What reason do I have to endorse this set as opposed to some other set, or as opposed to no set at all?” The proper answer at this point, according to the Humean constructivist, is that the question is illformulated. **One cannot** sensibly **step back from the entire set of one’s** interlocking **normative judgments** at once**, and ask**, from nowhere, **whether this set is correct** or incorrect**, for** on a constructivist view **there are no independent standards to fix an answer** to this question; this is the rejection of realism. It is 14 important to be clear here, lest it sound like the Humean constructivist is ruling out perfectly acceptable **questions such as “Do I have** a **reason to reject** the **values of the Taliban in favor of my own?”** or “Are the normative commitments of Albert Schweitzer or Mother Theresa superior to my own?” Such questions **are** entirely **in order**, according to the Humean constructivist—just **so long as one is**, at least implicitly, **posing them from the standpoint of some further set of values** (however vague or inchoate) concerning what makes one set of normative commitments more worthy of endorsement than another. 24 The one thing that one cannot do, sensibly, is to step back from every last one of one’s normative judgments at once and try to pose such questions from nowhere—asking, while suspending one’s acceptance of any value that might be capable of settling the matter, whether one should endorse one’s own set of values, or some other set, or none at all. If one tries this, then one has stepped, for the moment, outside the standpoint of agency, into a realm where there are no normative facts, and one’s question is illformulated. On the Humean constructivist view I’m proposing, then, the regress of normative questions comes to an end not with any substantive value, but with an understanding of the exact moment at which normative questions cease to make sense—namely, the moment one divorces oneself from the practical point of view altogether, refusing, to take any value for granted.

Thus the neg burden is to prove that the resolutional agent’s initial set of beliefs makes it irrational for them to pay reparations to Black Americans.

The US government holds the rule of law to be important in its initial set of beliefs. Reparations are inconsistent with US law.

1. Standing

Reparations for slavery lack legal standing – multiple warrants

**Cooper 11** writes[[7]](#footnote-7)

To reiterate, reparations have been justified because slavery constituted an exploitative theft of the value of African American workers. The descendants of these slaves have been denied the inheritance that the current generation of White Americans has enjoyed from their respective ancestors. Be that as it may, U.S. **courts have consistently ruled that** the **descendants of slaves have yet to demonstrate “standing” (**they have not demonstrated **that** the **defendants personally injured them)** and that these descendants have taken too long to file their claims.3 Opponents to reparations have a legitimate case when they assert that (a) **there is no single group responsible for** the crime of **slavery;** (b) there is **no single group** that **benefitted exclusively** from slavery; (c) **only a minority of White** American**s owned slaves**, whereas others gave their lives to free them; (d) **most living Americans have no connection** (direct or indirect) **to slavery**; (e) the **historic**al **precedents used to justify** the **reparations** claim **do not apply, and the claim** itself **is based on race not injury; and** (f) **the reparations argument is based on the unsubstantiated claim that all African Americans suffer from** the **economic consequences of slavery** (Horowitz, 2002, pp. 12-15).4 In short, the economic basis of the reparations claim is highly problematic and has failed to earn the minimum standard for standing in the American judicial system.

2. The Constitution

The US Constitution would prohibit reparations laws for being ex post facto.

**Flaherty and Carlisle 4** writes[[8]](#footnote-8)

The **reparations suits are without merit** for other reasons. As tragic as **slavery was**, it was **legal in the South between 1789 and 1865. The Constitution prohibits ex post facto laws**, which are laws **that criminalize conduct that was legal when originally performed.**

3. Statute of Limitations

The statute of limitations would reject reparations

**Epstein 4** writes[[9]](#footnote-9)

The statute of limitations defense, however, seems to be impregnable in these cases. These statutes can raise individual issues of immense complexity, but the basic outlines are tolerably clear. As a basic matter, **a statute of limitations has two major purposes**.35 The first purpose is **to make sure that the cause of action is brought when the evidence is fresh so** that **a trial can conclude with** tolerable **accuracy**.36 Second, **and** equally laudable, these statutes allow parties **to** bring to **clos**ure **past disputes so that everyone can get on with** the business of **life**. 37 These considerations also rationalize the doctrines of adverse possession and prescription developed in connection with claims for real property. 38 In general, the statute of limitations starts to run when the cause of action accrues, that is, when plaintiff suffers the harm. 39 As a first approximation, therefore, the **individual causes of action for slavery and segregation accrued when the injuries were inflicted**, so that the statutes in question have long run unless some tolling exception applies. Tolling refers to those equitable circumstances that "toll," or stop, the statute of limitation from running. In the simplest case, the statute is tolled during the minority of an individual who lacks the capacity to bring suit on his own behalf.40 It takes little imagination to accept that the statute should be tolled when the injured person is prohibited by law from bringing any legal action at all, which occurs when a slave is a nonperson. But even if we allow this tolling defense, it only gets us up to around 1865. 41 Much of the wrongs inflicted in the United States took place after the civil war during the period of official segregation. 42 But segregation does not toll the statute of limitations because segregation did not limit the right to bring suit, even if the climate of opinion made it impossible to win on these cases. That happens in countless areas of life. For example, the privity limitation relevant to product liability law once made it impossible for an injured person to sue a remote supplier of goods in New York unless certain limited exceptions applied. 43 Although MacPherson v. Buick undid this limitation in 1916, 44 a tort cause of action barred in New York in 1866 could still not be revived fifty years later. The same is true with reparations. The hostile legal climate surrounding a cause of action for reparations, or for anything else, does not prevent the statute from running. Furthermore, this case is not one where the individual plaintiff does not suffer an injury until years after the defendant has acted. In contrast, in cases where someone inhales asbestos fibers in 2004, under traditional law the plaintiff has a cause of action against the manufacturer who made the fiberboard fifty years earlier. 45 A statute of repose could bar actions based on the number of years since the defendant has parted with possession of the dangerous product. 46 This bar, however, is wholly without regard to the time of the plaintiffs injury. Nor is this a case of concealment or of a continuing wrong,47 apart from the want of redress of the older wrong, which if allowed in any case always makes the statute a dead letter. I think that the statute of limitations defense should be allowed, and that the case should turn on that ground alone, not that of standing or political question. This result is consistent with the basic theory of the statute of limitations because the **passage of time is, in general, a reliable proxy for** the **increased complexity of events.** The correct view of the substantive law allows for the descent of the action to take place on both sides of the case.48 On the plaintiffs side, each passing year results in the multiplication of the number of descendants to whom some fractional interests have passed. The analogous problem in connection with the possibilities of reverter and determinable fees has resulted in a number of legislative and private initiatives whose purpose is to cut down these actions because of the huge number of parties involved. 49 Thus a legislature could require that individuals reregister their interests to keep their interests alive, 50 or the legislature could require the creation of trustees who are allowed to proceed on behalf of all parties. But no such mechanism is available here, so that we see with each passing year the numbing difficulties of trying to figure out who is a descendant of whom, and to what fraction. This seems to make the class action approach difficult if we were to aggregate the individual claims, where each claim is dubious in itself and differs in some particulars from the others. In the years **since 1865 we have had at least seven generations, so** that **a direct descendant** of a slave **is 127 parts not slave descendant**, unless there is another slave somewhere else in his or her line of ascent. The truncation worked by **the statute of limitations prevents** these **reparations** actions **from lasting for more than a single generation**. To circumvent this problem, we have to contrive of some classwide payment that goes to no one in particular, but to entities who are said to represent these individuals. But at this point, why think of the claim as one for reparations when the program looks far more like some legislative initiative that does not have to observe the standard constraints of corrective justice, but simply has to command sufficient political support to pass. Similar difficulties exist on the side of the defendant. Let us assume that the claim really does ask for an accounting of profits that were achieved by using black labor, by selling insurance on slaves, or by making loans to purchase slaves. We have no idea how much of that profit (assuming that it could be calibrated) actually descended to the next generation. The ordinary business will reinvest some fraction of its profits, but will declare some as dividends and pay some out in salaries to its employees. Dividends and wages do not descend to the next generation. Hence it becomes necessary to figure out just how much of the current worth of any firm is related to these distant events, as opposed to those of more recent vintage that were conducted on a far larger scale. Any calculation that takes interest at just 2% of the full profits, or even some fraction thereof, improperly ignores the distributions and consumption that cause this action to fail.

## Case

His Rawls ev isn’t an actual framework justification – just describes the VOI

Rawls can’t solve cultural relativism.

**Singer 5** writes[[10]](#footnote-10)

One evident objection to **Rawls’s Kantian constructivism** is that it **makes ethics culturally relative**. Different **peoples**, **with differing conceptions of themselves and** their relation to **society, might construct** different theories that lead them to **different principles of justice.** Should that be the case, it could not then be said that one set of principles is true and the other false. **The most that can be claimed** for the particular principles of justice that Rawls defends **is** that they offer **reasonable grounds of agreement for people holding ‘‘our’’ conception** of ourselves and our relation to society. But some may not see this as an objection. Cultural relativism has had many defenders in ethics, including many who misguidedly believe that it offers a defense against cultural imperialism (This is the reverse of the truth. If ethics is culturally relative, and my culture gives great value to imposing our values on other cultures, ethical relativism allows no foothold for arguing that we are mistaken in believing that it is good to impose our values on others). I do not, however, want to dwell on the relativist element of Kantian constructivism, because I want to make a more general objection to any method of doing ethics that judges a normative theory either entirely, or in part, by the extent to which it matches our moral intuitions.

Kantian frameworks devolve to Humean constructivism since rational reflection relies on the standpoint of a particular agent. Reason isn’t constitutive of agency; either you have reasons or you don’t. **Street 12** writes[[11]](#footnote-11)

But I don’t think circularity or lack thereof is the real problem here. The real problem lies with the question at hand, and with the suggestion that there could be any coherent answer to it. **As Korsgaard phrases it,** the question is: “Does it really matter whether we act as our humanity requires, whether we find some ways of identifying ourselves and stand by them?” And her reply is: “But in this case you have no option but to say yes.” 21 But I think that as a matter of fact we do have an option here, and that the proper answer is not to say yes, but rather to reject the question at hand as ill - formulated. Translate d into the language of “mattering” and normative reasons, **the question** at hand **is: “Does it really matter whether I take anything** at all **to matter?”** Or: “Is there any reason why I should take something or other to be a reason?” **According to** metaethical **constructivism,** however, the standards that determine whether something “really matters” are set by one’s own judgments about what matters ; the standards that determine one’s r easons are ultimately set by one’s own judgments about what count as reasons; and there are no standards apart from this: this is the rejection of realism. It is therefore illegitimate to stand apart from every last one of one’s judgments about what matters, and then to ask whether something further matters; it is illegitimate to stan d apart from all of one’s judgments about what count as reasons, and then to ask whether one has some further reason. **Such questions are ill-formulated in the way that “Is the Empire State Building taller?”** is ill - formulated: one **has failed to supply the standard that would make the question make sense.** This is precisely the mistake that is involved in the question about the value of humanity, in my view. **In asking whether one has reason to take anything** at all **to be a reason,** one is posing a normative q uestion; and yet at the very same time **one is** stepping back from and **suspending one’s endorsement of all values**, thereby robbing the question of the standards that could make the question make sense. In effect, one is asking: “Does it matter (as judged ap art from the standards that determine what matters) whether I take anything to matter?” Or: “Do I have a reason (as judged apart from the standards that determine what counts as a reason) to take anything to be a reason?” The proper reply to such questions is not to say yes, but rather to reject the question and say: Either you take something or other to matter or you don’t; **either you take something** or other **to be a reason or you don’t.** If you do, then something matters for you; then you have reasons. If you don’t, then nothing matters for you; then you have no reasons. If this is right , then **what Korsgaard calls the “value of humanity ” is not** a **coherent** value. For **the value of humanity**, expressed in various ways, **is** this: • I have a reason to have som e normative conception or other of my identity. • I have a reason to take something or other to be a reason. • It matters that I take something or other to matter. • It is valuable that I take s omething or other to be valuable . In an important sense, such claims do not have meaningful content, any more than “The Empire State Building is taller ,” for these claims are asserted without reference to any standards which could determine their correctness or incorrectness (again, taking it for granted that realism is fa lse) . They are **not asserted from any standpoint,** but rather from nowhere, **and from nowhere there are no normative standards**, according to constructivism.

1. Paulo Friere. Pedagogy of the Oppressed. 1970. http://www.msu.ac.zw/elearning/material/1335344125freire\_pedagogy\_of\_the\_oppresed.pdf [↑](#footnote-ref-1)
2. Dr. Sima Barmania (medical doctor from London with an Intercalated degree in Community health science and a Master’s in Public Health from The London School of Hygiene and Tropical Medicine). “Why Paulo Friere’s ‘Pedagogy of the Oppressed’ is just as relevant today as ever,” The Independent. October 26th, 2011. http://blogs.independent.co.uk/2011/10/26/why-paulo-freires-pedagogy-of-the-oppressed-is-just-as-relevant-today-as-ever/ [↑](#footnote-ref-2)
3. Mark Yates (Department of Educational Policy Studies, GSU). “Congressional Debates Over Prisoner Education: A Critical Discourse Analysis,” *Educational Policy Studies Dissertations*. 2009. <http://digitalarchive.gsu.edu/cgi/viewcontent.cgi?article=1038&context=eps_diss> [↑](#footnote-ref-3)
4. Mark Yates (Department of Educational Policy Studies, GSU). “Congressional Debates Over Prisoner Education: A Critical Discourse Analysis,” *Educational Policy Studies Dissertations*. 2009. <http://digitalarchive.gsu.edu/cgi/viewcontent.cgi?article=1038&context=eps_diss> [↑](#footnote-ref-4)
5. Sharon Street. “Objectivity and Truth: You’d Better Rethink It.” New York University. 2007. [↑](#footnote-ref-5)
6. Sharon Street. “Coming to Terms with Contingency: Humean Constructivism about Practical Reason.” 2012. <https://files.nyu.edu/jrs477/public/Sharon%20Street%20-%20Coming%20to%20Terms%20with%20Contingency%20-%20Humean%20Constructivism%20about%20Practical%20Reason.pdf> [↑](#footnote-ref-6)
7. Allan Cooper (Otterbein University). “From Slavery to Genocide: The Fallacy of Debt in Reparations Discourse.” Journal of Black Studies. 2011. http://jbs.sagepub.com/content/early/2011/06/01/0021934711410879.full.pdf [↑](#footnote-ref-7)
8. Peter Flaherty and John Carlisle. “The Case Against Slave Reparations.” National Legal and Policy Center. 2004. nlpc.org/sites/default/files/Reparationsbook.pdf [↑](#footnote-ref-8)
9. Richard Epstein. “The Case Against Black Reparations.” 2004. http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=2323&context=journal\_articles [↑](#footnote-ref-9)
10. Peter Singer (professor of bioethics at Princeton). “Ethics and Intuitions.” 2005. [↑](#footnote-ref-10)
11. Sharon Street. “Coming to Terms with Contingency: Humean Constructivism about Practical Reason.” 2012. <https://files.nyu.edu/jrs477/public/Sharon%20Street%20-%20Coming%20to%20Terms%20with%20Contingency%20-%20Humean%20Constructivism%20about%20Practical%20Reason.pdf> [↑](#footnote-ref-11)