## \*\*\* 1NC

### 1NC—Topicality

#### “USFG should” means the debate is about a policy established by governmental means

Jon M. ERICSON, Dean Emeritus of the College of Liberal Arts – California Polytechnic U., et al., 3 [*The Debater’s Guide*, Third Edition, p. 4]

The Proposition of Policy: Urging Future Action

In policy propositions, each topic contains certain key elements, although they have slightly different functions from comparable elements of value-oriented propositions. 1. An agent doing the acting ---“The United States” in “The United States should adopt a policy of free trade.” Like the object of evaluation in a proposition of value, the agent is the subject of the sentence. 2. The verb should—the first part of a verb phrase that urges action. 3. An action verb to follow should in the should-verb combination. For example, should adopt here means to put a program or policy into action though governmental means. 4. A specification of directions or a limitation of the action desired. The phrase free trade, for example, gives direction and limits to the topic, which would, for example, eliminate consideration of increasing tariffs, discussing diplomatic recognition, or discussing interstate commerce. Propositions of policy deal with future action. Nothing has yet occurred. The entire debate is about whether something ought to occur. What you agree to do, then, when you accept the affirmative side in such a debate is to offer sufficient and compelling reasons for an audience to perform the future action that you propose.

#### Our interpretation is best because it’s key to preserve *productive* debate—

#### Modest predictability of the resolution is worth potential substantive tradeoff. Topicality creates space for relevant debate.

Toni M. MASSARO, Professor of Law, University of Florida, 89 [August, 1989, “Empathy, Legal Storytelling, and the Rule of Law: New Words, Old Wounds?” *Michigan Law Review*, 87 Mich. L. Rev. 2099, Lexis]

Yet despite their acknowledgment that some ordering and rules are necessary, empathy proponents tend to approach the rule-of-law model as a villain. Moreover, they are hardly alone in their deep skepticism about the rule-of-law model. Most modern legal theorists question the value of procedural regularity when it denies substantive justice.52 Some even question the whole notion of justifying a legal decision by appealing to a rule of law, versus justifying the decision by reference to the facts of the case and the judges' own reason and expe-rience.53 I do not intend to enter this important jurisprudential de-bate, except to the limited extent that the "empathy" writings have suggested that the rule-of-law chills judges' empathic reactions. In this regard, I have several observations.

My first thought is that the rule-of-law model is only a model. If the term means absolute separation of legal decision and "politics," then it surely is both unrealistic and undesirable.54 But our actual statutory and decisional "rules" rarely mandate a particular (unempathetic) response. Most of our rules are fairly open-ended**. "Relevance,"** "the best interests of the child," "undue hardship," "negligence," or "freedom of speech" - to name only a few legal concepts - hardly admit of precise definition or consistent, predictable application. Rather, they represent a weaker, but still constraining sense of the rule-of-law model. Most rules are **guidelines** that **establish** spheres of **relevant** **conversation**, **not** **mathematical** **formulas**.

Moreover, legal training in a common law system emphasizes the indeterminate nature of rules and the significance of even subtle variations in facts. Our legal tradition stresses an inductive method of discovering legal principles. We are taught to distinguish different "stories," to arrive at "law" through experience with many stories, and to revise that law as future experience requires. Much of the effort of most first-year law professors is, I believe, devoted to debunking popular lay myths about "law" as clean-cut answers, and to illuminate law as a dynamic body of policy determinations constrained by certain guiding principles.55

As a practical matter, therefore, our rules often are ambiguous and fluid standards that offersubstantial room for varying interpretations. The interpreter, usually a judge, may consult several sources to aid in decisionmaking. One important source necessarily will be the judge's own experiences -including the experiences that seem to determine a person's empathic capacity. In fact, much ink has been spilled to illuminate that our stated "rules" often do not dictate or explain our legal results. Some writers even have argued that a rule of law may be, at times, nothing more than a post hoc rationalization or attempted legitimization of results that may be better explained by extralegal (including, but not necessarily limited to, emotional) responses to the facts, the litigants, or the litigants' lawyers,56 all of which may go un-stated. The opportunity for contextual and empathic decisionmaking therefore already is very much a part of our adjudicatory law, despite our commitment to the rule-of-law ideal.

Even when law is clear and relatively inflexible, however, it is not necessarily "unempathetic." The assumed antagonism of legality and empathy is belied by our experience in rape cases, to take one important example. In the past, judges construed the general, open-ended standard of "relevance" to include evidence about the alleged victim's prior sexual conduct, regardless of whether the conduct involved the defendant.57 The solution to this "empathy gap" was legislative action to make the law more specific - more formalized. Rape shield statutes were enacted that controlled judicial discretion and specifically defined relevance to exclude the prior sexual history of the woman, except in limited, justifiable situations.58 In this case, one can make a persuasive argument not only that the rule-of-law model does explain these later rulings, but also that obedience to that model resulted in a triumph for the human voice of the rape survivor. Without the rule, some judges likely would have continued to respond to other inclinations, and admit this testimony about rape survivors. The example thus shows that radical rule skepticism is inconsistent with at least some evidence of actual judicial behavior. It also suggests that the principle of legality is potentially most critical for people who are least understood by the decisionmakers - in this example, women - and hence most vulnerable to unempathetic ad hoc rulings.

A final observation is that the principle of legality reflects a deeply ingrained, perhaps inescapable, cultural instinct. We value some procedural regularity - "law for law's sake" - because it lends stasis and structure to our often chaotic lives. Even within our most intimate relationships, we both establish "rules," and expect the other party to follow them.59 Breach of these unspoken agreements can destroy the relationship and hurt us deeply, regardless of the wisdom or "substantive fairness" of a particular rule. Our agreements create expectations, and their consistent application fulfills the expectations. The modest predictability that this sort of "formalism" provides actually **may encourage human relationships**.60

#### A limited topic of discussion that provides for equitable ground is key to productive inculcation of decision-making and advocacy skills in every and all facets of life—even if their position is contestable that’s distinct from it being valuably debatable. Our interpretation provides room for flexibility, creativity, and innovation, but targets the discussion to avoid mere statements of fact

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Debate is a means of settling differences, so there must be a difference of opinion or a conflict of interest before there can be a debate. If everyone is in agreement on a fact or value or policy, there is no need for debate; the matter can be settled by unanimous consent. Thus, for example, it would be pointless to attempt to debate “Resolved: That two plus two equals four,” because there is simply no controversy about this statement. Controversy is an essential prerequisite of debate. Where there is no clash of ideas, proposals, interests, or expressed positions on issues, there is no debate. In addition, debate cannot produce effective decisions without clear identification of a question or questions to be answered. For example, general argument may occur about the broad topic of illegal immigration. How many illegal immigrants are in the United States? What is the impact of illegal immigration and immigrants on our economy? What is their impact on our communities? Do they commit crimes? Do they take jobs from American workers? Do they pay taxes? Do they require social services? Is it a problem that some do not speak English? Is it the responsibility of employers to discourage illegal immigration by not hiring undocumented workers? Should they have the opportunity to gain citizenship? Does illegal immigration pose a security threat to our country? Do illegal immigrants do work that American workers are unwilling to do? Are their rights as workers and as human beings at risk due to their status? Are they abused by employers, law enforcement, housing, and businesses? How are their families impacted by their status? What is the moral and philosophical obligation of a nation state to maintain its borders? Should we build a wall on the Mexican border, establish a national identification card, or enforce existing laws against employers? Should we invite immigrants to become U.S. citizens? Surely you can think of many more concerns to be addressed by a conversation about the topic area of illegal immigration. Participation in this “debate” is likely to be emotional and intense. However, it is not likely to be productive or useful without focus on a particular question and identification of a line demarcating sides in the controversy. To be discussed and resolved effectively, controversies must be stated clearly. Vague understanding results in unfocused deliberation and poor decisions, frustration, and emotional distress, as evidenced by the failure of the United States Congress to make progress on the immigration debate during the summer of 2007.

Someone disturbed by the problem of a growing underclass of poorly educated, socially disenfranchised youths might observe, “Public schools are doing a terrible job! They are overcrowded, and many teachers are poorly qualified in their subject areas. Even the best teachers can do little more than struggle to maintain order in their classrooms.” That same concerned citizen, facing a complex range of issues, might arrive at an unhelpful decision, such as “We ought to do something about this” or, worse, “It’s too complicated a problem to deal with.” Groups of concerned citizens worried about the state of public education could join together to express their frustrations, anger, disillusionment, and emotions regarding the schools, but without a focus for their discussions, they could easily agree about the sorry state of education without finding points of clarity or potential solutions. A gripe session would follow. But if a precise question is posed—such as “What can be done to improve public education?”—then a more profitable area of discussion is opened up simply by placing a focus on the search for a concrete solution step. One or more judgments can be phrased in the form of debate propositions, motions for parliamentary debate, or bills for legislative assemblies. The statements “Resolved: That the federal government should implement a program of charter schools in at-risk communities” and “Resolved: That the state of Florida should adopt a school voucher program” more clearly identify specific ways of dealing with educational problems in a manageable form, suitable for debate. They provide specific policies to be investigated and aid discussants in identifying points of difference.

I. DEFINING THE CONTROVERSY

To have a productive debate, which facilitates effective decision making by directing and placing limits on the decision to be made, the basis for argument should be clearly defined. If we merely talk about “homelessness” or “abortion” or “crime” or “global warming” we are likely to have an interesting discussion but not to establish profitable basis for argument. For example, the statement “Resolved: That the pen is mightier than the sword” is debatable, yet fails to provide much basis for clear argumentation. If we take this statement to mean that the written word is more effective than physical force for some purposes, we can identify a problem area: the comparative effectiveness of writing or physical force for a specific purpose.

Although we now have a general subject, we have not yet stated a problem. It is still too broad, too loosely worded to promote well-organized argument. What sort of writing are we concerned with—poems, novels, government documents, website development, advertising, or what? What does “effectiveness” mean in this context? What kind of physical force is being compared—fists, dueling swords, bazookas, nuclear weapons, or what? A more specific question might be, “Would a mutual defense treaty or a visit by our fleet be more effective in assuring Laurania of our support in a certain crisis?” The basis for argument could be phrased in a debate proposition such as “Resolved: That the United States should enter into a mutual defense treaty with Laurania.” Negative advocates might oppose this proposition by arguing that fleet maneuvers would be a better solution. This is not to say that debates should completely avoid creative interpretation of the controversy by advocates, or that good debates cannot occur over competing interpretations of the controversy; in fact, these sorts of debates may be very engaging. The point is that debate is best facilitated by the guidance provided by focus on a particular point of difference, which will be outlined in the following discussion.

#### Independently, limits are a voting issue—we don’t need to win an external impact other than their interpretation makes debate an unending nightmare

Harris 13—Scott Harris, Ph.D Communications, Professor at Kansas, Ed Lee’s idol, better than Nick at basketball [April 5, 2013, “This Ballot,” CEDA Forums, http://www.cedadebate.org/forum/index.php?topic=4762.0]

I understand that there has been some criticism of Northwestern’s strategy in this debate round. This criticism is premised on the idea that they ran framework instead of engaging Emporia’s argument about home and the Wiz. I think this criticism is unfair. Northwestern’s framework argument did engage Emporia’s argument. Emporia said that you should vote for the team that performatively and methodologically made debate a home. Northwestern’s argument directly clashed with that contention. My problem in this debate was with aspects of the execution of the argument rather than with the strategy itself. It has always made me angry in debates when people have treated topicality as if it were a less important argument than other arguments in debate. Topicality is a real argument. It is a researched strategy. It is an argument that challenges many affirmatives. The fact that other arguments could be run in a debate or are run in a debate does not make topicality somehow a less important argument. In reality, for many of you that go on to law school you will spend much of your life running topicality arguments because you will find that words in the law matter. The rest of us will experience the ways that word choices matter in contracts, in leases, in writing laws and in many aspects of our lives. Kansas ran an affirmative a few years ago about how the location of a comma in a law led a couple of districts to misinterpret the law into allowing individuals to be incarcerated in jail for two days without having any formal charges filed against them. For those individuals the location of the comma in the law had major consequences. Debates about words are not insignificant. Debates about what kinds of arguments we should or should not be making in debates are not insignificant either. The limits debate is an argument that has real pragmatic consequences. I found myself earlier this year judging Harvard’s eco-pedagogy aff and thought to myself—I could stay up tonight and put a strategy together on eco-pedagogy, but then I thought to myself—why should I have to? Yes, I could put together a strategy against any random argument somebody makes employing an energy metaphor but the reality is there are only so many nights to stay up all night researching. I would like to actually spend time playing catch with my children occasionally or maybe even read a book or go to a movie or spend some time with my wife. A world where there are an infinite number of affirmatives is a world where the demand to have a specific strategy and not run framework is a world that says this community doesn’t care whether its participants have a life or do well in school or spend time with their families. I know there is a new call abounding for interpreting this NDT as a mandate for broader more diverse topics. The reality is that will create more work to prepare for the teams that choose to debate the topic but will have little to no effect on the teams that refuse to debate the topic. Broader topics that do not require positive government action or are bidirectional will not make teams that won’t debate the topic choose to debate the topic. I think that is a con job. I am not opposed to broader topics necessarily. I tend to like the way high school topics are written more than the way college topics are written. I just think people who take the meaning of the outcome of this NDT as proof that we need to make it so people get to talk about anything they want to talk about without having to debate against topicality or framework arguments are interested in constructing a world that might make debate an unending nightmare and not a very good home in which to live. Limits, to me, are a real impact because I feel their impact in my everyday existence.

### Situated Knowledge K

#### Privileging situated knowledge produces political atrocity. Social location appears to limit authority, but grants limitless authority to body, blood, and territory.

David SIMPSON English @ UC Davis 2 *Situatedness, or Why We Keep Saying Where We’re Coming From* p. 25-30

Casey's book makes a learned and comprehensive argument for the disappearance and reappearance of place. It thus offers a crucial context for any effort (such as mine in this volume) at plotting the history and function of our current fondness for situating ourselves.9 But the story Casey tells about the history of philosophy does not work or work in the same way for other language registers. The novel, for example, as we will see, shows in the late eighteenth century a huge commitment to specifying situations as local, embedded predicaments that are by no means reducible to punctilious definition; but at the same time it can be argued that the pressure of the philosophical vocabulary, especially on the Jacobin novel, does contribute to a high level of confidence that the situations of characters can be accurately specified, almost as if they were simple space-time locations. The term, in other words, is definitively labile and unstable, and goes in different directions. In our late-twentieth-century vocabularies an affinity for situations has become very apparent in the social sciences and of course in the humanities. In these fields there has been a visible emphasis on solving, or seeming to solve, residual problems in the epistemology of subject-object relations by the invocation of an in-place and in-time practical attitude to living in the world, something that can be assumed or defined by ostension. This is the language of "let me situate myself / my argument" and "let me tell you where I am coming from." It commonly comes with an embrace of the rhetoric of action, of change, of political progress. Donna Haraway's influential essay "Situated Knowledges" is in this sense a classic of its kind.iO Here, situated knowledge is a knowing that is at once contingent and objectively real, in that it can be "partially shared" (p. 187). Being located or "situated" in the world allows us as much access to objectivity as is needed for changing the world and keeps us at a distance from the temptation to subscribe to outright relativism. At the same time it confesses and apprehends its own partiality; indeed, only "partial perspective promises objective vision" (p. 190). In this "embodied objectivity" (p. 194) Haraway finds prospects of "rational conversations and fantastic imaginings that change history" (p. 193). She gives us permission to see ourselves, once again, as agents and progressives. Here the invocation of the term situation has become methodologically affirmative, a way of preserving or reinventing a function for agency, for human effort, in the face of all the familiar forces-the state, ideology, the sex-gender system, the economy-that have seemed to threaten such agency with extinction. And it is, I think, typically the intellectuals on the Left who find it helpful or obligatory to keep on situating themselves and appealing to situatedness. There is a longstanding pressure at work here. Sometime after the French Revolution the rhetoric of place and patriotism, locality and belongingness, was taken over by the conservatives. Edmund Burke was the most important figure in this capturing of in-placeness conditions for the political Right. He quite brilliantly identified a static or slowly evolving rural England as the last best hope against rootless cosmopolitanism and detraditionalizing radical republicanism; only the true-born Englishman was adequately situated, leaving the opposition looking for a home. And to this day one is unlikely to hear many if any of the denizens of the conservative think tanks appealing to their situatedness. The pathos of the Left is that it is committed at once to a celebration of the liberating functions of theory, of universalization, and of freedom from origins and disabling traditions—all the things we call Enlightenment values-while at the same time suspecting the unwholesome applications of these same values and gesturing toward a locatedness that prevents them from becoming sublimely impersonal and destructive. In short, an unstable situation. Explaining every detail in the long historical origins of the rhetoric of situatedness is not my aim in this book, although I will attend to some of the most important developments. But for the modern left-thinking intellectual it is safe to speculate that the influence and example of Habermas has been paramount, to the point that history before Habermas (in Sartre, in Jaspers, and elsewhere) risks being forgotten or undiscovered. It is Habermas who takes up the usefulness of the situation as something tending toward closure while always remaining open, as a term that can mediate between the equally indefensible extremes of reification and formlessness, thus offering a bewildered left-thinker the opportunity to imagine agency without culpability**.** Habermas's theory of "communicative action" is founded on a "cooperative negotiation of situation definitions" in such a way that all participants are deemed "capable of mutual criticism." 11 The inherited "lifeworld" provides a repository of previously agreed on situations so that we do not have to begin in some sort of primal confrontation (p. 70), but within this nexus of the inherited and the new everything is negotiable. Individual needs and desires are thus bound to encounter and come to terms with what is in place and up for inspection, so that persons must "harmonize their plans of action on the basis of common situation definitions" (p. 286). The process is interactive and democratic, task-oriented and tending to consensus, so that its veryexercise contributes to the social norming process on whose previous results it also depends. There is much to say about Habermas, and much to suspect in his status as fashionable authority figure; at the very least one must ponder the degree to which this conversational model premises its democratic credentials on equal access to speech and equal ability to speak when one has access. Here I shall only record the qualifications that Habermas himself records, which are so often omitted by those who make use of his positions. Although it is true that "the very situation that gives rise to the problem of understanding meaning can also be regarded as the key to its solution" (p. 120)-SO that there is an appealing air of problem solving at work here- it is also clear that the ideal communicative interaction event is either trivial or utopian. In other words it works best when it is least noticed, in routine exchanges where nothing much is at stake, or it shows up as most necessary when it fails, when consensual situations are not successfully negotiated and differences remain unmodified. And Habermas says that the more "decentered" and detraditionalized the world becomes, the more stress is attached to communicative action, because there is less that is given and more to be negotiated (p. 70). Even in ordinary interactions he does not assume a resultant stability, but rather a "diffuse, fragile, continuously revised and only momentarily successful communication in which participants rely on problematic and unclarified presuppositions and feel their way from one occasional commonality to the next" (pp. lOa-I). Again, "under the microscope every understanding proves to be occasional and fragile" (p. 130). This said, then the stability of outcomes must seem to depend on a belief in some psychological motivation toward the creation of stability, a compulsion to normalize of the sort that Adam Smith long ago proposed in his Theory of Moral Sentiments. And the analysis of what really is the case, under the microscope, looks very much like that of a number of other popular cases in the world we know: flexible employment patterns, short-term contracts, temporary emotional alliances, gender identities, and so forth. But it could be that human nature can in fact put up with this fragility and uncertainty when it is persuaded, economically and ideologically, to do so; and that it can even be made to celebrate it, as it does in various contemporary theories about various things. Hence the appetite for invoking and referring to "situated action," as Jerome Bruner calls it (Acts of Meaning, p. 19), tends either to obscure the fragility of the situation (as qualified by Habermas) by sheer terminological assertiveness, the way in which it can so readily be named, or to propose it in a tone of pragmatist bluster as the way the world really is, and oneself in it. So it is a positive message we get from Haraway's situated knowledge, one that is very appealing on moral and practical grounds. But it resolves rather too neatly the muddle and indecisiveness I want to preserve in my use of the related term, situatedness-the term that is not yet in the dictionary. Situatedness, as I see it, does not give rise to a method. Nor does it yet deserve, if it ever can deserve, invocation in a litany of approved vocabularies, as if to pronounce someone or something as "situated" is somehow to answer the questions one might have or to resolve the uncertainties one might experience. We are all under various pressures to produce solutions, to direct or defend social policies, to offer "outcomes" with actual or imagined empirical consequences, and ultimately to authenticate ourselves. The pressure is both external and self-imposed. It is not to be denied (for who does not want to be thought of as making a difference?) but it is to be monitored at those points wherewe find ourselves too hasty in proposing solutions. Take the following claim by the editors of a book of essays appealingly titled Situated Lives: "We view our own knowledge as critical feminist ethnographers as partial and situated, and, in analyzing women's and men's lives, we view our subjects as positioned actors who forge 'situated knowledges' in order to act within their material circumstances." 12 The implication here is that the declaration of one's own situatedness gives permission for an account of the actions and agency of others, and sets acceptable limits on the claims made for this account. But the "situated" lives of others seem to acquire an objective status, open to inspection. It is not clear what is being claimed or by whom. To position someone seems to be to pin them down, even when their position might be temporary or unrepresentative. The declaration of one's situatedness is often an admission of one's limits rather than a claim to authority. But its language of easeful (even when stressful) exculpation can then itself become a covert affirmation whereby the subject secures itself precisely in confessing its insecurity. Here is Dominick LaCapra, describing the difficulties of deciding who gets to talk about the Holocaust: "Certain statements or even entire orientations may seem appropriate for someone in a given subject-position but not in others. (It would, for example, be ridiculous if I tried to assume the voice of Elie Wiesel or Saul Friedlander. There is a sense in which I have no right to these voices . . . Thus, while any historian must be "invested" in a distinctive way ... ) . . . not all statements, rhetorics or orientations are equally available to different historians." 13 Being situated, then, places limits on what one can say, or on one's credibility in making certain statements. LaCapra is understandably sensitive here to what is surely one of the most morally fraught inquiries open to the historian. But what does it mean to say what he does say, that some things cannot be said by him? And to imply that what is said by him is credible as long as it does not replicate or imitate what others, such as Friedlander and Wiesel, are saying? The confession of situatedness seems to be at once denying LaCapra some kinds of authority but permitting him other kinds—those not said by Friedlander and Wiesel. What kinds of statement are preempted by the admission of not being a Holocaust survivor, and what other kinds are permitted? And why? Why does a moral discrimination ("I have no right") transform itself into an epistemological one ("not ... equally available")? Why are so many of us willing to agree with this type of statement? Most obviously, in our willingness we are thereby on or off the hook, all sorts of hooks, rather than being left puzzled and somewhere in between. We think we know where we stand. Grander versions of this knowing keep coming back even as they are widely recognized as dangerous and not to be desired. So Derrida writes of an ontopo[ogy that is "an axiomatics linking indissociably the ontological value of present-being [on] to its situation, to the stable and presentable determination of a locality, the topos of territory, native soil, city, body in general," and he hardly needs to spell out the affiliation of all of this with the very state of mind that helped the Holocaust itself into being.14 But there is the ghost of this in LaCapra's machine, which is all the more troubling in its commonplaceness (for it is not his alone). And if there is not a ghost, ifhere I am being too harsh, is there then anything more than an emptiness, a withholding of meaning, of the sort that Elspeth Probyn has so astutely discovered in the language of localization: "Local, locale, and location become abstract terms, cut off from a signifying ground and serving as signposts with no indication of direction"? 15

#### Privileging situatedness grants the illusion of ethical powers, but removes the ground for collective change and the testing of ethical principles.

David SIMPSON English @ UC Davis 2 [*Situatedness, or Why We Keep Saying Where We’re Coming From* p. 232-235]

Ulrich Beck's Risk Society, which can usefully be read along with Giddens's Modernity and Self-Identity (both discussed in chapter I and elsewhere) for the beginnings of a powerful analysis of the way we live now, in the moment that may be called late modernity or postmodernity, suggests that the poor old Cartesian subject has now taken such a drubbing (and it continues to suffer at the hands of many of us who are up-to-date thinkers) that the real problems are only being masked by exhuming it for regular reburial. Beck finds us experiencing a world in which nothing that is felt to be ultimately pertinent to our lives can be known through the experience of our lives. What most requires being known is now outside the individual: that which is "devoid of personal experience becomes the central determinant of personal experience," leading to a sense of "imperceptible and yet omnipresent latent causality" (Risk Society, p. 72). The assumed roles of class and family, visible even if never simply stable, are replaced by a host of "secondary agencies" too numerous to track and too mutable to hold on to (p. 131). Along with this there arise "risk conflicts" that cannot possibly be managed by individuals and that are in their scope nothing less than global and comprehensive, potentially removing all inherited protections possessed by the haves and withheld from the have nots. This complete breakdown of familiar patterns of cause and effect has, says Beck, produced a bizarre hyperbole, a placing of all decisionmaking language (certainly not power) back in the mouths (certainly not hands) of individuals. So we are presented with "construction kits of biographical combination possibilities" (p. 135), offered the chance to be all that we can be in a world where we can affect almost nothing that most matters to who we are and what we might become. Biography, as it had been for Sartre, becomes again the site of "systemic contradictions" that are experienced as choices (p. 137): "The floodgates are opened wide for the subjectivization and individualization of risks and contradictions produced by institutions and society" (p. 136). Beck's account (with Giddens's) asks to be read alongside Hollinger's to my mind far too affirmative recommendation of the lifestyle of making choices presented in Postethnic America. Beck's Risk Society finds that it is indeed a matter of choosing "between different options, including as to which group or subculture one wants to be identified with," but also that we have to "take the risks in doing so" (p. 88). These risks are substantial indeed, so that the language of self-determination covers over a predicament of near-powerlessness. Those alert to the dishonesties enshrined in the culture of empowerment will find much to identify with in Beck's analysis of the way in which "experts dump their contradictions and conflicts at the feet of the individual and leave him or her with the well intentioned invitation to judge all of this critically on the basis of his or her own notions" (p. 137). The pressures are unbearable: the individual is invited to take "a continual stand" on almost everything, and is "elevated to the apparent throne of a world-shaper" at the same time "as he or she sinks into insignificance" (p. 137). The effort to describe "individual situations" becomes more impossible than ever before owing to the proliferation of possible determinations needing to be accounted for (p. 138). Meanwhile, "handling fear and insecurity becomes an essential cultural qualification, and the cultivation of the abilities demanded for it becomes an essential mission of pedagogical institutions" (p. 76). This last observation contains another clue as to why it is that we (in the academy) so often go on speaking as if situatedness were a firm knowledge-producing concept, either by unanalyzed epistemological gestures or by recourse to an ethical vocabulary in which no epistemology need ever be tested. Pedagogical institutions, including not only the schools and universities, with their monotonous rhetoric of self fashioning, but also the popular media and the manipulators of common sense, have a powerful interest in presenting imposed predicaments as matters of choice, while those who resist this message find themselves driven to equally unambiguous alternatives, whereby situatedness precludes all significant choice whatsoever. Because neither position is tenable in the abstract, the debate between them is endless: it simply has no language in which it could possibly conclude anything. Beck suggests that we in fact live with neither kind of certitude, but with the experience of muddle and confusion in a state of considerable psychological stress: the sort of stress that 1 have argued is apparent in the rhetoric of self-affiliation with its awkward oscillation between hyperaffirmative and hypertentative declarations. (Common sense, and common usage, may then reveal more about the nature of our situatedness than many of those manning the "pedagogical institutions" would be prepared to admit.) Happy situated ness was probably always no more than a fantasy. Think of Heidegger with his hammer, hammering away happily because the act has subsumed the "equipment" in a way that "could not possibly be more suitable" because it calls up no theorization or reflection. The more purposive the action, the more "primordial" we become. Exchanging one hammer for another more suitable one embodies the way in which "interpretation is carried out primordialIy not in a theoretical statement but in an action of circumspective concern," with no "wasting words" (Beinll and Time, pp. 98, 200). Or recall Malinowski's picture of the tribal fishermen, each totalIy absorbed in carrying out his part of the general task at hand, confident in the habits of "old tribal tradition" and "lifelong experience" ("The Problem of Meaning in Primitive Language," p. 3II). This is (or was), perhaps, happy situated ness, wherein one is connected to an environment in a manner that does not calI for reflection and where what are otherwise thought of as self and other fulfill themselves in perfect purpose. But where now are the primitive fishermen, and what would we do to them if we found them? How long can one go on hammering without hitting one's thumb? While hammering, no one has to answer Adorno's question, "who are you?" Unless of course the hammering is going on in a lumberyard governed by divided labor instead of in some idyllic do-it-yourself situation with no one else around. Modernity has mostly been a condition of having others around; hence its reactive valuation of privacy and solitude. Late modernity is experienced as a sense of having far too many others around, and takes the nightmare form of a doomsday population explosion or (in the more decorouslyaffiuent loca- tions) a building-out of green spaces. According to Beck and Giddens, and to many other analysts of late modernity, privacy itself is now so thoroughly permeated by choice-making obligations and exterior determinations ranging from the local and microorganic to the global that the word hardly has meaning. Total situatedness, total panic. Perhaps the old false certainties of both kinds, the ones that claim self-determination (I can make my situation) and the ones that refuse all responsibility (I am a creature of my situatedness) are now all the more marketable because of the extent of this panic.

#### Alternative: We should not declare that situatedness knowledges resolve the problem of drone warfare and the view from nowhere even as we oppose drone warfare.

#### Privileging form and ethics of situatedness encourages judges to feel good in affirming the self-worth of the negative. Creates a trade-off with deciding what we should *do*, instead of how we should speak or who should speak.

David SIMPSON English @ UC Davis 2 [*Situatedness, or Why We Keep Saying Where We’re Coming From* p. 218-221]

The Persistence of Ethics The assertions of belonging that inform declarations of situatedness can then be read partly as wish fulfillments—for how else could their reiteration be so effectively ensured? Michael Sandel has specified the potential of the "multiply-situated" selves that he sees us to be to collapse into "formless, protean, storyless selves, unable to weave the various strands of their identity into a coherent whole" (Democracy's Discontent, p. 350). The maximizing of personal opportunities for some is shadowed by the melancholy of a lost or vanishing community even among those able to profit from flexible subjectification procedures. Others are presumably consigned to pure insecurity or to the imagined consolations of residual traditional groups of the sort that tend to go by the name of communities. Such groups as we do belong to or affiliate with are themselves insecure both as experienced and in their relation to anything identifiable as a general history. Lukacs may have been one of the last to believe that the "self-understanding" of a group, which was in this case a class, the proletariat, could also be "simultaneously the objective understanding of the nature of society," so that all conscious furtherance of class-specific aims was also the truth of history (History and Class Consciousness, p. 149). A more common contemporary experience is the declaration of group interests as ... group interests, and those of groups to which one only partly or temporarily belongs anyway. So the debate over the feminist "standpoint epistemology" that was derived from Lukacs rapidly acknowledged the problem of there being no visibly coherent groups, or too many of them, to belong to.20 Postmodern theory can sometimes declare itself comfortable enough with the predicament of fractured identity as itself a source of knowledge and oppositional energy, making a virtue of the condition that so concerns Michael Sandel. But there are still many of us who punctuate the narrative with regular declarations of situatedness, obeying an ethical mandate not to be a mere individual by way of a hoped-for connection with some interpersonal or impersonal identity-forming principle. Which leads us, at last, to the matter of ethics, and to a discussion I have withheld until now. What is at work in these assertions of the determining power of situatedness—positive for Benhabib and Sandel, and also for Hollinger when rendered subject to revocable consent-seems to be an instance of what Glen Newey has described as "the major project in modern liberalism ... to use ethics to contain the political." 21 What is actually going on in these addresses to the current condition, in other words, is an ethics, or an exhortation to certain sorts of ethical behavior, largely on the part of individuals. What is being said is not that I am in some clearly explicable sense situated here or there or then or now, but that l should or should not be so situated, in order to authorize what I am saying as the property of something beyond just myself. And that in being thus situated I am not responsible for what I am saying or doing: the responsibility is collective. And that in challenging or denying me in what I affirm or desire, you are opposing not just me but a group that I represent, which is an unethical thing for you to do. The claims and assumptions are muddled, even to the point of appearing by some definitions quite unethical (for this is hardly the Kantian subject doing rigorous justice on itself): notice that it is mostly a virtue to situate oneself but a sort of diminishment or accusation to ask someone else to do the same. But it is ethical argument that often pops up to fill the space abandoned by epistemology: what we cannot know for sure is supplanted by what we ought to be or do. So in the Goldhagen case the central hypothesis is about choice: how the Germans could have refused (without fear of reprisal) to kill Jews, but killed them anyway. In the exposition of the history standards, the gaps in our knowledge that come from the sheer proliferation of possible knowledges are filled by encouraging students to make moral choices. The scientism of The Bell Curve hardly conceals its address to the question of whether we should be in the business of maintaining (racial) preferences. And the Littleton summit and its ongoing rehearsal have a good deal to do with what we call in the last commonplace instance family values and community standards. It is for good reasons that Alain Touraine has characterized us as giving up on "scientism" in favor of a "return to moralism." 22 Touraine himself seems quite happy with this. Notwithstanding his rigorous critique of identity crisis as a social-historical phenomenon, it is to another such category, that of the creative subject, to which he turns for solace: "If we are to defend democracy, we must recenter our social and political life on the personal subject ... hence the growing importance of ethics, which is a secularized form of the appeal to the subject." 23 It is now twenty years since Fredric Jameson wrote about ethics as a "historically outmoded system of positioning the individual subject" and as "the sign of an intent to mystify" by way of the "comfortable simplifications of a binary myth." 24 These remarks are even more timely now than when they were first recorded, and Jameson himself has again recently reminded us that ethical speculation is "irredeemably locked into categories of the individual" and that "the situations in which it seems to hold sway are necessarily those of homogeneous relations within a single class." 25 This need not be always and in principle the case, and one would hardly wish to discourage attention to questions that are ethical in the broadest sense: questions about how one should act, how one might best live one's life, how one might limit the damages one does to others. But my very use of the impersonal pronoun here indicates the problem: that ethics for most of us most of the time means subjective meditation.26 The return to or persistence of ethics is a form of what Jameson has called "pastiche," which is "the blank and non-parodic reprise of older discourse and older conceptuality, the performing of the older philosophical moves as though they still had a content, the ritual resolution of 'problems' that have themselves long since become simulacra, the somnambulistic speech of a subject long since extinct" (p. 99). This could be said too of the "problem" of the subject that the rhetoric of situatedness is designed both to repackage and to "resolve." Those of us in the habit of situating ourselves on a regular basis might stop to investigate the peculiar feeling of virtue we have as we do so, and ponder whether we have deserved it by any active connection with anything (some of us of course can pass this test, but not all of us). Niklas Luhmann has written of the tendency whereby ethical prescriptions apply to others rather than to oneself: "One can formally subject oneself to them, but self-application is not an option because of the lack of any consequential authority for action." He sees them as symptoms of an "irritation" in the social sphere that can only take the form of pure "communication" (Observations on Modernity, p. 78). In its turning from "cognitive to normative" ethics then becomes itself "an unethical kind of doping" (pp. 91, 94) whereby one confesses one's own limits—itself a form of authority ("let me tell you where I am coming from")-only in order to expose everyone else's. The imperative to situate oneself is perceived as ethical even as (or perhaps because) it is usually devoid of critical content and without consequences beyond the moment of utterance. Meanwhile the ethics of situatedness promises to restore to the individual a satisfaction that in its profound loneliness it can no longer derive from the metaphysics of individuality itself.

## \*\*\* 2NC

### We solve Education

#### We turn their education arguments. Our limits improve the type of education and research they want us to do.

Jennifer MILLIKEN Graduate Inst. of Int’l Studies Geneva 1 [*Constructing International Relations* eds. Fierke and Jorgensen p. 149-150]

In contrast to IR theory studies, foreign policy studies and diplomacy and organization studies are directly concerned with explaining how a discourse articulated by elites produces policy practices (individual or joint). These types of discourse analysis also share an understanding of what it means to explain the production of policy practices, namely to take the significative system which they have analyzed, and to argue for that system as structuring and limiting the policy options (joint policies, norms of state practice) that policy makers find reasonable. This approach is an appropriate one, and one which I too have followed. But like the treatment of common sense, it also deserves to be reexamined and refined as a way to explain policy production. The current approach’s main weakness (or puzzle, in another idiom) is that it leaves out what happen after a policy is promulgated among high level officials, that is, the implementation of policy as actions directed towards those objectified as targets of international practices. Analyzing how policies are implemented (and not just formulated) means studying the operationalization of discursive categories in the activities of governments and international organizations, and the “regular effects” on their targets of interventions taken on this basis (Ferguson 1994, xiv). The operationalization practices of these entities is a subject rarely taken up in mainstream IR, as attested to by the general lack of discussion of implementation in most theories and studies of foreign policy or of international regimes. When implementation is considered, the discussion is usually couched in very general terms, outlined as a stylized type of act or policy (e.g. “land redistribution,” “intervention,” “foreign aid”) but not as explanation of how the actions putatively covered by the term were organized and enacted in particular circumstances. Governments and international organizations do document and record implementation practices and take measures of their effects, but in an arcane language that, for public consumption, usually involves the use of vague and general labels (e.g., Indonesia). Discourse studies which include the implementation of policy practices can potentially problematize such labels andexpose readers to the “micro-physics of power” in international relations (Foucault, 1977, 26).This exposure might in turn give readers a basis with which to “question” and “enquire about” the workings of states and international organizations, a critical goal that discourse studies share (Edkins 1996a, 575). Foucault’s **(**1977**)** work on the development of criminality and the prison system demonstrates the need for the study of policy implementation. In Foucault’s analysis, a significative process of definition was necessary—but not by itself sufficient—in order to create a disciplinary society. Rather, the meaning of categories for ‘the criminal” and “the delinquent” also had to be operationalized through measures organizing space in prisons and practices of surveillance developed to regulate the lives of prison inmates. It was the two processes together, and not just or mainly fixing objectives and naming things, that produced a discourse of criminality that could discipline subjects, shaping their activities down to the smallest detail.

### AT: Advocating Rez = Unethical

#### The argument that being topical is structurally unfair for them is a self-serving assertion used to sidestep clash—critiquing any part of the resolution, like the FG, to legitimize avoiding topical action gets co-opted by the right for the opposite purpose.

TALISSE 5— Robert, philosophy professor at Vanderbilt [“Deliberativist responses to activist challenges,” *Philosophy & Social Criticism*, 31.4]

\*\*\*gendered language in this article refers to arguments made by two specific individuals in an article by Iris Young

My call for a more detailed articulation of the second activist challenge may be met with the radical claim that I have begged the question. It may be said that my analysis of the activist’s challenge and my request for a more rigorous argument presume what the activist denies, namely, that arguments and reasons operate independently of ideology. Here the activist might begin to think that he made a mistake in agreeing to engage in a discussion with a deliberativist—his position throughout the debate being that one should decline to engage in argument with one’s opponents! He may say that of course activism seems lacking to a deliberativist, for the deliberativist measures the strength of a view according to her own standards. But the activist rejects those standards, claiming that they are appropriate only for seminar rooms and faculty meetings, not for real-world politics. Consequently the activist may say that by agreeing to enter into a discussion with the deliberativist, he had unwittingly abandoned a crucial element of his position. He may conclude that the consistent activist avoids arguing altogether, and communicates only with his comrades. Here the discussion ends.

However, the deliberativist has a further consideration to raise as his discursive partner departs for the next rally or street demonstration. The foregoing debate had presumed that there is but one kind of activist and but one set of policy objectives that activists may endorse. Yet Young’s activist is opposed not only by deliberative democrats, but also by persons who also call themselves ‘activists’ and who are committed to a set of policy objectives quite different from those endorsed by this one activist. Once these opponents are introduced into the mix, the stance of Young’s activist becomes more evidently problematic, even by his own standards.

To explain: although Young’s discussion associates the activist always with politically progressive causes, such as the abolition of the World Trade Organization (109), the expansion of healthcare and welfare programs (113), and certain forms of environmentalism (117), not all activists are progressive in this sense. Activists on the extreme and racist Right claim also to be fighting for justice, fairness, and liberation. They contend that existing processes and institutions are ideologically hegemonic and distorting. Accordingly, they reject the deliberative ideal on the same grounds as Young’s activist. They advocate a program of political action that operates outside of prevailing structures, disrupting their operations and challenging their legitimacy. They claim that such action aims to enlighten, inform, provoke, and excite persons they see as complacent, naïve, excluded, and ignorant. Of course, these activists vehemently oppose the policies endorsed by Young’s activist; they argue that justice requires activism that promotes objectives such as national purity, the disenfranchisement of Jews, racial segregation, and white supremacy. More importantly, they see Young’s activist’s vocabulary of ‘inclusion’, ‘structural inequality’, ‘institutionalized power’, as fully in line with what they claim is a hegemonic ideology that currently dominates and systematically distorts our political discourses.21

The point here is not to imply that Young’s activist is no better than the racist activist. The point rather is that Young’s activist’s arguments are, in fact, adopted by activists of different stripes and put in the service of a wide range of policy objectives, each claiming to be just, liberatory, and properly inclusive.22 In light of this, there is a question the activist must confront. How should he deal with those who share his views about the proper means for bringing about a more just society, but promote a set of ends that he opposes?

It seems that Young’s activist has no way to deal with opposing activist programs///

 except to fight them or, if fighting is strategically unsound or otherwise problematic, to accept a Hobbesian truce. This might not seem an unacceptable response in the case of racists; however, the question can be raised in the case of any less extreme but nonetheless opposed activist program, including different styles of politically progressive activism. Hence the deliberativist raises her earlier suspicions that, in practice, activism entails a politics based upon interestbased power struggles amongst adversarial factions.

### Rez Definitions

#### A Topical aff in order to be a statutory restriction can: Overturn authority, alter the jurisdiction, limit authorization, require inter-agency consultation, or require prior notification.

KAISER 80—the Official Specialist in American National Government, Congressional Research Service, the Library of Congress [Congressional Action to Overturn Agency Rules: Alternatives to the Legislative Veto; Kaiser, Frederick M., 32 Admin. L. Rev. 667 (1980)]

In addition to direct statutory overrides, there are a variety of statutory and nonstatutory techniques that have the effect of overturning rules, that prevent their enforcement, or that seriously impede or even preempt the promulgation of projected rules. For instance, a statute may alter the jurisdiction of a regulatory agency or extend the exemptions to its authority, thereby affecting existing or anticipated rules. Legislation that affects an agency's funding may be used to prevent enforcement of particular rules or to revoke funding discretion for rulemaking activity or both. Still other actions, less direct but potentially significant, are mandating agency consultation with other federal or state authorities and requiring prior congressional review of proposed rules (separate from the legislative veto sanctions). These last two provisions may change or even halt proposed rules by interjecting novel procedural requirements along with different perspectives and influences into the process.

It is also valuable to examine nonstatutory controls available to the Congress:

1. legislative, oversight, investigative, and confirmation hearings;

2. establishment of select committees and specialized subcommittees to oversee agency rulemaking and enforcement;

3. directives in committee reports, especially those accompanying legislation, authorizations, and appropriations, regarding rules or their implementation;

4. House and Senate floor statements critical of proposed, projected, or ongoing administrative action; and

5. direct contact between a congressional office and the agency or office in question.

Such mechanisms are all indirect influences; unlike statutory provisions, they are neither self-enforcing nor legally binding by themselves. Nonetheless, nonstatutory devices are more readily available and more easily effectuated than controls imposed by statute. And some observers have attributed substantial influence to nonstatutory controls in regulatory as well as other matters.3

It is impossible, in a limited space, to provide a comprehensive and exhaustive listing of congressional actions that override, have the effect of overturning, or prevent the promulgation of administrative rules. Consequently, this report concentrates upon the more direct statutory devices, although it also encompasses committee reports accompanying bills, the one nonstatutory instrument that is frequently most authoritatively connected with the final legislative product. The statutory mechanisms surveyed here cross a wide spectrum of possible congressional action:

1. single-purpose provisions to overturn or preempt a specific rule;

2. alterations in program authority that remove jurisdiction from an agency;

3. agency authorization and appropriation limitations;

4. inter-agency consultation requirements; and

5. congressional prior notification provisions.

#### Judicial relates to the judicial branch of the USFG

WEBSTER’S DICTIONARY OF LAW 01 [Merriam-Webster's Dictionary of Law, http://research.lawyers.com/glossary/judicial.html]

Judicial

Definition - adj

[Latin judicialis, from judicium judgment, from judic- judex judge, from jus right, law + dicere to determine, say]

1 a : of or relating to a judgment, the function of judging, the administration of justice, or the judiciary

b : of, relating to, or being the branch of government that is charged with trying all cases that involve the government and with the administration of justice within its jurisdiction

compare administrative executive legislative

2 : created, ordered, or enforced by a court <a ~ foreclosure>

compare conventional legal

#### A topical aff must restrict authority that the President has—they don’t.

Bradley and Goldsmith 5—Curtis and Jack, professor of law at the University of Virginia and professor of law at Harvard [118 Harvard Law Review 2047, May, Lexis]

Second, under Justice Jackson's widely accepted categorization of presidential power, n5 "the strongest of presumptions and the widest latitude of judicial interpretation" attach "when the President acts pursuant to an express or implied authorization of Congress." n6 This  [\*2051]  proposition applies fully to presidential acts in wartime that are authorized by Congress. n7 By contrast, presidential wartime acts not authorized by Congress lack the same presumption of validity, and the Supreme Court has invalidated a number of these acts precisely because they lacked congressional authorization. n8 The constitutional importance of congressional approval is one reason why so many commentators call for increased congressional involvement in filling in the legal details of the war on terrorism. Before assessing what additional actions Congress should take, however, it is important to assess what Congress has already done. Third, basic principles of constitutional avoidance counsel in favor of focusing on congressional authorization when considering war powers issues. n9 While the President's constitutional authority as Commander-in-Chief is enormously important, determining the scope of that authority beyond what Congress has authorized implicates some of the most difficult, unresolved, and contested issues in constitutional law. n10 Courts have been understandably reluctant to address the scope of that constitutional authority, especially during wartime, when the consequences of a constitutional error are potentially enormous. n11 Instead,  [\*2052]  courts have attempted, whenever possible, to decide difficult questions of wartime authority on the basis of what Congress has in fact authorized. n12 This strategy makes particular sense with respect to the novel issues posed by the war on terrorism.

#### “Targeted Killing” should be defined narrowly

**Silva 3** (Sebastian Jose Silva, Faculte de Droit de l'Universite de Montreal, “Death For Life: A Study of Targeted Killing by States In International Law,” August 2003)

As defined by Steven R. David, targeted killing is the "intentional slaying of a specific individual or group of individuals undertaken with explicit governmental approval.,,25 Though concise, the problem with this definition is that it fails to specify the intended targets and ignores the context in which they are carried out. By failing to define targeted killings as measures of counter-terrorism, killings of all types may indiscriminately fall under its mantle with devastating consequences. As such, the killing of political leaders in peacetime, which amounts to assassination, can fall within its scope. The same can be said about the killing of specific enemy combatants in armed conflict, which amounts to targeted military strikes, and the intentional slaying of common criminals, dissidents, or opposition leaders. Actions carried-out by governments within their jurisdictions can also be interpreted as targeted killings. Although the killing of terrorists abroad may constitute lawful and proportionate self-defense in response to armed attacks, the use of such measures by states for an unspecified number of reasons renders shady their very suggestion. David's definition is essentially correct but over-inclusive.