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Dredging Protectionism

BY COLIN GRABOW

Efficient functioning of America's ports and waterways is critical to the distribution of goods throughout the U.S. economy. Nearly 70% (by weight) of the country's international trade transits via water, along with a smaller percentage of domestic commerce.

Maintaining and expanding these vital pieces of infrastructure require dredging, the removal of soil, sand, and other materials from the underwater channels through which vessels navigate. Hampering these efforts, unfortunately, are two protectionist maritime laws: the Jones Act and the Foreign Dredge Act.

The 1920 Jones Act requires that merchandise transported by water between U.S. ports be on vessels that are U.S.-flagged, U.S.-built, and at least 75% U.S.-owned and crewed. The sludge removed by dredging is considered "merchandise" under this law and must be moved by these types of vessels. The 1906 Foreign Dredge Act applies the same requirements to dredging vessels specifically. As a result of these laws, American ports are forced to rely on dredges that typically are smaller, older, and less efficient than their foreign counterparts.

Old and small fleet / The privately owned U.S. fleet of hopper dredges, considered by the U.S. Army Corps of Engineers to be the most appropriate vessel for operating in coastal ports, consists of 16 vessels with a collective capacity of approximately 74,000 cubic meters. In comparison, four European dredging companies — Boskalis, DEME, Jan de Nul, and Van Oord — own 87 hopper dredges with a collective capacity of 986,000 m^3. The largest U.S. hopper dredge by capacity, the *Ellis Island*, would rank as only the 31st-largest in the European fleet.

U.S. vessels aren't just smaller and less numerous, they are also older, with an average build year of 1987. One U.S. hopper dredge, the *Columbia*, began its life in 1944 as a World War II landing ship before being converted to a hopper dredge in 1973. These old vessels require more maintenance than newer dredges, and they lack technologically advanced features that would lower their cost of operation. The European dredge fleet, meanwhile, has an average build year of 2004.

This U.S. inferiority is almost preordained. Requiring vessels to be U.S.-built means that they must be acquired from uncompetitive U.S. shipyards at considerably higher prices than those constructed abroad. In 2020, Great Lakes Dock and Dredge — the largest U.S. dredging firm, with a 39% market share — ordered a 5,000 m^3 capacity hopper dredge from Louisiana-based Conrad Shipyard for $100 million. In contrast, in 2018 the Dutch dredging firm Van Oord ordered two 10,500 m^3 hopper dredges from Singapore shipyard Keppel Singmarine for *a total* of about $158 million. While not perfect comparisons, Van Oord spent roughly $20 million less per dredge for vessels with twice the capacity.

American ports are forced to rely on dredges that typically are smaller, older, and less efficient than their foreign counterparts.

Beyond inflated vessel costs, U.S. dredging firms must also contend with other government-imposed burdens such as a 50% duty on repairs or maintenance performed in foreign shipyards.

Lack of competition / Such measures have greatly contributed to the creation of a U.S. fleet that is internationally uncompetitive. While European dredging firms operate around the world in locales as varied as India, Brazil, South Africa, Italy, and Australia, U.S. dredging firms are largely restricted to their captive domestic market, with only limited international forays. Great Lakes Dock and Dredge, for example, reports that foreign dredging operations accounted for an average of just 6% of its dredging revenues over the past three years.

Dredging costs resulting from the U.S. fleet's inferior and expensive vessels are further compounded by a lack of competition. Although the 16 hopper dredges compliant with U.S. dredging restrictions are divided among five companies, only three companies own more than two of the vessels. Limited competition also appears to be the order of the day among the broader U.S. dredging market. According to a 2019 Congressional Research Service (CRS) report, 42% of dredging contracts awarded by the Army Corps of Engineers from 2014 to 2018 were sole-bid contracts and another 25% attracted just two bidders. (The domestic industry group Dredging Contractors of America disputes the sole-bid figure, placing the number at 11%.) A 2018 Center for Strategic and International Studies analysis noted that during the period 1997–2015, 38% of contracts in the Corps' Galveston and Mobile works districts had only one bidder, and another 21.5% had just two. The 1988 indictments of 13 dredging firms (including Great Lakes Dock and Dredge, which pled guilty) as part of a federal investigation into bid-rigging is also suggestive of persistent limited competition.

The predictable result of a costly fleet and limited competition is inflated dredging prices. According to the Government Accountability Office, the Corps of Engineers spent nearly $170 million for hopper dredges owned both privately and by the

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Corps (which operates four dredges) to remove around 66 million cubic yards of material in fiscal year 2003. By fiscal year 2012, those dredges were removing only slightly more material (almost 72 million cubic yards) while spending on their operation had grown to about $370 million. The aforementioned CRS report, meanwhile, notes that inflation-adjusted costs for harbor maintenance dredging increased from $1.74 per cubic yard in 1970 to $5.77 in 2018. Although the report points out numerous factors behind this cost increase, one reason cited is the relative dearth of competition.

Costs and savings / The potential cost savings from market opening to more efficient foreign dredgers appear significant. Van Oord estimates that it could perform U.S. dredging projects such as port deepenings for 60% of the cost and three times faster, even if it used mostly U.S. crews and support vessels.

Comparisons of coastal restoration projects performed in the United States and abroad, for which hopper dredges are sometimes used, lend credence to these claims. A coastal restoration project at Whiskey Island, La., for example, cost $118 million to move 15.8 million cu. yd. of sand, while another project at Caminada Headlands, La., cost $216 million to move 8.8 million cu. yd. In contrast, a project in the Netherlands moved 28.1 million cu. yd. of sand at a cost of $55.5 million.

In total, the savings to government-funded projects from allowing European dredging firms to enter the U.S. market could reach $1 billion per year, these firms contend.

The economic toll from dredging protectionism goes still higher when opportunity costs are considered. According to the National Oceanic and Atmospheric Administration, dredging ports just an additional inch can allow ships to carry enough additional weight to transport 50 tractors or 5,000 55-inch televisions. That's a boon to efficiency. A study performed by the Soybean Transportation Coalition found that dredging the lower Mississippi River from its current 45 ft. to 50 ft. would produce additional income of $461 million to soybean producers from the ability to ship heavier loads.

Texas ports offer further examples of the potential gains that can be realized through additional dredging. Because of a lack of depth, supertankers known as Very Large Crude Carriers cannot directly access Texas ports and instead must sit offshore where the oil is transported to them by smaller tankers. Known as "reverse lightering," the process is estimated to take two to three days longer than direct loading and, depending on freight rates, can tack on over $1 million in additional shipping costs. Such inefficiencies require a wider price spread between U.S. crude oil and international crude oil prices to compensate for the resulting added costs.

In the Houston Shipping Channel, meanwhile, the lack of dredging to widen the channel means that large ships must perform a maneuver known as "Texas Chicken" when they approach each other from different directions. The ships sail directly at each other, swerving at the last moment and using hydrodynamic forces to keep from touching as they pass. As the Port of Houston notes on its website, "There is no question that a wider channel is a safer channel." Last year, a deal was reached to expand the shipping channel, but at a cost of $1.1 billion and with completion not until 2025.

Security concerns? / Some defenders of this highly restricted and costly dredging market claim it is necessary for national security — a claim often made for protectionism. A 2020 report by the Center for Strategic and Budgetary Assessments, for instance, floated the possibility of foreign dredging firms engaging in sabotage or installing surveillance equipment in U.S. ports — but it offered no evidence of this taking place in open dredging markets. Such a scenario becomes more dubious still when one considers that leading European dredgers are based in NATO-member countries and have stated their willingness to crew dredges with Americans for U.S. projects.

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It seems difficult to make the case, meanwhile, that the lack of efficient dredging for the country's ports is a national security asset.

Instead of national security, a more likely explanation for these laws is the lobbying power of domestic interest groups that reap the concentrated benefits of protectionist law as opposed to groups that bear the dispersed costs. The Dredging Contractors of America, headed by Richard Balzano, a former deputy administrator of the U.S. Maritime Administration, is the foremost advocate for maintaining dredging restrictions. Aiding its efforts are other organizations dedicated to preserving related protectionist maritime laws, such as the Jones Act, because they fear the fates of these laws are interlinked.

In contrast, there is no industry or lobbying group in Washington that places the demise of such laws as a top priority. Bills introduced in late 2021 and this year to reform or eliminate U.S. dredging protectionism reflect this dynamic, thus far failing to muster much support, even with the serious and well publicized supply problems related to the COVID pandemic. (See "Dispelling Supply Chain Myths," p. 26.)

Absent such changes, the United States will remain beholden to an inefficient and uncompetitive dredging industry, with the country's ports and waterways — as well as its broader prosperity — bearing the cost. *R*

READINGS

- "Army Corps of Engineers: Actions Needed to Further Improve Management of Hopper Dredging." U.S. Government Accountability Office, April 2014.
- "Expanding Competition, Expanding Ports: Competition in U.S. Hopper Dredging," by Ariel Collis and Robert N. Fenili. Center for Strategic and International Studies, June 2018.
- "Harbor Dredging: Issues and Historical Funding, Updated," by John Frittelli. Congressional Research Service, November 6, 2019.
- "Impacts on Crops and Product Export Flows of Dredging the Lower Mississippi River at 50 Feet," prepared by Informa Economics IEG. Soy Transportation Coalition, May 2018.
- "Strengthening the U.S. Defense Maritime Industrial Base: A Plan to Improve Maritime Industry's Contribution to National Security," by Bryan Clark, Timothy A. Walton, and Adam Lemon. Center for Strategic and Budgetary Assessments, February 12, 2020.

Anti–Price Gouging Laws: Why a Pandemic Is Different from Other 'Emergencies'

BY STEVE G. PARSONS

On March 18, 2020, President Donald Trump issued Executive Order 13910, declaring a national emergency related to the COVID-19 pandemic. This led to the Justice Department's creation of a COVID-19 Hoarding and Price Gouging Task Force.

Prior to 1979, there were no U.S. anti–price gouging laws (APGLs) at either the federal or state level. But by 2020, 37 states had APGLs that were triggered by a national state of emergency. In the COVID emergency, not only did those states initiate certain APGL provisions, but many other states' governors issued executive orders to similar effect. These pandemic APGLs generally apply to personal protective equipment (PPE), drugs, disinfectants, and related goods, but some could be interpreted more broadly.

Economists almost universally disdain APGLs or other forms of government price controls. Economic theory and substantial empirical evidence indicate that APGLs make society worse off by:

- increasing hording and shortages,
- sending the wrong price signal for consumers to conserve,
- not providing goods to their highest-valued use and users, and
- not providing the proper price signal for current and potential new suppliers to increase supply.

However, people in general (and therefore politicians) tend to have a strong emotional reaction to even the hint that a business or individual may be taking advantage of an emergency. This may be due to a lack of knowledge of economics and/or irrational behavior.

Previously in these pages, University of Georgia economist Dwight Lee suggested a morality focus regarding APGLs. (See "The Two Moralities of Outlawing Price Gouging," Spring 2014.) He argued that there are two different moralities at play in an emergency: One is the intentional behavior by people or businesses to sacrifice for others; he calls this "magnanimous morality." The other is the mundane morality of the market as firms' pursuit of self-interest can help others in an emergency (even if those facing the emergency are thousands of miles away).

I would argue that there is a range of business responses that fall somewhere between these two moralities. Businesses may:

- donate goods during an emergency,
- provide goods at a loss,
- provide goods at a lower profit margin,
- redirect goods to an emergency area even though that increases transportation costs, and/or
- voluntarily decide not to raise prices or to raise prices less than market conditions warrant.

Such actions may create customer good will and therefore could even be profitable in the long run (if not in the short term). Firms that have already invested in building brand or corporate names are more likely to engage in such activities. For example, as the late Ball State economist Steven Horwitz noted in a 2009 *Independent Review*

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article, "Since 2004, Walmart has had a corporate policy of instituting regional price freezes when hurricanes approach in order to avoid accusations of price gouging."

Unfortunately, APGLs (and even posturing by politicians) can stifle mundane morality and the shades-of-gray quasi-magnanimous morality by creating additional risks and constraints on business. This legal/regulatory risk is on top of the normal business risk associated with making a capital investment for products (such as facemasks and ventilators) for which future demand is uncertain. Early in the COVID pandemic, automaker General Motors partnered with Ventec Life Systems to produce ventilators, a decision that would almost certainly not have occurred without a federal contract that effectively side-stepped APGLs and eliminated demand-side risk.

Different sort of emergency / There are several reasons why APGLs are worse for society during a pandemic vis-à-vis a more typical emergency. First, there is the much longer time period for a pandemic. The strongest argument for APGLs is that, during a typical emergency, the time period is so short that supply is not very price responsive. This argument becomes weaker as the time period of the declared emergency becomes longer and businesses have more time to respond and increase supply.

After two years of "emergency," on February 18, President Joe Biden "continued" the national COVID emergency. Seven of the 37 state APGLs preclude any price increase (i.e., 0%) during an emergency, while others allow no more than 10%, 20%, or 25% increases. Some employ such vague language (e.g., "unconscionable" or "excessive" pricing) that suppliers face a risky business environment and are uncertain as to what prices will be legal. Consider goods not covered by pandemic APGLs. During the pandemic, gasoline went from $2.40 to over $4.30 a gallon (after first dropping below $2). Prices on food, rent, new homes, new and used vehicles, and a host of other goods and services rose faster than many APGLs would have allowed if they were covered by the law. To constrain prices for PPE and related goods for over two years should seem to everyone to be unrealistic and unreasonable.

Second, most typical disasters are narrow in geography, but COVID-19 is a worldwide pandemic. If the United States limits the prices of PPE and related goods, those goods are likely to be diverted elsewhere in the world. Moreover, modern worldwide supply chains mean U.S. manufacturers' costs will rise more than during a typical time period or during a U.S.-only disaster.

Third, there is no physical destruction during a pandemic. Downed power lines and instantaneous loss of housing experienced in many natural disasters are different problems than shortages of PPE. Therefore, personal hoarding is more likely during a pandemic; one can hoard sanitizers and N-95 masks, but not housing, clear roads, and electricity. Hoarding exacerbates shortages that could have been at least partially mitigated with prices that send the right information.

Fourth, COVID-19 is infectious. Righteous indignation over price increases codified in APGLs accentuates shortages, but a shortage has a compound effect via infection. The loss of PPE or drugs for one person can lead to death or illness for others. In addition, this pandemic has caused far greater loss of life than other forms of disaster, and APGLs have contributed to that.

Conclusions and recommendations / Like virtually all economists, I recommend against any price controls in an emergency. Somehow, prior to 1979, the United States managed to navigate disasters without APGLs. However, given the public's distaste for someone seemingly taking advantage of an emergency, I offer the following, more circumspect, recommendations.

First, tone down the rhetoric with respect to APGLs. It can send the wrong signal to businesses that are contemplating expanding supply. Raising prices is not "fraud" nor a "scam."

Second, APGLs should have specific percentage price caps and not rely on vague language such as "excessive" or "exorbitant." Vague language increases business risk.

Third, specific caps on price increases should not be set at 0%. Such a mandate is inconsistent with normal business.

Fourth, if an APGL is triggered, policymakers should either state with specificity when the emergency will end or provide additional upward price flexibility over time.

Fifth, distinguish between new sources of supply (e.g., generators brought in from another part of the country during a hurricane or expanded production of masks during a pandemic) and hording for resale.

And sixth, APGLs are particularly ill-suited for pandemics. COVID-19 will not be the last pandemic in history, but perhaps it will be the last pandemic triggering APGLs.

As a practical perspective on enforcement, consider Louisiana Attorney General Jeff Landry's comments in a March 23, 2020, news story in *The Hill*. He provided two examples of fraud: misrepresentation that a telephone caller was from a hospital seeking funds for a ventilator to save a young man's life, and calls offering fake COVID-19 tests. Landry stated: "We should, when we catch some of these people, lock them up for the entire rest of their lives. This is no joke." But, in contrast, he also stated: "Price gouging is a subjective test. We have to factor in market supply, demand, [and] where the product is coming from." R

READINGS

- "Gasoline Prices after Hurricane Ike in South Carolina," by Michael Giberson. *Knowledge Problem*, Aug. 17, 2009.
- "How California's Price-Gouging Order Can Cause More Deaths," by Richard B. McKenzie. *Regulation* 43(2): 7–8 (Summer 2020).
- "States See Surge of Scams, Price-Gouging Tied to Pandemic," by Reid Wilson. *The Hill*, March 23, 2020.
- "The Problem with Price Control Laws," by Michael Giberson. *Regulation* 34(1): 48–53 (Spring 2011).
- "The Two Moralities of Outlawing Price Gouging," by Dwight R. Lee. *Regulation* 37(1): 28–31 (Spring 2014).
- "Walmart to the Rescue: Private Enterprise's Response to Hurricane Katrina," by Steven G. Horwitz. *Independent Review* 13(4): 511–522 (2009).

BRIEFLY NOTED

Bootleggers and Constitutional Carry

BY JOSEPH MICHAEL NEWHARD

Legislation enshrining "constitutional carry" — that is, the legal right to carry a firearm without a government permit — is spreading quickly across the country. Many states have adopted constitutional carry in the past decade, and more are expected to do so in the coming years.

Gun control groups unsurprisingly oppose constitutional carry. More surprisingly, so do some police chiefs associations and police unions. They argue that permitless carry increases the danger faced by law enforcement officers. Yet, officer fatalities have trended downward slightly over the past four decades (excepting COVID-19 deaths), despite a growing number of law enforcement officers, a growing U.S. population, more guns in circulation, and expansions in concealed and open carry.

Could another motivation be behind the police groups' opposition to constitutional carry? The economic theory of regulation, outlined by Nobel economics laureate George Stigler, posits that government regulation often reflects private interests rather than the public interest. An extension of this idea, public choice theory, holds that policymakers and other government officials, themselves, can be the private beneficiaries. Accordingly, law enforcement organizations' position on constitutional carry may reflect their economic benefit from gun control. Armed citizens are a substitute for police in dangerous areas, thus gun control increases demand for police services, leading to more funding and more law enforcement jobs.

This may explain why police chiefs and unions, if not the rank-and-file of law enforcement, tend to favor gun control measures. Individual officers, many of whom are gun owners and Second Amendment supporters, may see only a small direct economic benefit from gun control, but police unions enjoy a larger membership and more union dues, and police chiefs enjoy the greater prestige and power that comes from commanding larger and better-funded police forces. Likewise, municipal law enforcement representatives are more likely to support gun control than their rural counterparts because they see armed citizens as substitutes for law enforcement. In rural areas, where crime rates are lower, armed citizens are seen as complements.

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Law enforcement and gun control / Vermont, which is the historical home of several major U.S. gun manufacturers, led the way in constitutional carry, having *never* restricted the right to carry a firearm. As a result, constitutional carry is sometimes referred to as "Vermont carry." Alaska adopted it in 2003. In 2010, Arizona became the third state to do so, kicking off a wave of similar laws in other states for the remainder of the decade. More recently, Iowa, Montana, Tennessee, Texas, and Utah adopted constitutional carry in 2021, while Wyoming extended it to visitors from other states. Alabama, Georgia, Indiana, and Ohio adopted constitutional carry earlier this year.

Throughout this process, representatives from law enforcement organizations have generally opposed constitutional carry laws. For instance, when Idaho enacted it in 2016, police chiefs Bill Bones, Jeff Lavey, and Rick Allen wrote in an op-ed in the *Idaho Statesman*, "We believe dismantling the longstanding and effective permitting system without taking additional precautionary steps will weaken public safety." The three head police forces in Ada County, the largest county in Idaho, with a little over a quarter of the state population as of 2020. In contrast, Joe Rodriguez, sheriff of Nez Perce County — a much smaller county — has been more favorably disposed to the legislation, saying in 2017 that "nothing has changed" in reference to crime rates. That same year, the *Washington Post* reported that Scott Haug, president of the Idaho Chiefs of Police Association, admitted that constitutional carry made him worry about a lack of gun safety training for those exercising the right, but "other than that, it's gone pretty well."

Constitutional carry went into effect in Texas on September 1, 2021. Many representatives of the law enforcement community voiced opposition to the law, including James McLaughlin, executive director of the Texas Police Chiefs Association, Austin interim police chief Joseph Chacon, Houston Police Officers' Union director Ray Hunt, and Texas Municipal Police Association executive director Kevin Lawrence. Lawrence echoed his peers in arguing that constitutional carry "will make the jobs of our law enforcement officers more difficult and more dangerous." Former Houston and Austin police chief and gun control advocate Art Acevedo called the law "ridiculous" and predicted "a lot more bloodshed," claiming, "Law enforcement, police chiefs, sheriffs, police labor … do not support constitutional carry here in Texas or anywhere in this country." He added, "You're either with law enforcement or you stand with the fringe." Similar statements have been made by law enforcement representatives in Tennessee, Ohio, Indiana, Alabama, Georgia, and other states recently debating constitutional carry bills.

The general support for gun control measures among police chiefs and police union representatives stands in contrast to some sheriffs and the police rank-and-file. According to Doug Wyllie of *Police* magazine, a 2013 survey of over 15,000 verified law enforcement professionals found that 95% believe a ban on the manufacture and

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sale of ammunition magazines that hold over 10 rounds would have no effect on violent crime, and 71% believe that a ban on the manufacture and sale of semiautomatic weapons would have no effect while another 20% believe it would *increase* crime. Though similar polling doesn't yet exist on constitutional carry, the impression is that police chiefs and unions generally oppose it while sheriffs tend to be supportive or neutral.

Cartel enforcement / In a 1983 article in *Regulation*, Clemson economist Bruce Yandle offered another extension of the economic theory of regulation. According to "Bootleggers and Baptists: The Evolution of a Regulatory Economist," interest groups with very different motivations can independently work toward a mutually beneficial social regulation. One party would be driven by high-minded — and publicity friendly — interests while the other would follow narrow economic self-interest. Yandle argued that durable social regulation often emerges from the combined work of both types of interest groups.

Regulation of the firearms industry in the United States throughout the 20th century is an excellent real-world illustration of Yandle's model. Previously in these pages, I observed that the major acts of U.S. federal gun control offered protectionism to the domestic firearms industry. (See "'Bootleggers' and Gun Control," Fall 2015.) These included restrictions on imported weapons under the National Firearms Act of 1934 and the Gun Control Act of 1968, President George H.W. Bush's executive action blocking imports of many popular firearms in 1989, and President Barack Obama's blocking of the importation of surplus American M1 Garand rifles from South Korea during his term. Although these actions were rationalized in the name of public safety, they also protected domestic producers from foreign competition and ultimately attracted production facilities from other countries to the United States. Taken together, these acts seem to confirm Stigler's general assertion that "as a rule, regulation is acquired by the industry and is designed and operated primarily for its benefit."

Police organizations' opposition to constitutional carry and other gun rights can be understood as a merger of both public choice and bootleggers-and-Baptists theories, with the police groups acting as both bootleggers and Baptists. Restrictions on the carrying of a firearm outside the home induce demand for public law enforcement. Police groups are hardly strangers to such self-motivation: as journalist Lee Fang has noted, one of the top five interest groups that lobby to keep marijuana illegal is police unions (along with private prison corporations and prison guard unions).

In contrast, public firefighters did not resist innovations that reduce fire incidence. The broader use of fire-resistant building materials, smoke alarms, fire extinguishers, and fire sprinklers have reduced the percentage of emergency calls for fire relative to medical aid. In 1980, 27.6% of calls to fire departments were for fire and 46.6% were for medical aid; today, just 4% are for fire and 65% for medical aid. As a result, firefighters have reoriented toward emergency medical services. If crime rates continue to trend downward, police officers may likewise have to expand their mission in the future; perhaps the war on drugs represents just such an adaptation to an evolving society.

Conclusion / The economic theory of regulation can lead to insights that may seem counterintuitive, yet it can explain seemingly irrational behavior by public officials. Many police chief groups and police unions say they oppose constitutional carry for officer and public safety reasons, yet data trends do not support that concern, making the chiefs and unions appear irrational. However, economic interests would explain why they support public safety regulations that restrict the individual right to carry a firearm, resulting in greater demand for police services. *R*

READINGS

- "Bootleggers and Baptists in Retrospect," by Bruce Yandle. *Regulation* 22(3): 5–7 (1999).
- "Bootleggers and Baptists: The Education of a Regulatory Economist," by Bruce Yandle. *Regulation* 7(3): 12–16 (1983).
- "'Bootleggers' and Gun Control," by Joseph Michael Newhard. *Regulation* 38(3): 10–16 (2015).
- "Luddism as Cartel Enforcement," by Gary M. Anderson and Robert D. Tollison. *Journal of Institutional and Theoretical Economics* 142(4): 727–738 (1986).
- *More Guns, Less Crime*, 3rd ed., by John R. Lott Jr. University of Chicago Press, 2010.
- "Police and Prison Guard Groups Fight Marijuana Legalization in California," by Lee Fang. *The Intercept*, May 18, 2016.
- "The Theory of Economic Regulation," by George J. Stigler. *Bell Journal of Economics and Management Science* 2(1): 3–21 (1971).

BRIEFLY NOTED

Increased Immigration as an Inflation and Inequality Fighter

BY IKE BRANNON AND M. KEVIN MCGEE

The inflationary spike in the United States over the last few months has the Biden administration scrambling to find ways to ease price levels. While its ability to do so is limited, a series of White House policy changes in early 2022 will boost the number of technology-worker immigrants and could help ease technology prices and give the economy a boost.

The administration will allow foreign students on a J-1 visa to remain in the United States for up to three years to work and undertake practical training. The J-1 visa typically covers scholars participating in research exchange programs, and current regulations only permit 12 months of practical training. Biden also expanded the number of fields eligible for this opportunity. The administration also increased the range of skills and expertise that will qualify a worker to receive an O-1A visa, which goes to persons of extraordinary ability in the fields of science, business, education, or athletics.

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Lost workers / In the last two years, the pandemic has exacerbated what was already a tight labor market. There are now 1.5 million fewer workers participating in the U.S. economy than there were before the pandemic, and a sizable fraction of that loss appears to be permanent. This worker exodus has exacerbated supply issues currently plaguing the U.S. economy, which show few signs of abating. (See "Supply-Chain Myths," p. 26.)

Firms across a wide variety of industries are struggling to attract qualified applicants as well as retain current employees. The Bureau of Labor Statistics (BLS) reports that a record number of workers quit their jobs in March, yet new jobless claims in April were at historic lows. Most of the reduction in labor force participation rates appears to be from older workers who left their jobs, either because COVID made working less attractive or the stock market boom allowed them to accelerate their retirement date. Women's employment has also fallen precipitously in the last two years, but this may be a transitory phenomenon owing to pandemic-induced child-care issues.

While restaurants and food producers — two industries that tend to hire workers with relatively little education and training — have had noticeable troubles maintaining employment levels, labor shortages are occurring all across the skills spectrum. Many of the hardest-to-fill positions are

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This worker exodus has exacerbated supply issues currently plaguing the U.S. economy, which show few signs of abating.

in health care, a field hit particularly hard by the repeated waves of the pandemic. COVID has also exacerbated demand for software developers and a variety of other high-skilled occupations.

Growing demand, constrained supply / The latter categories are all areas in which foreign-born workers have traditionally taken a high proportion of jobs, largely because universities — for a variety of reasons — have not been able to train enough U.S.-born workers to meet demand. More than half of all the master's degrees in computer science and in engineering awarded by U.S. postsecondary institutions in 2019 were to nonresident aliens.

As part of its nativist agenda, the Trump administration made it considerably more difficult for foreigners to migrate to the United States to work or obtain an education. The pandemic further obstructed this migration, and so far those numbers have not rebounded as COVID begins to recede. The reduction in the number of foreign-born workers is especially problematic because the current demographic patterns in the United States — and elsewhere — suggest that heightened labor scarcity may soon become a permanent condition. A BLS study projects a steady decline in labor force participation rates in the next 40 years, as the tail end of the baby boom reaches retirement age. A recent private sector analysis suggests that the pandemic served to accelerate this decline.

Helping immigrants, helping ourselves / The Biden administration's actions will help to increase the ability of the United States to retain these high-skilled graduates in the workforce, although the number of new workers this will add will be slight compared to overall demand. Our own research suggests that the order will be especially helpful to firms located away from the densely populated coasts, as immigrants tend to be more amenable to moving to where there are available jobs. This will also help create and retain jobs in such places for U.S. workers. This reality goes against the reflexive — and facile — story often put forth by opponents of immigration, which is that increased numbers of foreign workers will take away jobs from U.S.-born workers.

Americans are unaccustomed to thinking about labor scarcity, but that may be about to change. Boosting the number of skilled immigrants would help to address that problem while lessening the pressures that labor demand might have on price levels and income inequality. The Biden administration's efforts don't offer a complete solution to a complex problem, but they are a step in the right direction. *R*

READINGS

- "A Look at the Future of the U.S. Labor Force to 2060," by Mitra Toossi. U.S. Bureau of Labor Statistics, September 2016.
- "Estimating the Economic Impacts of DACA," by Ike Brannon and M. Kevin McGee. Working paper, September 5, 2019.
- "The Demographic Drought: Bridging the Gap in Our Labor Force," by Ron Hetrick, Cassondra Martinez, and Hannah Grieser. Emsi Burning Glass, February 23, 2022.

Electronic Health Records, Inflation, and Private Medicine

BY DEVORAH GOLDMAN

In late 2021, doctors and medical students bombarded Congress with hundreds of thousands of letters protesting a scheduled 10% cut to Medicare payment rates for private physicians. The effort, largely organized by the American Medical Association, was rewarded, and doctors were granted a reprieve from the full reduction, but physician payments are still being trimmed just as inflation has hit a 40-year high. Physicians are also facing a statutory payment freeze scheduled to last through 2026.

In some ways, this marks a pivotal moment for private physicians. Unlike other small business owners, doctors running private practices have little power to set their own prices; Medicare largely sets the going rates for the entire industry. But the costs of running a private medical practice rose by around 39% between 2001 and 2021, even before the recent inflationary spike. Related expenses include office rent, employee wages and benefits, costly medical equipment, malpractice insurance premiums, and so forth. On top of that, a study published in *JAMA Health Forum* estimates that it costs $12,811 and takes more than 200 hours per physician annually to comply with the Medicare Merit-Based Incentive Payment System (MIPS).

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EHRs / What is MIPS and why should it cost doctors so much? First approved by Congress in 2015, the system is designed to push doctors to improve the "quality and value" of their services. More than anything, it seeks to nudge physicians to use electronic health records (EHRs) in their daily work. This has proven to be costlier and more onerous than policymakers anticipated.

Beginning in 2017, hundreds of thousands of physicians across the country were forced to participate in MIPS or else face

severe financial penalties. Today, Medicare increases or decreases payments to doctors based on how well they perform on a range of complicated EHR-related measures.

MIPS is just one of several major government initiatives to get doctors to adopt EHRs. The controversial technology systems were originally optimized for billing — rather than actual medical care — and they have been widely lambasted. In 2019, *Fortune* magazine and the Kaiser Foundation released a bombshell report, "Death by 1,000 Clicks," on the thousands of serious, sometimes fatal, medical errors caused by EHRs. Some of the problems are features rather than bugs.

Because of the enormous quantity of data that EHRs require doctors to fill in per patient, the report explains that "critical or time-sensitive information routinely gets buried." For instance, in 2014 Thomas Eric Duncan was sent home from a Dallas hospital with an undiagnosed infection. A nurse had entered his recent trip to Liberia — where an Ebola epidemic was raging at the time — among many other details in Duncan's EHR, but the doctor never saw it. Duncan died of the disease shortly after his discharge.

The study noted that many other errors are hidden by contractual "gag clauses" imposed by EHR vendors, dissuading buyers from speaking out about safety issues and disastrous software installations. Some hospitals also fight to withhold records from injured patients or their families.

Complicating rather than streamlining / The federal push to get EHRs into medical facilities nationwide began in earnest after the 2008 financial crisis. Then-president-elect Barack Obama's recovery plan included making "sure that every doctor's office and hospital in this country is using cutting-edge technology and electronic medical records so that we can cut red tape, prevent medical mistakes, and help save billions of dollars each year."

Unfortunately, the large-scale adoption of EHRs has done none of those things. Until that point, medical facilities had been gradually replacing paper-record systems with digital records, much as smartphones incrementally replaced flip-phones. But Obama's plan sought to greatly accelerate the transition. The 2009 stimulus bill invested over $36 billion in the EHR industry; in exchange for the infusion of cash, EHR vendors were expected to create record systems that conformed to a wide range of government requirements.

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These made-to-order, government-approved systems — which were not sought after by either doctors or the patient community — have failed in egregious ways. Among other things, government-approved EHRs are often difficult to use, and poor software designs have led to countless recording and medical errors. They have complicated rather than streamlined medical files. The *Fortune* report notes:

> Many doctors today opt for manual workarounds to their EHRs. Aaron Zachary Hettinger, an emergency medicine physician with MedStar Health in Washington, D.C., said that when he and fellow clinicians need to share critical patient information, they write it on a whiteboard or on a paper towel and leave it on their colleagues' computer keyboards.

Perhaps most worrisome, these systems have disrupted the doctor–patient relationship and in some ways revamped the medical industry in undesired ways. Doctors who employ EHRs must spend a great deal of time carefully checking off boxes and marking down specific notes, which means they are often distracted during patient consultations. Both doctors and patients have complained bitterly about this in myriad surveys. To mitigate this, many physicians have begun employing "medical scribes" to literally follow them around, taking notes. (Private physicians, of course, must pay these employees out of pocket.) None of this feels much like innovation.

Critical moment / It is clear that the widespread use of EHRs benefits the EHR industry, which has grown from $2 billion annually in 2009 to over $13 billion annually today. It also benefits many companies interested in mass accumulation of health data; in 2019, the health data of over 50 million Americans were transferred to Google by Ascension, the second-largest healthcare provider in the United States. Google reportedly plans to use the data to improve artificial intelligence and other tools, but there is scant evidence that it has provided any meaningful benefit for patient care (the ostensible justification for MIPS and other programs). The cost of complying with government EHR requirements, combined with a host of other expenses, is pushing many physicians to leave medicine altogether.

Over the course of the COVID-19 pandemic, thousands of physicians have resigned or significantly reduced their working hours, and nearly 24% have said they plan to leave their practices within two years. The stress of the last several years surely contributed to these decisions, but private physicians have had to contend with serious financial instability related to unpredictable Medicare payment rates for decades. This, combined with enormous increases in administrative burdens and costs, has made the practice of medicine in the private sphere almost unrecognizable. R

READINGS

- "Death By 1,000 Clicks: Where Electronic Health Records Went Wrong," by Fred Schulte and Erika Fry. Kaiser Health Network and *Fortune*, March 18, 2019.
- "Time and Financial Costs for Physician Practices to Participate in the Medicare Merit-Based Incentive Payment System: A Qualified Study," by Dhruv Khullar, Amelia M. Bond, Eloise May O'Donnell, et al. *JAMA Health Network* 2(5): e210527 (May 14, 2021).

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