# 1AC

Same as r1

# 2AC

## A1

#### Courts have experience determining rates and the risk of bad determinations is low empirically – its predictable

Cary 11 [George Cary, Mark Nelson, Steven Kaiser, Alex Sistla. Cary and Sistla are members of the California and District of Columbia Bars. Mr. Nelson is a member of the New York and District of Columbia Bars. Mr. Kaiser is a member of the New Jersey and District of Columbia Bars. “THE CASE FOR ANTITRUST LAW TO POLICE THE PATENT HOLDUP PROBLEM IN STANDARD SETTING”. Antitrust Law Journal No 3. (2011). https://www.clearygottlieb.com/~/media/organize-archive/cgsh/files/publication-pdfs/the-case-for-antitrust-law-to-police-the-patent-holdup-problem-in-the-standard-setting.pdf]

While we recognize that, when a court is asked to determine a FRAND royalty, one form of “false positive” is that the court could require a patent owner to license its technology at less than a FRAND rate (if it incorrectly finds that the patent owner failed to offer a license on FRAND terms), we believe this risk is limited. Courts are routinely asked to calculate royalty rates in a variety of disputes. They are also routinely asked to calculate the “but for” world competitive price in assessing damages in most antitrust litigation. There is no reason to believe that evaluating such rates in the context of a FRAND commitment would be any more difficult.84 We also note that patent owners can (and do) mitigate their risk in this regard if, prior to the adoption of a standard, they provide transparency into the rates that they consider FRAND. With such ex ante disclosures, patent owners can reduce the risk of being accused of deception, which is generally at the core of antitrust claims arising out of abuses of the standard-setting process.

## A2

## S

#### Antitrust law is well developed, predictable, and has a better enforcement regime than alternatives for patent holdup

Cary 11 [George Cary, Mark Nelson, Steven Kaiser, Alex Sistla. Cary and Sistla are members of the California and District of Columbia Bars. Mr. Nelson is a member of the New York and District of Columbia Bars. Mr. Kaiser is a member of the New Jersey and District of Columbia Bars. “THE CASE FOR ANTITRUST LAW TO POLICE THE PATENT HOLDUP PROBLEM IN STANDARD SETTING”. Antitrust Law Journal No 3. (2011). https://www.clearygottlieb.com/~/media/organize-archive/cgsh/files/publication-pdfs/the-case-for-antitrust-law-to-police-the-patent-holdup-problem-in-the-standard-setting.pdf]

Antitrust law directly addresses anticompetitive conduct. It is a well-developed body of law, with relatively clear doctrines and standards. Almost from the time of its inception in the late 19th century, it has received significant attention from the Supreme Court, and this attention has, if anything, increased in recent years. It is recognized to be a common law doctrine, which provides all of the flexibility and adaptability that the common law affords.28

Moreover, in major economies, governments employ significant resources to enforce their antitrust laws. In the United States, this includes substantial enforcement regimes at two agencies, the Department of Justice and the Federal Trade Commission. No comparable enforcement regime exists in any other area that might police standard-setting abuse. Even where the government is not involved, the antitrust law provides relatively broad standing to parties that are directly harmed by the anticompetitive conduct at issue, including consumers.

Therefore, it is unsurprising that antitrust has long been applied to the conduct of standard-setting organizations. As one of us recently described in depth, there is little debate that the activity of SSOs (and their members) can raise serious anticompetitive issues, which may—in certain cases—violate Sections 1 and/or 2 of the Sherman Act.29 Indeed, because the opportunistic conduct resulting in patent holdup specifically “concerns the inefficient acquisition of market power,”30 many commentators have “generally assumed that [such] opportunism in the standard-setting process is an antitrust problem.”31

#### FTC works even when congress backlashes

Solove et. al. 19 [Daniel, professor of law at the George Washington University Law School. He is well known for his academic work on privacy and for popular books on how privacy relates with information technology, and Chris Hoofnagle, professor at the University of California, Berkeley who teaches information privacy law, computer crime law, regulation of online privacy, internet law, and seminars on new technology, and Woodrow Hartzog, Professor of Law and Computer Science at Northeastern University School of Law and the Khoury College of Computer and Information Sciences. He is also an Affiliate Scholar at the Center for Internet and Society at Stanford Law School. “The FTC can rise to the privacy challenge, but not without help from Congress” https://www.brookings.edu/blog/techtank/2019/08/08/the-ftc-can-rise-to-the-privacy-challenge-but-not-without-help-from-congress/]

THE FTC HAS ACHIEVED MUCH WITH LIMITED RESOURCES AND WITHOUT CONSISTENT CONGRESSIONAL SUPPORT

Many privacy issues are thought to be new. But the FTC has decades of experience handling privacy problems, particularly in credit reporting and debt collection. The FTC’s earliest information privacy matters, in 1951 and then a series of cases in the 1970s, recognized the general consumer preference against commercialization of personal data. Using its enforcement powers, the FTC sued companies for deceptive data collection, and for the sale of data collected in preparing tax returns. The agency brought its first internet-related fraud case in 1994, long before most consumers shopped online. Since then, the FTC has pursued the biggest names in internet commerce. It has steadily broadened the duties for fair information handling, particularly in the information security domain.

The FTC’s broadest jurisdiction is its enforcement against unfair and deceptive practices under Section 5 of the FTC Act. Despite a wide reach, however, Section 5 has some significant limits in power. The FTC generally cannot issue a fine for Section 5 violations initially—fines can only be issued for violations of consent decrees, as happened in the Facebook case.

## AI CP

### 2AC – AI CP

#### Should doesn’t mean certain

Encarta 5 [Encarta World English Dictionary. 2005. http://encarta.msn.com/encnet/features/dictionary/DictionaryResults.aspx?refid=1861735294]

expressing conditions or consequences: used to express the conditionality of an occurrence and suggest it is not a given, or to indicate the consequence of something that might happen ( used in conditional clauses )

#### AI can’t do it—it’s a task by task process. And, impossible to predict when the tech will be deployable

Lohr 17 [Steve Lohr, "A.I. Is Doing Legal Work. But It Won’t Replace Lawyers, Yet.", 3/19/17, https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.htmlSteve Lohr, "A.I. Is Doing Legal Work. But It Won’t Replace Lawyers, Yet.", 3/19/17, https://www.nytimes.com/2017/03/19/technology/lawyers-artificial-intelligence.html]

Impressive advances in artificial intelligence technology tailored for legal work have led some lawyers to worry that their profession may be Silicon Valley’s next victim.

But recent research and even the people working on the software meant to automate legal work say the adoption of A.I. in law firms will be a slow, task-by-task process. In other words, like it or not, a robot is not about to replace your lawyer. At least, not anytime soon.

“There is this popular view that if you can automate one piece of the work, the rest of the job is toast,” said Frank Levy, a labor economist at the Massachusetts Institute of Technology. “That’s just not true, or only rarely the case.”

An artificial intelligence technique called natural language processing has proved useful in scanning and predicting what documents will be relevant to a case, for example. Yet other lawyers’ tasks, like advising clients, writing legal briefs, negotiating and appearing in court, seem beyond the reach of computerization, for a while.

“Where the technology is going to be in three to five years is the really interesting question,” said Ben Allgrove, a partner at Baker McKenzie, a firm with 4,600 lawyers. “And the honest answer is we don’t know.”

### 2AC – Demo

#### AI application in governance destroys democracy

Karl Manheim\* and Lyric Kaplan\*\*, 19 – \*Professor of Law, Loyola Law School, and \*\*Associate in Privacy & Data Security Group, Frankfurt Kurnit Klein & Selz. “Artificial Intelligence: Risks to Privacy and Democracy.” 21 Yale J.L. & Tech. 106. https://yjolt.org/sites/default/files/21\_yale\_j.l.\_tech.\_106\_0.pdf

This article explores present and predicted dangers that AI poses to core democratic principles of privacy, autonomy, equality, the po- litical process, and the rule of law. Some of these dangers predate the advent of AI, such as covert manipulation of consumer and voter preferences, but are made all the more effective with the vast pro- cessing power that AI provides. More concerning, however, are AI’s sui generis risks. These include, for instance, AI’s ability to generate comprehensive behavioral profiles from diverse datasets and to re- identify anonymized data. These expose our most intimate personal details to advertisers, governments, and strangers. The biggest dan- gers here are from social media, which rely on AI to fuel their growth and revenue models. Other novel features that have gener- ated controversy include “algorithmic bias” and “unexplained AI.” The former describes AI’s tendency to amplify social biases, but covertly and with the pretense of objectivity. The latter describes AI’s lack of transparency. AI results are often based on reasoning and processing that are unknown and unknowable to humans. The opacity of AI “black box” decision-making14 is the antithesis of democratic self-governance and due process in that they preclude AI outputs from being tested against constitutional norms.

We do not underestimate the productive benefits of AI, and its inev- itable trajectory, but feel it necessary to highlight its risks as well. This is not a vision of a dystopian future, as found in many dire warnings about artificial intelligence. Humans may not be at risk as a species, but we are surely at risk in terms of our democratic institutions and values.

#### **Global war**

Kasparov, Chairman of the Human Rights Foundation, 2/16/2017

Garry, “Democracy and Human Rights: The Case for U.S. Leadership” http://www.foreign.senate.gov/imo/media/doc/021617\_Kasparov\_%20Testimony.pdf

The Soviet Union was an existential threat, and this focused the attention of the world, and the American people. There existential threat today is not found on a map, but it is very real. The forces of the past are making steady progress against the modern world order. Terrorist movements in the Middle East, extremist parties across Europe, a paranoid tyrant in North Korea threatening nuclear blackmail, and, at the center of the web, an aggressive KGB dictator in Russia. They all want to turn the world back to a dark past because their survival is threatened by the values of the free world, epitomized by the United States. And they are thriving as the U.S. has retreated. The global freedom index has declined for ten consecutive years. No one like to talk about the United States as a global policeman, but this is what happens when there is no cop on the beat. American leadership begins at home, right here. America cannot lead the world on democracy and human rights if there is no unity on the meaning and importance of these things. Leadership is required to make that case clearly and powerfully. Right now, Americans are engaged in politics at a level not seen in decades. It is an opportunity for them to rediscover that making America great begins with believing America can be great. The Cold War was won on American values that were shared by both parties and nearly every American. Institutions that were created by a Democrat, Truman, were triumphant forty years later thanks to the courage of a Republican, Reagan. This bipartisan consistency created the decades of strategic stability that is the great strength of democracies. Strong institutions that outlast politicians allow for long-range planning. In contrast, dictators can operate only tactically, not strategically, because they are not constrained by the balance of powers, but cannot afford to think beyond their own survival. This is why a dictator like Putin has an advantage in chaos, the ability to move quickly. This can only be met by strategy, by long-term goals that are based on shared values, not on polls and cable news. The fear of making things worse has paralyzed the United States from trying to make things better. There will always be setbacks, but the United States cannot quit. The spread of democracy is the only proven remedy for nearly every crisis that plagues the world today. War, famine, poverty, terrorism–all are generated and exacerbated by authoritarian regimes. A policy of America First inevitably puts American security last. American leadership is required because there is no one else, and because it is good for America. There is no weapon or wall that is more powerful for security than America being envied, imitated, and admired around the world. Admired not for being perfect, but for having the exceptional courage to always try to be better. Thank you

## States

### 2AC – States CP

#### Standard setting is global and SSOs are outside of US jurisdiction

Kasdan 19 [Abraham and Michael. Partners in IP Law @ Wiggins and Dana LLP. “Recent Developments In The Licensing Of Standards Essential Patents”. 8/30/19. https://www.natlawreview.com/article/recent-developments-licensing-standards-essential-patents-0]

Technologies that operate across many different devices and geographical regions are all around us. As one example, today's mobile telephones can connect to 3G/4G/LTE and WiFi networks and communicate with other devices virtually anywhere in the world. This is made possible because all of these devices comply with highly specific technical standards that are promulgated by national and/or international standards setting organizations (SSOs), made up of companies involved in developing and building these global technologies.

When aspects of technical standards are protected by patents, the patent owners are generally obligated by the pertinent SSO to offer licenses to their patented technology under "fair, reasonable and non-discriminatory" (FRAND) terms, as the quid pro quo for having their patented technology included in the standard. The purpose behind the FRAND requirement is to prevent patent owners from gaining an unfair advantage over companies who must make devices that practice the standard in order to participate in the market; and are therefore necessarily “locked in” to standard-compliant designs.

Over the past several years, the licensing and litigation landscape involving standard essential patents (SEPs) and FRAND has become a matter of intense focus. Numerous technology industries, as well as courts around the world have begun to grapple with key issues such as “How do you determine what a FRAND licensing rate should be?” and whether a licensor’s offer is FRAND or not. This article summarizes several recent developments in the transnational licensing of SEP portfolios.

The Overall Landscape

Not surprisingly, most of the recent licensing disputes over SEPs involve the worldwide telecommunications industry. A host of multinational companies have been involved in developing the 2G, 3G, 4G and soon-to-be-commercialized 5G standards (aspects of which are also described by a bewildering array of acronyms, such as "LTE" and "LTE Advanced" ) These standards specify the technical features included in mobile phones and their networks.

The European Telecommunications Standards Institute (ETSI) is an SSO charged with developing worldwide standards for these technologies. Early on, SSOs recognized that the incorporation of patented technology into a standard could give the patent holder significant leverage when negotiating licenses. SSOs therefore required the patent holder to agree to make its SEPs available on FRAND licensing terms. However, ETSI, like other SSOs, does not provide guidance on how to structure licensing terms that meet the FRAND requirement. Indeed, doing so or setting price or royalty rates among entities in a given industry may raise antitrust issues. This leaves it to others to work out the specifics of how SEP owners can comply with the FRAND requirement.

#### State international regulation gets preempted, kills foreign investment and triggers massive economic uncertainty

O’Rourke 10 [Ken, Senior Partner @ O'Melveny & Myers LLP. “United States: The FTAIA In State Court: A Defense Perspective”. 3/3/10. https://www.mondaq.com/unitedstates/trade-regulation-practices/95030/the-ftaia-in-state-court-a-defense-perspective]

A threshold question is whether these limitations similarly restrict the extraterritorial application of state antitrust laws. Defendants will argue that the state antitrust laws cannot permissibly extend to reach conduct or give rise to damages that Congress has placed beyond the reach of federal antitrust law under the FTAIA.

The defendants' argument goes like this. First, under the Supremacy Clause of the U.S. Constitution,4 federal law preempts state law even in the absence of an express preemption provision when, "under the circumstances of [a] particular case, [the challenged state law] stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress."5

Second, the FTAIA's legislative history establishes that Congress had multiple objectives when enacting the statute. One objective was to ensure that the risk of Sherman Act liability did not prevent American exporters and other firms doing business abroad from entering into advantageous "business arrangements (such as joint selling arrangements), however anticompetitive, as long as those arrangements adversely affect only foreign markets."6

Another objective was to eliminate "ambiguity in the precise legal standard to be employed in determining whether American antitrust law is to be applied to a particular transaction."7

Congress sought to adopt a "clear benchmark ... for businessmen, attorneys and judges as well as [U.S.] trading partners"8 with the "ultimate purpose" of "promot[ing] certainty in assessing the applicability of American antitrust law to international business transactions and proposed transactions."9

A third objective was to promote international comity by acknowledging and respecting the prerogatives of other nations to establish and apply their own standards for regulating and remediating alleged restraints of trade in their own markets.10

Congress believed that respecting such foreign sovereign regulatory prerogatives would ultimately best serve U.S. interests by "encourage[ing] our trading partners to take more effective steps to protect competition in their markets."11

Applying state antitrust laws to regulate foreign trade or commerce excluded from federal antitrust jurisdiction by the FTAIA arguably would frustrate every one of these objectives.

American exporters and other businesses engaged in foreign trade or commerce could have no confidence that restraints exempted from federal antitrust attack would not be subject to alternative antitrust attack under the laws of one or more U.S. states. Businesses, therefore, would be deterred from entering into arrangements that Congress intended to enable.

Likewise, ambiguity in the "standard to be employed" for assessing the extraterritorial application of "American antitrust law" would not only persist, but would be multiplied fifty times.

And the imposition of as many as 50 states' antitrust laws on foreign trade or commerce clearly would negate the federal objectives of international comity and respect for foreign regulation of foreign markets.

At every level then, the application of state antitrust laws to foreign trade or commerce exempted by the FTAIA from federal antitrust regulation would "stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress" in enacting the FTAIA.12

Plaintiffs likely will counter these preemption arguments by pointing out that there is a presumption against preemption and that Congress did not expressly overrule any state antitrust law when enacting the FTAIA.

True, Congress did not address the reach of state antitrust laws, one way or the other, when it enacted the FTAIA. However, the Sherman Act has always extended to "commerce with foreign nations,"13 and was subject to a large body of pre-FTAIA case law addressing the limitations on its extraterritorial reach.14

By contrast, state antitrust laws such as California's Cartwright Act do not expressly reference foreign commerce and have no comparable history of being applied to it.

Congress, therefore, had no cause to be concerned that states would attempt to apply state antitrust laws to foreign trade or commerce exempted from federal regulation by the FTAIA.

Even if there had been such a concern, Congress would have been amply justified in anticipating that the doctrine of implied obstacle preemption — well established when the FTAIA was enacted in 198215 — would resolve any conflict.16

Take California as a specific example. There is a "strong presumption" against preemption, particularly in fields that have been the subject of California's "historic police powers."17 Antitrust plaintiffs would argue that California's "historic police powers" include the authority to regulate competition in California.

On the other hand, the U.S. Supreme Court has consistently held that the power of states to regulate commercial activity outside their borders is necessarily circumscribed.18 That principle applies a fortiori when states attempt to regulate foreign trade or commerce.19

Even in cases involving traditional regulation of conduct within state borders, the California Supreme Court has declined to apply a presumption against preemption where the regulation in question also implicates foreign affairs.20

When the area of regulation encompasses not only foreign trade and commerce but also international relations — that is to say, areas in which federal rather than state interests traditionally predominate — the case for preemption is even stronger.21

Extending the foreign extraterritorial reach of state antitrust laws beyond the limits of the Sherman Act would infringe not only the Supremacy Clause but several additional constitutional provisions establishing federal primacy in the areas of foreign trade, foreign commerce and international relations.22

This allocation of power is intended to ensure that only one entity — the federal government — represents American interests in foreign trade and commerce and foreign affairs.23

In recognition of these principles, courts have repeatedly invalidated state laws that undermine, or threaten to undermine, federal policies and prerogatives in the areas of foreign trade and commerce or foreign affairs.24

These decisions support a conclusion that states cannot constitutionally apply state antitrust laws such as the Cartwright Act to remediate alleged harm from restraints of trade in foreign markets having no direct, substantial and foreseeable anti-competitive effects on trade or commerce in the United States (as would be required for federal antitrust jurisdiction under the FTAIA).

There are policy reasons for this result as well. Claims arising from international cartel conduct or overseas monopolistic behavior arguably seek to apply state antitrust law to decide the legality of foreign conduct (e.g., communications between English and Japanese manufacturers about industry standards, or discussions between Chinese and Korean buyers, or joint ventures in Singapore investing in South America) regardless of whether such conduct was legal when and where it occurred.

Such claims threaten much more than an "incidental or indirect effect" on foreign trade and the internal affairs of foreign countries exercising their sovereign rights to regulate their own markets.25

To assert a state's antitrust law as an all-encompassing international antitrust statute available to police alleged restraints of trade in every country would contravene the federal policy, reflected in the FTAIA, of promoting international comity in this area.26

And allowing one state to apply its antitrust laws to foreign transactions paves the way for every other state to apply its antitrust statutes beyond the limits of the FTAIA.27

Exposure to a thicket of state antitrust regimes would drive foreign companies to avoid doing business that even tangentially affects U.S. commerce.

Finally, such an outcome would conflict with the reported decisions considering this specific issue. One federal court, in In re Intel Corp. Microprocessor Antitrust Litig. ("Intel II"),28 held that California Cartwright Act claims are "limited by the reach of their applicable federal counterparts."29

Intel II analyzed the question as follows:

"Plaintiffs have ... not demonstrated that their state law claims should be applied beyond the boundaries set by the FTAIA ... As the Supreme Court has recognized, '[f]oreign commerce is pre-eminently a matter of national concern,' and therefore, it is important for the Federal Government to speak with a single, unified voice.

"Here, Congress has spoken under the FTAIA with the 'direct, substantial and reasonably foreseeable effects' test, and the Court is persuaded that Congress' intent would be subverted if state antitrust laws were interpreted to reach conduct which the federal law could not."30

The only published California appellate decision on the issue, Amarel v. Connell, similarly holds that the Cartwright Act should not be construed to allow prosecution of extraterritorial antitrust claims that the FTAIA would not.31

The Amarel court observed that "[t]he legislative history of [the FTAIA] discloses it was intended to establish a uniform standard, in the face of conflicting judicial formulations, of the domestic effects necessary to trigger the jurisdiction of American antitrust laws,"32 and that "the proper approach to a preemption analysis is to reconcile 'the operation of both statutory schemes with one another rather than holding one completely ousted.'"33

The court concluded that the plaintiffs' state law antitrust claims were "not preempted" because, as pleaded, the claims did not seek to apply state antitrust laws in a manner inconsistent with the FTAIA.

Rather, they sought damages for anti-competitive practices "alleged to have had an adverse effect on the relevant markets in this state ..."34

According to the court:

"So long as the anticompetitive conduct in question has a direct, substantial and reasonably foreseeable effect within the state, prosecution of the conduct under state law is not precluded."35

In sum, there are strong reasons for a state court evaluating a state law antitrust claim involving foreign trade or commerce to limit the reach of that state law co-extensively with the reach of the Sherman Act as defined by the FTAIA.

To do otherwise contravenes constitutional clauses, rules of statutory construction and federal policies.

## Trade DA

### 2AC

#### Protectionism inevitable--US is about to restart the trade war with China

Constantino 10/1 [Annika Kim Constantino, "Biden’s top trade advisor will say China isn’t complying with phase 1 deal reached under Trump, according to sources", 10/1/21, https://www.cnbc.com/2021/10/01/china-is-not-complying-with-phase-1-deal-biden-trade-official-will-say-sources.html]

U.S. Trade Representative Katherine Tai will announce Monday that China is not complying with the so-called phase one trade deal reached under former President Donald Trump’s administration, sources familiar with the matter told CNBC’s Kayla Tausche.

Under the agreement, China was supposed to purchase an additional $200 billion in U.S. goods over a two-year period, but the nation has not lived up to that pledge, sources said.

The announcement will represent some of the the Biden administration’s most forceful pushback against China. Tai will deliver remarks Monday on her review of China trade policy in Washington.

It is unclear how the USTR will respond. Sources told CNBC that the USTR is evaluating potential actions against China for its non-compliance, including possible additional tariffs.

Tai’s speech on Monday will mark the last three months of the deal, which was signed by Trump in 2019. It called for China to expand purchases of certain U.S. goods and services from Jan. 1, 2020, through Dec. 31, 2021.

China’s purchases of U.S. exports through August are estimated to be running at about 62% of the trade deal’s targets, Chad Bown, a senior fellow at the Peterson Institute for International Economics in Washington, told Reuters.

#### Apple case thumps---it’s politicized, and has ripple effects across antitrust.

Albertgotti 9/10/21, \*[Reed Albergotti](https://www.washingtonpost.com/people/reed-albergotti/), Washington Post; (September 10th, 2021, “Judge’s ruling may take a bite out of Apple’s App Store, but falls short of calling the iPhone maker a monopolist”, https://www.washingtonpost.com/technology/2021/09/10/apple-epic-decision-judge-market-monopoly/)

A federal judge fundamentally altered Apple’s App Store business model on Friday in a landmark ruling that accused the iPhone maker of illegal anticompetitive behavior and is likely to have ripple effects across the U.S. antitrust landscape.

In a decision on an antitrust lawsuit brought by Fortnite maker Epic Games, U.S. District Judge Yvonne Gonzalez Rogers ruled that Apple must allow app developers to “steer” customers to alternatives to the tech giant’s payment processing service, which collects a 30 percent fee on most digital transactions. That was previously not allowed by the company, and marks a major victory for developers which have long complained of the tight grip the tech giant holds over its App Store on the roughly one billion iPhones currently in use.

[The blockbuster trial between Apple and the maker of ‘Fortnite’ goes out with a ‘hot tub’ session](https://www.washingtonpost.com/technology/2021/05/24/apple-epic-trial-hot-tubbing/?itid=lk_interstitial_manual_5)

Gonzalez Rogers also found that Apple was in violation of California state competition laws because of the way it forces developers into using Apple’s payment processing service without allowing them to tell customers there are alternatives, which are often cheaper.

She stopped short of ruling in favor of Epic‘s claims that Apple is a monopolist, although she left the door open by suggesting more evidence could have changed her decision.

“The court does not find that it is impossible; only that Epic Games failed in its burden to demonstrate Apple is an illegal monopolist,” she wrote.

Epic spokeswoman Elka Looks said the company plans to appeal the ruling. Tim Sweeney, chief executive of Epic, said in a tweet that, “Today’s ruling isn’t a win for developers or for consumers.”

Apple did not respond to requests for comment.

The ruling, one of the first major legal actions taken against a tech giant in a new era of antitrust scrutiny, is sure to echo loudly both in Washington, where a legislative effort to rein in the power of Big Tech is underway, and in the courts, which are facing the biggest test of existing antitrust laws in decades. Tech giants have come under the microscope in recent years as it became clear that current antitrust law does not effectively address their power, and regulators and lawmakers have been pushing to change that.

#### No protectionist anti-trust – it backfires on domestic industries and it’s too cumbersome to enforce

Bradford 12 [Anu H. Bradford is a Finnish-American author, law professor, and expert in international trade law. In 2014, she was named the Henry L. Moses Distinguished Professor of Law and International Organization at the Columbia Law School. She is the author of The Brussels Effect: How the European Union Rules the World. "Antitrust Law in Global Markets." https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=2977&context=faculty\_scholarship]

Other authors have questioned that trade fl ows could lead to biased antitrust enforcement. Einer Elhauge and Damien Gerardin note that the effects doctrine compromises states’ ability to engage in systematic underenforcement or overenforcement.135 If a net- exporting country were to enact overly lax antitrust laws, its producers would still be subject to the antitrust laws of the importing jurisdiction, assuming their activities have an eff ect on that market.136 The prospect of a concurrent jurisdiction by importing jurisdictions renders net- exporting countries’ underenforcement irrelevant, steering them towards optimal regulation.137 Elhauge and Geradin point out that the importing jurisdiction also has optimal incentives to regulate as long as it embraces the consumer welfare standard.138

Michael Trebilcock and Edward Iacobucci question whether trade defi cits or surpluses would ever determine countries’ preferred level of antitrust regulation, given that trade imbalances usually constitute only a small percentage of any nation’s GDP.139 John McGinnis notes that tr ade fl ows have a tendency to fl uctuate, and doubts that countries amend their antitrust laws in response to their changing trade balances.140 McGinnis further argues that trade- flow bias would be infeasible to apply in practice, considering that it is often difficult to categorize a multinational corporation as ‘domestic’ or ‘foreign’. Hence, exercising bias against a ‘foreign’ corporation may have the unintended eff ect of harming the corporation’s many domestic shareholders and employees.141 Anu Bradford points out that biased policies may have similar unintended consequences on domestic industries that rely on intermediate goods, since such goods comprise approximately 50% of the total imports in developed countries.142 Thus, if a country is a net- importer, predisposed to adopt overly strict antitrust laws, those strict antitrust laws would not only target the foreign producers attempting to penetrate the market but also domestic firms that depend on imported goods as inputs or raw materials.143 This criticism, if accepted, suggests that trade flows have, at best, only a marginal effect on countries’ level of antitrust regulation.

#### Trade is a tiny factor in overall calculations of war

Zachary Keck 13, Associate Editor of The Diplomat, monthly columnist for The National Interest, 7/12/13, “Why China and the US (Probably) Won’t Go to War,” <http://thediplomat.com/2013/07/why-china-and-the-us-probably-wont-go-to-war/>

Xinhua was the latest to weigh in on this question ahead of the Strategic and Economic Dialogue this week, in an article titled, “China, U.S. Can Avoid ‘Thucydides Trap.’” Like many others, Xinhua’s argument that a U.S.-China war can be avoided is based largely on their strong economic relationship.

This logic is deeply flawed both historically and logically. Strong economic partners have gone to war in the past, most notably in WWI, when Britain and Germany fought on opposite sides despite being each other’s largest trading partners.

More generally, the notion of a “capitalist peace” is problematic at best. Close trading ties can raise the cost of war for each side, but any great power conflict is so costly already that the addition of a temporarily loss of trade with one’s leading partner is a small consideration at best.

And while trade can create powerful stakeholders in each society who oppose war, just as often trading ties can be an important source of friction. Indeed, the fact that Japan relied on the U.S. and British colonies for its oil supplies was actually the reason it opted for war against them. Even today, China’s allegedly unfair trade policies have created resentment among large political constituencies in the United States.

## FTC DA

### 2AC – Top

#### FTC overload now.

Burke ’21 [Henry and Andrea; May 28; B.A. in Political Science and Labor Studies from the University of California at Los Angeles; Research Assistant, B.A. in Economics from the University of Maryland; Revolving Door Project, “Hobbled FTC Lacks Budget to Combat Corporate Buying Spree,” <https://therevolvingdoorproject.org/hobbled-ftc-lacks-budget-to-combat-corporate-buying-spree/>]

Even if the will to stop it exists, the FTC doesn’t have the funding to stop this boom. In fact, it hasn’t had the funding to keep up with a steady uptick in mergers in years. Aside from the recent spike, the total number of premerger filings [increased](https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-bureau-competition-department-justice-antitrust-division-hart-scott-rodino/p110014hsrannualreportfy2019_0.pdf) by 80 percent over the last 10 years. In 2010, corporations filed 1166 premerger notifications. By 2019, yearly filings almost doubled to 2089.

While the number of transactions the FTC is charged with regulating has increased steadily, the number of enforcement actions — challenges to anticompetitive mergers or conduct — has stagnated.  A 2020 paper from Equitable Growth showed that while the number of [enforcement actions](https://equitablegrowth.org/wp-content/uploads/2020/11/111920-antitrust-report.pdf) from both the FTC and DOJ hovered at about 40 challenges per year from 2010 to 2019, even as the number of corporations seeking merger approval grew. The FTC’s enforcement actions over the past ten years show the agency hasn’t kept up with increased HSR filings: while FY 2010 saw 22 enforcement actions for 1166 reported mergers, a ratio of approximately one enforcement action for every 53 mergers, FY 2019 saw a mere 21 enforcement actions for 2089 mergers, meaning there was only one FTC enforcement action for every 99 mergers.

Overall funding and staffing levels at the FTC have similarly stagnated. Then-FTC commissioner Rebecca Slaughter said in 2020 that it is an “[indisputable](https://www.ftc.gov/system/files/documents/public_statements/1583714/slaughter_remarks_at_gcr_interactive_women_in_antitrust.pdf)” fact that FTC funding has not kept up with market demands; according to Slaughter, the FTC budget has only increased by 13% since 2010 and the employee headcount decreased. This budget increase has not come from increased discretionary appropriations from Congress however, but from a massive increase in merger filings and their accompanying fees. Startlingly, Slaughter notes that “the FTC had roughly 50% more full-time employees at the beginning of the Reagan Administration than it does today.” The situation has become so dire that increased budgets for the enforcement agencies has become a rare [bipartisan](https://www.law360.com/articles/1368496/klobuchar-says-congress-has-rare-shot-at-antitrust-overhaul) issue in the Senate.

#### Turn—the aff resolves FTC-DOJ turf wars over SEPs—the aff harmonizes enforcement. The aff’s certain enforcement encourages more resources down the line and frees wasted resources.

McGinnis and Sun, 21 – John O. McGinnis, Professor at Northwestern University and Linda Sun, Associate at Wilmer Pickering Hale & Dorr LLP and J.D. 2020 at Northwestern Pritzker School of Law, Winter, “Unifying Antitrust Enforcement for the Digital Age,” *78 Wash. & Lee L. Rev. 305*, p. Nexis

1. Standard-Essential Patents: A Case Study in Incoherence

Turf battles aside, the FTC and the DOJ have promoted directly opposing policies regarding the application of antitrust law to technology.138 The contentious disagreement on the important issue of standard-essential patents shows the divergent treatment and uncertainty already generated by dual enforcement. The FTC believes violation of a SEP licensing agreement is potentially an antitrust violation.139 Standard-setting organizations often require patent holders to license SEPs for free or on fair, reasonable, and non-discriminatory (FRAND) terms.140 The FTC argues that a violation of these licensing terms can violate antitrust laws by enabling a patent holder to “parlay the standardization of its technology into a monopoly in standard-compliant products.”141 The DOJ disagrees, because it believes “it is not the duty or the proper role of antitrust law to referee what unilateral behavior is reasonable for patent holders in this context.”142 The DOJ argues that patent holders enjoy a government-granted monopoly over the item under patent.143 Thus, a violation of a SEP licensing agreement may raise an issue of contract law or other common law right, but not antitrust.144

SEPs are vital to technological innovation and economic growth, with billions of dollars at stake.145 To understand the importance of SEPs to technology, one must first understand the importance of a standard. A standard is a uniform practice around which a technology develops.146 For example, a standard could describe a specific design of a charging port. Once the standard is set, multiple devices, from cell phones to speakers, can be designed to work with that standard charging port. Standards enable uniformity and operability across manufacturers, devices, or platforms.147 We interact with and depend on countless technology standards such as USB, Bluetooth, HTML, and 3G in our everyday life. Their importance cannot be overstated: they provide the foundation for the development and implementation of technology.148

Despite their benefits, standards also present a dilemma: they are most beneficial when there is widespread adoption.149 But most entities, from companies to countries, want to have their own individual designs become standard so as to gain a competitive advantage.150 Thus, there must be some process that encourages collaboration and consensus even among competitors.151

Such collaboration is facilitated by a standards development organization (SDO) or standard setting organization (SSO), which creates, revises, and coordinates technical standards.152 Standards development organizations have rules and criteria to prevent a single interest from dominating the definition of a standard.153 Their rules govern how they approach patented technologies.154 For example, an SDO may require that only unpatented technologies can be adopted as standard. Thus, in deciding what charging port will be the industry standard, the SDO would reject any charging ports that were patented. While this is, in a sense, a procompetitive solution—no entity would have a monopoly over the standard technology that was decided upon—it is largely unrealistic in today’s world where most useful and current inventions are patented. Adopting an unpatented technology that is outdated as standard defeats the purpose of a standard, which is to facilitate the development and adoption of innovative technology.155

As a result, SDOs must contend with standard-essential patents (SEPs), patents that are necessary for the implementation of a standardized technology.156 SDOs typically require that if a proposed standard is encumbered by patents, those patents must be licensed on “fair, reasonable, and non-discriminatory” (FRAND) terms to those seeking to utilize the technology.157 This requirement is thought to facilitate the adoption of the standard in the industry while providing fair terms to all parties involved.158 Because standards are critical to almost everything that touches technology, standard-essential patents are as well. When a patent is essential to a standard, there is no way to comply with the standard without infringing or licensing the patent.159 A dispute over a single SEP can prevent a company from making its product compatible with the internet, computers, or mobile devices.160 For example, a typical cellphone charging port has SEPs that cover every part of its design, from the electronic circuitry to communication protocols. Methods that enable a mobile phone to stay connected to a 4G/LTE network are covered by a multitude of SEPs that are essential to the 4G/LTE standard.161 Qualcomm owns SEPs essential to widely adopted cellular communication standards such as CDMA and LTE.162

A competition problem arises when, despite any agreement made at the time a standard was chosen, SEPs are later not licensed at fair, reasonable, and non-discriminatory terms. When the owner of a SEP bars a competitor from utilizing a SEP and therefore a standard technology, this decision deals a huge blow to the competitor. The FTC believes that when a SEP-owner violates an agreement to license the SEP on fair, reasonable, and non-discriminatory terms, this is an anticompetitive action in violation of antitrust laws.163 In FTC v. Qualcomm,164 the FTC pursued action against Qualcomm under Section 5 of the FTC Act for refusing to license its SEPs to competitors.165

In contrast, the DOJ has taken the stance that SEP owners refusing to license on FRAND terms is not an anticompetitive antitrust violation.166 It is simply a patent owner exercising his or her earned right to exclude competitors. As dictated under patent law doctrine, a patent owner has the right to prevent anyone from utilizing his or her patented technology.167 Going forward, it is uncertain whether the government will pursue antitrust enforcement actions related to the licensing of SEPs.168

This disagreement between the DOJ and the FTC rippled out to cause concern in the legislative branch. Because of the DOJ’s disagreement with the FTC, Senators wrote to the DOJ urging the agency to clarify its policy and provide guidance to stakeholders.169 The uncertainty created by this bifurcated approach creates dissatisfaction in Congress and so undermines support for these agencies among those who control their funding.170

The disagreement between the DOJ and FTC has international implications as well. Divergence in treatment of FRAND agreements among countries already causes difficulties for companies operating under different national standards in the global economy.171 These international challenges are further exacerbated by the different policies of the two domestic antitrust enforcement agencies of the United States, still the most important commercial nation in the world.172 Companies are subject to potentially conflicting standards depending not only on the national identity of the enforcement agency but also on the identity of the agency with the United States. International harmonization becomes more difficult if the United States has internal disagreements. Therefore, the case of SEPs shows how dual enforcement has created uncertainty in the industry, in Congress, and internationally.

B. Dual Enforcement Causes Inefficiencies and Inconsistent Outcomes

Technology did not create, but only exacerbates long-standing problems of dual antitrust enforcement. In this subpart we briefly offer more general arguments against joint enforcement by the FTC and Antitrust Division. It wastes resources, and even in non-technological areas, it creates uncertainty. 173 Both waste and uncertainty are compounded by turf wars, as exemplified by conflicts over mergers. 174

Moreover, Congress never intended for a system of full dual enforcement. 175 Thus, eliminating it would not undermine a fully deliberated scheme. Single enforcement would additionally bring the United States in conformity with industrialized nations worldwide, which generally have a single antitrust enforcer. 176 Finally, we respond to the argument that single agency enforcement would not improve matters much because private actors can enforce antitrust. 177 Private enforcers are subject to heavy restrictions and do not have the same ability to direct antitrust policy as the agencies do.

#### Tons of new thumpers – newest enforcement action cites opioid addiction, telemedicine, COVID-19 fraud

Dunphy 9/28 [Brian Dunphy, Mintz Law Firm. Sarah Beth S. Kuyers, Mintz. Karen Lovitich, Mintz. “Five Takeaways from DOJ’s Latest National Enforcement Action, Including Continued Focus on Opioids and Telemedicine.” 9/28/21. https://www.jdsupra.com/legalnews/five-takeaways-from-doj-s-latest-1847706/]

The U.S. Department of Justice (DOJ) recently announced its latest national enforcement action related to health care fraud (National Enforcement Action) in which DOJ filed criminal charges against 142 defendants. The National Enforcement Action, which alleges losses of $1.4 billion due to false or fraudulent billings, follows similar DOJ “take downs” over the last several years in that it focuses on telemedicine providers and the opioid crisis. This post provides five takeaways from the National Enforcement Action.

1. Opioid Addiction Remains a Hot Topic

Assistant Attorney General (AAG) Kenneth Polite, Jr. began and ended his remarks about the National Enforcement Action by expressing concern about the ongoing opioid addiction crisis and highlighting DOJ’s continued efforts to “aggressively prosecute” those who are contributing to it. However, the alleged fraud related to the illegal distribution of opioids accounted for only about 1% of the government’s alleged losses ($14 million), making it the smallest category of alleged fraud cited in the press release. As we discussed in our Health Care Enforcement 2020 Year in Review and 2021 Outlook, DOJ has closely scrutinized opioid-related activities for the last several years, but it is surprising that opioid-related charges accounted for a relatively small portion of the National Enforcement Action.

2. DOJ Continues to Focus on Telemedicine

The largest amount of alleged fraud – more than $1.1 billion – is related to false and fraudulent billings connected to telemedicine. The AAG and DOJ’s press release both specifically cited the ordering of medically unnecessary durable medical equipment (DME), prescriptions, and other items and services after no (or very limited) patient interaction as sources of the alleged fraud. The AAG recognized in his remarks that telemedicine is a very important tool for providing health care services, especially during the COVID-19 pandemic, but that it can be subject to abuse. Last year’s National Healthcare Fraud and Opioid Takedown, which we covered in our Health Care Enforcement 2020 Year in Review and 2021 Outlook, also focused heavily on alleged fraud involving medically unnecessary DME and prescriptions ordered via telemedicine. While the purported schemes targeted by the National Enforcement Action are unlike the robust telemedicine interactions with providers that have become increasingly utilized since the onset of COVID-19, we expect enforcement to follow the expansion of telemedicine.

3. COVID-19 Fraud Comes in a Variety of Forms and is a Growing Area of Enforcement

The National Enforcement Action makes clear that DOJ continues to pursue allegations of COVID-19 fraud. Some of the alleged fraud related to Medicare’s loosening of certain restrictions during COVID-19, such as the waiver of certain telemedicine requirements, which some providers allegedly used to submit false billings. In addition, DOJ charged five defendants for alleged fraud related to the Provider Relief Fund. The AAG explained in his remarks that these defendants did not actually have an operational medical practice and used the funds received from the Provider Relief Fund for personal purposes instead of running a medical practice as required. As we predicted, enforcement regarding COVID-19 relief funds will remain an area of enforcement focus.

4. Florida is a Key Area for DOJ Enforcement on Health Care Fraud

The U.S. Attorney’s Office for the Southern District of Florida issued its own press release about charges brought there. Notably, over one-third of the defendants in the National Enforcement Action were charged in the Southern District of Florida. The press release includes a quote from the Special Agent in Charge, FBI Miami, who stated that “South Florida is ground zero for health care fraud,” which does not comes as a surprise to most in the health care industry. As noted in our Health Care Enforcement 2020 Year in Review and 2021 Outlook, health care qui tam cases are most often filed in major metropolitan areas, like Miami in the Southern District of Florida. In addition to South Florida, the Middle District of Florida, which covers Tampa, Orlando, and Jacksonville, had the highest number of qui tam cases unsealed last year.

### Impact

#### Bathtubs kill more people than terrorism

Mueller and Stewart 10/29/18 [John Mueller is Woody Hayes Senior Research Scientist, Mershon Center for International Security Studies, and adjunct professor of Political Science, at Ohio State University. He is also a Senior Fellow at the Cato Institute in Washington. Mark G. Stewart is Professor of Civil Engineering and Director of the Centre for Infrastructure Performance and Reliability at The University of Newcastle in Australia. Terrorism and Bathtubs: Comparing and Assessing the Risks. October 29, 2018. https://www.tandfonline.com/doi/abs/10.1080/09546553.2018.1530662?journalCode=ftpv20]

The likelihood that anyone outside a war zone will be killed by an Islamist extremist terrorist is extremely small. In the United States, for example, some six people have perished each year since 9/11 at the hands of such terrorists—vastly smaller than the number of people who die in bathtub drownings. Some argue, however, that the incidence of terrorist destruction is low because counterterrorism measures are so effective. They also contend that terrorism may well become more frequent and destructive in the future as terrorists plot and plan and learn from experience, and that terrorism, unlike bathtubs, provides no benefit and exacts costs far beyond those in the event itself by damagingly sowing fear and anxiety and by requiring policy makers to adopt countermeasures that are costly and excessive. This article finds these arguments to be wanting. In the process, it concludes that terrorism is rare outside war zones because, to a substantial degree, terrorists don’t exist there. In general, as with rare diseases that kill few, it makes more policy sense to expend limited funds on hazards that inflict far more damage. It also discusses the issue of risk communication for this hazard

# 1AR

### S

#### Aff is bipartisan

Runde 21 [Daniel F. Runde is senior vice president, director of the Project on Prosperity and Development, and holds the William A. Schreyer Chair in Global Analysis at CSIS, Sundar R. Ramanujam is a research associate with the CSIS Project on Prosperity and Development, "Digital Governance: It Is Time for the United States to Lead Again", 8/2/21, https://www.csis.org/analysis/digital-governance-it-time-united-states-lead-again]

U.S. leadership in global digital governance needs to be more than a campaign of rejections. Instead, it should be supplemented through an affirmative and constructive vision that champions a viable governance model at home. Although a bipartisan legislative effort to govern the digital economy at the federal level will need deft navigation of domestic political fault lines, the United States should not let this challenge keep it from reclaiming its moral leadership and protecting one of its most influential soft-power tools. Moreover, digital governance standards developed by the United States are very likely to be steeped in common law traditions, making them less prescriptive than the European GDPR even as both seek to realize similar goals of protecting data and the digital consumer. This is a critical feature of U.S. regulatory practices that, when adopted overseas, can positively impact emerging markets.

However, the current political environment significantly limits the viability of any federal leadership on this matter. Both at the national and state levels, political actors are vastly divergent in their views on the role of the internet and the regulation of the digital economy. Congress should resolve to overcome these differences. The Biden administration can also leverage the growing bipartisan chorus of concern over China’s geopolitical influence as it works with Congress to develop domestic technological standards. A failure to act will result in the United States abdicating leadership on setting the most critical standard for the twenty-first century.

### AI CP

#### AI fails now – only the plan can solve innovation that makes it effective but it literally can only Identify a CAT

Mims July 31, 2021 [Christopher Mims writes Keywords, a weekly column on technology. Before joining the Journal in 2014, he was the lead technology reporter for Quartz and has written on science and tech for publications ranging from Technology Review, Smithsonian, Wired, the Atlantic, Slate and other publications. WSJ “Why Artificial Intelligence Isn’t Intelligent”]

<https://www.wsj.com/articles/why-artificial-intelligence-isnt-intelligent-11627704050>

This might seem like a purely academic debate. Whatever we call it, surely what matters most about “AI” is the way it is already transforming what can seem like almost every industry on earth? Not to mention the potential it has to displace millions of workers in trades ranging from white to blue collar, from the back office to trucking?

And yet, across the fields it is disrupting or supposed to disrupt, AI has fallen short of many of the promises made by some of its most vocal advocates—from the disappointment of IBM’s Watson to the forever-moving target date for the arrival of fully self-driving vehicles.

Words have power. And—ask any branding or marketing expert—names, in particular, carry weight. Especially when they describe systems so complicated that, in their particulars at least, they are beyond the comprehension of most people.

Inflated expectations for AI have already led to setbacks for the field. In both the early 1970s and late 1980s, claims similar to the most hyperbolic ones made in the past decade—about how human-level AI will soon arise, for example—were made about systems that would seem primitive by today’s standards. That didn’t stop extremely smart computer scientists from making them, and the disappointing results that followed led to “AI winters” in which funding and support for the field dried up, says Melanie Mitchell, an AI researcher and professor at the Santa Fe Institute with more than a quarter-century of experience in the field.

No one is predicting another AI winter anytime soon. Globally, $37.9 billion has been invested in AI startups in 2021 so far, on pace to roughly double last year’s amount, according to data from PitchBook. And there have also been a number of exits for investors in companies that use and develop AI, with $14.4 billion in deals for companies that either went public or were acquired.

But the muddle that the term AI creates fuels a tech-industry drive to claim that every system involving the least bit of machine learning qualifies as AI, and is therefore potentially revolutionary. Calling these piles of complicated math with narrow and limited utility “intelligent” also contributes to wild claims that our “AI” will soon reach human-level intelligence. These claims can spur big rounds of investment and mislead the public and policy makers who must decide how to prepare national economies for new innovations.

Inside and outside the field, people routinely describe AI using terms we typically apply to minds. That’s probably one reason so many are confused about what the technology can actually do, says Dr. Mitchell.

OpenAI declined to comment or make Mr. Altman available. Tesla did not respond to a request for comment. Facebook’s vice president of AI, Jerome Pesenti, says that his company believes the field of AI is better served by more scientific and realistic goals, rather than fuzzy concepts like creating human-level or even superhuman artificial intelligence. “But,” he adds, “we are making great strides toward learning more like humans do, and creating more general-purpose models that perform well on tasks beyond those they are specifically trained to do.” Eventually, he believes this could lead to AI that possesses “common sense.”

The tendency for CEOs and researchers alike to say that their system “understands” a given input—whether it’s gigabytes of text, images or audio—or that it can “think” about those inputs, or that it has any intention at all, are examples of what Drew McDermott, a computer scientist at Yale, once called “wishful mnemonics.” That he coined this phrase in 1976 makes it no less applicable to the present day.

“I think AI is somewhat of a misnomer,” says Daron Acemoglu, an economist at Massachusetts Institute of Technology whose research on AI’s economic impacts requires a precise definition of the term. What we now call AI doesn’t fulfill the early dreams of the field’s founders—either to create a system that can reason as a person does, or to create tools that can augment our abilities. “Instead, it uses massive amounts of data to turn very, very narrow tasks into prediction problems,” he says.

When AI researchers say that their algorithms are good at “narrow” tasks, what they mean is that, with enough data, it’s possible to “train” their algorithms to, say, identify a cat. But unlike a human toddler, these algorithms tend not to be very adaptable. For example, if they haven’t seen cats in unusual circumstances—say, swimming—they might not be able to identify them in that context. And training an algorithm to identify cats generally doesn’t also increase its ability to identify any other kind of animal or object. Identifying dogs means more or less starting from scratch.

The vast sums of money pouring into companies that use well-established techniques for acquiring and processing large amounts of data shouldn’t be confused with the dawn of an age of “intelligent” machines that aren’t capable of doing much more than narrow tasks, over and over again, says Dr. Mitchell. This doesn’t mean that all of the companies investors are piling into are smoke and mirrors, she adds, just that many of the tasks we assign to machines don’t require that much intelligence, after all.

#### Even AI is biased—can’t solve, leads to erroneous decisions

Lim 17 [Daryl Lim, Professor of Law and Director, Center for Intellectual Property, Information, and Privacy Law, "Can Computational Antitrust Succeed?", 2017, https://law.stanford.edu/wp-content/uploads/2021/04/lim-computational-antitrust-project.pdf]

Reflecting on computational antitrust, Eleanor Fox noted that “[w]hen you talk about data, you also have to talk about values . . . And assumptions.”66 Fox touches on a fundamental obstacle to the success of computational antitrust. Humans are not designed to process vast amounts of quantitative data, a problem the economic literature calls “bounded rationality.”67 They rely on heuristics such as ideology to navigate the world, shaped by personal experiences, beliefs, and biology.68 When humans code, their coding is not value-neutral, and biases may seep into the algorithmic code, filtering into training data and the weights judges may assign to the algorithm.69 Algorithms will likely be path-dependent, as Tom Nachbar observed, “based on decisions made in previous iterations of the program— prompting a cascading search for purpose.”70

Of course, training datasets themselves may contain biases and lead to unfair and legally erroneous decisions. For example, a case from the 1970s would likely have been decided on Chicago School’s terms, weighing potential losses to dynamic efficiency more than the intervention’s potential gains.71 Earlier cases may be more Neo-Brandeisian by comparison, favoring small businesses because of a political preference for atomism over economic efficiency.72 Moreover, the training data may identify the criteria for evaluation and replicate the problems as we advance if based on bad theories. This problem is all the more systemic in reinforcement learning, where the reward may be a biased identification, generating even more bias over time, raising the risk of what Nachbar labeled “snowballing unfairness.”73

Andrew Selbst expressed concern that using AI in adjudication exchanges one problem-bounded rationality for another: the inability to oversee or understand how AI decides completely.74 Sophisticated algorithms are too complicated to be read and evaluated even by data scientists and software engineers.75 Moreover, the massive scale of datasets makes it hard to scrutinize their contents and perpetuate algorithmic bias thoroughly.76

#### the era of liberalist interventionism is over in favor of realism

Posner 9/3 [Eric, professor at the University of Chicago Law School. “America's Return to Realism”. 9/3/21. https://www.project-syndicate.org/commentary/america-return-to-foreign-policy-realism-by-eric-posner-2021-09]

CHICAGO – US President Joe Biden’s speech defending the withdrawal from Afghanistan announced a decisive break with a tradition of foreign-policy idealism that began with Woodrow Wilson and reached its apex in the 1990s. While that tradition has often been called “liberal internationalism,” it also was the dominant view on the right by the end of the Cold War. The United States, according to liberal internationalists, should use military force as well as its economic power to compel other countries to embrace liberal democracy and uphold human rights.

Both in conception and in practice, American idealism rejected the Westphalian international system, in which states are forbidden to intervene in others’ internal affairs, and peace results from maintaining a balance of power. Wilson sought to replace this system with universal principles of justice, administered by international institutions. During World War II, Franklin D. Roosevelt revived these ideals in the Atlantic Charter of 1941, which declared self-determination, democracy, and human rights to be war goals.

But during the Cold War, the US pursued a resolutely “realist” foreign policy that focused on national interest and propped up or tolerated dictatorships as long as they opposed the Soviet Union. The two rivals had little use for international institutions or universal ideals except for propaganda purposes, instead using regional arrangements to knit together their allies. It was Europe that, in the 1970s, tried to advance human rights and assume a position of moral leadership to distinguish itself from the goliaths to its east and west.

America’s commitment to human rights began at a moment of weakness. In the wake of the military and moral disaster of Vietnam, President Jimmy Carter and the US Congress sought to infuse American foreign policy with a moral center and reached for the language of human rights. President Ronald Reagan saw human rights as a convenient rhetorical cudgel for clobbering the Soviet Union. But both presidents continued to support dictatorships that served US security interests, and neither used military force to advance humanitarian ideals. The era of US-led humanitarian intervention would have to await the end of the Cold War.

The rhetoric outstripped the reality, but reality did change. As the sole global hegemon, the US embarked on a large number of wars, big and small, involving a confusing mélange of hard-nosed security interests and idealistic rhetoric. In Panama, Somalia, Yugoslavia (twice), Iraq (twice), Libya, Afghanistan, and elsewhere, the US launched military interventions on both national-security and humanitarian grounds.

The nonintervention in the Rwandan genocide of 1994 may have been the most consequential (non)event of this period, because it was reinterpreted with the benefit of hindsight as a missed opportunity to use military force to save hundreds of thousands of lives. The debacle was used to justify the wars in Afghanistan and Iraq, and to urge US military intervention in Sudan in the early 2000s, which President George W. Bush’s administration wisely resisted, despite mass killings that amounted to another genocide.

All of this led to an extraordinary burst of interest in international law and legal institutions. Multiple international tribunals were created, leading to the establishment of a permanent International Criminal Court. Human rights treaties and institutions were revived and strengthened. Principles of humanitarian intervention were advanced, including the now-forgotten “responsibility to protect.” Every Western university nowadays has a human rights center of some sort that is a testament to the idealism of that era.

It was already clear that President Donald Trump repudiated this tradition of humanitarian or quasi-humanitarian military intervention, but Biden’s forceful renunciation of it is somewhat surprising. In his speech, he repeatedly emphasized the importance of identifying and defending America’s “vital national interest.” The word “national” is key, and Biden wasn’t subtle:

“If we had been attacked on September 11, 2001, from Yemen instead of Afghanistan, would we have ever gone to war in Afghanistan? Even though the Taliban controlled Afghanistan in the year 2001? I believe the honest answer is no. That’s because we had no vital interest in Afghanistan other than to prevent an attack on America’s homeland and our friends. And that’s true today.”

America had no vital interest in introducing democracy to Afghanistan, in helping women escape a medieval theological regime, in educating children, or in helping to prevent another civil war. His decision to withdraw from Afghanistan was

“about ending an era of major military operations to remake other countries. We saw a mission of counterterrorism in Afghanistan, getting the terrorists to stop the attacks, morph into a counterinsurgency, nation-building, trying to create a democratic, cohesive, and united Afghanistan. Something that has never been done over many centuries of Afghan’s [sic] history. Moving on from that mindset and those kind of large-scale troop deployments will make us stronger and more effective and safer at home.”

Biden also did say that human rights will remain “the center of our foreign policy,” and that economic tools and moral suasion can be used to advance them. This claim is in tension with his declaration that “vital national interests” should determine military intervention. Why wouldn’t vital national interests determine nonmilitary forms of intervention as well? Clearly, the role of human rights and other moral ideals in US foreign policy has been downgraded. The only question is whether the rhetoric will be toned town to match the new reality.

Of course, it was never very clear that US governments were actually motivated by humanitarian considerations. Critics often found more nefarious motives. Future historians may well argue that US foreign policy in the 1990s and 2000s was simply advancing a very ambitious vision of the national interest: America required all countries to adopt American ideals and institutions so that none would want to act against America. Or they might say that, like any empire, the US lacked the patience and wisdom to maintain a consistent stance in its treatment of its peripheries.

In any case, idealism is not actually so idealistic when a country has enough power, and the only thing that is clear now is that America doesn’t. Resistance to its post-Cold War nation-building goals took the form of international terrorism. China and Russia did not obediently embrace democracy. And much of the rest of the world has reverted to various forms of nationalism and authoritarianism.

### DA

#### Biden says decoupling is IMPOSSIBLE

Jianli Yang 10/1, Founder and President of Citizen Power Initiatives for China, “Biden Calls For International Cooperation, But How To Cooperate With China?”, The Hill, 10/1/2021, https://thehill.com/opinion/international/574380-biden-calls-for-international-cooperation-but-how-to-cooperate-with

Responding to the China threat, some in Washington have been advocating for a total decoupling with China — namely, to shut down all “areas of cooperation” altogether. However, this is unrealistic. Even during the past two years of heightened tensions between the U.S. and China, the trade volume between the two hostile nations has remained relatively stable, and has even shown signs of growth. Moreover, it would be detrimental to global welfare if the world’s two major powers — which are also the two largest economies — were unable to collaborate on issues of global concern, such as climate change and the coronavirus pandemic. Even during the peak of the Cold War, the U.S. and the Soviet Union were able to negotiate and work out deals on arms control, most notably the Anti-Ballistic Missile Treaty. Responding to the question of whether the Trump administration was seeking to “decouple” from China, then Vice President Mike Pence stated bluntly in his Oct. 24, 2019, address at the Woodrow Wilson International Center for Scholars, “The answer is a resounding ‘no.’”

The Biden administration and the preceding Trump administration both agree that decoupling from China is neither possible nor desirable — and both can be considered the most hawkish U.S. administrations toward China over the past 40 years. Kerry announced on the day following Biden’s U.N. address that he would go to China again, in his effort to seek collaboration with China.