Against the Jones Act

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June 7, 2021

Economist Josh Hendrickson asserts that the Jones Act is properly understood as a Coasean bargain. In this view, the law serves as a subsidy to the U.S. maritime industry through its restriction of waterborne domestic commerce to vessels that are constructed in U.S. shipyards, U.S.-flagged, and U.S.-crewed. Such protectionism, it is argued, provides the government with ready access to these assets, rather than taking precious time to build them up during times of conflict.

We are skeptical of this characterization.

Although there is an implicit bargain behind the Jones Act, its relationship to the work of Ronald Coase is unclear. Coase is best known for his theorem on the use of bargains and exchanges to reduce negative externalities. But the negative externality is that the Jones Act attempts to address is not apparent. While it may be more efficient or effective than the government building up its own shipbuilding, vessels, and crew in times of war, that's rather different than addressing an externality. The Jones Act may reflect an implied exchange between the domestic maritime industry and government, but there does not appear to be anything particularly *Coasean* about it.

Rather, close scrutiny reveals this arrangement between government and industry to be a textbook example of policy failure and rent-seeking run amok. The Jones Act is not a bargain, but a rip-off, with costs and benefits completely out of balance.

The Jones Act and National Defense

For all of the talk of the Jones Act's critical role in national security, its contributions underwhelm. Ships offer a case in point. In times of conflict, the U.S. military's primary sources of transport are not Jones Act vessels but government-owned ships in the Military Sealift Command and Ready Reserve Force fleets. These are further supplemented by the 60 non-Jones Act U.S.-flag commercial ships enrolled in the Maritime Security Program, a subsidy arrangement by which ships are provided $5 million per year in exchange for the government's right to use them in time of need.

In contrast, Jones Act ships are used only sparingly. That's understandable, as removing these vessels from domestic trade would leave a void in the country's transportation needs not easily filled.

The law's contributions to domestic shipbuilding are similarly meager. if not outright counterproductive. A mere two to three large, oceangoing commercial ships are delivered by U.S. shipyards per year. That's not per shipyard, but all U.S. shipyards *combined*.

Given the vastly uncompetitive state of domestic shipbuilding—a predictable consequence of handing the industry a captive domestic market via the Jones Act's U.S.-built requirement—there is a little appetite for what these shipyards produce. As Hendrickson himself points out, the domestic build provision serves to "discourage shipbuilders from innovating and otherwise pursuing cost-saving production methods since American shipbuilders do not face international competition." We could not agree more.

What keeps U.S. shipyards active and available to meet the military's needs is not work for the Jones Act commercial fleet but rather government orders. A 2015 Maritime Administration report found that such business accounts for 70 percent of revenue for the shipbuilding and repair industry. A 2019 American Enterprise Institute study concluded that, among U.S. shipbuilders that construct both commercial and military ships, Jones Act vessels accounted for less than 5 percent of all shipbuilding orders.

If the Jones Act makes any contributions of note at all, it is mariners. Of those needed to crew surge sealift ships during times of war, the Jones Act fleet is estimated to account for 29 percent. But here the Jones Act also acts as a double-edged sword. By increasing the cost of ships to four to five times the world price, the law's U.S.-built requirement results in a smaller fleet with fewer mariners employed than would otherwise be the case. That's particularly noteworthy given government calculations that there is a deficit of roughly 1,800 mariners to crew its fleet in the event of a sustained sealift operation.

Beyond its ruinous impact on the competitiveness of domestic shipbuilding, the Jones Act has had other deleterious consequences for national security. The increased cost of waterborne transport, or its outright impossibility in the case of liquefied natural gas and propane, results in reduced self-reliance for critical energy supplies. This is a sufficiently significant issue that members of the National Security Council unsuccessfully sought a long-term Jones Act waiver in 2019. The law also means fewer redundancies and less flexibility in the country's transportation system when responding to crises, both natural and manmade. Waivers of the Jones Act can be issued, but this highly politicized process eats up precious days when time is of the essence. All of these factors merit consideration in the overall national security calculus.

To review, the Jones Act's opaque and implicit subsidy—doled out via protectionism—results in anemic and uncompetitive shipbuilding, few ships available in time of war, and fewer mariners than would otherwise be the case without its U.S.-built requirement. And it has other consequences for national security that are not only underwhelming but plainly negative. Little wonder that Hendrickson concedes it is unclear whether U.S. maritime policy—of which the Jones Act plays a foundational role—achieves its national security goals.

The toll exacted in exchange for the Jones Act's limited benefits, meanwhile, is considerable. According to a 2019 OECD study, the law's repeal would increase domestic value added by $19-$64 billion. Incredibly, that estimate may actually understate matters. Not included in this estimate are related costs such as environmental degradation, increased congestion and highway maintenance, and retaliation from U.S. trade partners during free-trade agreement negotiations due to U.S. unwillingness to liberalize the Jones Act.

Against such critiques, Hendrickson posits that substantial cost savings are illusory due to immigration and other U.S. laws. But how big a barrier such laws would pose is unclear. It's worth considering, for example, that cruise ships with foreign crews are able to visit multiple U.S. ports so long as a foreign port is also included on the voyage. The granting of Jones Act waivers, meanwhile, has enabled foreign ships to transport cargo between U.S. ports in the past despite U.S. immigration laws.

Would Chinese-flagged and crewed barges be able to engage in purely domestic trade on the Mississippi River absent the Jones Act? Almost certainly not. But it seems perfectly plausible that foreign ships already sailing between U.S. ports as part of international voyages—a frequent occurrence—could engage in cabotage movements without hiring U.S. crews. Take, for example, APL's Eagle Express X route that stops in Los Angeles, Honolulu, and Dutch Harbor as well as Asian ports. Without the Jones Act, it's reasonable to believe that ships operating on this route could transport goods from Los Angeles to Honolulu before continuing on to foreign destinations.

But if the Jones Act fails to meet U.S. national security benefits while imposing substantial costs, how to explain its continued survival? Hendrickson avers that the law's longevity reflects its utility. We believe, however, that the answer lies in the application of public choice theory. Simply put, the law's costs are both opaque and dispersed across the vast expanse of the U.S. economy while its benefits are highly concentrated. The law's de facto subsidy is also vastly oversupplied, given that the vast majority of vessels under its protection are smaller craft such as tugboats and barges with trivial value to the country's sealift capability. This has spawned a lobby aggressively dedicated to the Jones Act's preservation. Washington, D.C. is home to numerous industry groups and labor organizations that regard the law's maintenance as critical, but not a single one that views its repeal as a top priority.

It's instructive in this regard that all four senators from Alaska and Hawaii are strong Jones Act supporters despite their states being disproportionately burdened by the law. This seeming oddity is explained by these states also being disproportionately home to maritime interest groups that support the law. In contrast, Jones Act critics Sen. Mike Lee and the late Sen. John McCain both hailed from land-locked states home to few maritime interest groups.

Disagreements, but also Common Ground

For all of our differences with Hendrickson, however, there is substantial common ground. We are in shared agreement that the Jones Act is suboptimal policy, that its ability to achieve its goals is unclear, and that its U.S.-built requirement is particularly ripe for removal. Where our differences lie is mostly in the scale of gains to be realized from the law's reform or repeal. As

such, there is no reason to maintain the failed status quo. The Jones Act should be repealed and replaced with targeted, transparent, and explicit subsidies to meet the country's sealift needs. Both the country's economy and national security would be rewarded—richly so, in our opinion—from such policy change.

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